



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Hurunui/Kaikōura Earthquakes Recovery Bill

05/12/2016

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Overview

1. In the very limited time available the New Zealand Law Society makes the following submissions on the Hurunui/Kaikōura Earthquakes Recovery Bill.
2. The Law Society accepts that the recovery from the 2016 earthquake requires emergency legislation and powers which necessarily will require some abrogation and changes to normal democratic, legal and administrative rights and processes. That said, the extent and duration of these should be limited to measures that are absolutely required and only for so long as they are required.
3. The Law Society has consistently been opposed to:
 - delegated legislation, such as Orders in Council or regulations, being used to amend primary legislation, and
 - the abrogation of existing appeal rights or the right to apply for judicial review,as these give rise to significant rule of law concerns and can only be justified in exceptional and carefully circumscribed circumstances. That also accords with the key recommendations of the Regulations Review Committee's report on its Inquiry into Parliament's legislative response to future natural emergencies presented to Parliament on 1 December 2016.¹
4. The Law Society acknowledges that the Bill recognises and seeks to meet these concerns in a number of ways, as provided for in clauses 8 – 14 and 17 – 20. It is also acknowledged that these checks and balances go beyond those put in place under the Canterbury Earthquake Recovery Act 2011.

Specific submissions

5. The Law Society does not consider that adequate time for public consultation on the Bill has been provided, even accepting that it is emergency legislation. The Law Society was effectively given one working day to make submissions.
6. **Clause 4(1):** "Earthquake-affected area" includes areas "indirectly" affected. This is potentially a very broad definition.
7. **Clause 8(1)(a):** It would be preferable to expressly include that:

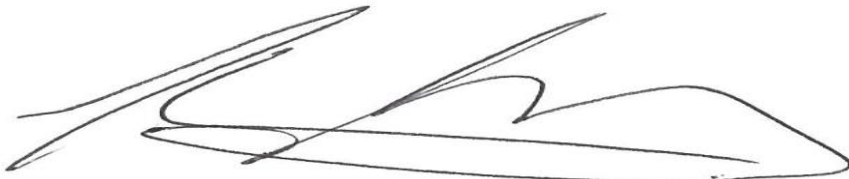
(iv) the duration of the order is no longer than reasonable necessary to address the matters that gave rise to the order.

This also gives rise to an issue as to whether activities undertaken pursuant to an order may be continued indefinitely; for example, if a farmer digs a well without having to obtain the usual consent, can the well continue to be used indefinitely after the expiry of the Act and the order? There are two possibilities. The first is that the farmer can continue with the activity. The second is that the activity must cease on expiry of the Act and the order. That would still allow between now and 1 April 2018 to obtain the usual consent on a permanent basis. The Law Society favours the second alternative.

8. **Clause 8(1)(c):** A draft order should in all cases be provided to both the Regulations Review Committee and each leader of a political party represented in Parliament.

¹ *Inquiry into Parliament's legislative response to future national emergencies* (I.16B) (1 December 2016), at p3: Recommendation 4 (Emergency legislation should take the form of primary legislation wherever reasonably possible, rather than relying on broad powers to make delegated legislation) and Recommendation 7 (The right to seek judicial review of Orders in Council made under emergency legislation should be preserved and upheld).

9. **Clause 8(3):** The abrogation of the availability of judicial review should be deleted.
10. **Clause 11(1):** It would be preferable to include as a mandatory member of the Panel a community representative of the earthquake affected area in respect of which the decision is to be made. Otherwise, there is an imbalance in the Panel's membership.
11. **Clause 16(1)(b):** This clause should be deleted. Adding further Acts for the purposes of Schedule 2, making them subject to this Act, should require an enactment of Parliament and not just an Order in Council.
12. **Clause 16(3):** If nevertheless clause 16(1)(b) remains then clause 16(3) should be subject to the Panel's review under clause 13. This is because the Panel will have relevant community and factual knowledge.
13. **Complaints:** There is potential for orders under this Act to authorise activities that may have more than minor adverse effects on people. There should be a mechanism to allow those adversely affected in a more than minor way by an Order in Council to be able to make a complaint. An option would be provision for:
 - (a) a general ability to complain to the Panel in such cases;
 - (b) the Panel to investigate a complaint and make a report to the Minister, so that he or she can decide whether relief or other remedial action should be available or whether the order ought to be amended to prevent recurrence;
 - (c) this not to prevent the ability of an affected person to pursue any other remedy available.
14. **Review:** It would be preferable for there to be a mid-term review and report by the Panel to the Minister, say in June 2017, as to the efficacy of the Act and any issues that have arisen. The mid-term review should also consider whether it is still necessary and appropriate to continue the Act's 'Henry VIII' approach of using Orders in Council to amend primary legislation.

A handwritten signature in black ink, appearing to read 'Kathryn Beck', written in a cursive style.

Kathryn Beck
President
5 December 2016