

**Addendum to
'CDEM Special Interest Group - Regional Issues and Options Analysis Report, December 2022' (SIG Report)**

Purpose and Scope of the Addendum

On 7 June 2023, the Emergency Management Bill to replace the CDEM Act 2002 was introduced to Parliament. In Dec. 2022 Simon Markham Consulting completed a report based on prospective Bill scope discussed in the 'Trifecta' discussion document.

This addendum is based on review of the Bill as introduced, and supporting documentation, and considers:

- How the Bill addresses the topics below in terms of what is proposed relative to what CDEM GMs/Cs generally favoured, and relative to operative provisions of the CDEM 2002 Act.
- The extent to which the issues or concerns raised by CDEM GMs/Cs are acknowledged and/or have been addressed; if not in the Bill, then in its implementation, or some other way
- Other changes of significance in the Bill v. the Act not otherwise subject to '*Trifecta: Modernising the emergency management framework, Jan. 2022*' proposals and submissions. This drew substantially on interviews with 13 of 16 CDEM Group Managers/Controllers (GMs/Cs).

The Dec. 22 Report sought to '*identify common themes/issues within the reports (papers and interviews) that impact across Groups and local government in the civil defence emergency management space...the idea is not necessarily to come to conclusions (although if there is collective agreement this may be appropriate) but rather identify and analyse the issues from a CDEM GMs/Cs perspective*'.

It considered issues under seven topic headings, (first four below as per the Trifecta discussion document), the issues raised in discussions with Groups, and their early 2022 submissions:

- Roles and Responsibilities
- Disproportionately impacted people
- Critical Infrastructure
- Iwi and Māori Participation
- Other Major Reforms - Interface Issues
- 'The 4Rs'
- System Development

An Addendum to the above Report is required to support an effective Regional Councils sponsored Civil Defence Emergency Management (CDEM) Special Interest Group (SIG) submission(s) on the Emergency Management (EM) Bill when submissions are called for.

The format of the Addendum for each topic is:

- Recall relevant Trifecta options
- Set out the relevant CDEM 2002 Act provisions
- Set out the relevant EM 2023 Bill provisions
- Comment on the EM Bill in relation to Trifecta, the CDEM 02 Act and, the overall views of GMs/Cs.

Roles and Responsibilities - Functions (x-ref 4.1 in the SIG Report)

Trifecta Options

A Current State - Section 17 of the Act sets out the functions for each of the CDEM Groups and applies concurrently to each member local authority. There is no clear separation between the individual duties of local authorities and the collective functions of the CDEM Groups.

B Distinct Local Functions - CDEM Groups retain the Section 17 functions and will also have an explicit function to coordinate across the region. Local authorities are removed from Section 17 and have local emergency management functions distinct from the CDEM Group.

C Strengthened Regional Approach - CDEM Groups retain the Section 17 functions and will also have an explicit function to coordinate across the region. Local authorities are removed from section 17 and instead must 'give effect' to the decisions of the CDEM Group. and

D Regional Approach with Local Support - CDEM Groups retain the Section 17 functions and will also have an explicit function to coordinate across the region. Local authorities are removed from Section 17 but are expected to have capability and capacity to support CDEM Group and integrate their business-as-usual work for emergency management.

Civil Defence Emergency Management Act 2002 (CDEM02Act)

S.17 Functions of Civil Defence Emergency Management Groups

(1) The functions of a Civil Defence Emergency Management Group, and of each member, are to—

(a) in relation to relevant hazards and risks,—

(i) identify, assess, and manage those hazards and risks:

(ii) consult and communicate about risks:

(iii) identify and implement cost-effective risk reduction:

(b) take all steps necessary on an ongoing basis to maintain and provide, or to arrange the provision of, or to otherwise make available suitably trained and competent personnel, including volunteers, and an appropriate organisational structure for those personnel, for effective civil defence emergency management in its area:

(c) take all steps necessary on an ongoing basis to maintain and provide, or to arrange the provision of, or otherwise to make available material, services, information, and any other resources for effective civil defence emergency management in its area:

(d) respond to and manage the adverse effects of emergencies in its area:

(e) plan and carry out recovery activities:

(f) when requested, assist other Groups in the implementation of civil defence emergency management in their areas (having regard to the competing civil defence emergency management demands within the Group's own area and any other requests for assistance from other Groups):

(g) within its area, promote and raise public awareness of, and compliance with, this Act and legislative provisions relevant to the purpose of this Act:

(h) monitor and report on compliance within its area with this Act and legislative provisions relevant to the purpose of this Act:

(i) develop, approve, implement, and monitor a civil defence emergency management group plan and regularly review the plan:

(j) participate in the development of the national civil defence emergency management strategy and the national civil defence emergency management plan:

(k) promote civil defence emergency management in its area that is consistent with the purpose of this Act.

(2) A Group also has any other functions that are conferred or imposed by or under this Act or any other enactment.

(3) For the purposes of subsection (1)(g) and (h), legislative provisions relevant to the purpose of this Act include, but are not limited to, the provisions in the following Acts that may be relevant to civil defence emergency management:

(a) Biosecurity Act 1993:

(b) Building Act 2004:

(c) Fire and Emergency New Zealand Act 2017:

(d) [Repealed]

(e) Hazardous Substances and New Organisms Act 1996:

(f) Health Act 1956:

(g) Health and Safety at Work Act 2015:

(h) Local Government Act 1974:

(ha) Local Government Act 2002:

(i) Maritime Transport Act 1994:

(j) Resource Management Act 1991:

(k) any enactment passed in substitution for any of the Acts in paragraphs

(a) to (j).

S.64 Duties of local authorities

(1) A local authority must plan and provide for civil defence emergency management within its district.

(2) A local authority must ensure that it is able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency.

Emergency Management Bill 2023 (EMBill23)

Cl.29 Role of Emergency Management Committees (*new/changed provisions in italics*)

(1) The role of an Emergency Management Committee is to,

(a) in relation to hazards and risks within the Committee's area, —

(i) ***take the lead in*** identifying and assessing those hazards and risks:

(ii) ***co-ordinate the management of those hazards and risks:***

(iii) identify and implement cost-effective risk reduction:

(iv) assist each local authority represented in the Committee to

(A) identify and assess those hazards and risks relevant to that local authority:

(B) consult and communicate with the communities within that local authority about those hazards and risks:

(b) ***ensure that*** suitably trained and competent personnel, including volunteers, are available and there is an appropriate organisational structure for those personnel for effective emergency management in its area:

(c) respond to and manage the adverse effects of emergencies in its area:

(d) co-ordinate emergency management throughout its area:

(e) plan and carry out recovery activities in its area:

(f) when requested, assist other Committees in the implementation of emergency management in their areas (having regard to the competing emergency management demands within the Committee's own area and any other requests for assistance from other Committees):

(g) within its area, promote and raise public awareness of, and compliance with, this Act and legislative provisions relevant to the purpose of this Act:

(h) identify the needs of iwi and Māori within its area in relation to emergency management and develop plans to address those needs:

(i) recognise the role and contributions of iwi and Māori in emergency management in its area and communicate that information to local authorities, communities, and others within the area if it is relevant:

(j) monitor and report on compliance within its area with this Act and legislative provisions relevant to the purpose of this Act (including the Acts set out in clause 3 of Schedule 2):

(k) develop, approve, implement, and monitor an emergency management committee plan and regularly review the plan:

(l) engage with Māori and iwi within its area in the development of the emergency management committee plan:

(m) establish systems and processes to ensure that the Committee has the capability and capacity to engage with iwi and Māori and to understand the perspectives of iwi and Māori:

(n) participate in the development of the national disaster resilience strategy and the national emergency management plan:

(o) promote emergency management in its area that is consistent with the purpose of this Act.

(2) A Committee also has any other functions that are conferred or imposed by or under this Act or any other enactment.

Cl.37 Functions and duties of local authorities members of Emergency Management Committees in emergency management (new/changed provisions in italics)

The functions and duties of each local authority member of an Emergency Management Committee are to—

(a) do, in relation to hazards and risks within its region or district, the following:

(i) identify and assess those hazards and risks:

(ii) report to the Committee on its identification and assessment of hazards and risks:

(iii) manage those hazards and risks:

(iv) identify how to reduce risks and implement cost-effective risk reduction:

(v) consult and communicate with the communities within that region or district about those hazards and risks:

(b) arrange for the provision of suitably trained and competent personnel, including volunteers, and an appropriate organisation structure for those personnel for effective emergency management:

(c) take all steps necessary to maintain and provide, or to arrange the provision of, or otherwise to make available material, services, information, and any other resources for effective emergency management:

(d) respond to and manage the adverse effects of emergencies in its region or district:

(e) plan and carry out recovery activities in its region or district:

(f) assist, when requested, other local authorities in the implementation of emergency management in their regions or districts as appropriate:

(g) promote and raise public awareness of, and compliance with, this Act, and legislative provisions relevant to the purpose of this Act, within its region or district:

(h) monitor and report on compliance within its region or district with this Act and legislative provisions relevant to the purpose of this Act:

(i) do, in relation to an emergency management committee plan of the Committee, the following:

(i) provide input in the development or review of the plan:

(ii) implement the relevant aspects of the plan:

(iii) ensure alignment between the relevant aspects of the plan and the local authority's local government planning instruments relevant to the purpose of this Act:

- (j) participate in the development of the national disaster resilience strategy and the national emergency management plan:
- (k) promote emergency management in its region or district that is consistent with the purpose of this Act.

Comments

Trifecta set out three options for moving from the current state of S.17 of CDEM02Act applying to both CDEM Groups and local authorities, while S.64 of that Act specifying two general duties of local authorities.

The EMBill23 sets out the role of Emergency Management Committees (currently Civil Defence Emergency Management (CDEM) Groups) in Clause 29, and in Clause 37 the functions and duties of local authorities members of Emergency Management Committees in emergency management.

Bolded in italics for Cl.29 above are elements of the role of Committees that are new and/or of note, and similarly so for Cl.37 as it applies to local authorities.

The EMBill23 aims to clarify that:

- Emergency Management Committees are responsible for regional co-ordination and governance
- Local authority members are responsible for delivering local emergency management in their communities, and for participating in the Emergency Management Committees.

As such, EMBill23 has elements of both Trifecta 'Option B:Distinct Local Functions' and 'Option D:Regional Approach with Local Support' but is significantly short of the degree of regionalisation recommended by majority view in the 'TAG Report' in 2018 (*Technical Advisory Group, 2018 'Delivering better responses to natural disasters and other emergencies*). That Report is the origin of much of Trifecta and now new/changed provisions in EMBill23, and that which Trifecta 'Option C: Strengthened Regional Approach' in part reflects.

Through the SIG Report, CDEM GMs/Cs, most expressed (at least partial) support for Option D:Regional Approach with Local Support, some for B:Distinct Local Functions, while others found not enough information in the Trifecta consultation document to respond upon.

Of particular note in Cl.29 (as bolded in italics) are distinct leadership/co-ordination roles of EM Committees. This includes responsibility for activating and maintaining engagement with Māori and iwi in their area (region) and undertake planning to meet their needs in emergency management (note as set out below, the EMBill23 requires one or more Māori members).

Cl.37 sets out the functions and duties of local authorities, including some new ones in relation to the work of EM Committees and to/with their communities. It is relevant to note this does not include any specific functions or roles in relation to Māori and iwi as part of local level emergency management. Typically, there are ongoing manawhenua relationships that sit with individual local authorities. In some regions these are of long standing and reflect the complex hapū and iwi structures that exist. Forging a relationship at EM Committee level that is reflective of this complexity will be challenging.

As set out in S4.1 of the SIG Report, GMs/Cs raised a number of issues/concerns in relation to functional roles and responsibilities beyond the options discussion. Significant among these were funding and capacity, with EM Committees requiring resources to undertake their role and responsibilities, but ultimately being reliant on local authorities 'holding the purse strings'.

Consistency in EM service levels between regions while ensuring service delivery is appropriate and responsive to circumstance was also of concern, as was the level of integration of Group activities with wider regional council and territorial local authority functions that give effect to the '4Rs' aspiration.

At first glance, how successfully CDEM Groups transition to EM Committees and embrace new/changed responsibilities will depend a lot on the 'standing' and proactivity of existing Group Committees, and funding/resourcing arrangements to accommodate new/changed roles and responsibilities.

Apart from specifying certain roles (Controllers and Recovery Managers), and providing for EM Committee administrative arrangements, the Bill does not address resourcing and roles at Group (Committee) level (e.g., that of Group Managers).

'No new funding powers are proposed to be created in the legislative reforms or funding provided in any supporting package of policies to address any capacity issues in the emergency management system' (Regulatory Impact Statement: Emergency Management System Reforms – iwi and Māori contributions to emergency management, legal framework, and critical infrastructure (28 October 2021)

Roles and Responsibilities - Legal Status of Groups (x-ref. 4.2.1 in the SIG Report)

Trifecta Options

A - Keep the current state

B - Explicit recognition in the Act - Through the Bill, CDEM Groups are explicitly given their own legal status.

C - Mandatory delegation requirements - Introduce mandatory delegation requirements. This option would make it mandatory for local authorities to delegate their ability to enter into contracts.

CDEM02Act

Under S.12, CDEM Groups involving multiple local authorities are deemed to be ongoing joint standing committees under the Local Government Act 2002. Unitary authorities must also establish a CDEM Group as a committee or subcommittee as appropriate. There is in the Act no specific legal authority for Groups to enter into contracts (for example).

EMBill23

Cl.24 of the Bill imposes a comparable requirement for local authorities to establish EM Committees while Cl.28 sets out a range of administrative and support powers and duties of members of EM Committees. No distinct legal status is included.

Comments

Mixed views were expressed by GMs/Cs on the legislative significance of this issue and on the options identified. In any event the Bill opts for Option A:Keep the current state.

Roles and Responsibilities - Accessibility of CDEM Group Plans (x-ref. 4.2.2 in the SIG Report)

Trifecta Options

A - Keep the current state - There is no mandatory requirement or specified format to publish a civil defence and emergency management group plan (CDEM Group Plan).

B - Explicit requirement to publish (minus the incorporated documents) - Make publication of CDEM Group Plan explicit and allow for plan documents to be incorporated by reference in specified

ways

C - Explicit requirement to publish (incl. documents incorporated by reference) - Make publication of CDEM Group Plan explicit and allow for plan documents to be incorporated by reference in specified ways. The documents incorporated by reference must be published with the CDEM Group Plan.

CDEM02Act

The Act does not include explicit provision about the publication requirements or specified formats for civil defence and emergency management group plans (CDEM Group Plan). S.51 of **the** Act allows for CDEM Groups to incorporate documents by reference if they are too large or otherwise impractical to be printed as part of a CDEM Group Plan.

EMBill23

Clause 72(2) makes it explicit that Emergency Management Committee Plans (formerly CDEM Group Plans) must be published on an internet site.

The Bill at Schedule 2 Cl.15 also introduces updated principles to guide which documents can be incorporated by reference as part of Emergency Management Committee Plans.

Comments

There was a mix of support expressed by GMs/Cs for Options B and C, although the need to legislate for this was also questioned.

Roles and Responsibilities - Undeclared Emergencies (x-ref. 4.2.3 in the SIG Report)

Trifecta Options

A - Keep the current state

B - Response thresholds for coordination - Introduce new response thresholds for the coordination of undeclared emergencies. Introduce functions and powers for Controllers outside a state of emergency.

C - Liability protections for undeclared events - Retain current approach and practices to undeclared events but introduce measures for protection from liability for personnel outside of a state of emergency or transitional period.

CDEM02Act

The Act focuses specifically on the roles, responsibilities and powers associated with a declared state of emergency. It was suggested in the Trifecta consultation document that the lack of clarity for the management of undeclared events results in variation in the response thresholds (and levels of service delivery) across the country, and ambiguity about protection from liability for personnel during an undeclared event.

That said, through S.94A and S.94B, provision is made for authorised persons to declare a national or local transition period *'for after an emergency arises for which a state of emergency has not been declared'* and thereby activate recovery management powers during that period.

EMBill23

The Bill does not directly address undeclared emergencies. Equivalent provisions to S.94A and S.94B relating to transition periods in the CDEM02Act are included in the EMBill23 at Cl. 87 and Cl.88.

Comments

General support among GMs/Cs was indicated for Option B: Response thresholds for coordination, but a wide range of issues were raised in relation to achieving the sought after clarity.

Roles and Responsibilities - Concurrent Emergencies (x-ref. 4.2.4 in the SIG Report)

Trifecta Options

A - Keep the current state

B - The Bill provides guidance and clarity around responding to concurrent emergencies - Introduce greater clarity, through the Bill (or regulations or rules), about the management of concurrent emergencies at a local, regional, and national level.

C - Other mechanisms provide guidance and clarity around the responding to concurrent emergencies - Introduce guidance by specifying, for example, the roles and responsibilities of CDEM Group members or matters to be taken into account when coordinating the response.

CDEM02Act

Concurrent emergencies may be declared or undeclared or a combination of both, and occur at a local, regional, or national level. The Act does not provide explicit provisions for the management of concurrent events, except for declarations relating to COVID 19, S.68 (6) (7) and (8).

S67 directs that when a declaration of a state of national emergency is made, any other state of emergency then in force in the area to which the state of national emergency applies, ceases to have effect.

Section 68 of the Act states that if an authorised person declares a state of local emergency for either a whole area or district, any other state of local emergency already in force for one or more districts or wards ceases to have effect.

EMBill23

Cl.93 addresses concurrent local and national declared emergencies. It enables local states of emergencies and transition periods to remain in force concurrently with national states of emergencies or national transition periods. It ensures Local or Area Controllers and Recovery Mangers do not contradict priorities set by the Director, National Controller, or National Recovery Manager.

Provision is made at Cl.143 for regulations as secondary legislation to address operational matters in relation to the management of concurrent emergency designations.

Also, the Director of Emergency Management (CEO of NEMA) is enabled to make rules through Cl.147 that prescribe the operational approach to the management of concurrent emergency designations.

Comments

General support among GMs/Cs was indicated for Option B: the Bill provides guidance and clarity around responding to concurrent emergencies.

This has been addressed in the Bill, and it has also enabled regulations and rules to be made in relation to operational matters and approach.

Roles and Responsibilities - Ambulance Services (x-ref. 4.2.5 in the SIG Report)

Trifecta Options

A - Keep the current state

B - Amend definition of emergency services - The Bill will define what an emergency ambulance service is, that an emergency ambulance service is specifically included in the definition of emergency services, and that emergency ambulance services are specifically included in Civil Defence Emergency Management Coordinating Executive Groups or their equivalent.

CDEM02Act

Ambulance services play a vital role in responding to emergency events but are not included within the definition of emergency services in the current CDEM Act.

EMBill23

Cl.5 and Cl.33 includes ambulance services in the definition of 'emergency services' to reflect their core role in emergencies. A permanent position for a chief executive or senior officer of an ambulance service on an Emergency Management Co-ordinating Executive is provided for.

Comments

Universal support among GMs/Cs was expressed for Option B: Amend definition of emergency services to include ambulance services.

Roles and Responsibilities - Animal Welfare (x-ref. 4.2.6 in the SIG Report)

Trifecta Options

A - Keep the current state

B - Expressly provide for the welfare of animals in emergencies - Make it clear that for emergency management activities, indicating animals are covered (in addition to people and property), clarifying that animals can be 'seized' for their safety/rescue, and also clarifying that entry on premises is allowed to rescue animals, as it is to rescue humans.

CDEM02Act

Across the relevant pieces of legislation there is a lack of clarity for emergencies about:

- whether animals, like property, can be seized to '*prevent or limit the extent of the emergency*'
- whether entry onto premises is permitted for animal rescue operations.

The CDEM02 Act addresses animals, somewhat indirectly, through S.90. It provides for a specified (authorised) person to direct the owner or person for the time being in control of (among other property related items, including animals), and give to the owner or person in control of the animal a written statement specifying the 'property' that is requisitioned and the person under whose control the property is to be placed.

EMBill23

Cl.105 Requisitioning power is comparable to S90 above in relation to including animals in the definition of property that may be placed under the control of a specified person, but otherwise the Bill does not address animal welfare.

Comments

universal support among GMs/Cs was indicated for Option B: express provision for the welfare of animals in emergencies
Issues raised include:

- Ensuring alignment with animal welfare legislation
- Confirming scope with respect to companion and/or production animals
- Ensuring legality of powers of property entry and seizure and consistency with other 'rights relevant' legislation

However, the current state has prevailed. It may be that whether entry onto premises is permitted for animal rescue operations is (to be) provided in animal welfare legislation.

Roles and Responsibilities - Lead Agencies (x-ref. 4.2.7 in the SIG Report)

Trifecta Options

A - Keep the current state

B - Hook in the Act - An enabling clause is added to the Act through the Bill which permits the making of regulations or rules or both with the specific purpose of establishing the roles and responsibilities of lead and support agencies. This option would ensure the lead agency framework is recognised in primary legislation but would use regulations, rules and supporting guidance (as necessary) to clarify agency responsibilities before, during, and following emergencies.

CDEM02Act

The concept of 'lead agency' is not in the Act.
 In the National CDEM Plan, a lead agency is the agency with the primary mandate for managing the response to an emergency in its area of authority mainly as set out in legislation. Lead agencies at national and regional/local level are listed by hazard in Appendix 1 of the CDEM National Plan as is their legislative or policy authority to manage response. Support agency means any agency, other than the lead agency, which has a role or responsibilities during the response to an emergency.

EMBill23

Cl.146 provides for Regulations as secondary legislation to be made that confirms the roles and responsibilities of lead and support agencies. The regulations enabled by the Bill will also:

- establish the mechanisms and criteria by which lead and support agencies are allocated
- provide for the governance of lead and support agencies for their emergency management activities
- specify the triggers and thresholds that determine the lead agency for a specific event.

Comments

General support by GMs/Cs was expressed for Option B: Clarification of Lead Agency arrangements within the legislation. Much more conditional support was expressed in (subsequent to Trifecta) targeted engagement in relation to further, more specific options, with reservations about the implications of Options 2 Lead agency across the 4Rs and/or Option 3 Mandated Unified Control.

Cl.146 states that regulations prescribing the roles and responsibilities of lead and support agencies 'for managing particular hazards or risks' is provided for, with the implication they may be wider than (only) managing the response to an emergency in their particular area of expertise. It will be interesting for example, to see how the roles of lifeline utilities in reduction under Cl60 of the National CDEM Plan will be dealt with.

Critical Infrastructure (x-ref 5.0 in the SIG Report)

Trifecta Options

Critical Infrastructure Changes

- Replace the terminology 'Lifeline Utilities' with 'Critical Infrastructure' and create a definition of 'Critical Infrastructure' in the Act, proposed to be "critical infrastructure means essential and enabling assets, systems, networks, and services."
- Specify the critical infrastructure sectors and entities via a notice made by the Minister in the New Zealand Gazette. This change from an Order in Council would allow for increased flexibility within the sector.
- Develop criteria for the categorisation of Critical Infrastructure Sectors or entities to provide clarity for planning and agreeing roles and responsibilities.
- Introduce a requirement for Critical Infrastructure entities to proactively, and on request, share information with lead agencies, risk owning agencies, other Critical Infrastructure entities and CDEM Groups for monitoring and planning.
- Introduce obligations for sector specific critical infrastructure response plans, to be updated at three-year intervals

Planning level of emergency services

A - Keep the current state

B - Lifeline Utilities must state their Planning Emergency Level of Service every three years and those levels must be:

- measurable and timebound
- meaningful to end users
- publicly available
- stated against a known hazard, as nominated in conjunction with the respective CDEM Group
- developed in conjunction with the relevant sector responsible agency and CDEM
- shown in conjunction with a description of whether the level of service is projected to be achievable, for relevant geographical regions (i.e., region, town, city, or suburb).

Reporting, monitoring, and evaluation

A - Keep the current state

B - New monitoring, evaluation, and annual reporting requirements

Lifeline Utilities must provide an annual statement to the responsible agency affirming that the organisation has the capability and capacity to meet obligations signed by the entity Chief Executive or equivalent authority.

The agency designated as responsible may review the entity's systems and processes to ensure that the entity has developed adequate capability and capacity to meet duties and responsibilities. This includes their ability to deliver upon their Planned Emergency Levels of Service.

The responsible agency may also review an entity's systems and processes post an emergency if deemed necessary. The responsible agency must confirm the respective sector's ability to meet their duties and responsibilities annually and make relevant information available to CDEM Groups or NEMA or both on request.

CDEM02Act

S.60 sets out the duties of lifeline utilities that is focused on functioning during and after an emergency.

S61 provided for Schedule 1 to the Act to list lifeline utilities as specific entities or classes of business and for this to be modified by Order in Council.

S62 provides for exemptions to scheduling to be granted to entities on a case-by-case basis.

S57-61 of the CDEM National Plan further details the role of lifeline utilities, including during reduction and readiness (Cl.60) and during response and recovery (Cl.61).

EMBill23

Cl.5 updated terminology and defines critical infrastructure, critical infrastructure entities and critical infrastructure sectors.

Cl.50 provides for recognition of critical infrastructure entities and critical infrastructure sectors by the Minister and by notice in the Gazette rather than currently by scheduling in the Act and thereby allowing for increased responsiveness to changes within the sector.

Cl.51 sets out criteria for recognition of critical infrastructure entities and critical infrastructure sectors, Cl.52 enables the Minister to remove recognition of critical infrastructure entity, while Cl.53 provides for exemptions to recognition.

Cl.54 introduces a new requirement for critical infrastructure entities to develop, or contribute to the development of, sector-specific plans for responding to and recovering from emergencies, including review, and updating every three years. Schedule 2 to the Bill at Cl.12 and Cl.13 sets out further obligations of critical Infrastructure entities across the 4Rs, that currently are set out in the CDEM National Plan.

Cl.57 introduces a new requirement for critical infrastructure entities to establish and publicly state their planning emergency levels of service and to review them every five years.

Cl.58 provides for annual compliance reporting by critical infrastructure entities in relation to their obligations under the Act (Bill). This reporting is to the Director and 1 or more responsible public service agencies relevant to the entity.

Cl.145 provides for the making of regulations relating to critical infrastructure entities prescribing matters of detail and procedure for planning emergency levels of service and for detail relating to reporting requirements. Planning emergency levels of service are defined in Cl.5 as: *'the planning goals that a critical infrastructure entity is required to establish and maintain under section 57 relating to the levels of service that it will be able to provide during and after an emergency.'*

Notwithstanding all of the above Schedule One relating to transition arrangements provides on commencement of the Act for the renaming of existing scheduled lifeline utilities as critical infrastructure entities; but, retains existing obligations for a two-year transition period allowing existing lifeline utilities time to comply with the new legal requirements relating to critical infrastructure 'planning emergency levels of service' and annual compliance reporting.

Comments

General support was expressed by GMs/Cs for the critical infrastructure changes, them setting out planning emergency levels of service, and for the introduction of reporting, monitoring, and evaluation requirements.

It is relevant to note that through a related reform stream Government is currently progressing concurrent to the Bill work on strengthening the resilience of Aotearoa New Zealand's critical infrastructure system, led by DPMC.

On 13 June 2023 it released a discussion document in this regard. *'Strengthening the resilience of Aotearoa New Zealand's critical infrastructure system'*. The scope of what constitutes this system is broader than lifeline utilities and includes for example, cloud service providers, the health system, and food and grocery services.

The document signalled a potential change in approach from sector specific to whole of system consistent minimum resilience standards for all critical infrastructure through a system-wide regulatory approach.

MBIE had signalled in the August 2022 Cabinet Paper that sought authorisation for Emergency Management System Reform Proposals, its concern at the lack of coordination between the emergency management and broader reform to the regulatory framework for the critical (national) infrastructure system.

It also has concerns about the usefulness of the Planning Emergency Levels of Service (PELOS) proposals in the Bill, as well as the cost/funding for the CDEM reforms; in particular, the requirements imposed on lead agencies and the PELOS regime.

In responding to MBIE concerns, NEMA favours the current sequential approach, with the EM Bill proposals in relation to critical infrastructure proceeding first, as steppingstones to wider system reform.

It also discusses in the Cabinet Paper the wide range of benefits in terms of community resilience and preparedness in developing planning emergency levels of service and believes the cost of new reporting requirements are low-medium, while phasing that transition and NEMA support will assist manage compliance costs.

It is not immediately apparent how Planning Emergency Levels of Service and Minimum Resilience Standards being considered as part of wider reforms might relate to each other.

This information on the work being led by DPMC, and MBIE concerns about aspects of the EM reform, is included here so GMs/Cs are aware of differing perspectives as they consider the Bill and engage with relevant agencies.

Iwi & Māori Participation (x-ref 6.0 in the SIG Report)

Trifecta Options

Māori Emergency Management Advisory Group (MEMAG)

Establish a new national body Māori Emergency Management Advisory Group in legislation, with a varied scope including providing advice to NEMA on:

- the establishment of electoral processes to elect iwi and Māori representatives to Group Joint Committee
- NEMA's assurance function and how the emergency management system is performing for Māori at all levels
- the new rule making powers

The MEMAG may also provide advice and guidance to CDEM Groups on:

- methods of enabling iwi and Māori participation in Coordinating Executive Groups
- consultation and collaboration with Māori and iwi partners in the development of CDEM Group Plans and strategies

Iwi and Māori representation on Joint Committees

Iwi and Māori may elect two members with full voting rights to CDEM Group Joint Committees.

The proposed MEMAG will give guidance on electoral processes.

Membership fees and expenses of members will be centrally funded.

Iwi and Māori representation on CEGs

Legislate to achieve participation of iwi and Māori in all CEGs.

The proposed MEMAG will provide guidance to support the ways that this can occur, noting it may vary across regions.

NEMA will undertake analysis to establish a funding mechanism, with this likely drawn from NEMA's baseline.

New iwi and Māori function

- identify the needs of iwi and Māori within their CDEM region
- develop plans to address these needs
- identify the contributions iwi and Māori can make to managing an emergency event
- communicate this information to the wider CDEM Group, their communities and others as required.

Consultation on CDEM Group plans and strategies

Introducing mandatory requirements for CDEM Groups to:

- collaborate with Māori and iwi partners in the development of CDEM Group Plans
- have systems and processes to ensure that it has the capability and capacity to engage with Māori and to understand perspectives of Māori
- notify iwi and Māori partners as a requirement of planning starting with the CDEM Group Plan and moving to other plans, as appropriate
- have regard to the comments received from iwi and Māori on CDEM Group planning documents
- set out the arrangements for coordination with Māori during response/recovery in CDEM Group Plans.

Additional proposals

Include specific roles and responsibilities for iwi and Māori entities in the National CDEM Plan to enable Māori participation in the emergency management system and strengthen partnerships with Māori.

Enabling iwi and Māori to be provided government financial support directly for costs incurred while caring for affected people in an emergency (rather than having to go via local government mechanisms) and using the same criteria that currently provide reimbursement for such welfare services to Territorial Local Authorities.

The new Emergency Management Act will clearly demonstrate that the interests of iwi and Māori, along with the principles of the Treaty of Waitangi, are central to achieving the overarching objectives of the Act.

CDEM02Act

Currently there is no nationally representative group for iwi and Māori recognised in legislation for emergency management.

Iwi can be invited to attend Joint Committee meetings and to provide specialist knowledge and advice, but do not have express voting rights.

Some CDEM Groups have local arrangements for iwi and Māori representation on Joint Committees, but this is not uniform across the country and is not provided for in legislation.

Iwi and Māori representation is possible through coopting arrangements, but it is not mandatory on CEGs.

Section 17 of the Act lists the functions of Joint Committees, but this does not include a specific function to address the needs and contributions of iwi and Māori.

Currently, section 52 of the Act requires CDEM Groups to notify the public before making a CDEM Group Plan. At their discretion, CDEM Groups may also notify particular entities and individuals.

Some CDEM Groups do notify and consult with iwi and Māori, but this is not required and there is no consistent practice across the country. There is no explicit requirement in the Act to notify and consult iwi and Māori beyond public consultation.

Part 5 of the National CDEM Plan specifies the roles and responsibilities of participants in the emergency management system. However, despite the contribution iwi and Māori make to emergency management, specific roles and responsibilities are not assigned to iwi and Māori entities.

Iwi and Māori carry out work in ensuring the welfare of their people, and those in the communities surrounding them. Iwi and Māori entities often incur similar costs as local authorities and are unable to access reimbursements directly from Government.

Section 3 of the CDEM Act sets out the purpose of the Act. However, there is no recognition of the Treaty or the interests of iwi and Māori in this statement.

EMBill23

Cl.20 establishes the National Māori Emergency Management Advisory Group. Its role includes advising on policy development, advising NEMA on the delivery of positive outcomes for Māori through the emergency management system, and developing guidance, including guidance relating to how Māori and local government may develop processes for the appointment of Māori to Emergency Management Committees and Emergency Management Co-ordinating Executives.

Cl.21 provides for the NMEMAG to have 5-8 appointees.

Cl.26 and Cl.33 provision is made for 1 or more Māori members on Emergency Management Committees and EM Co-ordinating Executives.

Cl.144 provides for regulations relating to Māori representation on Emergency Management Committees and Emergency Management Co-ordinating Executives.

These regulations may provide for appointment processes and mechanisms that are locally-appropriate, including by providing for different appointment processes and mechanisms to apply to different Committees and Executives.

Cl.29 sets out the role of Emergency Management Committees. This includes identifying the needs of iwi and Māori within its area in relation to emergency management and develop plans to address those needs, as well as recognising the role and contributions of iwi and Māori in emergency management in its area and communicate that information to local authorities, communities, and others within the area, if it is relevant.

Emergency Management Committees will therefore be required to collaborate with Māori and iwi in the development of Emergency Management Committee plans, noting this responsibility sits with EM Committees and is not included in the role/responsibility specification for Cttee Members (Cl.37). This means they will need to establish systems and processes to ensure they have the capacity and capability to engage with iwi and Māori sit with the Committee.

Cl.32 clarifies that EM Committees are not PCBUs for the purposes of the Health and Safety at Work Act 2015, thereby excluded from liability proposed Māori members. (Council members are through the Local Electoral Act 2002 excluded from liability).

Cl.67 introduces a requirement for the National Emergency Management Plan (currently the National Civil Defence Emergency Management Plan Order 2015) to include the role of Māori in emergency management.

Cl73 stipulating the content of emergency management committee plans provides that it must state and provide for the arrangements for co-ordination with iwi and Māori during all the stages of emergency management, including reduction, readiness, response, and recovery.

Cl76 setting out the procedure for making proposed new or revised emergency management committee plans indicates that EM Committees must engage with representatives of iwi and Māori within the Committee's area.

Cl.149 updates the permanent legislative authority so that iwi and Māori organisations can be reimbursed directly for welfare costs incurred during an emergency.

Cl.4 includes a descriptive Treaty of Waitangi / Te Tiriti o Waitangi clause. The clause expressly references the Crown's Treaty responsibilities and describes how these are given effect to in the emergency management context.

Comments

General support was expressed by GMs/Cs for all proposals, noting that to varying degrees, many of these arrangements are already in place or underway. It was suggested by some GMs/Cs that these changes will, in of themselves, have a transformational impact on Emergency Management.

A range of issues were raised. As the relationships with iwi are largely held at a local level, GMs/Cs propose that the two parties should enter dialogue and decide how the governance and partnership should work for them rather than set structure being imposed through legislation.

That said, Cl144 authorises regulations to include processes and mechanisms that are locally appropriate and provide for different appointment processes and mechanisms to apply to different Committees and Executives.

Cl.37 setting out the functions and duties of local authorities does not specifically address Iwi and Māori. Cl.29 provides for EM Committees to take the lead in engagement with and planning for Iwi and Māori.

Disproportionately Impacted People (x-ref 7.0 in the SIG Report)

Trifecta Options

A - Keep the current state

B - Inclusion of disproportionately impacted people in planning

Mandatory engagement with disproportionately impacted communities in CDEM Group planning activities. This option ensures disproportionately impacted communities are actively consulted and engaged with during the development of CDEM Group Plans. We anticipate that CDEM Groups would engage with disproportionately impacted communities to:

- identify the needs of disproportionately impacted communities within their CDEM region
- develop plans to address these needs
- identify how disproportionately impacted communities can collaborate with CDEM across Reduction, Readiness, Response and Recovery.
- communicate this information to the wider CDEM Group, their communities, and others as required.

CDEM02Act

S.38 stipulates the need for all persons exercising functions in relation to the development of civil defence emergency management plans to 'have regard' to New Zealand's international obligations.

However, beyond this generic statement, there are no specific requirements that enable, empower, or support community resilience such as connecting, including, and supporting disproportionately impacted people across the emergency management system.

EMBill23

The proposed change to the Act aims to start give better effect to New Zealand’s Treaty obligations under the Sendai Framework for Disaster Risk Reduction (2015-2030), the UN Declaration on the Rights of Indigenous Peoples, the UN Convention on Rights of Persons with Disabilities, and the Treaty of Waitangi. Cl.65 of the Bill is equivalent to S38 of the Act.

An example stated in the Trifecta discussion document is *‘ensuring that existing institutional structures and processes, such as CDEM Group planning, prioritise equity for people who are disproportionately impacted by emergencies’*.

Cl.76 is seen as a first step; it was also indicated through Trifecta that more work will follow in the National CDEM Plan and the (National Disaster Resilience Strategy) Roadmap.

This clause provides for EM Committees to engage in the development of the new or revised plans with representatives of communities that are likely to be disproportionately impacted by emergency events in the Committee’s area.

Cl.143 provides for regulation making powers specifying how Emergency Management Committees must engage with communities that are or may be disproportionately affected by emergencies, including—

- (i) setting out principles for identifying and confirming individuals and organisations that represent these communities; and
- (ii) prescribing minimum requirements for engaging individuals and organisations that are representative of those communities.

Comments

General support among GMs/Cs was expressed for Option B but also a range of issues noted. To varying degrees GMs/Cs saw this as reflecting current practice.

That said, defining and identifying disproportionately affected communities in a more structured way remains unclear and potentially problematic in terms of clarity and consistency across jurisdictions. The relevant regulations under Cl.143 should assist here.

Uncertainty was expressed by GMs/Cs about interrelationship of this set of requirements with welfare function(s)/other agencies planning work. They also noted it needs in practice to reflect the way in which those communities wish to engage.

It is relevant to note that Cl.73 setting out EM Committee plan contents does not specifically address disproportionately impacted communities, while the procedural obligation for plan-making under Cl.76 is confined to representatives of such communities, not at large.

Other Major Reforms - Interface Issues (x-ref. 8.0 in the SIG Report)**Three Waters**

How EM legislative reforms fits into/with the broader local government sector reforms and their impacts was one of three key issues raised through conversations with most GMs/Cs. The other two - the ‘4Rs’ and overall EM system development are discussed below.

Three Waters Reform creates new Water Services Entities (WSE). Through WS legislation, CDEM02 Act/EMBill23 will apply to the new Entities and their three waters assets once the assets are transferred to the WSE from local authorities, as they fit within the definition of lifeline utilities (critical infrastructure entities).

The WS legislation also provides for Relationship Agreements (RA) between local authorities and WSE setting out how the parties will work together in relation to the performance or exercise of any statutory functions, including emergency management. It also provides for the parties to a relationship agreement to enter into a service-level agreement relating to the provision of a services to which the relationship agreement applies.

WSEs will have specific responsibility for stormwater management planning, as well as preparing Asset Management Plans and Infrastructure Strategies for assets, increasingly subject to a disrupted climate.

As indicated in the Dec. 22 report, still being determined is what stormwater ‘assets’ transfer to WSEs, especially in rural settings and what remains with Councils. While it seems that RA will be a key mechanism for coordination of activity, this could add ‘three-way’ complexity to RA and emergency responses.

RM Reforms

The RM Reforms have reached the stage of the Environment Select Committee (ESC) reporting back to Parliament on the two reform Bills – The Spatial Planning Bill (SPA) and the Natural and Built Environment Bill (NBEA).

The SPA provides for the development of Regional Spatial Strategies (RSS) that identify the big issues and opportunities facing regions, and then develop implementation plans. The Bill as reported back has greater specificity in S.17 - Contents of regional spatial strategies: key matters than previously in relation to natural hazards:

Cl.17(jb) matters relating to risks arising from natural hazards and the effects of climate change, including—

- (i) areas that are or will be vulnerable to those risks:
- (ii) indicative locations for infrastructure that is or may be required to reduce those risks or increase resilience to them:
- (iii) areas that are suitable for land use change that would reduce those risks or increase resilience to them
- (iv) other measures to reduce those risks or increase resilience to them

The reported back NBEA Bill also provides for changes to provisions in relation to natural hazards. The Environment Select Report commentary on the Bill notes that Cl.7 – Interpretation, largely replicates the existing definition of ‘natural hazards in the RMA, but also contains the following:

‘We think the interaction of natural hazards and climate change effects should be clarified throughout the bill. When considering natural hazards and planning for the associated risks, both the current and future states should be included to account for the effects (such as frequency or intensity) that climate change will have on those hazards. We propose amending the interpretation clause (and, later in this report, certain other clauses of the bill) to reflect the connection between natural hazards and climate change.’

The definition of natural hazard now reads:

- (a) means any atmospheric or earth- or water-related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation,
- (b) wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment; and

- (c) includes the effects of climate change on any of those occurrences; and
- (d) includes soil that contains concentrations of naturally occurring contaminants that pose an ongoing risk to human health

Of relevant note is that at S854(1) the NBEA Bill provides for emergency response regulations to be made for the purpose of:

- (a) responding to a natural disaster hazard event or other emergency in an area; and
- (b) recovery efforts in the affected area (including any work required to improve the resilience or standard of assets).

In recommending such regulations, the Minister must be satisfied that they are necessary or desirable for the purpose of the NBEA and have consulted with affected councils among others, on a 5-day turnaround basis.

Emergency response regulations may apply for up to 3 years to an area where a state of national or local emergency, or a local or national transition period has been declared. They may—

- (a) permit, authorise, or prohibit specific activities, noting that this will not give long-term existing use rights to these activities;
- (b) modify or alter the plan development processes;
- (c) apply a temporary stay to types or categories of applications (processing and granting of consents);
- (d) extend or shorten consent processing time frames.

More generally in relation to the interaction of Emergency Management with 'Planning', it could be expected that EM Committees and the new Regional Planning Committees have significant engagement.

'The 4Rs' (x-ref. 9.0 in the SIG Report)

As indicated in the Dec. 22 Report, general statements have been made in Cabinet Papers/statements of objectives for framework development in relation to enhanced focus on Readiness, Response, Recovery and Reduction. The implication being that this would be a significant focus for Bill development, e.g., *'Introducing a truly integrated '4Rs' (risk reduction, readiness, response, and recovery) approach to emergency management'*.

GMs/Cs questioned at the time the level of realism for a 'whole of 4Rs approach' within the CDEM mandate, given capacity and capability constraints, limitations in the level of integration with other Council functions, and 'the reforms', as we go forward into a more uncertain and natural disaster emergency challenged future.

The 'policy settings' reflected in the EMBill23 as compared to the CCDEM02Act in relation to the 4Rs are not significantly changed in an explicit way. The Minister on introduction of the Bill indicated it was "not designed as a fundamental transformation, but instead makes some practical improvements...". In Cl.3, the statement of purpose of the Bill, apart from introducing requirements in relation to Māori and critical infrastructure, is unchanged from the CDEM02Act.

The Cabinet Paper seeking approval to introduce the Bill indicated:

'Due to the frequency and intensity of recent weather-related emergencies, and increasing public concern about climate change, there may be concern that the Bill does not sufficiently address climate change. The Bill will include reference to existing climate change legislation. Climate change is recognised as an exacerbator of the hazards and risks already managed through this legislation,

rather than a new factor requiring further policy. Furthermore, there may be concern that the Bill does not address increased funding for risk reduction or recovery.'

All that said there are some specific changes of note. Cl37(i) in setting out the functions and duties of local authorities now includes in relation to an emergency management committee plan 'ensur(ing) alignment between the relevant aspects of the plan and the local authority's local government planning instruments relevant to the purpose of this Act'.

Also, at Cl.73 setting out the content of emergency management committee plans, at subclause (k) includes 'the arrangements for co-ordination with iwi and Māori during all the stages of emergency management, including reduction, readiness, response, and recovery'.

EM System Development (x-ref. 10.0 in the SIG Report)

A significant focus in GMs/Cs discussions was on 'system development' considering the objectives of Trifecta: *'build a modern, fit-for-purpose, and enduring framework for the emergency management system so that:*

- *communities better understand the risks they face and are better prepared to respond to and recover from emergencies.*
- *iwi and Māori participation are recognised, enabled, and valued.*
- *the emergency management system is well-coordinated, high-performing and enjoys widespread trust and confidence.*
- *the impacts of emergencies on people, the economy and the environment are reduced*

The Bill in Part 2 sets out the EM System to include players at national, regional, and local levels as well as other parties. (e.g., critical infrastructure entities). Roles and responsibility changes such as to the increased powers of the Director of Emergency Management, the greater coordinating function of Emergency Management Committees, the specification of functions and duties of local authorities and the increased recognition of critical infrastructure entities does 'develop' the system.

Above all, the explicit and substantial inclusion of Iwi and Māori in 'the system' is a key change with impact. Implementation of new system requirements will take time, especially in light of the substantial reliance on yet to be developed regulations to guide how they may be given effect to.

That said, the genuine concern evident among GMs/Cs about the need for system development and investment (expressed prior to this year's extreme weather events in the North Island), to meet the challenges of more frequent, longer lasting, and severe events; and, at a time when a range of reforms that significantly interface with EM are 'up in the air', likely remains.

Document List

- Emergency Management Bill, 2023
- Civil Defence Emergency Management Act 2002
- National Civil Defence Emergency Management Plan Order 2015 @ 5 April 2023
- Delivering better responses to natural disasters and other emergencies: Government response to the Technical Advisory Group's recommendations, August 2018
- Cabinet paper (2020): Updating the legislative framework to strengthen New Zealand's response to emergencies – tranche one
- Cabinet Paper (2021): Emergency Management System Reform
- Regulatory Impact Statement (2021): Emergency Management System Reforms – Iwi and Māori Contributions to Emergency Management, Legal Framework and Critical Infrastructure

- Cabinet paper (2022): Emergency Management System Reform Proposals
- Regulatory Impact Statement (2022): Emergency Management System Reforms
- Cabinet Paper (2023): Emergency Management Bill: Approval for Introduction
- Emergency Management Bill: Draft Departmental Disclosure Statement, 2023
- EM Bill - NEMA Website Overview June 2023
- 2023-06-EM-Bill-Factsheet-about-the-Bill
- Strengthening the resilience of Aotearoa New Zealand's critical infrastructure system, NZ Government, June 2023

Simon Markham Consulting Ltd

www.smconsulting.co.nz

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