New Zealand Law Society
Te Kāhui Ture o Aotearoa

Emergency Management Bill (No 2)

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

11 February 2026

1. Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (the **Law Society**) welcomes the opportunity to comment on the Emergency Management Bill (No 2) (the **Bill**). The Bill is a comprehensive reform of New Zealand's emergency management legislation and replaces the Civil Defence Emergency Management Act 2002 (the **CDEM Act**).

1.2 This submission has been prepared with the input of the Law Society's Public Law Committee. The Law Society does not seek to be heard on this submission.

2. Prior submission on the Emergency Management Bill 2023

2.1 The Law Society made a submission on the Emergency Management Bill 2023 (**2023 Bill**), which was before Select Committee at the time Parliament dissolved in advance of the 2023 General Election.[1] The 2023 Bill was eventually discharged by the present Government, when the 54th Parliament commenced.

2.2 At the time, the Law Society commented that the 2023 Bill was generally well-drafted and provided a clear and detailed framework for emergency management. This included appropriate regulation-making powers, and safeguards to constrain the Director of Emergency of Management by requiring that the Director give notice of intention to make rules and a reasonable opportunity for submission.

2.3 Overall, the Law Society submitted that the Bill struck an appropriate balance between individuals' rights and the need to give officials the ability to appropriately deal with emergencies.

2.4 The Law Society did, however, raise concerns about:

a) The compensation regime, and whether it complied with the principle that property should not be taken without compensation. The Law Society's submission identified drafting ambiguities in clauses 119 and 120, and recommended that Select Committee consider whether a $20,000 cap on compensation for the loss of personal property was fair and/or adequate, and whether the reliance on the ability for ex gratia payments was appropriate. It was stated that it may be appropriate to index any limits to CPI.

b) Appeal rights relating to information requests and requirements to obtain structural assessments from owners of the structure. It was noted that there were no appeal rights, even though the above (and other provisions in the Bill) permit actions that interfere with persons' autonomy and property. It was suggested that, as well as standard judicial review rights, Select Committee should consider whether other appeal rights are appropriate.

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1 That submission can be found here: https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/Emergency-Management-Bill-3-11-23.pdf

c) Emergency Management Committees not being considered PCBUs. It was submitted that while this may be appropriate in an emergency, such an exclusion may not be appropriate if the committees are able to employ or contract individuals.

2.5 The Law Society recommended that if the 2023 Bill was not reinstated under the 54th Parliament, the incoming Government should introduce an "alternative bespoke framework which provides as much clarity and specificity as possible about the options available to a future government responding to a pandemic."

2.6 We acknowledge the present Bill is also informed by the findings of the Government Inquiry into the Response to the North Island Severe Weather Events (the **Government Inquiry**), which commenced on 31 July 2023 and concluded on 24 March 2024.

3. General comments on the current Bill

3.1 It is widely accepted that the CDEM Act is no longer fit for purpose and that legislative change is required.

3.2 Additionally, the Government Inquiry concluded that, as drafted, the 2023 Bill was "insufficient as a legislative basis for an effective, future-proof system."[2] It also acknowledged that more than legislative change would be required. Recommendations included that the Government:

a) Legislate for and invest in an inclusive, community-led emergency management model that explicitly recognises the knowledge and capability of iwi Māori, businesses, and local communities in emergency management.

b) Legislate to enable iwi to participate in planning for and responding to a natural disaster or other emergency, and to bring more clarity to their role (including appropriate iwi representatives to be part of the Groups Coordinating Executive Group and on the Group Joint Committee).

c) Legislate for and invest in the National Emergency Management Agency's (NEMA) primary function and purpose to hold system leadership for emergency readiness and response.

d) Explicitly clarify the roles of central, regional, and local levels of government in a national state of emergency.

e) Clarify and strengthen, in legislation, the governance role of mayors and chairs during an emergency.

f) Strengthen regional and local council governance accountability for readiness and leading response.

g) Legislate for and invest in a single common operating platform and picture for emergency management to be adopted by every council and NEMA.

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2 Report of the Government Inquiry into the Response to the North Island Severe Weather Events (March 2024), at para [46].

3.3 The Bill appears to be a comprehensive replacement of the CDEM Act. It includes some provisions that reflect the CDEM Act (for example, the precautionary approach is included in clause 13, and the Director-General has many of the same functions and powers as in the CDEM Act) and some that reflect the 2023 Bill.

3.4 The Bill is also more detailed in some respects. For example, it specifically identifies "essential infrastructure providers", requires identification of "disproportionately affected communities", requires Emergency Management Committee Co-ordinating Executive Groups to consist of people with knowledge, experience, or expertise regarding the interests and needs of rural communities in the area, and introduces the concept of compliance orders, including requirements as to how they are served, their form and content, how proceedings may be brought in relation to non-compliance, and appeal rights (clause 207).

4. Comment on specific aspects of the Bill

Changes to engagement with Māori

4.1 One key change between the 2023 Bill and the present Bill is that the 2023 Bill provided for the establishment of a National Māori Advisory Group, whereas the present Bill does not. It instead takes the approach of requiring varying levels of iwi and Māori engagement, including:

- Requiring Emergency Management Committees to appoint 1 or more Co-ordinating Executive Group members with "*local perspectives of Māori, Māori communities, and their interests and values, including mātauranga Māori (Māori traditional knowledge) and tikanga Māori (Māori protocol and culture), iwi, and hapū in the area*" (clause 39).
- Where an agreement is proposed for joint responsibility of offshore islands, the Minister of Local Government and responsible Emergency Management Committee "must consult iwi and hapū with an interest in the offshore island" (clause 48).
- Requiring the Director-General, in developing the national emergency management plan, to "engage with and seek advice on Māori interests and knowledge" (clause 86).
- Requiring Emergency Management Committees to:
  - "engage with and involve" representatives of iwi and Māori in the Committee's area when developing a proposal for a regional emergency management plan (clause 94); and
  - notify representatives of iwi and Māori of proposed regional emergency management plans, provide an opportunity for written submissions, and have regard to comments made by iwi and Māori within the Committee's area (clause 95).

4.2 Our concerns here are twofold. First, the ability of the Bill, as drafted, to achieve its aims. Second, the clarity of the drafting of these provisions, and the scope for them to be utilised in a manner inconsistent with their intention.

4.3 One of the specified intentions of the Bill is to strengthen the role of community and iwi in emergency management. The accompanying legislative materials are clear on the importance of iwi and Māori involvement, not only as groups who are often disproportionately affected by emergencies:[3]

> *Iwi and other groups that represent Māori have unique knowledge, skills, and resources to contribute across the 4 Rs. For example, iwi Māori have an understanding of hazards and risks that is grounded in centuries of local knowledge, and use their capacity, networks, and resources to care for displaced people*.

4.4 This sentiment is consistent with the recommendations of the Government Inquiry, though is arguably not given effect in the Bill. The Government Inquiry spoke to the absence of a formal legislated role for Māori,[4] and recommended:[5]

> *Iwi Māori who have the capacity, capability, and desire to be involved in emergency readiness and response should be empowered to take on a greater role. To give effect to this, the role of iwi Māori in emergency management should be formalised and embedded within the one emergency management system, so it is reflected throughout the community, local, regional, and national structures. We endorse the recommendations of the 2017 Ministerial Review into Better Responses to Natural Disasters to recognise iwi contributions and legislate for iwi participation in readiness, response, and recovery.*

4.5 The views of iwi and Māori submitters during the 2025 consultation are noted only briefly throughout the RIS. Of the feedback recorded with some detail, we note there was a strong desire for a national Māori advisory board, and that some iwi sought greater partnership in the emergency management response amongst their communities.

4.6 In the absence of further information on the views of these stakeholders, the Law Society is of the view that the drafting of the above provisions does not achieve a strengthened role for iwi and Māori. Clauses 39 and 86 do not ensure the involvement of representatives of iwi and Māori. They refer instead to knowledge of matters, without consideration of who holds that knowledge and can appropriately share it. Dependent upon the views of iwi and Māori, it may be that clause 39 is better drafted as requiring a representative of iwi and Māori (who has the requisite knowledge and authority). While clause 86 relates to national interests, and this would understandably make reference to "representatives" less feasible, consideration should be given as to whether the inclusion of a National Māori Advisory Group (or similar) would be one means of ensuring that the "advice on Māori interests and knowledge" that is received by the Director-General, is provided by those with the expertise and authority to share it. Theoretically, both clauses 39 and 86 could be met if an Emergency Management Committee or the Director-General were content to receive such information from an individual who is not even a member (much less a representative) of the relevant communities.

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3 Explanatory note
4 Above, n 2, [58].
5 Above, n 2, [52].

4.7 Turning to clauses 94 and 95, these do include reference to representatives of iwi and Māori, and the consideration of their views. However, in contrast with clause 48 (which uses the familiar expression of 'consulting' with iwi and hapū), clauses 94 and 95 are less clear. It not certain whether this is intended to signal lesser obligations. In particular, at the important stage of developing the proposal, the requirement is to "engage and involve." This phrase, and its constituent parts, are undefined and uncommon in legislation, and it not clear what is required to meet that obligation. It is not saved by a consultative requirement at the point at which a proposal has been developed and notified, as clause 95 has the lesser requirement of simply having 'regard' to submissions from iwi and Māori. Acknowledging that 'engage and involve' may well have been intended to require more than formal consultation, the phrase is ambiguous. Does it, for example, intend engagement for purposes similar to those set out at section 33 of the Urban Development Act 2020? If so, what is the addition of the terms 'and involve' intended to entail?[6]

4.8 Noting the recommendations of the Government Inquiry and the objectives outlined in the RIS and explanatory note, we recommend the Select Committee consider whether the Bill, as presently drafted, adequately enables and strengthens the role of iwi and Māori in emergency management and make any amendments needed to make clearer, or indeed strengthen, that role.

Definition of Director-General of Emergency Management – clause 5

4.9 The Bill creates the position of Director-General of Emergency Management/Director-General. Clause 5 of the Bill defines this as meaning "the chief executive." "Chief executive" is then defined in clause 5 as meaning the "chief executive of the department". "Department" is not defined.

4.10 We presume "department" is intended to be the department that for the time being is responsible for the administration of the Bill once enacted. While that may be considered self-explanatory, the circular (yet incomplete) nature of the definitions above would perhaps benefit from this being clarified.

Lead agencies – clause 69

4.11 Clause 69 of the Bill introduces the concept of the 'lead agency, and provides that "in an emergency that has been caused or contributed to by a particular hazard, the lead agency for that emergency has the primary responsibility for managing the response to the emergency," and sets out the functions of the lead agency. "Lead agency" is defined in section 2 of the Bill as meaning "a government agency identified in the national emergency management plan as the lead agency in respect of emergencies caused or contributed to by a particular hazard."

4.12 The identification of a government agency as lead agency within a national emergency management plan is provided for by clause 83 of the Bill. However, clause 83 uses

6 See also the Pae Ora (Health Futures) Act 2020, which includes engagement requirements but provides some guidance such as at section 16A, which specifies engagement in relation to Māori aspirations and needs for hauora Māori.

discretionary language – a national emergency management plan *may* identify a lead agency. It is not required to.

4.13 Combined, this suggests there could, in some circumstances, be an emergency/hazard for which there is no identified lead agency. It is not clear that this is intended. One option could be to make the "department" (see above) the lead agency by default.

Transfer of the lead agency role

4.14 Clause 70 allows the lead agency role to be transferred to another agency, with the agreement of the agency to which responsibility is being transferred. Such provision is sensible.

4.15 However, to provide greater clarity about how a transfer will work in practice, and to ensure it is at all times clear who is responsible for an emergency, it may be worthwhile providing for the development of rules addressing: how a transfer takes place; the form in which agreement should be recorded; from when transfer takes effect; and any transitional requirements that may arise.

4.16 A formal transfer mechanism or other specific requirement may also assist at clause 70(3), which provides that responsibility transfers back "when the response to the emergency for which the lead agency obligations were transferred is complete". It will not always be objectively clear when a response to an emergency is "complete", and a formal mechanism for transfer may provide greater certainty.

Compensation provisions – new Part 5, subpart 4

4.17 In the Law Society's submission on the 2023 Bill, we observed:

> *It is a general principle that property should not be taken without compensation. New legislation should be drafted to respect this, typically through the establishment of fair and rigorous procedures for the provision of compensation.*

4.18 The Bill proposes a compensation regime that appears to operate much as that proposed by the 2023 Bill (for those to whom clauses 191 or 193 do not apply):

- Clause 197 provides for compensation for loss or damage to property that occurs as a result of actions or measures captured by clause 197(3).
- Clause 197(5) limits this liability to no more than the replacement value of property concerned. In respect of personal property, clause 197(6) limits compensation to $20,000 less any insurance cover for that property.
- Any shortfall would then be reliant on an ex-gratia payment by the Crown, and Emergency Management Committee, or a territorial authority (clause 199(6)).

4.19 The Bill's provisions are drafted in similar, though not identical terms to the 2023 Bill. Several of the Law Society's comments on the 2023 Bill are therefore reiterated below.

Clause 197 – Compensation for loss or damage due to exercise of other powers during emergency declarations

4.20 Clause 197(1)(a) now includes reference to "property" ("a person a who has suffered loss or damage to property…"). This addresses in part the ambiguity noted at para 3.3(a) of the Law Society's submission on the 2023 Bill. It also refers to "the benefit, or the likely benefit" of an action or measure being disproportionally less, rather than the proposed 2023 drafting of "the good done, or likely to be done". This is clearer drafting, though one ambiguity noted in our 2023 submission remains – it is not clear whether this is intended to encompass non-economic considerations.

4.21 Clause 197, via the definition of property in subsection (6)(c), retains reference to a $20,000 limit of liability. The Law Society raised this as a concern in its 2023 submission, and that concern remains. Inclusion of the limitation within a definitional clause could be interpreted as meaning that 'personal property' only includes property with a value of $20,000 or less. On this view, personal property of a value higher than $20,000 would not be covered by the scope of the compensation regime. We presume this is not the intention, and that it is instead intended as a cap on compensation payable. However, if the Bill is in fact intending to exclude any personal property with a value exceeding $20,000, the Select Committee may wish to consider whether this is fair.

4.22 Further, the reference in clause 197(6)(c) also suggests that "property" excludes all animals except livestock (which is covered by clause 197(6)(b)). It is not clear why compensation in relation to animals (other than livestock) is precluded from the compensation regime.

4.23 Finally, we note that by virtue of clause 197(3)(b), compensation is payable only in relation to actions or measures taken in "good faith" in the course of the person exercising functions, duties, or powers during, or in connection with, a state of emergency or transition period. This suggests that compensation is not available for actions or measures taken in bad faith, or taken outside of functions, duties or powers relating to a state of emergency or transition period. It is not clear why this distinction is made, and whether it reflects an expectation that individuals who suffer loss as a consequence of such measures or actions should recover that loss via an alternative means. We recommend the Committee consider whether this intended.

Adequacy of compensation and reliance on ex gratia payments

4.24 As noted in the Law Society's submission the 2023 Bill, the Select Committee may wish to consider:

- Whether the $20,000 limitation on compensation for personal property in clause 197(6)(c) (subject to our comments above) is adequate. While any figure set will be arbitrary to some degree, this figure may currently be too low to achieve respect for property rights. Reliance on an ex-gratia payment to address any unfairness or hardship arising from this is insufficient, particularly in an emergency context

where Crown finances may be under pressure, and decision-makers not minded to remedy unfairness.

- It may be appropriate to index any specified dollar amount in clause 197 to CPI. The CDEM Act has been in place for over 20 years. If this Bill remains in force for a comparable period, the current proposed limitation of $20,000 will provide considerably less compensation in the event of an emergency 18 years' from now. This could lead to unfairness or hardship, and an over-reliance on ex-gratia payments.

Offences – New Part 5, subpart 3

4.25 The Law Society notes that the offences in the new Bill largely replicate the offences under the CDEM Act, except that the penalties are stated in each offence (and vary substantially), rather than maintaining the "one size fits all" approach of section 104 of the CDEM Act. We consider the Bill's approach to be preferable.

4.26 One new offence is proposed by clause 187, relating to failure to comply with a compliance order. This is a corollary of clause 174, which allows such order to be issued by the Director-General. The offence carries significant financial penalties, though we acknowledge imprisonment is not provided for.

4.27 As there are several requirements to be met by the Director-General before issuing a compliance order under clause 174, there are potential defences to any charge under clause 187. The offence is likely one of strict liability, but for the avoidance of doubt, the Law Society recommends providing expressly for a defence of reasonable excuse for non-compliance, with a legal onus on the defendant as would ordinarily be the case in such regulatory offences.

Minister's power to make rules – clause 212

4.28 Clauses 212 to 215 provide for the making of secondary legislation in the form of rules. Under the 2023 Bill, such rules could be made by the Director of Emergency Management, whereas under the present Bill this has been amended to a Ministerial power. The Departmental Disclosure Statement states that "*The Bill provides for a greater level of national direction by empowering the Minister to make rules prescribing technical, operational, procedural, or operational matters*." The RIS notes the approach is reflective of a regulator setting legal requirements, and that safeguards will include a requirement for notification and consultation with relevant persons, as well as the rules being subject to review by the Regulations Review Committee.

4.29 That said, it is not clear why the Bill proposes to place this power with the Minister, given the wide-ranging and substantive functions and powers of the Director-General in clauses 14 to 16. We note that the Director-General also retains some responsibility for operational standards. For example, clause 15(4) enables the Director-General to issue guidelines, codes, or technical standards to people with responsibilities under the Act on a range of topics, including any matters the Director-General considers are necessary and consistent with the purposes of the Act. The Director-General can also grant exemption from Rules made by the Minister (clause 214). We recommend the Select Committee

carefully review the balance between the responsibilities of the Minister and of the Director-General.

4.30 Clause 213 of the Bill specifies requirements with which the Minister must comply when making rules, including giving public notice, giving interested persons reasonable time to make submissions, and consultation with "persons and groups as the Minister thinks fit." It is presumed that, practically, this will typically be on the advice of the Director-General. However, given the substantive roles and responsibility of the Director-General, consideration should be given to the extent to which the Director-General's input should be formally required, as elsewhere in the Bill. For example, while the Minister has responsibilities relating to reviewing a national emergency management plan (clauses 84 to 89), the Minister must consider a proposal relating to the review developed by the Director-General (clause 86). The Minister is also required to consult the Director-General before issuing regional emergency management planning standards (clause 101(2), as below).

Additional matters

Clause 45 – Costs incurred by local authorities or water organisations

4.31 Clause 45 provides for costs incurred by local authorities or water organisations in connection with emergency management to be reimbursed or paid. However, it provides that costs are only repayable if they meet the criteria for reimbursement or payment in a "Government policy" that was in force before the emergency was incurred. The 2023 Bill had a similar provision.

4.32 Reference to a "Government policy" is ambiguous (noting the Bill provides for a range of standards and Rules), and there is no obligation on any agency to have such a policy. We recommend the Committee consider whether this provision is adequate, or whether more certainty about when such costs might be reimbursed/paid should be included in the Bill, even if only by way of requiring the establishment of a relevant policy.

Clause 172 – Medical information

4.33 Clause 172 refers to "medical and legally privileged information" not being disclosed. The Privacy Act, Health Information Privacy Code, and Health Act refer to "health information", which is arguably broader than "information concerning the medical condition or history of any person". We recommend amending clause 172 to refer to "health information".

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