



**National Emergency
Management Agency**
Te Rākau Whakamarumarū



**DEPARTMENT OF THE
PRIME MINISTER AND CABINET**
TE TARI O TE PIRIMIA ME TE KOMITI MATUA

Proactive Release

The following Cabinet material has been proactively released by the Department of the Prime Minister and Cabinet (DPMC), and National Emergency Management Agency (NEMA), on behalf of Hon Peeni Henare, Minister of Civil Defence:

Updating the legislative framework to strengthen New Zealand's response to emergencies – tranche one

Cabinet confirmed this paper on 3 August 2020. The material released below comprises the original signed briefing and the revised appendices, to reflect the final advice.

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:

- 9(2)(j), to prevent prejudice or disadvantage to negotiations, and
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Office of the Minister of Civil Defence

Chair, Government Administration and Expenditure Review Committee

Updating the legislative framework to strengthen New Zealand's response to emergencies – tranche one

Proposal

1. This paper seeks agreement to a first tranche of amendments to the Civil Defence Emergency Management Act 2002 (the Act) to improve New Zealand's future response to natural disasters and other emergencies.

Relationship with government priorities

2. While I acknowledge that the specific amendments are not directly tied to the 12 priorities, it is worth noting that improving the emergency management system, and therefore building New Zealand's resilience, is connected to following Government priorities:
 - Supporting thriving and sustainable regions;
 - Supporting healthier, safer and more connected communities;
 - Committing to deliver transparent, transformative, and compassionate government;
 - Building closer partnerships with Māori;
 - Creating an international reputation we can be proud of.
3. This paper works towards implementing the Government's 2018 response to the Technical Advisory Group's (TAG's) report "Better Responses to Natural Disasters and Other Emergencies" [DEV-18-MIN-0169 refers].

Executive Summary

4. New Zealand has faced many emergencies in recent years. Our emergency management system must continuously evolve to incorporate lessons identified from previous emergencies and adapt to changing community expectations, evolving technologies, shifting demographics, and reflect New Zealand's cultural diversity.
5. In its response to the TAG's report "Better Responses to Natural Disasters and Other Emergencies", the Government agreed that greater collaboration, consistency, capability and clearer lines of authority are required to better support local, regional and national emergency management practice.

6. This paper sets out a first tranche of proposed amendments to the Act to implement the Government Response to the TAG. These include:
- specific amendments to clarify roles and responsibilities;
 - enabling an approved provider ^{s9(2)(j)} to issue warnings, and protecting them from civil liability;
 - identifying the New Zealand Emergency Management Assistance Team (EMAT) in legislation and protecting its members from civil liability;
 - protecting volunteers from civil liability when acting under the direction of a person performing functions, duties, or powers under the Act;
 - enabling a Controller or Recovery Manager to operate nationwide;
 - allowing Civil Defence Emergency Management Groups (CDEM Groups) to meet via audio or video meetings during an emergency;
 - providing that any CDEM Group member can be a statutory administering authority, but have the regional council member act in that role as a default;
 - providing that the National CDEM Strategy does not expire until it is replaced; and
 - miscellaneous minor amendments to update and clarify the Act.
7. These changes to the Act will help ensure that we have a strong yet flexible legislative framework and responsive emergency management system in place to ensure that people and communities are well taken care of, and supported in, any emergency or disaster.
8. A second tranche of proposals will deal with matters where policy work is yet to be completed. My aim is to seek further policy decisions in February 2021. My intent is that both sets of proposals will be delivered through one Amendment Bill.

Background

The current emergency management framework

9. The term 'emergency management' describes how we organise and manage the people, plans, infrastructure, and assets needed to improve and promote the sustainable management of hazards in New Zealand. The emergency management framework is designed to reduce and manage the consequences of all hazards, threats and risks should they occur (e.g. pandemic, pests and diseases, cyber events, natural hazards, infrastructure failure, food safety events etc.).

10. The Act, along with supporting components such as the National Disaster Resilience Strategy and National Civil Defence Emergency Management Plan, forms the legal basis of the emergency management framework in New Zealand. The Act mandates roles for those who direct, coordinate and manage emergency management and provides for extraordinary powers to be used during a state of emergency or transition period.
11. The profile of emergencies has changed significantly in recent years. For example, New Zealand has experienced a varied range of significant emergencies since 2010, including many severe weather-related emergencies, the Pike River Mine disaster (2010), Canterbury earthquakes (2010 and 2011), RENA oil spill (2011), Kaikōura/Hurunui earthquake and tsunami (2016), Auckland fuel crisis (2017), M. Bovis (2017 – current), 2017 Port Hills and 2019 Nelson Tasman Fires, Christchurch mosque attack (2019), Whakaari White Island eruption and COVID-19 pandemic (present). The emergency management framework must build resilience across communities and functions to ensure New Zealand is well placed to prepare for, respond to, and recover from emergencies.

Technical Advisory Group review

12. In April 2017, the then Minister of Civil Defence, Hon Gerry Brownlee, tasked a TAG with providing advice on the most appropriate operational and legislative mechanisms to support effective responses to natural disasters and other emergencies in New Zealand.
13. In January 2018, the then Minister of Civil Defence, Hon Kris Faafoi, released the TAG's final report "Better Responses to Natural Disasters and Other Emergencies" (the TAG Report), which provided advice and options on how to deliver better response to emergencies [DEV-18-MIN-0169 refers].
14. The TAG Report made a number of recommendations aimed at improving emergency responses, including improving community engagement with the emergency management system and strengthening national-level leadership, direction and standards.

Government's response to the TAG Report

15. In August 2018, Hon Kris Faafoi released "Delivering better responses to natural disasters and other emergencies", the Government's response to the TAG Report (Government Response), detailing the Government's vision that people in New Zealand receive a consistent level of support in an emergency, no matter who or where they are. The Government Response set a direction for the transformation required to improve New Zealand's emergency response system [DEV-18-MIN-0169].
16. The Government instructed the Department of the Prime Minister and Cabinet to commence work on the legislative change necessary to support those agreed responses [CAB18-Min-0169 refers].
17. Previous Cabinet decisions include:

- on 15 August 2018, Cabinet agreed to create a “Fly-in Team” to support responses to emergencies in New Zealand [DEV-18-MIN-0169], and committed \$5.2 million to establish the New Zealand Emergency Management Assistance Team (EMAT);
- in April 2019, as part of Budget 2019, Cabinet agreed to establish the National Emergency Management Agency (NEMA). NEMA was established on 1 December 2019, replacing the Ministry of Civil Defence and Emergency Management [CAB-19-MIN-0174.33];
- s9(2)(j)
[REDACTED]

18. Work to progress the Government’s response has been delayed because resources have been diverted to respond to a number of emergencies (including the Christchurch mosque attacks, Tasman District Fires, Whakaari/White Island eruption, severe weather on the West Coast and Timaru, Southland flooding, North Island drought and the COVID-19 pandemic). To ensure that momentum for this work continues and allow for development of drafting instructions this year, I propose a two tranche approach to seeking policy approval for legislative changes to implement the Government Response.
19. The first tranche contains amendments that are largely focused on improving the operation of the emergency management system at the local level. These include amendments to the Act consistent with the Government Response.
20. The second tranche deals with matters where policy work is yet to be completed. My aim is to seek further policy decisions in February 2021.

Additional recommendations for which decisions are required

21. My officials have now completed additional policy work examining those TAG Report recommendations to which the Government agreed to in part, or in principle. I am asking that Cabinet now agree to the following proposals.

Proactively Released by the Ministry of Civil Defence

Providing for agencies to issue warnings and providing limitation of civil liability¹

22. Currently the Director of Civil Defence Emergency Management (the Director) and CDEM Groups/officials have limitation of civil liability in performing their functions but this may not apply to other agencies who may have a warning role. s9(2)(j)

[Redacted]

23. s9(2)(j)

[Redacted] Warning providers may not currently be covered by the limitation on civil liability in the CDEM Act because they do not have a function to do this under the Act and because civil liability is linked to any loss or damage that is due directly or indirectly to a state of emergency or transition periods. In practice, a warning may be provided when no state of emergency or transition period is required.

24. I propose amending the Act so that an approved provider is authorised to issue warnings and related notifications (including but not limited to advisories, non-threat notifications and cancellations). I propose to use 'approved provider' rather than specifying any particular provider to future-proof the legislation from any changes to warning providers, and potential other types of warning (for example landslide or volcano warnings). I propose that the Minister of Civil Defence should approve a provider, in consultation with the Director.

25. s9(2)(j)

[Redacted]

Proactively Released by the Minister of Civil Defence

¹ Section 110 of the Civil Defence Emergency Management Act 2002 provides for the protection from civil liability of certain parties or persons. This protection does not cover any act, or omission to act, that constitutes bad faith or gross negligence.

26. I seek Cabinet agreement to allow any organisation that undertakes the role of a warning provider, s9(2)(j) [redacted] to have protection from civil liability when providing warnings. This would be similar protection to that currently provided to CDEM officials, but would not be limited to states of emergency or transition periods. This is necessary because warnings can be issued outside of a state of emergency or transition period. The protection from civil liability would not extend to acts conducted in bad faith or gross negligence.

New Zealand Emergency Management Assistance Team

27. NEMA has identified changes to the Act to ensure EMAT members have clear accountability and the same protection from civil liability as other CDEM officials operating under the Act.
28. I seek Cabinet agreement to changes to the Act to:
- provide for EMAT in the Act, including a broad function to provide additional support in an emergency response or transition to recovery;
 - provide that EMAT Controllers or Recovery Managers can operate as Controllers or Recovery Managers anywhere in New Zealand;
 - provide that the Director may authorise an EMAT mobilisation to assist an emergency response where she or he considers one is needed, and to add, remove or change the members of an EMAT as she or he considers necessary or desirable;
 - provide that a CDEM Group may appoint EMAT members in the roles of Group or Local Controller or Recovery Manager;
 - require EMAT members who act in the capacity of a Controller or Recovery Manager to act and report in accordance with the line control set out in the Act;
 - make it clear that EMAT members have the same protection from civil liability as other CDEM officials (that is protection due directly or indirectly to a state of emergency or transition period);
 - make consequential minor or technical amendments to implement EMAT being used in emergencies.

s9(2)(h) [redacted]

29. s9(2)(h) [redacted]
[redacted]
[redacted]

30. s9(2)(h) [Redacted]

31. s9(2)(h) [Redacted]

Enabling any Controller or Recovery Manager to operate in New Zealand

- 32. The Act limits who can be a Controller or Recovery Manager in an emergency to those people or positions listed in a CDEM Group Plan. This can be a barrier to increasing the resources available during an emergency. I consider that there is a similar issue in relation to allowing Recovery Managers from outside the CDEM Group to support initial recovery from an emergency.
- 33. I seek Cabinet agreement to amend the Act to allow any Controller or any Recovery Manager to operate anywhere in New Zealand upon agreement of the relevant CDEM Group, to quickly allow additional Controller or Recovery Manager resources to be provided during an emergency.

Allow audio or video meetings during an emergency;

- 34. The Act requires CDEM Groups to meet in person to make decisions. During an emergency this can be impractical or unsafe and can result in delayed decision-making. The Government Response noted the intention to enable CDEM Group members, in an emergency when an urgent decision is required, to attend a CDEM Group meeting by audio or video link, rather than having to be physically present, to achieve a quorum.
- 35. The inability for a CDEM Group to meet in person has been an issue in several emergencies, such as the Kaikōura/Hurunui earthquakes and COVID-19. These experiences are one reason why on 25 March 2020 the COVID-19 Response (Urgent Management Measures) Legislation Act 2020 amended the Local Government Act 2002 to allow CDEM Groups to attend meetings by audio or video link during COVID-19 response.
- 36. I recommend Cabinet agree to amend the CDEM Act to allow for a CDEM Group to meet by audio or video link during an emergency to make decisions necessary in a timely manner.

Providing that any CDEM Group member can be a statutory administering authority, but have the regional council member act in this role as default

37. CDEM Groups are generally comprised of the regional council and every territorial authority (a district or city council) within a region, unless it involves a unitary authority (which are themselves a CDEM Group). The Government Response noted the intention to provide more flexibility for CDEM Groups to agree which member local authority will act as the Group's statutory administering authority. The Act currently provides that regional councils are the administering authority (unless it is a unitary authority). The intent of the Act is that regional councils do not have any greater governance role than any other territorial authority member of the Group.
38. I seek Cabinet agreement to amend the 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 more flexibility for a territorial authority to act as the Group's statutory administering authority.

Ensure regulation-making power is sufficient to implement Government's Response

39. The Government's Response proposes a number of regulations to strengthen the capability of the Groups and other operational aspects of their performance. The existing regulation-making powers in the Act are not sufficient to provide the regulations proposed. I seek Cabinet agreement to amend the Act to allow for the regulation-making set out in the Government Response. This includes the powers to:
- require CDEM Groups to publicly report to their communities and to the Government on expenditure and performance against the Group Plan and regulations;
 - require CDEM Groups to establish publicly-available shared emergency management services agreements that set out how the CDEM Group will deliver emergency management across the region, in accordance with the Group Plan and regulation.
40. I will consider the proposal for regulation-making powers to provide for penalties for non-compliance as part of tranche two legislative changes. This will consider if these penalties should sit in primary legislation.
41. I also seek agreement to amendments to the Civil Defence Emergency Management Act 2002 set out in Appendix One to implement the Government Response related to strengthening the local CDEM Groups.

Other amendments

Provide that the New Zealand Civil Defence Emergency Management Strategy does not expire until replaced

42. The Act provides that the New Zealand Civil Defence Emergency Management Strategy (the Strategy) expires ten years after it was created. The Strategy sets out the Crown's statement on the strategic direction for emergency management. In 2017, the response to the Kaikōura/Hurunui earthquakes delayed the development of the Strategy. This resulted in urgent legislation being passed to extend the expiry of the Strategy. By contrast, the Act provides that the National CDEM Plan² remains in place until the next plan is completed, so a delay in developing the Plan does not require a change to legislation.
43. I seek Cabinet agreement to provide that the Strategy remains in place until a new Strategy is completed. A risk with this approach is that a new Strategy is not developed. Therefore, I seek Cabinet agreement to provide that the Strategy review must begin within 10 years after the last Strategy is put in place.

Minor and technical amendments

44. I propose to make minor and technical amendments to the Act to update and clarify it. These amendments do not have a regulatory impact and are outlined in Appendix Two.

Treaty of Waitangi/ Māori interests

45. Iwi/Māori continue to provide significant value to emergency responses, and have been highly visible across a range of events, including the Nelson-Tasman fires, Whakaari/White-Island eruption, COVID-19 and numerous severe weather events. However, the CDEM Act is silent on the role of iwi/Māori in emergency management.
46. As part of the second tranche of CDEM Act amendments, I am therefore asking my officials to undertake further work on ensuring greater recognition, understanding and integration of iwi/Māori perspectives and tikanga in emergency management – before, during and after an event.
47. This work will reflect the Government's Response, and will likely include proposals that the legislation provide for iwi representation on CDEM Group Coordinating Executive Groups. Officials will also explore a requirement for CDEM Groups to consult iwi on key planning documents, and the possibility of a provision acknowledging the Treaty of Waitangi. I also expect officials to incorporate, where appropriate, lessons from the numerous emergency responses since the Government Response was released.
48. Officials will provide me with advice on the proposed objectives, scope and timeframes for an iwi consultation process to inform these proposals.

² The National CDEM Plan identifies the hazards and risks to be managed at a national level and the operation plan for coordination of resources during an event of national significance or a national emergency.

Financial Implications

49. None of the legislative changes sought in this paper have direct financial implications.

Legislative Implications

50. The proposals in this paper seek a first tranche of amendments to the Act through a Civil Defence Emergency Management Act 2002 Amendment Bill.
51. The proposed legislation received priority 5 rating on this year's legislation programme, which means instructions are to be provided to Parliamentary Counsel Office within 2020.
52. I propose that Cabinet delegate to me the authority to make decisions on additional matters that are necessary for the legislative proposals contained within this paper.
53. I also seek authorisation to make technical and administrative changes required to finalise the draft Bill, in consultation with other Ministers as appropriate. Any substantive policy decisions required to finalise draft legislation for inclusion in the Bill will be submitted to Cabinet for decisions.
54. Implementation of the proposals in this paper would require consequential amendments to the National Civil Defence Emergency Management Plan, the Civil Defence Emergency Management Regulations 2003 and other legislation. I seek agreement to make any consequential amendments arising from the proposals in this paper.

Impact Analysis

Regulatory Impact Analysis

55. The Regulatory Impact Analysis (RIA) requirements apply to the proposals in this paper. Some of the proposals in this paper were included in the previous regulatory impact statements for the Government Response [DEV-18-MIN-0169 refers]. A Regulatory Impact Statement (RIS) has been prepared and is attached for additional policy proposals.
56. The Department's Regulatory Impact Analysis Panel considers that the information and analysis summarised in the "Updating the legislative framework to strengthen New Zealand's response to emergencies – tranche one" Regulatory Impact Assessment **partially meets** the quality assurance criteria.
57. The Treasury Regulatory Quality Team determined that the minor amendments in listed in Appendix Two to this paper are exempt from the requirement to provide a Regulatory Impact Statement, on the basis that they have no or minor impacts on businesses, individuals or not for profit entities.

Climate Implications of Policy Assessment

58. 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

59. Emergencies tend to have a disproportionate impact on disabled people, women and Māori. Failure to deliver the required support after an emergency could potentially further isolate and negatively impact the health and wellbeing of those dependent on this support. The amendments in this paper, while they do not directly impact the disabled, Māori or women, reflect their interests by supporting efforts to ensure the emergency management system is modern, fit-for-purpose and better able to respond to the needs of New Zealand communities.
60. A strengthened emergency management system will better enable individuals and communities to build resilience levels, take action to reduce their risks, and better enable cohesive, rapid and supportive arrangements before, during and after emergencies. This would involve tailored and inclusive approaches that would improve outcomes for vulnerable people during emergencies. While this would involve action from agencies and organisations across the system, the national emergency management system will play an important role in ensuring that the safety and wellbeing of people is at the heart of all emergency management activity.
61. The Office of Disability Issues (ODI) notes that, given New Zealand's aging population, integrating disability into disaster management planning will be crucial going forward. For example, the 2013 Disability Survey shows that 59% of adults aged 65 or over have a disability. ODI recommends that policy work is carried out in tranche two to:
- strengthen New Zealand's legislative framework with a specific focus on disability as an integral part of emergency management planning;
 - consider how different emergency management approaches will be required to meet the needs of people with diverse impairments (e.g. individuals with intellectual and physical impairments); and
 - consider how the application of a "modern, fit-for-purpose" emergency management system for disabled people allows for the development of accessible technologies and the provision of accessible, timely and accurate information.
62. I consider it is important that the emergency management system has a specific focus on disability matters as part of emergency management response and planning. I have asked my officials to work with the ODI to provide advice to myself and the Minister for Disability Issues on what work should be undertaken as part of tranche two to strengthen the focus on disability matters in emergency management.

Human Rights

63. The proposals contained in this Cabinet paper are consistent with the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act) and the Human Rights Act 1993.

64. A final review as to whether the proposals will be consistent with the Bill of Rights Act will be possible 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

65. Consultation with affected portfolio Ministers, local government stakeholders, iwi and central government agencies took place in 2018 to inform the development of the Government's response to the TAG report.
66. Local government stakeholders consulted included elected representatives and chief executives, CDEM Group Managers and other emergency management support personnel. Various concerns were raised about the how the suggested amendments to the Act could result in a loss of Council involvement and accountability for local responses. The Government considered this feedback when it made decisions on the response to the TAG.
67. As part of developing the Government Response, the former Minister of Civil Defence held some discussions with some iwi and marae representatives about the TAG's recommendations to more fully recognise the contribution of iwi/ Māori to effective emergency management. This resulted in the Government agreeing to provide for iwi/ Māori representation on CDEM Coordinating Executive Groups, and to explore a requirement for CDEM Groups to consult iwi on key planning documents, as part its broader response to TAG.
68. Further consultation occurred with the same range of stakeholders in 2019, as policy work began on proposed amendments to the Act resulting from the Government Response.
69. The following government departments and agencies were consulted on this paper: Civil Aviation Authority, Crown Law, Department of Internal Affairs, Fire and Emergency New Zealand, Maritime New Zealand; Ministry of Business, Innovation and Employment, Ministry of Education, Ministry for the Environment; Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, Ministry for Primary Industries, Ministry of Social Development, Ministry of Transport, Ministry for Women, New Zealand Customs Service, New Zealand Defence Force, New Zealand Police, Waka Kotahi New Zealand Transport Agency, Parliamentary Counsel Office, Office for Disability Issues, Office for Seniors, State Services Commission, Te Arawhiti , Te Puni Kōkiri and the Treasury. The Department of the Prime Minister and Cabinet's Policy Advisory Group was informed.

Communications

70. If Cabinet agrees to this paper, I propose that the Director of Civil Defence Emergency Management advises CDEM Groups of the decisions prior to the proactive release of this paper.

Proactive Release

71. I will release this paper proactively, subject to redactions as appropriate under the Official Information Act 1982.

Proactively Released by the Minister of Civil Defence

Recommendations

The Minister of Civil Defence recommends that the Committee:

1. **Note** that in August 2018, the Minister of Civil Defence released the Government Response to a Technical Advisory Group report “Delivering better responses to natural disasters and other emergencies”, setting a direction for the transformation required to improve New Zealand’s emergency response system [DEV-18-MIN-0169];
2. **Agree** to the amendments to the Civil Defence Emergency Management Act 2002 set out in Appendix One to implement the Government Response related to strengthening the local CDEM Groups;

Approved providers to issue warnings with limitation from civil liability

3. s9(2)(j)
[Redacted]

4. **Agree** to amend the Civil Defence Emergency Management Act 2002 to provide that the Minister may approve a warning provider to issue warnings under the Act;

5. **Note** that the proposal for the Minister to approve a warning provider to issue warnings under the Act is enabling s9(2)(j)
[Redacted]

6. **Agree** that an approved provider who can issue a warning will have protection from civil liability under the Civil Defence Emergency Management Act 2002 when providing warnings, and that this protection will be provided for warnings issued at any time (not only during a state of emergency or transition period). This protection does not extend to any act or omission to act that constitutes bad faith or gross negligence.

Emergency Management Assistance Team

7. **Note** that on 15 August 2018, Cabinet agreed to the establishment of the New Zealand Emergency Management Assistance Team (EMAT) to support responses to emergencies by providing an immediate solution to localised issues of staff capability and capacity across the country [DEV-18-MIN-0169];

Proactively Released by the Minister of Civil Defence

- 8 **Agree** to amend the Civil Defence Emergency Management Act 2002 to:
- 8.1 Provide for the existence of EMAT and its broad function to provide additional support in an emergency response or transition to recovery;
 - 8.2 Provide that the Director of Civil Defence Emergency Management may authorise an EMAT mobilisation to assist an emergency response where she or he considers one is needed, and add to, remove or change the members of an EMAT as she or he considers necessary or desirable;
 - 8.3 Provide that a CDEM Group may appoint EMAT members in the roles of Group or Local Controllers or Recovery Managers, or as an alternative or back-up for an emergency;
 - 8.4 Require the EMAT members who act in the capacity of a Controller or Recovery Manager to act and report in accordance with the line control set out in the Act as any Controller or Recovery Manager would;
 - 8.5 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). This protection does not extend to any act or omission to act that constitutes bad faith or gross negligence;

Administrative improvements

- 9 **Agree** to amend the Civil Defence Emergency Management Act 2002 to:
- 9.1 Make it clear that volunteers under the direction of a person performing functions, duties, or powers under the Act are protected from civil liability. This protection does not extend to any act or omission to act that constitutes bad faith or gross negligence;
 - 9.2 Allow a Controller or Recovery Manager to operate anywhere in New Zealand;
 - 9.3 Allow for a CDEM Group to meet by audio or visual link during an emergency to ensure they can make decisions necessary in a timely manner;
 - 9.4 Provide for any CDEM Group member to be a statutory administering authority, but have the regional council member act in this role as default;

Regulation-making powers, Strategy and technical amendments

- 10 **Agree** to amend the regulation-making power in the Civil Defence Emergency Management Act 2002 to allow for the regulation-making set out in the Government's response to the Technical Advisory Group, with the exception of the power to make regulations for penalties for non-compliance (which will be the subject of further policy work);
- 11 **Agree** to amend the Civil Defence Emergency Management Act 2002 to provide that the New Zealand Civil Defence Emergency Management Strategy remains in place until a new Strategy is completed. In addition, the amendment would require a Strategy review must begin within 10 years after the last Strategy is put in place;

- 12 **Agree** to make minor and technical amendments to the Civil Defence Emergency Management Act 2002, set out in Appendix Two, for the purposes of updating and clarifying the legislation;

Legislative implications

- 13 **Agree** that the legislative amendments in this paper be included in a Civil Defence Emergency Management Act 2002 Amendment Bill;
- 14 **Note** that the Civil Defence Emergency Management Act 2002 Amendment Bill has a priority of Category 5 in the 2020 legislative programme, which means instructions are to be provided to Parliamentary Counsel Office within 2020;
- 15 **Authorise** the Minister of Civil Defence to make consequential changes to the Civil Defence Emergency Management Regulations 2003, the National Civil Defence Emergency Management Plan and other necessary enactments needed in relation to the amendments in this paper;
- 16 **Authorise** the Minister of Civil Defence to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above legislative amendments;
- 17 **Authorise** the Minister of Civil Defence to make technical, administrative and other changes required to finalise draft legislation giving effect to the proposals in this paper, in keeping with the overall policy aims of the proposals, and in consultation with other Ministers as appropriate;

Publicity

- 18 **Note** that the Director of Civil Defence Emergency Management will advise CDEM Groups of the decisions in this paper prior to the proactive release of this paper.

Authorised for lodgement
Hon Peeni Henare
Minister of Civil Defence

Appendix One: Proposed changes to Civil Defence Emergency Management Act 2002 to implement the Government Response to the Ministerial review of New Zealand's system for responding to natural disasters and other emergencies by strengthening local CDEM Groups.

<i>Change proposed</i>	<i>Reason</i>
Require local authorities to cooperate as a CDEM Group within each region with shared emergency management services and personnel.	It is implicit that individual local authorities that make up a CDEM Group should cooperate. The proposed amendment makes it explicit.
The Group appointee would declare for the Group area (region) and may declare a state of local emergency for more than one district, and the Mayor would declare for one district or one or more wards.	This change ensures there is no overlap in who is responsible for declaring a state of local emergency over what area, in the first instance.
Clarify that Mayors declare states of local emergency for their district or ward and require that they consider the advice of a Group Controller where this is practicable.	The Act provides that mayors can declare a state of local emergency but several provisions need to be read in order to work this out. The proposed change would clarify who is authorised to declare a state of local emergency. The second change recommends where practicable the mayor seeks advice from the Group Controller before declaring. This will ensure there is communication between the two parties to determine if a state of local emergency is needed. E.g. the Controller is likely to be able to advise if powers are needed.
Provide that EMAT Controllers or Recovery Managers can operate as Controllers or Recovery Managers anywhere in New Zealand.	This change would allow for a Controller from one region to come in and work as a Controller in another region during an emergency to help boost capacity.
Provide that Local Controllers must perform their function to coordinate a response to, and manage the consequences of, emergencies; and may exercise their power to direct personnel and control other resources that are made available by agencies, unless directed otherwise by the Group Controller.	The Act does not set out what the functions are of a Local Controller. It is implicit that a Local Controller co-ordinates response to an emergency and directs personnel in their local area. This change would make the function of local controllers clear. Section 27(2) of the Act requires that Local Controllers are under the direction of Group Controllers.
CDEM Groups have an explicit function to coordinate emergency management activity across the region.	This makes it clear that the CDEM Group focus is coordination of emergency management activity across the region.

<p>Provide for a representative of the Group (which can be any member) to declare a state of local emergency if the Mayor (or Mayor's designate) is unable to declare.</p>	<p>This ensures that if the Mayor or their designate is not available that a state of local emergency can be declared. At present the Act requires a written instrument by the Group but this is not always possible to do quickly.</p>
<p>Require the Group appointees, when considering whether to declare a state of local emergency, to seek and consider comment from any affected Mayor unless the circumstances are impracticable or the situation is urgent.</p>	<p>This ensures that there is coordination of state of local emergency responses where one or more member local authority area is affected.</p>
<p>Require Group appointees who declare a state of local emergency to receive and consider the advice of a Controller before making a decision to declare, unless the circumstances are impracticable or the situation is urgent.</p>	<p>This will ensure there is communication between the two parties to determine if a state of local emergency is needed. E.g. the Controller is likely to be able to advise if powers are needed.</p>
<p>Clarify that Mayors give notice of a local transition period for their district or ward and require that they consider the advice of a recovery manager where this is practicable</p>	<p>The Act provides that Mayors can give notice of a local transition period but several provisions need to be read to work this out. The proposed change would clarify that the Mayor is authorised to give notice of a local transition period.</p> <p>The second change recommends where practicable the Mayor seeks advice from the Group recovery manager before giving notice of a local transition period. This will ensure there is communication between the two parties to determine if a local transition period is needed. E.g. the recovery manager is likely to be able to advise if powers are needed.</p>
<p>Amend the Act to provide that local recovery managers must perform their function to coordinate, the use of the personnel, material, information, services, and other resources made available by departments, CDEM Groups, and other persons for the purpose of carrying out recovery activities unless directed otherwise by the Group Recovery Manager.</p>	<p>The Act does not set out what the functions are of a local recovery manager. This change makes their role explicit. Section 30(2) requires the local recovery manager to follow the directions of the Group Recovery Manager.</p>

Appendix Two: minor and technical amendments to the Civil Defence Emergency Management Act 2002 for the purposes of updating and clarifying it.

<i>Change proposed</i>	<i>Reason</i>
Adjust the terminology used within the Act to be consistent with that of the Local Government Act.	Ensuring the terminology referring to local government committees is consistent with the terminology used in the Local Government Act will reduce confusion.
Make it clear a mayor can declare for a ward in their territorial authority.	The way geographical area is described in Section 25(5) and 68(2) is inconsistent. One uses wards and one uses territorial authority districts. This means it is unclear if a mayor can declare for a ward in their territorial authority, although a state of local emergency can be declared for 'part' of an area.
Make it clear that the provisions for when a transition period comes into force apply to an extension of a transition period.	It is unclear in section 94D(6), which relates to when a transition period comes into force, that it applies to when an extension of a transition period comes into force as well.
Provide that when a state of emergency or transition period is extended that the geographical area can be reduced.	The Act does not allow for a reduction in geographical area where a state of emergency or transition period are extended. The premise of the Act is that no area or part should be captured by these unless they are needed. Allowing for the reduction in area for an extended would encourage a check of whether all existing geographical areas need to be covered by the extension. The alternative is that a new declaration of state of emergency or transition period is needed. Currently, to reduce the geographical area of a state of national emergency, a new declaration would be required and therefore there would be a requirement for Parliament to meet.

<p>Change 'advise' to 'inform' in relation to duties to inform the House of a state of national emergency or national transition period.</p>	<p>When a state of national emergency or national transition period is created, there is an obligation to 'advise' the House. Other legislation, such as the Biosecurity Act, uses the term 'inform' the House to note that no advice is given but the House is informed.</p>
<p>Amend the Act so that where the Director has not delegated powers to a separate National Recovery Manager, the Director provides a report under section 94P on use of powers during a national transition period to Minister who must present it to the House of Representatives.</p>	<p>This change avoids the situation where if the Director has not delegated powers to a separate National Recovery Manager, they are effectively required to provide a report to themselves. The Director will be able to report directly to the Minister who must present it to the House of Representatives.</p>
<p>Amend the reporting requirements for transition periods to require that the number of times a power is used is provided.</p>	<p>The requirements to report on use of powers during a transition period do not require any indication of the quantum of the use of powers. This undermines the intentions of providing for the transparency in the use of powers during a transition period.</p>
<p>Amend the Act to make it clear that the Director can delegate functions and powers of the Director to the National Recovery Manager. This would make it consistent with the treatment of the National Controller.</p>	<p>Section 105 of the CDEM Act refers to the delegation of powers of the Director, and in s105(7) this refers to "nothing in this section limits s10 and 11" (s10 and 11 refers to the delegation of powers and functions of the Director to the National Controller). However, this subsection should refer to s11A and 11B (which refer to the delegation of functions and powers of the Director to the National Recovery Manager) but does not.</p>

Proactively Released by the Minister of Justice

Coversheet: Updating the legislative framework to strengthen New Zealand’s response to emergencies – tranche one

Advising agencies	Department of the Prime Minister and Cabinet, National Emergency Management Agency
Decision sought	Agreement to the proposed tranche one of legislative changes to the Civil Defence Emergency Management Act 2002.
Proposing Ministers	Minister of Civil Defence

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

The opportunity that this Regulatory Impact Assessment (RIA) seeks to address is to learn from previous emergencies and improve the emergency management system by implementing the Government’s response to ‘Better Responses to Natural Disasters and Other Emergencies’.

New Zealand has faced many emergencies in recent years. Our emergency management system must continuously evolve to incorporate lessons identified from previous emergencies and adapt to changing community expectations, evolving technologies, shifting demographics, and reflect New Zealand’s cultural diversity.

In April 2017, the then Minister of Civil Defence, Hon Gerry Brownlee, tasked a Technical Advisory Group (TAG) to provide advice on the most appropriate operational and legislative mechanisms to support effective responses to natural disasters and other emergencies in New Zealand.

The then Minister of Civil Defence, Hon Kris Faafoi, released the TAG’s final report “Better Responses to Natural Disasters and Other Emergencies” (the TAG Report) in January 2018, which provided advice and options on how to deliver better response to emergencies [DEV-18-MIN-0169 refers]. The Government agreed that greater collaboration, consistency, capability and clearer lines of authority are required to better support local, regional and national emergency management practice. A variety of new initiatives were agreed.

This RIA covers a first set of Civil Defence Emergency Management 2002 (CDEM Act) amendments to implement the Government’s response to the TAG.

Summary of Preferred Option or Conclusion (if no preferred option)

How will the agency's preferred approach work to bring about the desired change? Why is this the preferred option? Why is it feasible? Is the preferred approach likely to be reflected in the Cabinet paper?

The preferred options in this RIA are:

- Enabling the legislative recognition of the Emergency Management Assistance Team (EMAT) and ensuring that it has the same protection from civil liability as other Civil Defence Emergency Management (CDEM) officials;
- Enabling warning providers to issue warnings under the Act and have protection from civil liability under the Act;
- Ensuring that volunteers are protected from civil liability in emergencies when acting under the direction of a person undertaking functions, duties and powers under the Act;
- Allowing a controller or recovery manager to work anywhere in New Zealand;
- Allowing CDEM Groups to meet by audio or video meetings during an emergency;
- Providing that any CDEM Group member can be a statutory administering authority, but have the regional council member act as default member;
- Amend regulation-making provisions in CDEM Act to provide for the regulations proposed in the Government's Response to TAG, and
- Providing that the National Civil Defence Emergency Management Strategy does not expire until it is replaced.

These preferred options above strengthen the emergency management system

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The main beneficiaries of the changes in this RIA are ultimately the New Zealand public because these changes strengthen the emergency management system. Improving the capacity at the local level quickly can help improve a response to an emergency.

Central government will be better able to support local government. Citizens and communities will have better and more consistent emergency response that enable more timely decisions, and minimise delays or loss of life/property damage, e.g. Tsunami warnings. As a result, there will be an increase in public safety and reduced damage to property and faster, more effective recovery.

Where do the costs fall?

The proposed legislative amendments have minimal cost implications.

There are no extra costs associated with the ability to provide additional capacity to support local CDEM groups by providing for controllers or recovery managers to work anywhere or an EMAT team. These costs are already incurred during emergencies. The proposal would remove time and process barriers to use of controllers or recovery managers from other parts of New Zealand working on a response or recovery to an emergency.

The Government has already agreed to fund EMAT.

[<https://www.beehive.govt.nz/release/emergency-management-system-reform-fly-teams-funded-support-communities>]

Providing for warning providers may incur some costs. It is during the ministerial approval process for warning providers that the costs and benefits of particular providers need to be considered.

Minor additional costs could be incurred by a CDEM Group that decides to change the statutory administration authority from a regional council to a territorial authority member. We consider that the CDEM Group will consider these costs and the benefits to the group as part of their decision-making.

What are the likely risks and unintended impacts? How significant are they and how will they be minimised or mitigated?

No significant risks have been identified with the proposals in this RIA.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

Medium.

This RIA builds on the 2018 RIA, which provided high level proposals to improve the emergency response system. The proposals contained in this RIA constitutes final policy decisions to initiate legislative change. The evidence base for this RIA has been sourced from the 2018 RIA and from the Technical Advisory Group's report "Better Responses to Natural Disasters and other emergencies." In addition, the Government engaged with the CDEM sector in developing its response to the TAG report.

Central government agencies have been consulted on the Government's response to TAG and the proposals in this RIA.

The evidence for these changes include experience during a number of emergencies that reinforce the need to improve the emergency management system, including provide for increase in capacity to help with response or recovery. Emergencies included:

- Kaikoura/Hurunui Earthquakes
- Port Hills Fire
- Whaakari/White Island eruption
- COVID-19.

Post emergency evaluations, such as the Tasman fire emergency evaluation (below), reinforce the importance of being able to expand capacity during an event.

<https://www.civildefence.govt.nz/assets/Uploads/publications/post-event-report-Tasman-District-Fire-Response.pdf>

Quality Assurance Reviewing Agency:

Department of the Prime Minister and Cabinet

Quality Assurance Assessment:

The Department's Regulatory Impact Analysis Panel considers that the information and analysis summarised in the "Updating the legislative framework to strengthen New Zealand's response to emergencies – tranche one" Regulatory Impact Assessment **partially meets** the quality assurance criteria.

Reviewer Comments and Recommendations:

The proposals progress some aspects of the Government's response to the Technical Advisory Group's report "Better responses to natural disasters and other emergencies". They involve changes to the Civil Defence Emergency Management Act 2002 to improve the effectiveness of the emergency response system.

The opportunity and objectives of the proposals are narrow in scope. The panel acknowledges that it is difficult to quantify the estimated costs and benefits of the proposals, noting that the proposals are primarily informed by earlier work undertaken in developing the Government's response to the Technical Advisory Group's report "Better responses to natural disasters and other emergencies". Some of the assumptions underlying the opportunities, options and analysis are also constrained by the Government's response, although these constraints are not always clearly explained in the Regulatory Impact Assessment.

The Regulatory Impact Assessment makes good use of sub-headings to help the reader navigate the opportunities and proposals. The Regulatory Impact Assessment shows evidence of effective consultation with stakeholders and key affected parties.

Proactively Released by the Minister of Civil Defence

Impact Statement: Updating the legislative framework to strengthen New Zealand’s response to emergencies – tranche one

General information

Purpose
<i>The Department of the Prime Minister and Cabinet and the National Emergency Management Agency are solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing Cabinet decision making on policy proposals to amend the Civil Defence Emergency Management Act 2002.</i>
Departmental consultation
<i>The following agencies were consulted on the proposals in this RIA through departmental consultation: Civil Aviation Authority, Crown Law, Department of Internal Affairs, , Fire and Emergency New Zealand, Maritime New Zealand; Ministry of Business, Innovation and Employment, Ministry of Education, Ministry for the Environment; Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, Ministry for Primary Industries, Ministry of Social Development, Ministry of Transport, Ministry for Women, New Zealand Customs Service, New Zealand Defence Force, New Zealand Police, Waka Kotahi New Zealand Transport Agency, Parliamentary Counsel Office, Office for Disability Issues, Office for Seniors, State Services Commission, Te Arawhiti, Te Puni Kōkiri and the Treasury. The Department of the Prime Minister and Cabinet’s Policy Advisory Group was informed.</i>
<i>Non-governmental consultation</i>

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For the majority of proposals relating to implementation of the TAG Report we have consulted with various CDEM groups and officials, local government stakeholders, Local Government New Zealand, local authority elected representatives and chief executives, CDEM Group Managers, and other emergency management personnel.

There is general support from the CDEM sector for the following proposals:

- Establishing an EMAT;
- Enabling warning providers to issue warnings under the Act and have protection from civil liability under the Act;
- Ensuring that volunteers are protected from civil liability in emergencies when acting under the direction of a persons undertaking functions, duties and powers under the Act
- Allowing a controller or recovery manager to work anywhere in New Zealand;
- Allowing CDEM Groups to meet by audio or video meetings during an emergency; and
- Providing that any CDEM Group member can be a statutory administering authority, but have the regional council member act as default member.

In terms of allowing CDEM Groups to have audio or video meetings during an emergency, experience in a number of emergencies Kaikōura/Hurunui, Port Hills fires and COVID-19 has shown that a requirement to meet in person can affect the timeliness of CDEM Group decisions. During these situations the CDEM Groups and CDEM Officials have recommended that the Act is changed to allow for audio or video meetings.

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Key Limitations or Constraints on Analysis

This analysis and the scope of this work are constrained and limited by the Government response to the Technical Advisory Group's review 'Better Response to Natural Disasters and Other Emergencies in New Zealand'.

The focus of the analysis is on how to implement through legislation the Government's previously agreed decisions. All of the decisions require legislative change and cannot be addressed through non-regulatory options.

The underlying assumptions underpinning the impact analysis are:

- the importance of ensuring that additional capacity can be provided to support emergency responses and how it can achieve more timely outcomes for communities during a response or recovery from an emergency (based on experiences in emergencies);
- good warning systems can save lives and reduce property damage (as evidenced by international literature)¹;
- allowing meeting via audio/video allows for more timely decision-making during an emergency because it can address barriers to physical attendance such as road closures or a reluctance of a mayor/chair to leave their community to travel to spend a day travelling to a meeting during an emergency

For all options the status quo was considered.

Consultation was undertaken firstly by the Technical Advisory Group and then by the Government in order to develop a response to the TAG review. There was good engagement with the CDEM sector and more limited engagement with iwi/ Māori.

Responsible Manager (signature and date):

Brian Hallinan
Manager, Emergency Management Policy Team
National Security Group
Department of Prime Minister and Cabinet
23 July 2020

¹ World Bank Study on costs and benefits of early warning systems
<http://documents1.worldbank.org/curated/en/609951468330279598/pdf/693580ESW0P1230aster0Risk0Reduction.pdf>

Proposal 1: Enabling Emergency Management Assistance Teams in legislation

Proposal 1: Problem definition and objectives

1.1 What is the current state within which action is proposed?

The Ministerial Review 'Better Responses to Natural Disasters and other emergencies' set out that:

Group effort needs to be backed with national capability that can be deployed as required. The recommendation to establish a cadre of professionals to act as 'fly-in teams' first surfaced in the Review of the CDEM Response to the 22 February Christchurch Earthquake. It received strong support then and was endorsed in many submissions received for this current review. There are examples of surge capacity teams deployed at the regional level, in other emergency response services, and internationally.

The Government's response to the Technical Advisory Group recognises the importance of building capability and capacity of the emergency management workforce. It noted that an immediate solution to staff capability and capacity issues would be to establish a national team that will be able to *'rapidly respond to emergencies and will have the right skills in place to support CDEM Groups to manage emergencies effectively and consistently, irrespective of where in New Zealand they occur'*.

Cabinet agreed to the establishment of New Zealand Emergency Management Assistance Team (EMAT) to support responses to emergencies in New Zealand. [DEV-18-MIN-0169].

EMAT teams are in place and can be used during an emergency.

The Government response also set out that it would:

Amend the Civil Defence Emergency Management Act to enable Fly-in Controllers to undertake their statutory function anywhere in the country.

1.2 What regulatory system(s) are already in place?

The existing regulatory system provides for positions in the emergency management system at a national and local level. However, sometimes the local system need support during an emergency, which can be provided in two ways:

- CDEM officials from other areas support the response/recovery
- EMAT team provides support for the response/recovery

CDEM officials currently travel to other areas to support response/recovery but a CDEM Group meeting is needed in order for them to be approved to work as a controller or recovery manager.

1.3 What is the policy problem or opportunity?

Work on implementation of EMAT members highlights a number of areas where there is uncertainty about how EMAT interacts with the existing Act and clarification is needed. In particular:

- Who an EMAT member is accountable to under the Act;
- s9(2)(h) [REDACTED]
- If EMAT controllers can work as controllers. The existing Act only includes controllers that are appointed by CDEM Groups and for which the CDEM Group provides a check on their suitability for being a controller (suitably qualified and experienced person).

In addition, EMAT members are proposed to be deployed to quickly allow additional capacity to support a local response. However, to use an EMAT member as a controller or recovery manager the CDEM Group would need to meet urgently. This is not always practical.

1.4 What do stakeholders think about the problem?

The key stakeholders generally agree that capacity can be a problem during an emergency and support EMAT to be available.

We are not aware of any stakeholder groups that do not support EMAT being available to assist with capacity to a response or recovery.

The Government engaged with the CDEM sector and other key stakeholders as part of preparing its response to the Technical Advisory Group review. There was general support for having EMAT teams but more work was needed to understand how they would work in practice.

We have not tested the need for EMAT to be set out in legislation with the sector.

1.5 What are the objectives sought in relation to the identified problem?

The objectives sought are:

- Response and recovery to emergencies are well-managed to reduce potential impacts on public/communities/CDEM Groups
- Where additional capacity is needed, local responses are supported.

Proposal 1: Option identification

1.6 What options are available to address the problem?

Option one: *Status quo – Make no amendments to the Act*

This option would not address the uncertainty identified above. There could potentially be three parties that an EMAT controller or recovery manager could report to: the Director, the CDEM Group, or the Group Controller. This could create confusion in conducting their work and also who is liable for any compensation relating to EMAT member actions.

s9(2)(h)

Option two: *Amend the Act to make the following clear:*

- Who EMAT members are accountable to under the Act
- The EMAT members would report to the control structure set out in the Act. For example, if an EMAT member acted in the role as a local controller, they would report to the Group Controller. If they acted in the capacity of a Group Controller they would report to the CDEM Group.
- That EMAT members are captured by the provisions to limit civil liability;
- A CDEM Group does not need to appoint an EMAT controller or recovery manager for them to work in these roles.

Clarifying how EMAT controllers and recovery managers report into the control structure and who they report to makes it clear where EMAT controllers fit into the hierarchy, and who makes decisions on their use as a controller. This clarification ensures that only one Group controller is in place at a time.

1.7 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

No additional criteria are proposed. The key criteria are the benefits from improving responses to emergencies and the costs.

1.8 What other options have been ruled out of scope, or not considered, and why?

No other options were considered and ruled out.

Proposal 1: Impact Analysis: Enabling Emergency Management Assistance Teams in legislation

1.9 Marginal impact: How does each of the options identified in section 3.1 compare with taking no action under each of the criteria set out in section 3.2?

	Option one: Status quo - Make no amendments to the Act	Option two: Amend the Act to make EMAT role and their limitation from civil liability clear
No additional criteria	Not applicable	Not applicable

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

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Proposal 1: Conclusions

1.10 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

Option two is recommended, that is to provide for EMAT in the CDEM Act. This would ensure that the legislative framework clearly provides for an EMAT member, addresses any uncertainty in their legal role s9(2)(h)

We are confident that the analysis to support the preferred option, in terms of potential uncertainty in terms of how EMAT fit under the CDEM Act, is sufficient.

We do not consider there are Treaty of Waitangi implications. We note that Māori can be disproportionately impacted by emergencies and improvements to responding to emergencies can improve outcomes for Māori during and following an emergency.

1.11 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
Additional costs of proposed approach compared to taking no action			
Public/communities	EMAT is already in place. The changes to the legislation clarify their roles.	None	High
CDEM sector	None. EMAT is already in place. The changes to the legislation clarify their roles.	None	High
Total Monetised Cost	<i>None</i>		
Non-monetised costs	<i>None</i>	<i>None</i>	

Expected benefits of proposed approach compared to taking no action			
Communities Public	No new benefits relating to this proposal for communities/public because EMAT is already in place.		
CDEM sector	Provides greater clarity on how the role fits in with CDEM structure.	Medium	
EMAT groups	Makes it clear they have limitation of civil liability.	Medium	
Other parties			
Total Monetised Benefit	None		
Non-monetised benefits	As above.	<i>Medium – important for the CDEM Sector to have the clarity on how EMAT fit in.</i>	

1.12 What other impacts is this approach likely to have?

These changes will reduce the risks that there are uncertainties about how EMAT fits in with existing CDEM structure.

Proposal 1: Implementation and operation

1.13 How will the new arrangements work in practice?

EMAT is already in operation. The legislative changes continue to support its implementation.

1.14 What are the implementation risks?

The implementation risks from clarifying the role of EMAT in legislation, is that if any changes to how they interact in the CDEM structure are made the Act may need to be amended. This risk can be mitigated by providing the high level roles for EMAT. Guidance can be provided to set out more detail.

Proposal 1: Monitoring, evaluation and review

1.15 How will the impact of the new arrangements be monitored?

The use of EMAT is being monitored over time regardless of the proposal above. No formal evaluation of the legislative changes is proposed.

1.16 When and how will the new arrangements be reviewed?

No plans for review are in place. It is normal practice following emergencies to have a review of how things went. Use of EMAT in an emergency or following an emergency may be covered in any post-emergency review.

The National Emergency Management Agency has a number of channels where CDEM Groups can raise any concerns with the legislative provisions relating to EMAT.

Proactively Released by the Minister of Civil Defence

Proposal 2: Enabling providers of warning systems in the Act

Proposal 2: Problem definition and objectives

2.1 What is the current state within which action is proposed?

Currently if an agency wanted to be a warning provider, unless they were operating under a CDEM official direction and during a state of emergency or transition period, they would not be covered by the limitation of civil liability provisions in the CDEM Act.

Early warning systems can save lives and reduce property damage by providing valuable time for evacuation or to take actions to reduce risk (e.g. sandbag river banks)². As technology improves there are likely to be more warning systems available that could reduce the risk to life or property damage. However, the potential application of civil liability can affect the willingness of an agency to become a warning provider.

The Ministerial Review 'Better Responses to Natural Disasters and Other Emergencies' recommended in relation to alerting and warning of emergencies (TAG review) that there needed to be an:

'Increase the speed by which alerts are provided and distributed, particularly in regard to simplifying or shortening current practice and providing timely and geographically accurate tsunami warnings'

In the Government response to the TAG Review, it noted that 'any delays in providing warnings about potential tsunami puts lives at risk. We want to ensure that any delays in the current system are removed' and noted that work would occur to speed up tsunami warnings. Warnings could be provided by a central government agencies, such as the National Emergency Management Agency or a warning provider.

2.2 What regulatory system(s) are already in place?

The current regulatory system under the CDEM Act provides that the Director may issue or cause to be issued warnings of hazards and provides regulation making powers for the operation of warning system. However, the Act does not have a process for approving warning providers and provide that they have limitation on civil liability.

Government regulation is preferable to private arrangements in this area as it provides certainty on the limitation of civil liability.

² World Bank Study on costs and benefits of early warning systems

<http://documents1.worldbank.org/curated/en/609951468330279598/pdf/693580ESW0P1230aster0Risk0Reduction.pdf>

2.3 What is the policy problem or opportunity?

The policy problem is that the Act does not provide a limitation of civil liability for warning providers and this is a barrier to having warning systems in place to reduce the risk to life or property.

The underlying cause of the problem is that the Act does not cater for the approval, or use, of warning providers and provide for their limitation for liability.

s9(2)(j)

2.4 What do stakeholders think about the problem?

The key stakeholders are:

- The public/communities who can benefit from warning systems in terms of reducing the risk of loss of life, harm or property damage;
- The Government as warning systems can reduce the impact of emergencies, such as reducing the loss of life, harm or property damage.

2.5 What are the objectives sought in relation to the identified problem?

The objectives are to:

- Reduce barriers to using warning systems to protect life, protect from harm and reduce property damage by providing protection from civil liability; and
- Increase the speed at which warnings are issued.

Proposal 2: Option identification

2.6 What options are available to address the problem?

Option one Status quo – provide no limitation of civil liability for warning providers

Warning systems have been found to have benefits in saving lives and reducing property damage. Technologies are continuing to emerge that reduce the impact of emergencies through early warning. s9(2)(h)

Option Two Provide limitation of civil liability for warning providers approved by the Minister

This option would amend the Act to ensure that a warning provider, and those delegated to perform on their behalf, are authorised to issue warnings and are protected from civil liability when issuing warnings and related notifications. This would provide the same limitation of liability as any other CDEM official.

This option would reduce barriers to agencies/organisations undertaking warnings which would be expected to reduce the risk to life and property.

Given the significance of warning systems in protection of against loss of life and property damage, it is considered that providing ministerial approval of a warning provider would be an appropriate level of approval.

s9(2)(h)

Examination of the potential liability issues from other countries in terms of warning systems has been undertaken. However, different countries have different parameters for liability, which means that it means it is hard to determine the extent of risk of civil liability on a warning provider based on overseas experience.

2.7 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

Criteria: Does the option reduce barriers to an agency/organisation to provide a warning system?

2.8 What other options have been ruled out of scope, or not considered, and why?

Non-regulatory options such as seeking insurance cover have been considered and rejected because of the high cost of insurance and uncertainty around the extent of cover and longer term availability of such insurance in with increasing adverse events.

Proposal 2: Impact Analysis

2.9 Marginal impact: How does each of the options identified compare with taking no action under each of the criteria set out (non-cost benefit criteria)?

	Option one: Status quo – provide no limitation of civil liability for warning providers	Option two: provide limitation of civil liability for warning providers approved by the Minister
Criterion – addresses barriers to warning providers	Not applicable	++
Overall assessment		++

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Proposal 2: Conclusions

2.10 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

Option two is recommended. This would reduce the barrier to agencies/organisations providing warnings by providing protection from civil liability.

We consider that our advice that warning providers may be deterred from providing warning systems is accurate because this has been an issue in negotiations with a potential provider of a warning system.

We do not consider there are Treaty of Waitangi implications. We note that Māori can be disproportionately impacted by emergencies and systems in place to provide early warning may help reduce this impact.

2.11 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
Additional costs of proposed approach compared to taking no action			
Wider government	Costs involved are making the legislative change.		
Warning providers	Set up costs (noting that any funding sought would need to be addressed before the ministerial approval process)		
Total Monetised Cost			
Non-monetised costs		Low	

Expected benefits of proposed approach compared to taking no action			
Public/communities	Potential use of legislation provisions that allow for warning providers who could reduce the risk in loss of life, harm and property damage by reducing barriers to using early warning systems.	moderate	
Warning providers	Third party warning providers will be more willing to provide warning systems		
Wider government	Reduces barriers to taking action to implement warning systems to reduce loss of life, harm or property damage. This may provide greater opportunities to use warning providers.	moderate	
Total Monetised Benefit	Not estimated.		
Non-monetised benefits	As above.	<i>Medium.</i>	

2.12 What other impacts is this approach likely to have?

A risk is that providing a limitation on civil liability could encourage a provider to be more careless in the provision of warnings. We consider this risk is low and unlikely as a provider investing in the provision of undertaking warning systems has high incentives to act appropriately.

Proposal 2: Implementation and operation

2.13 How will the new arrangements work in practice?

The preferred option involves an amendment to the CDEM Act.

Once implemented, the Minister would be responsible for approving warning providers, based on advice from the Director of CDEM.

2.14 What are the implementation risks?

No implementation risks are identified. Amending the Act to provide for the ministerial approval of warning providers and their limitation for civil liability is enabling. Any implementation issues would need to be considered when a warning provider is being considered for approval.

Proposal 2: Monitoring, evaluation and review

2.15 How will the impact of the new arrangements be monitored?

No formal review is proposed.

2.16 When and how will the new arrangements be reviewed?

The arrangements will be reviewed if concerns are raised that affect the use of the provision. Stakeholders always have opportunities to raise any concerns.

Proactively Released by the Minister of Civil Defence

Proposal 3 - Ensure that volunteers are protected from civil liability in emergencies when acting under the direction of a person undertaking functions, duties and powers under the Act

Proposal 3: Problem definition and objectives

3.1 What is the current state within which action is proposed?

The emergency management system relies on the volunteers supporting emergency efforts to respond and recovery from an emergency.

3.2 What regulatory system(s) are already in place?

The key features of the existing regulatory system is that a CDEM Group, controller or recovery manager may use volunteers to support response to or recovery from an emergency.

Volunteers provide valuable support and surge capacity to tasking agencies, emergency services, CDEM Groups and communities. For example, the 17 New Zealand Response Teams attached to CDEM Groups and local government bodies.

The Ministerial Review “Better Responses to Natural Disasters and other Emergencies” (TAG review) recommended that work was needed to:

- *Explore how best to protect volunteers from liability if they are ‘in the system’ i.e. NZRT [New Zealand Rescue Team] , USAR [Urban Search and Research]*

The Government agreed to work on how best to protect volunteers from liability.

3.3 What is the policy problem or opportunity?

s9(2)(h)

[Redacted text]

[Redacted text]

[Redacted text]

3.4 What do stakeholders think about the problem?

We do not know if volunteers consider the lack of clarity in the application of protection from civil liability under the Act as a problem.

3.5 What are the objectives sought in relation to the identified problem?

The objective is to make it clear that volunteers working under the direction of a person performing functions, duties or powers under the Act have limitation on civil liability.

Proposal three: Option identification

3.6 What options are available to address the problem?

Option one: s9(2)(h)

Option two: Amend the Act to specifically protect volunteers from civil liability when acting under the direction of a controller or recovery manager

This option would mean amending amend section 110(2) so that the actions/omissions of volunteers are specifically protected when they are under the direction of a person performing functions, duties, or powers under the Act (e.g. controller or recovery manager).

The TAG recommended that volunteers are adequately protected from civil liability. This matter was also considered as part of engagement in developing the Government's response to TAG review.

3.7 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

Addressing barriers to use of volunteers during an emergency

3.8 What other options have been ruled out of scope, or not considered, and why?

Option three: Specify volunteers' functions and duties of volunteers in the Act

This option was discounted as it would be difficult to set out functions and duties of volunteers to allow for volunteers to be clearly covered by the Act's existing liability provision. This option has a number of risks including that it may be difficult to anticipate all the types of functions and duties volunteers perform and the risk is that the legislation would need to be amended or roles could not be performed if functions and duties listed were not sufficient for volunteer activities undertaken during an emergency.

Proposal 3: Impact Analysis

3.9 Marginal impact: How does each of the options identified compare with taking no action under criteria that are not costs or benefits (identified above)?

	Option one: s9(2)(h)	Option two: amend the Act to provide protection from civil liability for volunteers working under the direction of persons performing functions, duties or powers under the Act.
Criterion addresses barriers to volunteering	Not applicable	+
Overall assessment		+

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

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Proposal three: Conclusions

3.10 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

We propose Option two to amend the CDEM Act to specifically protect volunteers from civil liability when acting under the direction of a person performing functions, duties or powers under the Act.

This clarifies the Act that volunteers acting under the direction of a person performing functions, duties or powers under the Act have limitation on civil liability.

We consider this option as being the most appropriate. The CDEM Act is clear that the role of managing CDEM sits with CDEM Groups and their named officers and employees e.g. Group Controllers. This includes directing volunteers during response and recovery. Protecting volunteers from civil liability when they are acting on the direction of a person performing functions, duties, or powers under the Act is therefore in line with the overall approach of the Act.

We do not consider there are Treaty of Waitangi implications. Māori contribute significantly to emergency responses, including as volunteers, and would therefore, would have clarity on the extent of the limitation of civil liability when they are acting under the direction of a person performing functions, duties or powers under the Act have limitation on civil liability.

3.11 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
Additional costs of proposed approach compared to taking no action			
Other parties	There may be a cost for those that cannot take civil liability action against a volunteer. This is considered low likelihood.	Low and unlikely	
Total Monetised Cost			
Non-monetised costs	As above	(High, medium or low)	

Expected benefits of proposed approach compared to taking no action			
Public/communities	Greater certainty on extent of protection from civil liability may result in more volunteers or more willingness for volunteers to make better decisions that benefit the public and communities during an emergency or following an emergency.		
Volunteers	Have clarity on their extent of protection from civil liability.		
Emergency Management sector (local and national level)	This may encourage more volunteers and increase overall capacity resulting in more timely responses to or recovery from emergencies.		
Total Monetised Benefit			
Non-monetised benefits	As above	<i>Medium</i>	
3.12 What other impacts is this approach likely to have?			
None identified.			

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Proposal three: Implementation and operation

3.13 How will the new arrangements work in practice?

For volunteers there will be no discernible difference in work practice.

3.14 What are the implementation risks?

None.

Proposal three: Monitoring, evaluation and review

3.15 How will the impact of the new arrangements be monitored?

No monitoring proposed, other than a general watching brief on the potential impact of the changes.

3.16 When and how will the new arrangements be reviewed?

No formal review period is proposed.

Stakeholders have the opportunity to raise concerns.

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Proposal four: Allowing controllers and recovery managers to work across CDEM Groups

Proposal four: Problem definition and objectives

4.1 What is the current state within which action is proposed?

The intent of the CDEM Act is that CDEM Groups manage local emergencies, provided they have the resources to do so. CDEM Groups are responsible for appointing a 'suitably qualified and experienced' Group Controller, Local Controller and at least one alternative Group Controller that are available for effective emergency management in their area'.

When emergencies overwhelm an area there are often calls for assistance from other areas.

4.2 What regulatory system(s) are already in place?

As above.

4.3 What is the policy problem or opportunity?

Only people (controllers and recovery managers) listed in Group Plans are able to exercise the statutory power during an emergency. This means to take up assistance from another region an urgent meeting of the CDEM Group is needed. This is often not practical to arrange quickly, particularly as the group must have a physical quorum. The result of delays in appointing additional resource, such as controllers or recovery managers, is that it limits the capacity of the emergency management response or recovery.

If an emergency operations centre is running 24/7 they may need controllers or recovery managers to cover time periods when the controller is off-duty.

In addition, more experienced controllers or recovery managers may be able to mentor local resources when they act in the capacity as an alternate controller.

The Government in its response to Ministerial Review: 'Better Responses to Natural Disasters and Other Emergencies' recommended that the CDEM Act be amended so "*if requested by a Group, accredited Controllers are automatically authorised to operate as the Group Controller in that Group's region*".

4.4 What do stakeholders think about the problem?

Engagement with the CDEM sector agree that it can be a problem to have controllers or recovery managers from outside of the CDEM Group area to be able to be used quickly because they need to be approved by the CDEM Group.

4.5 What are the objectives sought in relation to the identified problem?

To make it quicker to provide additional controller or recovery manager capacity to support a response to recovery from an emergency and remove the need for the CDEM Group to meet in person.

Proposal four: Option identification

4.6 What options are available to address the problem?

Option one: status quo – Significant guidance could recommend that wider controller appointments are made by CDEM and no legislative change. This option would not address current constraints/limits in capacity, and regional variation would stay in place.

Option two: Amend the CDEM Act to allow any Controller or Recovery Manager to act anywhere in New Zealand

4.7 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

None.

4.8 What other options have been ruled out of scope, or not considered, and why?

None.

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Proposal 4: Impact Analysis

4.9 Marginal impact: How does each of the options identified compare with taking no action under criteria other than costs and benefits identified above?

	Option one: status quo	Option two: Amend the CDEM Act to allow any Controller or Recovery Manager to act anywhere in New Zealand
No additional criteria	Not applicable	Not applicable

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

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Proposal four: Conclusions

4.10 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

Option two (proposed): Amend the CDEM Act to allow any Controller or Recovery Manager to act anywhere in New Zealand

We recommend this approach as it supports nationwide consistency, with little administration burden on CDEM Groups. It would mean that all accredited Controllers in the New Zealand would be able to be immediately deployed, and have all the powers necessary to carry out the Controller role.

This option also allows controllers or recovery managers to support a 24/7 rostering system when the Group controller is off-duty.

The ability for controllers and recovery managers to work anywhere has been discussed with the CDEM sector and is supported. Therefore, we have high confidence in the assumptions and evidence.

There is a risk that CDEM Groups may decrease their investment in their own Controllers, relying on the assumption another accredited Controller will assume the statutory Controller role in any emergency. This would be a risk to the principle of local emergencies being managed by people with local knowledge. To mitigate this risk, we will provide guidance to CDEM Groups clarifying the role of EMAT and other accredited Controllers and the statutory responsibility of CDEM Groups to appoint a *'suitably qualified and experienced'* Group Controller, Local Controller and at least one alternative Group Controller.

We do not consider there are Treaty of Waitangi implications. We note that Māori can be disproportionately impacted by emergencies and improvements to responding to emergencies can improve outcomes for Māori during and following an emergency.

4.11 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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Additional costs of proposed approach compared to taking no action

CDEM Groups (local authorities)	Costs for local authorities to update CDEM Group Plans / websites to recognise EMAT and other groups' Controllers as alternative Local/Group Controllers.	Low. Guidance material would need to be updated. This could be undertaken as part of business as usual work programme.	
Regulators	Change guidance to implement the change	low, as guidance would need to be updated for the entire package	
Total Monetised Cost			
Non-monetised costs	<i>As above</i>	<i>low</i>	

Expected benefits of proposed approach compared to taking no action			
Controllers and recovery managers	Allows controllers and recovery managers to gain experience or share experience.		
CDEM Groups (local authorities)	Will ensure that EMAT and other groups' Controllers are able to support locally-led responses effectively by being able to perform the statutory Controller function anywhere in the country.	Med	
National Emergency Management Agency	Strengthens the position of emergency management at the national level by ensuring that EMAT and other groups' Controllers are able to operate anywhere in the country and that there will be no delay in these Controllers taking full control, if necessary.	Med	
Public	Increased public trust and confidence in the overall system as responses are well managed and supported no matter where they are in the country.	Med	
Other parties			
Total Monetised Benefit			
Non-monetised benefits		<i>Medium</i>	

4.12 What other impacts is this approach likely to have?

None identified.

Proposal four: Implementation and operation

4.13 How will the new arrangements work in practice?

Implementation would be through an amendment to the Civil Defence Emergency Management Act 2002, updating CDEM Groups plans and providing guidance to CDEM Groups, controllers and recovery managers.

National Emergency Management Agency will have the role in monitoring the implementation.

The arrangements will come into effect on the date set out in the Act.

Normal practice is to involve a CDEM reference group or the CDEM Groups in preparation of any guidance for a new system.

Controllers and recovery managers currently operate in other parts of the country to their home CDEM Group. This change reduces the administrative barrier to requiring a CDEM Group meeting to appoint a controller or recovery manager from outside the CDEM Group.

4.14 What are the implementation risks?

No implementation risks are identified.

Proposal four: Monitoring, evaluation and review

4.15 How will the impact of the new arrangements be monitored?

No formal monitoring programme is proposed. However, the use of controllers or recovery managers from outside of the CDEM Group area could be discussed in any post emergency response/recovery evaluation of events.

4.16 When and how will the new arrangements be reviewed?

No formal review programme is proposed. Stakeholders will have an opportunity to raise any concerns.

Proposal five: Allow audio or video meetings during an emergency or when an emergency appears imminent

Proposal five: Problem definition and objectives

5.1 What is the current state within which action is proposed?

The Civil Defence Emergency Management Act 2002 requires that CDEM Groups meet physically and have a physical quorum (minimum number of attendees in person). The requirements to meet in person arise from the linkages between the Act and the Local Government Act 2002.

The objectives of the requirement for CDEM Groups to meet in person is to allow members of the public to attend physical or where available video meetings allowing them input into local democracy and transparency of CDEM Group decision-making.

5.2 What regulatory system(s) are already in place?

As above.

5.3 What is the policy problem or opportunity?

The response to the TAG noted the intention to enable Group members, in an emergency when an urgent decision is required, to attend a Group (Joint Committee) meeting by audio/video link, rather than having to be physically present, to achieve a quorum. This has been an issue in several emergencies, including COVID-19. On 25 March 2020, the COVID-19 Response (Urgent Management Measures) Legislation Act 2020 was enacted. This Act enabled local government and Civil Defence Emergency Management Groups to attend meetings by audio or video link during the COVID-19 response.

CDEM Groups have important role in an emergency, and therefore need to be able to meet quickly to undertake this role. To be able to meet in person some mayors may need to spend half a day travelling to a meeting. Mayors are important figures in leading responses to emergencies across local authorities and being out of their area during an emergency may not be practical.

Sometimes members of a CDEM Group cannot physically travel to a CDEM Group meetings, for example, after Kaikōura/Hurunui earthquakes, roads were closed. In addition, sometimes it is unsafe for the CDEM Group to meet in one place during an emergency, for example, the experience of COVID-19 when there were restrictions in place on travel and physical contact. Another example may be where there may be ongoing events (e.g. series of earthquakes) which means finding a safe place for all CDEM members to meet.

Without being able to meet quickly it means that there may be a delay access to the powers of the CDEM Group such as section 85 of the Act to clear roads and other public places.

In the Government's response to the Ministerial Review: Better Responses to Natural Disasters and other Emergencies, the Government noted:

We intend to also enable Group members, in an emergency when an urgent decision is required, to attend a Group (Joint Committee) meeting by audio/audio-visual link, rather than having to be physically present, in order to

achieve a quorum. This has been an issue in the past for Group leadership in an emergency.

5.4 What do stakeholders think about the problem?

CDEM Groups and their officials generally agree that requiring physical quorum attendance at a CDEM Group meeting during an emergency can be problematic and can delay decision-making.

5.5 What are the objectives sought in relation to the identified problem?

The broad objective is to ensure that the emergency management system can operate as efficiently as possible in order to provide the best possible response to or recovery from emergencies.

Proposal five: Option identification

5.6 What options are available to address the problem?

Option one: Status quo

This option would continue to require CDEM Groups to meet in person. The risks with this is that important CDEM Group decisions could not be made in a timely manner during an emergency. This may impact on the speed of response to an emergency and the degree of oversight the CDEM Group may have on an emergency.

Option two: Amend the Act to allow for a CDEM Group to meet by audio or video meetings during an emergency

This would ensure that CDEM Groups are able to meet via audio or video meetings during an emergency to make timely decisions needed. This would be consistent with the recent legislative change to allow for audio/video meetings in response to COVID-19, broadening this to apply to all emergencies.

Option three: Amend the Act to allow for CDEM Groups to meet by audio or video meetings at any time

This approach would allow CDEM Groups to meet by audio or video meetings at any time, including for normal CDEM Group meetings. This option could reduce the ability for members of the public to attend meetings because not all people have access to technology.

The Civil Defence Emergency Management sector has been consulted on the proposal to allow CDEM Groups to meet by audio or video meetings during an emergency and generally support it. This consultation was part of the Government developing its response to the Technical Advisory Group.

There are no non-regulatory options available, since meeting in person is stipulated in the CDEM Act by virtue of reference to requirements in the Local Government Act.

5.7 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

None.

5.8 What other options have been ruled out of scope, or not considered, and why?

None.

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Proposal five: Impact Analysis

5.9 Marginal impact: How does each of the options identified compare with taking no action under criteria other than costs and benefits?

	Option one: Status quo	Option two: Amend the Act to allow for a CDEM Group to meet by audio or video meetings during an emergency	Option three: Amend the Act to allow for CDEM Groups to meet by audio or video meetings at any time
No additional criteria	Not applicable	Not applicable	Not applicable

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Proposal five: Conclusions

5.1 0 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

We propose option two, to allow for a CDEM Group to meet by audio or video meetings where an emergency seems likely to occur or during an emergency to make urgent decisions. This would allow CDEM Groups to meet where there may be physical barriers to them meeting e.g. members are isolated during an emergency by road closures, or where all members meeting in the one place would take each member out of their community during a pivotal period of an emergency because of the need to travel to a place for the CDEM Group meeting.

CDEM Groups have many matters that they may need to discuss during an emergency such as:

- determining matters such as whether a group declaration for state of local emergency is used or not;
- oversight of an emergency response or recovery;
- changing key personnel e.g. controllers or recovery managers
- delegating access to powers (if not done during peacetime or through the CDEM Group plan)
- providing oversight on the use of powers as they consider appropriate.

A benefit of this option is that more regular meetings of CDEM Groups could be held during an emergency to provide greater oversight of the response because members would not have the travel time as a barrier to attending a meeting.

Sometimes during an emergency, only one or two members of the CDEM Group are affected by an emergency and it can be difficult for all members of a CDEM Group to attend a physical meeting at the urgency that the affected members need. Allowing an audio or video meeting may make it easier for non-affected members to urgently attend a meeting to assist making decisions in relation to the affected CDEM Group members.

A downside of meeting by audio or video means is that it may exclude the public and normally CDEM meetings are open to the public. However, CDEM groups could use technology to allow the public to watch the meeting live. It is likely despite enabling technology to allow the public to view any audio or visual meeting that some people will not have access to technology or the capability to use technology to attend a CDEM Group meeting by these methods.

Option three raise broader questions about access to local democracy. We do not recommend this option because it may reduce access to attending CDEM Groups. We consider if any wider consideration of ongoing use of audio or video is considered, this should be done in the context of local government legislation.

We do not consider there are Treaty of Waitangi implications. We note that Māori can be disproportionately impacted by emergencies and improvements to responding to emergencies can improve outcomes for Māori during and following an emergency. We note that providing audio or video means to engage with CDEM Groups during an emergency may assist the Group connect with iwi/Māori as part of their meetings to manage the response to an emergency.

5.11 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
Additional costs of proposed approach compared to taking no action			
CDEM Groups (local authorities)	Time to investigate best ways to meet online to ensure public transparency. Although as many councils provide live type meetings, little time may be needed for this task.	Low	COVID-19 experience has demonstrated that local authorities can move council business online.
Total Monetised Cost			
Non-monetised costs	<i>See above</i>	Low	

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Expected benefits of proposed approach compared to taking no action			
CDEM Groups affected by an emergency (local authorities)	<p>May increase CDEM Group oversight of emergencies.</p> <p>Reduces impediments to physical meetings that could result in meetings being delayed</p> <p>Ability to respond more quickly to emergencies.</p> <p>Allows mayors to stay within their territorial authority area during an emergency to provide local level leadership (as opposed to travelling to a CDEM Group meeting)</p>	Medium	
Public/Communities	There are likely to be benefits in terms of the ability to more quickly respond to an emergency, provision of greater insight and having mayor stay within their area during an emergency to provide local level leadership.	Medium	
Wider government	Would provide an easier way to connect in with CDEM Groups during an emergency by removing the need to travel to a meeting.	Medium	
Total Monetised Benefit			
Non-monetised benefits		<i>Medium</i>	

5.12 What other impacts is this approach likely to have?

None

Proposal five: Implementation and operation

5.13 How will the new arrangements work in practice?

COVID-19 experience shows that the ability to meet by audio/video means CDEM Group direction and decisions during an emergency can be made more easily and quicker than if members had to travel and meet in person. Many local authorities already have online platforms to allow members of the public to watch council meetings via online platforms.

Legislative change would be needed to implement the ability for a CDEM Group to meet by audio/visual means where an emergency was likely or during an emergency.

If legislation changes were made, it is likely that this change would come into effect on enactment of the Act.

5.14 What are the implementation risks?

No implementation risks are identified. CDEM Groups have experience in meeting via audio/visual means from COVID-19 experience.

Proposal five: Monitoring, evaluation and review

5.15 How will the impact of the new arrangements be monitored?

No formal evaluation is proposed. The National Emergency Management Agency will keep a watching briefing on the use of the provisions.

5.16 When and how will the new arrangements be reviewed?

No formal review is proposed. Stakeholders, such as the public, could raise concerns with the National Emergency Management Agency if they had concerns.

Proposal six: Providing that any CDEM Group member can be a statutory administering authority, but have the regional council member act as default member

Proposal six: Problem definition and objectives

6.1 What is the current state within which action is proposed?

The Act provides that regional councils are administering authority for the CDEM Group. An administering authority provides the administrative and secretarial support for CDEM Groups and the Co-ordinating Executive Group.³

Regional councils are likely to have been given the role of statutory administering authority because they generally cover the area of the CDEM Group.

6.2 What regulatory system(s) are already in place?

As above.

6.3 What is the policy problem or opportunity?

The intent of the Act is that regional councils do not have any greater governance role than any other local authority member. Therefore, the change would provide more flexibility for a local authority (a district or city council) to act as the Group's statutory administering authority

In the Government's Response to Better Responses to Natural Disasters and Other Emergencies it set out that Government intends:

'to also provide more flexibility for Joint Committee Groups to agree which member local authority will act as the Group's statutory administering authority. The regional council remains as a default unless the Group agrees otherwise. This reinforces the current intent of the CDEM Act that the regional council does not have any greater governance role than any other member.'

6.4 What do stakeholders think about the problem?

The key stakeholders are the CDEM Group members – which are local authorities. There is some support for the proposal within the sector from CDEM Groups that would like to have the ability to have non-regional council members act as a statutory administering authority.

6.5 What are the objectives sought in relation to the identified problem?

To provide more options relating to which CDEM Group member can be a statutory administering authority.

³ The Co-ordinating Executive Group is established under the CDEM Act 2002. It provides for senior representatives of organisations such as emergency services to meet and provide advice to CDEM Groups.

Proposal six: Option identification

6.6 What options are available to address the problem?

Option one: Status quo – retain the status quo

This option would retain the regional council as the statutory administering authority and would not allow the CDEM Group to determine who is best to undertake this role.

Option two: Allow for any member of a CDEM Group to be a statutory administering authority but retain regional council as default

This option would allow a non-regional council CDEM Group member, such as a district or city council, to become a statutory administering authority.

6.7 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

None identified.

6.8 What other options have been ruled out of scope, or not considered, and why?

None identified.

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Proposal six: Impact Analysis

6.9 Marginal impact: How does each of the options identified compare with taking no action under criteria other than costs and benefits set out above?

	Option one: Status quo	Option two: Allow for any member of a CDEM Group to be a statutory administering authority but retain regional council as default	Option
No additional criteria	Not applicable	Not applicable	

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

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Proposal six: Conclusions

6.10 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

Option two to allow any member of a CDEM Group to a statutory administering authority but retain regional council as default is proposed. This option recognises that regional councils have the same standing as other members of the CDEM Group and no greater governance role.

We do not consider there are Treaty of Waitangi implications.

6.11 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
Additional costs of proposed approach compared to taking no action			
CDEM Groups (local authorities)	Costs for change to statutory administering authority, only if the CDEM Group chooses to make a change	Low to medium	
Statutory administering authority employees	Uncertainty about future changes to location of the role	Medium	
Other parties	Potential time delays in making the transition and establishing a statutory administering authority		
Total Monetised Cost			
Non-monetised costs	As above	Low to medium	

Expected benefits of proposed approach compared to taking no action			
CDEM Groups (local authorities)	Allows a decision about which member of a CDEM Group could act as a statutory administering authority, which may be benefits for the CDEM Group and reduces the perception that regional councils have a greater governance role in CDEM Groups	medium	
Total Monetised Benefit			
Non-monetised benefits		<i>Medium</i>	

6.12 What other impacts is this approach likely to have?

There is a small risk that allowing for a territorial authority to be a statutory administering authority may reduce the region wide focus and become more focused on the needs of the statutory administering authority.

A risk is that there could be more disruption to the local level emergency management programme if there are frequent changes to who the statutory administering authority are made.

A risk is that the statutory administering authority may struggle to attract staff because of the ongoing uncertainty around potential to change where the statutory administering authority is located.

Proposal six: Implementation and operation

6.13 How will the new arrangements work in practice?

A change in the Civil Defence Emergency Management Act would be needed to give these changes effect.

6.14 What are the implementation risks?

Concerns were raised in engagement with the CDEM Sector that the joint committee is not a legal entity and therefore cannot employ staff in a statutory administering authority. Therefore, whoever has the role needs to employ people and also takes the associated costs and risks if decisions are made in the future to change which CDEM Group member is the statutory administering authority. This costs of changing the statutory administering authority would need to be considered and agreement reached as part of any decision-making to change which member is the statutory administering authority.

Implementation risks include:

- Existing statutory administration authority staff may not wish to move to another CDEM Member as their employer or move locations;
- CDEM Group may change the statutory administering authority frequently resulting in disruption to the staff and their work.

Proposal six: Monitoring, evaluation and review

6.15 How will the impact of the new arrangements be monitored?

No formal monitoring system is proposed.

6.16 When and how will the new arrangements be reviewed?

No formal review process is proposed. Stakeholders always have the opportunity to raise concerns about how the provision works.

Proposal seven: Amend regulation-making provisions in CDEM Act to provide for the regulations proposed in the Government's Response to TAG

Proposal seven: Problem definition and objectives

7.1 What is the current state within which action is proposed?

The Civil Defence Emergency Management Act 2002 provides a limited range of regulation-making powers.

7.2 What regulatory system(s) are already in place?

The Government's response proposes a number of regulations to strengthen the capability of the Groups and other operational aspects of their performance. The existing regulation making powers in the Act are not sufficient to provide the regulations proposed.

The regulation-making powers in the Government's response to 'Ministerial Review 'Better Responses to Natural Disasters and other emergencies' included:

- Amend the regulation making power to allow for regulations to be made to require Groups to publicly report to their communities and to the Government on expenditure and performance against the Group Plan and regulations;
- Amend the regulation making power to allow for regulations to be made to establish minimum standards for Groups (to be monitored by [NEMA] with appropriate penalties for non-compliance⁴), which include performance standards and consistent operating practices and systems for emergency management that align with the Co-ordinated Incident Management System.
- Amend the regulation making power to allow for regulations to be made to require Groups to establish publicly available shared emergency management services agreements that set out how the Group will deliver emergency management across the region, in accordance with the Group Plan and regulation.
- Amend the regulation making power to allow for regulations to be made to require consistent organisational arrangements. This would include that Groups maintain the ability to establish and operate:
 - An Emergency Management Office to undertake the Group's planning and programme management, risk reduction, and readiness for response and recovery activities.
 - An Emergency Coordination Centre, Emergency Operations Centres, and Recovery Management Offices, where operationally appropriate; and to staff Co-ordinated Incident Management System functions, to respond to emergencies and undertake recovery.
- Amend the regulation making power to allow for regulations to be made to establish the mandatory national standard of technical and personal competency for national,

⁴ Note that regulation-making in relation to penalties for non-compliance will be considered in Tranche two.

regional, and local CDEM Controllers and national, regional and local Recovery Managers⁵;

- Amend the regulation making power to allow for regulations to be made to establish what suitably qualified and experienced means for Controllers and Recovery Managers. In addition, regulations can defined what suitably trained and competent means in terms of other personnel⁶.

7.3 What is the policy problem or opportunity?

The Government's response proposes a number of regulations to strengthen the capability of the Groups and other operational aspects of their performance. The existing regulation making powers in the Act are not sufficient to provide the regulations proposed.

This RIA does not cover the breadth of regulation-making powers, recommended by the Government Response to TAG.

7.4 What do stakeholders think about the problem?

Ensuring the regulation-making powers is sufficient for the Government's response to the TAG has not been tested with the CDEM Sector.

7.5 What are the objectives sought in relation to the identified problem?

The objective is to provide the appropriate tools to support improving the capability and capacity of controllers and recovery managers to improve emergency responses.

⁵ There is a regulation-making power to establish competency and standards for CDEM officials, which could be used. Although minor amendments may help make it clear that the standards are national standards and mandatory to meet.

⁶ The Act uses the term suitably qualified and experienced in relation to Controllers and Recovery Managers and suitably trained and competent in relation to other personnel. To define the term in regulations there would need to be a regulation-making power and also reference in the Interpretation section that the definition is set out in regulations.

Proposal seven: Option identification

7.6 What options are available to address the problem?

Option one: Status quo – retain the status quo

This option would mean that some of the regulations proposed to be made under the Government Response to TAG could not be made. This would impact on the ability to implement the Government response, particularly to:

- Improve the capability of CDEM officials;
- Require Groups to report to their communities and the Government their expenditure and performance against the Group Plan and regulations;
- Require groups to establish publicly available shared emergency management service agreements that will set out how the Group will deliver emergency management across the region, in accordance with the Group plan and regulation;
- Other regulation-making powers including consistent organisational arrangements such as establishing an Emergency Management Office to undertake the Groups planning and programme management risk reduction, and readiness for response and recovery activities

Option two: Provide regulation-making powers to implement the Government's Response to TAG

This option would allow regulation-making powers set out in the Government's Response to TAG.

When individual regulations are made, a specific RIA would be developed.

7.7 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

None

7.8 What other options have been ruled out of scope, or not considered, and why?

None.

Proposal seven: Impact Analysis

7.9 Marginal impact: How does each of the options identified above compare with taking no action under criteria other than costs and benefits identified above?

	Option one: status quo	Option two: Option two: Provide regulation-making powers to implement the Government's Response to TAG
No additional criteria	Not applicable.	Not applicable.

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

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Proposal seven: Conclusions

7.10 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

Option two to provide for the regulation-making power necessary to implement the Government's Response to the TAG. This would allow for regulations to be made to strengthen the CDEM system, including improved transparency relating to expenditure and shared emergency management service agreements.

7.11 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
Additional costs of proposed approach compared to taking no action			
CDEM Sector	No costs expected from providing the regulation-making powers. However, for each set of regulations made, consideration of the impacts on the CDEM Sector would be necessary.	Low	
Total Monetised Cost			
Non-monetised costs		Low	

Expected benefits of proposed approach compared to taking no action			
CDEM Sector	Provides for tools to strengthen CDEM sector and improve transparency to the public of expenditure and shared emergency management service agreements.	<p><i>Low (regulation-making)</i></p> <p><i>Medium (potential future benefits from regulations being made)</i></p>	
Central government	The regulation-making power could be used to improve the capability of the sector which should improve emergency responses and recoveries	<p><i>Low (regulation-making)</i></p> <p><i>Medium (potential future benefits from regulations being made)</i></p>	
Public/communities	Provides for tools to strengthen CDEM sector and improve transparency to the public of expenditure and shared emergency management service agreements. The regulation-making powers could be used to improve the capability of the sector which should help improve emergency responses and recoveries. The regulation-making power in relation to shared emergency management service arrangements improves the public transparency of CDEM arrangements.	<p><i>Low (regulation-making)</i></p> <p><i>Medium (potential future benefits from regulations being made)</i></p>	
Total Monetised Benefit			
Non-monetised benefits	As above	<p><i>Low (regulation-making)</i></p> <p><i>Medium (potential future benefits from regulations being made)</i></p>	

7.12 What other impacts is this approach likely to have?

The uncertainties are what regulations will be made and when.

Proposal seven: Implementation and operation

7.13 How will the new arrangements work in practice?

A Civil Defence Emergency Management Act amendment would be necessary to amend the regulation-making powers.

The amended regulation-making power is likely to come into force on passing of a legislative amendment.

7.14 What are the implementation risks?

None identified. Amending the regulation-making power is enabling regulations to be made and does not cover the development of specific regulations and their implementation.

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Proposal seven: Monitoring, evaluation and review

7.15 How will the impact of the new arrangements be monitored?
No formal monitoring system is proposed.

7.16 When and how will the new arrangements be reviewed?
No formal review of amended regulation-making powers is recommended.

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Proposal eight: Expiry of the National Civil Defence Emergency Management Strategy

Proposal eight: Problem definition and objectives

8.1 What is the current state within which action is proposed?

The Act provides for the development of a New Zealand Civil Defence Emergency Management Strategy (the Strategy) which expires ten years after it was created. The purpose of the Strategy is to set the Crown's direction for emergency management.

8.2 What regulatory system(s) are already in place?

See above.

8.3 What is the policy problem or opportunity?

In 2017 urgent legislation was needed to extend the expiry of the Strategy because responding to the Kaikōura/Hurunui earthquakes delayed the development of the Strategy. By contrast, the National CDEM Plan remains in place until the next plan is completed but a review must be started within the five year period of the Plan. This means if there are delays to the development of the National CDEM Plan, no change to legislation is needed to reflect the delay.

8.4 What do stakeholders think about the problem?

Stakeholders did not raise this problem. It was raised by the National Emergency Management Agency.

This proposal has not been discussed with the CDEM Sector but has been subject to departmental consultation. Feedback from departmental consultation highlights the importance ensuring that the change does not mean that a CDEM Strategy should be allowed to stay in place for an open-ended period of time. To reduce the risk of this, it is proposed that a review to develop a new Strategy must be put started within ten years of when the last Strategy was put in place.

8.5 What are the objectives sought in relation to the identified problem?

To address potential problems with failure to develop a National CDEM Strategy on time.

Proposal eight: Option identification

8.6 What options are available to address the problem?

Option one: Status quo – retain the status quo

This option would retain that the Strategy expires after ten years.

Option two: Provide that the Strategy is for ten years but remains in place until a new Strategy is completed

This option would allow an existing Strategy to remain in place until a new Strategy is completed but would require a review of the Strategy to begin before it expires. This option would reduce the need for an amendment of the Act is a Strategy if a new Strategy is delayed.

8.7 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

None.

8.8 What other options have been ruled out of scope, or not considered, and why?

None.

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Proposal eight: Impact Analysis

8.9 Marginal impact: How does each of the options identified compare with taking no action under criteria (other than costs and benefits) set out above?

	Option one: Status quo	Option two: Provide that the Strategy is for ten years but remains in place until a new Strategy is completed
No additional criteria	Not applicable	Not applicable

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

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Proposal eight: Conclusions

8.10 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

Option two to allow an existing Strategy to remain in place until a new Strategy is completed. This would reduce the need for an amendment of the Act if development of a new Strategy is delayed, for example, resources were diverted to response to a significant emergency as they were in 2017. It also aligns with the approach taken in the Act for the National CDEM Plan, which remains in place until another plan is developed.

No consultation has taken place. This problem was identified through the need to develop urgent legislation in 2017.

A National CDEM Strategy is one tool in the Civil Defence Emergency Management Act that could be used to set direction to address Māori interests in emergency management. The provision to ensure that a review of a National CDEM strategy is started reduces the risk that a new National CDEM Strategy is started if work on this has been delayed.

We do not consider there are Treaty of Waitangi implications. We note that it is important the iwi/Māori are properly consulted on the development of a National CDEM Strategy and therefore, the provision could help ensure there is adequate time to do this if work on the Strategy is delayed by the need to response to an emergency.

8.11 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
Additional costs of proposed approach compared to taking no action			
Crown	Potential delay in Strategy could impact on Crown direction setting.	Low	
Public/Communities/Central government	Potential delay in Strategy setting could delay revising the Crown direction which could have opportunity costs for public/communities/central government	Low	
Total Monetised Cost			
Non-monetised costs	<i>As above</i>	<i>Low</i>	

Expected benefits of proposed approach compared to taking no action			
Crown	If the Strategy development is delayed for any reason, the proposed change would remove the need to do an urgent legislative amendment or risk have a poorer quality Strategy because it has been rushed Strategy put in place that may not be optimal.	Low	
Public/Communities/Central government	If the Strategy development is delayed for any reason, the proposed change would reduce the risk have a poorer quality Strategy because it has been rushed Strategy put in place that may not be optimal.	Low	
Total Monetised Benefit			
Non-monetised benefits		Low	

8.13 What other impacts is this approach likely to have?

A risk is that while a review of a new National CDEM Strategy is started, it may not progress in a timely manner and this could have opportunity costs in terms of setting the Crown's direction for emergency management. We consider this risk unlikely.

Proposal eight: Implementation and operation

8.14 How will the new arrangements work in practice?

An amendment to the Civil Defence Emergency Management Act 2002 will be necessary.

8.15 What are the implementation risks?

The key implementation risk is that a new National CDEM Strategy will not be developed in a timely way.

Proposal eight: Monitoring, evaluation and review

8.16 How will the impact of the new arrangements be monitored?

No formal monitoring is proposed.

8.17 When and how will the new arrangements be reviewed?

No formal review is proposed.



Cabinet Government Administration and Expenditure Review Committee

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.

Updating the Legislative Framework to Strengthen New Zealand's Response to Emergencies: Tranche One

Portfolio Civil Defence

On 30 July 2020, the Cabinet Government Administration and Expenditure Review Committee (GOV):

- 1 **noted** that that in August 2018, the Minister of Civil Defence (the Minister) released the Government Response to a Technical Advisory Group report “Delivering better responses to natural disasters and other emergencies”, setting a direction for the transformation required to improve New Zealand’s emergency response system [DEV-18-MIN-0169];
- 2 **agreed** to the amendments to the Civil Defence Emergency Management (CDEM) Act 2002 (the Act) set out in Appendix One of the paper under GOV-20-SUB-0035 to implement the Government Response related to strengthening the local CDEM Groups;

Approved providers to issue warnings with limitation from civil liability

- 3 s9(2)(j) [REDACTED]
- 4 **agreed** to amend the Act to provide that the Minister may approve a warning provider to issue warnings under the Act;
- 5 **noted** that the proposal for the Minister to approve a warning provider to issue warnings under the Act is enabling s9(2)(i) [REDACTED]
- 6 **agreed** that an approved provider who can issue a warning will have protection from civil liability under the Act when providing warnings, and that this protection will be provided for warnings issued at any time (not only during a state of emergency or transition period), but this protection does not extend to any act or omission to act that constitutes bad faith or gross negligence;

Emergency Management Assistance Team

- 7 **noted** that in August 2018, the Cabinet Economic Development Committee agreed to the establishment of the New Zealand Emergency Management Assistance Team (EMAT) to support responses to emergencies by providing an immediate solution to localised issues of staff capability and capacity across the country [DEV-18-MIN-0169];
- 8 **agreed** to amend the Act to:
- 8.1 provide for the existence of EMAT and its broad function to provide additional support in an emergency response or transition to recovery;
 - 8.2 provide that the Director of Civil Defence Emergency Management may authorise an EMAT mobilisation to assist an emergency response where she or he considers one is needed, and add to, remove or change the members of an EMAT as she or he considers necessary or desirable;
 - 8.3 provide that a CDEM Group may appoint EMAT members in the roles of Group or Local Controllers or Recovery Managers, or as an alternative or back-up for an emergency;
 - 8.4 require the EMAT members who act in the capacity of a Controller or Recovery Manager to act and report in accordance with the line control set out in the Act as any Controller or Recovery Manager would;
 - 8.5 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;

Administrative improvements

- 9 **agreed** to amend the Act to:
- 9.1 make it clear that volunteers under the direction of a person performing functions, duties, or powers under the Act are protected from civil liability. This protection does not extend to any act or omission to act that constitutes bad faith or gross negligence;
 - 9.2 allow a Controller or Recovery Manager to operate anywhere in New Zealand;
 - 9.3 allow for a CDEM Group to meet by audio or visual link during an emergency to ensure they can make decisions necessary in a timely manner;
 - 9.4 provide for any CDEM Group member to be a statutory administering authority, but have the regional council member act in this role as default;

Regulation-making powers, Strategy and technical amendments

- 10 **agreed** to amend the regulation-making power in the Act to allow for the regulation-making set out in the Government's response to the Technical Advisory Group, with the exception of the power to make regulations for penalties for non-compliance (which will be the subject of further policy work);

- 11 **agreed:**
- 11.1 to amend the Act to provide that the New Zealand Civil Defence Emergency Management Strategy remains in place until a new Strategy is completed;
 - 11.2 that the amendment would require that a Strategy review must begin within 10 years after the last Strategy is put in place;
- 12 **agreed** that minor and technical amendments be made to the Act, as set out in Appendix Two of the paper under GOV-20-SUB-0035, for the purposes of updating and clarifying the legislation;

Legislative implications

- 13 **agreed** that the legislative amendments agreed to above be included in a Civil Defence Emergency Management Act 2002 Amendment Bill;
- 14 **noted** that the Civil Defence Emergency Management Act 2002 Amendment Bill has a Category 5 priority in the 2020 legislative programme (instructions to be provided to Parliamentary Counsel Office in 2020);
- 15 **authorised** the Minister to make consequential changes to the Civil Defence Emergency Management Regulations 2003, the National Civil Defence Emergency Management Plan and other necessary enactments needed in relation to the amendments agreed to above;
- 16 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in paragraphs, 2, 4, 6, and 8 to 12 above;
- 17 **authorised** the Minister to make technical, administrative and other changes required to finalise draft legislation giving effect to the proposals in this paper, in keeping with the overall policy aims of the proposals, and in consultation with other Ministers as appropriate.

Rachel Clarke
Committee Secretary

Present:

Hon Kelvin Davis
Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon Andrew Little
Hon David Parker
Hon Stuart Nash
Hon Kris Faafoi
Hon Ron Mark
Hon Peeni Henare
Hon James Shaw

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for GOV



Cabinet

Minute of Decision

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Report of the Cabinet Government Administration and Expenditure Review Committee: Period Ended 31 July 2020

On 3 August 2020, Cabinet made the following decisions on the work of the Cabinet Government Administration and Expenditure Review Committee for the period ended 31 July 2020:

Not relevant to your request



GOV-20-MIN-0035

**Updating the Legislative Framework to Strengthen
New Zealand's Response to Emergencies: Tranche One**
Portfolio: Civil Defence

CONFIRMED

Not relevant to your request



Michael Webster
Secretary of the Cabinet