



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Civil Defence Emergency Management Amendment Bill

24/03/2016

Civil Defence Emergency Management Amendment Bill

1 Introduction

- 1.1 The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Civil Defence Emergency Management Amendment Bill (Bill).
- 1.2 The Bill amends the Civil Defence Emergency Management Act 2002 (Act) to enable better recovery from emergencies, including a “seamless transition” from the emergency response phase to the recovery period by ensuring that appropriate and effective statutory powers and arrangements are available.¹
- 1.3 The Law Society supports emergency powers being used in a manner appropriate to the state of the emergency that exists. The Law Society makes the following suggestions with the aim of ensuring that transition period powers are appropriately circumscribed, given the lesser state of emergency that exists in the recovery period.

2 Persons who may give notice of a local transition period

- 2.1 Proposed new section 25A (clause 13) provides that a Civil Defence Emergency Management Group (CDEM Group) “must appoint at least 1 person as a person authorised to give notice of a local transition period for its area”.
- 2.2 The effect of this provision is that *any* representative of a member of the Group can be authorised to trigger a local transition period and the Part 5B powers exercisable during that period. This appointment process is inconsistent with other parts of the Act and Bill. The Chief Executive’s appointment of a Director (section 8), and the CDEM Group’s appointment of Group Controllers and Group Recovery Managers (section 26 and proposed sections 29(1) and (2), respectively) all require that the appointed person be “suitably qualified and experienced”. Given the circumstances in which transition powers will be notified and exercised, the power to give notice of a local transition period should be vested in someone who is suitably qualified and experienced.

Recommendation:

- 2.3 That the words “suitably qualified and experienced” be added after the number “1” in proposed section 25A(1). For consistency, and for the reasons outlined above, the same amendment should be made to proposed new section 25(1) (clause 12) in relation to appointment of persons who may declare a state of local emergency.

3 Appointment of Local Recovery Managers

- 3.1 Proposed new section 30 (clause 17) provides that a CDEM Group may appoint one or more *persons* to be a Local Recovery Manager. For the reasons given above at paragraph 2.2, there should be an express requirement that a CDEM Group appoint only suitably qualified and experienced persons to this important role.

¹ Explanatory Note to the Bill, p1.

Recommendation:

- 3.2 That the words “suitably qualified and experienced” be inserted after the number “1” in the first line of proposed section 30(1).

4 Consultation requirements – CDEM plans

Clause 20: amending section 53(2) – the Minister’s views

- 4.1 Sections 48 to 55 of the Act provide for the preparation and approval of CDEM plans. Section 49 provides that, before approving a CDEM plan, a CDEM Group must send a copy of the proposed plan to the Minister for his or her comments. Clause 20 of the Bill proposes to amend section 53(2) to require CDEM plans to “take account of” any comments made by the Minister. The Law Society suggests this requirement more logically belongs in section 49 (which requires the proposed plan to be sent to Minister), rather than in section 53.

Recommendation:

- 4.2 Delete clause 20 and amend clause 19 to add the following before the proposed amendment to section 49(2)(d):

Section 49 amended (Proposed plan to be sent to Minister)

Replace section 49(1) with the following:

- (1) Before approving a civil defence emergency management group plan, a Civil Defence Emergency Management Group must:
- (a) send a copy of the proposed plan to the Minister for his or her comments;
 - (b) allow the Minister 20 working days to comment; and
 - (c) take account of any comments that the Minister makes under section 49(1)(a).

Section 52: public consultation

- 4.3 Section 52 of the Act establishes a process for public consultation on a proposed CDEM plan. There is, however, no corresponding obligation to “take account” of public submissions in finalising the CDEM plan. While such an obligation is likely to be implied, it is preferable for it to be stated expressly.

Recommendation:

- 4.4 That a new paragraph be inserted after section 52(1)(d) of the Act, requiring a CDEM Group to take into account written and oral submissions made under that section.

5 New Part 5A (Transition periods) and new Part 5B (Powers in relation to transition periods) – clause 28

Proposed section 94B: notice of Local Transition Period

- 5.1 Proposed new section 94B, which provides for notice of a local transition period, is long and difficult to follow. It would be preferable to split it up and simplify its structure. For example:

- Proposed subsections (1) and (2) use different terms to describe (apparently) the same person: “A person appointed for the purpose under section 25A” (in subsection (1)), and “A person who is authorised to give notice of a local transition period” (in subsection (2)).
- The duplication in proposed subsections (1) and (2) could be eliminated by collapsing them into one sub-section so that they share their common introductory clause (from “A person appointed ...” to “... [CDEM Group] concerned ...”).
- It is unclear whether the requirements in proposed subsection (5) (being satisfied invoking powers is in the public interest and necessary and desirable to ensure a timely and effective recovery) are intended to apply to the decision whether to give notice of a local transition period or only after a notice has been given. The Law Society considers that these requirements should apply both to the decision whether to give notice and to the period. If the requirements of subsection 5 are intended to apply only after notice is given, then proposed subsection (5) does not belong in section 94B (which relates to the giving of notice).
- Proposed subsections (7) and (8) should be placed in a separate section because they relate to the period after notice is given, rather than to the process for giving a notice.

Proposed section 94F(4)(a): Publication of transition period notices

- 5.2 Proposed section 94F(4)(a) provides that a person who gives notice of a transition period or who extends a transition period must “immediately notify the public by any means of communication that are reasonably practicable in the circumstances”. This provision could be made more specific, for example by adding words such as “including by placing the notice on a publicly available Internet site that is appropriate for the purpose”.

Proposed section 94J: Minister’s power of direction

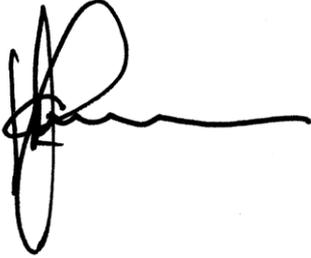
- 5.3 This proposed section enables the Minister to direct the Director or any CDEM Group or person to perform or cease to perform any of the function or duties or exercise any of the powers conferred on that person or group under Part 5B. The exercise of this power depends on whether “the Minister considers that, having regard to all of the circumstances, it is expedient [to do so]”. (A similar power of direction also appears in section 84 of the Act in the context of emergencies.) The Law Society submits that “expediency” does not sufficiently constrain the exercise of the powers under the Act, especially after the transition from emergency to recovery. Consistently with proposed section 94G (Recovery Managers’ exercise of powers), the Minister’s discretion under proposed section 94J should also be informed by the public interest, the requirements for a timely and effective recovery, and proportionality.

Recommendation:

- 5.4 That proposed section 94J is amended to require the Minister, before exercising the power of direction, to be satisfied that doing so is (i) in the public interest, (ii) necessary or desirable to ensure a timely and effective recovery, and (iii) proportionate in the circumstances.

Conclusion

5.5 The Law Society does not wish to appear in support of this submission.

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Chris Moore
President
24 March 2016