

// SUBMISSION



EMERGENCY MANAGEMENT BILL

// Local Government New Zealand's submission

// AUGUST 2023





Ko Tātou LGNZ.

Local Government New Zealand (LGNZ) provides the vision and voice for local democracy in Aotearoa, in pursuit of the most active and inclusive local democracy in the world. We support and advocate for our member councils across New Zealand, ensuring the needs and priorities of their communities are heard at the highest levels of central government. We also promote the good governance of councils and communities, as well as providing business support, advice, and training to our members.

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Executive summary

Local Government New Zealand (**LGNZ**) welcomes the opportunity to submit on the Emergency Management Bill (**Bill**).

Communities turn to their councils when disaster hits. Councils lead their regions and communities through all phases of an emergency, and locally led planning and response is critical. Councils are increasingly bearing the brunt of emergency events, especially as weather events become more frequent and extreme.

Our key points

LGNZ supports the proposed streamlining of the Civil Defence Emergency Management Act 2002 (**CDEM Act**) into a modern Act that enables councils to support their communities in times of crisis.

However, more work is needed to deliver an integrated, fit-for-purpose emergency management framework that responds to the increased frequency and severity of events and better supports recovery. Such a framework would better provide for and integrate risk reduction and resilience approaches across other reforms, including water services, resource management, critical infrastructure, and community-led retreat. Funding is a significant factor and needs to be considered holistically.

LGNZ is generally supportive of the Bill, and in particular:

- // The enhanced role for iwi/Māori.
- // setting out the roles of Emergency Management Committees separately from the emergency management (**EM**) functions and duties of council members of the Committee.
- // Transitioning lifeline utilities to critical infrastructure entities.
- // Provisions allowing the Director to make rules, subject to consultation with councils.
- // Consultation required with “disproportionately impacted” persons/communities, subject to further clarification.
- // Increased penalties and the introduction of an infringement regime.
- // Continuation of the liability protection provision.

To improve the Bill, LGNZ seeks the following changes:

- // A requirement to consult councils on the development of guidance, the National Emergency Management Plan Review and Director’s rule-making.



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- // Simplification of provisions relating to the role of iwi and Māori that recognises individual councils' relationships with mana whenua.
 - // Strengthening of consultation requirements to explicitly require direct consultation with councils.
 - // A definition of “disproportionately impacted” persons/communities.
 - // A clearer statement of funding provision policies for engagement processes, including to support capacity and capability of those being engaged.
 - // Modification of provisions relating to Critical Infrastructure Entities to minimise duplication with existing reporting and better integrate with other reforms.

To strengthen the EM system, LGNZ seeks further consideration of:

- // The role of the EM system in risk reduction and resilience, and how this integrates with other reforms recently passed or currently being explored.
- // Establishment of a permanent recovery agency, and legislation that provides a template for immediate response and recovery measures in future events.

Our submission

Functions of emergency management committees and councils

LGNZ supports setting out the roles of Emergency Management Committees (currently CDEM Groups) separately from the emergency management (**EM**) functions and duties of council members of the Committee in an area (region). We're pleased to see definitions of the respective roles of EM Committees in clause 29 and council members in clause 37 reflecting best practice in terms of a regionally coordinated, locally led approach to emergency management.

However, aspects of EM functions are overly prescriptive and do not align with current ways of working. A key example is the requirement for EM Committees to establish systems and processes for engagement with iwi/Māori, and developing plans to address those needs. When making plans EM Committees must also engage with representatives of communities that are likely to be disproportionately impacted by emergency events in the Committee's area, and there is provision for regulations to prescribe how this is to happen. While we support strong engagement with iwi/Māori and those likely to be disproportionately impacted, EM Committees should be empowered to lead engagement and determine their processes. These processes must reflect local circumstances and variations within and between areas. There may be long-standing relationships that reflect complex iwi and hapū structures, and are guided by a range of existing engagement and joint working agreements.

We are concerned that the prescriptive approach to EM functions might result in inefficiencies and see more resourcing required at the Committee level, drawing council EM staff away from local EM readiness and response planning. We want to see the Bill better recognise and enable the diversity of existing engagement arrangements amongst individual local authority members, and to recognise that arrangements are also likely to change through other reforms (such as resource management reform).

Role of iwi/Māori

LGNZ supports changes in the Bill that enhance the role of iwi/Māori and seek to better provide for partnership, including explicit reference to upholding the principles of the Treaty, as well as including iwi and Māori people and knowledge in EM.

LGNZ supports the establishment of a National Māori Emergency Management Advisory Group (NMEMAG) and the appointment of one or more Māori members to each EM Committee. We also support requirements for the National Emergency Management Plan is 'to provide a role for Māori in emergency management', and provisions about how Māori are to be appointed to EM

Committees, (including regulations to determine the process for this to happen), and requirements that they are engaged with and involved in plan-making.

Development of guidance should be in consultation with councils

As indicated LGNZ generally supports the establishment of NMEMAG, which will advise on policy development, the role of the National Emergency Management Agency in relation to outcomes for Māori, and develop guidance for how Māori and local government develop appointment processes to EM Committees and EM Co-ordinating Executives. LGNZ wants to see consultation with councils (or a representative group on behalf of councils) made a requirement in relation to the development of guidance for appointment processes under clause 20(3) of the Bill. This consultation would help ensure guidance appropriately recognises local circumstances and is workable for councils.

The provisions for the appointment of Māori to EM Committees are too complex and overlapping

While LGNZ supports Māori being involved with EM Committees, we note that there are three different provisions addressing the appointment of Māori (clause 20(3)(c), clause 26, and clause 67(2)). This approach is overly complex and overlapping, particularly as regulations, if issued, are likely to have priority.

We want to see a more straightforward approach, with only provisions for NMEMAG guidance to be issued (clause 20(3)(c)) retained. This would see EM Committees empowered to determine arrangements in partnership with iwi and Māori at area and local levels in line with this guidance. If this approach is not adopted, then the provisions should be revised to clarify the intended role of each and how they are intended to work together.

Minister's power to appoint to the Emergency Management Committees should be reconsidered

The ability for the Minister to appoint members of a council committee (clause 26(2)) is unusual and unnecessary. We want to see the 'must' to become a 'may'. There may be circumstances that explain why an appointment has not been made within timeframes stated in regulations if they are promulgated.

A similar provision in clause 33(2) applies to the appointment of Māori members to EM Co-ordinating Executives. This says if timeframes have not been met, the Minister must appoint one or more Māori members to what is predominantly a local government management forum. This is highly unusual and should also be changed.

Funding confirmation needed for Māori emergency management fora participation

We want funding for NMEMAG clarified. This includes how attendance fees and expenses of iwi/Māori on EM committees and participation in Co-ordinating Executives will be funded, which has not been addressed in material released with this bill. However, the 'Trifecta' consultation document (NEMA, January 2022, *Modernising the emergency management framework*) suggested that membership fees and expenses of iwi /Māori representation on Joint EM Committees will be

centrally funded, while for Co-ordinating Executives “NEMA will undertake analysis to establish a funding mechanism, with this likely drawn from NEMA’s baseline.”

LGNZ strongly supports this being funded by central government and for this to be made clear in communications around the Bill.

Changes to critical infrastructure entities

We support participation in planning and proactive sharing requirements

Requiring participation by critical infrastructure entities in emergency planning processes and proactive information sharing with EM Committees is both necessary and useful. This will give councils, better access to relevant and current information when planning for, and supporting, emergency responses.

The Bill’s provisions for critical infrastructure entities are too complex and overlap

LGNZ is concerned that collectively, the provisions set out in the Bill for critical infrastructure entities are too complex, overlap with many existing requirements and practices, and may be too onerous to achieve over a two-year period.

Other reforms are being progressed simultaneously, including water services and resource management, as well as the critical infrastructure system regulatory reform that will impact on councils and other infrastructure providers.

The potential for coordination risks between the emergency management and broader critical infrastructure system reforms were noted in the 2022 Cabinet paper on Emergency Management Systems Reform Proposals (GOV-22-SUB-0031) leading to the new Bill: *“significant coordination risks that could lead to regulatory confusion and unnecessary compliance costs for Government and (critical infrastructure) operators”*.

Lifeline utilities have existing service levels and performance measures (some of which are mandatory), including emergency service provision statements, which they report against annually. Asset management plans are prepared to respond to service levels and are publicly available. Critical infrastructure entities already report against their existing service levels annually: to councils, boards, industry regulators and Audit New Zealand.

The approach in the Bill is too complex, significantly overlaps with existing processes and requirements and potentially also with wider system reforms. We recommend that the requirements imposed upon critical infrastructure entities (which include water and roading services delivered by councils) be clarified and simplified to minimise coordination risks.

If compliance reporting by critical infrastructure entities in relation to their obligations under the Bill is retained, LGNZ recommends that the “responsible agency” be an existing industry regulator and/or Audit NZ rather than creating a new accountability and audit function, essentially to public service chief executives.

We also want to see clearer linkages with the resource management system. This means clarifying what entities might become critical infrastructure entities, so that both systems are consistent.

Development of the National Emergency Management Plan

Consultation with councils should be explicitly required

While the Bill requires the Director to consult with persons and agencies with roles and responsibilities under the new or revised Plan, it does not specify that these “agencies” must include councils. For the avoidance of doubt, LGNZ recommends that Bill makes it explicit that councils are emergency management partners that must be consulted by the Director before the Minister can approve any Plan.

Emergency Management Committee Plans

Definition of “disproportionately impacted” is required

While we support the Bill’s intent in requiring that EM Committees must engage with representatives of the community who are likely to be “disproportionately impacted” by emergency events when developing new or revised EMC Plans, the definition of “disproportionately impacted” in the Bill’s explanatory note is very broad.

Councils’ experience is that it can be difficult to determine which communities might be impacted by hazards. There is no uniform threshold or test against which hazard or risk impact can be assessed. While the Bill enables for regulations to be made (clause 143), these only address identifying representatives and not the relevant communities themselves.

To assist with identifying who should be engaged with as part of developing a new Plan, LGNZ recommends the select committee gives specific thought a how the intent of such a requirement could be better achieved.

One option would be to provide further clarity around the phrase “representatives of communities that are likely to be disproportionately impacted by emergency events”. This could, instead of requiring a definition, require EM Committees to consult with various communities within their district. The legislation could set out a list of communities the EM Committee should endeavour to consult when developing EMC Plans.

An alternative is that the legislation could refer to “vulnerable communities” instead, and clearly state who makes up those communities (for example, people in flood-prone areas), and how the EM Committees will work together with them to develop EMC Plans. The legislation could require councils to identify who will be considered a “vulnerable community” for the purposes of their area, as this will differ area by area depending on sociographic makeup and ‘hazardscape’.

Both options would have their own challenges and should be examined carefully alongside any other viable alternatives.

LGNZ also notes that it is unclear what will happen to EM Committees if they fail to consult sufficiently with these communities. Given the potentially broad meaning of the proposed phrase, it might be difficult for an EM Committee to consult with all representatives who are likely to be disproportionately impacted. More clarity is needed to reduce the risk of legal challenge to EM Committees if some groups believe they have not been consulted.

To further support clarity for committees, any regulations developed to specify how EM Committees must engage with these communities should be mandatory and be made at the time the Bill comes into force, to ensure EM Committees, through councils, can properly fulfil their duties.

Funding required for engagement

Finally, the Bill does not make clear how, or if, central government will provide capability and capacity funding for iwi/Māori organisations or communities to participate in engagement processes. Given that a key reason for the disproportionate impact is a lack of financial resources, LGNZ considers that central government should provide appropriate funding to support iwi/Māori participation in EM Committee engagement processes.

Improved enforcement regime

The Bill increases the penalties for offences and sets different rates for different offences. LGNZ supports this change, as it better reflects the seriousness of different offences and introduces a greater deterrent.

Director's rules should require consultation with councils

It is proposed that the Director of Emergency Management (NEMA CEO) will be able to make rules to prescribe technical standards, prescribe forms for emergency management plans, and prescribe reporting requirements for EM Committees, among other matters. Before any such rules are made, the Director must consult with persons and groups that the Director thinks are appropriate. LGNZ requests that there be an explicit requirement that the Director consult with councils before making any rules, in particular to avoid making rules that are inconsistent with any bylaws (and therefore create regulation overlap).

Increased funding for councils and iwi/Māori organisations during time of emergency

The Bill proposes that the Crown be able to reimburse an iwi or Māori organisation, as well as councils, for any expenses incurred in EM activities. We strongly support this. We particularly

welcome funding support for iwi and Māori organisations, given the constraints on their capacity and resourcing, as well as the huge amount of work they undertake to support communities in EM.

We note that the amount and activities reimbursed are subject to Government policy in force at the time of the emergency. A Government policy is neither primary nor secondary legislation and can be easily updated. While this is beneficial, it also creates uncertainty as future governments could roll back this provision substantially by limiting the amount/activities that may be reimbursed.

The policy must be easily accessible to councils and iwi/Māori, and any changes to it must be clearly communicated. Ideally, councils should be consulted on any changes. Currently, the policy can be found on different Government websites, and it is not wholly clear which policy is the most current and contains the complete set of information councils need to be reimbursed.

Continuation of the liability protection

LGNZ supports retaining the protection of liability clause when acting under good faith (clause 122) from the existing CDEM Act (section 110) along with the wider framework for compensation for loss or damage.

EM Committees will often have to undertake urgent actions in an emergency and cannot always confirm in advance that the action is lawful at that time. It is important that this good faith protection is retained for members and Groups/Committees, as it is in the Bill. If not, it could lead to reluctance to undertake crucial emergency actions.

Risk reduction, recovery and resilience

This legislation should do more to integrate risk reduction and recovery across the EM system

Climate change is increasing the frequency and severity of natural disasters, as shown by the destruction and distress resulting from Cyclone Gabrielle. This means all elements of emergency management need more attention: risk reduction, readiness, response, and recovery. The current EM system is focussed on readiness and response, and this Bill maintains that approach. While these are important, more work needs to be done within the EM framework to better support risk reduction and recovery – in an integrated way.

The Cabinet Paper that sought approval to introduce the Bill (LEG-22-SUB-0239) noted that there may be concern the Bill does not sufficiently address climate change, and does not address increased funding for risk reduction or recovery. LGNZ holds these concerns. EM committees' role in risk reduction is also unclear.

There are other reforms and frameworks that play an important role in risk reduction and resilience but they seem disconnected with this Bill and the wider EM system. These include the new resource

management system (including spatial planning), water services reforms (including relationship agreements), and any implementation of current work on critical infrastructure and community-led retreat and adaptation funding. Integration is important to ensure communities are engaged appropriately in these important conversations, and to align decision making and outcomes across a range of actors.

Recovery approaches should be less ad hoc and better provided for

In Aotearoa New Zealand, more extreme weather events means major emergency responses and prolonged recovery will increasingly overlap as we have seen in Tairāwhiti Gisborne this year.

To better support recovery, LGNZ recommends the establishment of a permanent recovery agency with an enduring legislative framework for activating recovery arrangements at national, regional, and local levels.

This would require more clearly defining the role of central government and local government in recovery before an event occurs, and is an opportunity to further embed a close central-local government partnership throughout recovery. It would also avoid ad hoc decision making reliant on the government-of-the-day on how communities are supported through recovery. The design of such an agency should embed a locally led approach to recovery, and support and strengthen (not duplicate) the role of local government.

Regional recovery structures developed in response to Cyclone Gabrielle, as seen in the Hawke's Bay, provide useful insights into locally led, regionally coordinated, and nationally supported approaches to recovery.

A permanent agency would work on developing close relationships with EM Committees, local government and central government, so that there is a clear pathway of communication between the two. When there is an emergency, the EM Committees could focus on the immediate emergency response, whereas the permanent agency could focus on a strategy for rebuilding, working closely with the communities and local government in affected areas, and providing resource in the aftermath of an emergency after the initial shock has subsided.

The Queensland Reconstruction Authority could provide a starting point for such a model, including what functions such an agency could have. These include:

- Working closely with affected communities in deciding priorities for community infrastructure and community services needed for protection, rebuilding, and recovery;
- Working closely with affected communities to ensure communities' needs are recognised in rebuilding and recovery;
- Collecting and sharing information about community infrastructure and other property, to inform prioritisation of rebuild and recovery work;
- Facilitating data sharing across government to support affected communities;
- Coordinating and distributing financial assistance for affected communities – and key stakeholders;
- Providing advice to the Minister.

A framework for enabling response and recovery should be in place before events

Recent severe weather events have made it clear that Aotearoa New Zealand needs a proactive approach to modifying legislation to support response and recovery after emergencies. It is taxing and stressful for councils to manage an emergency response, maintain the status quo for their legislative and regulatory obligations, and engage and respond to consultation on proposed Orders in Council or amendments to legislation.

LGNZ recommends developing a framework that is disaster-ready and can be turned on for certain regions if an emergency of a certain threshold/magnitude occurs. This could incorporate appropriate mechanisms for tailored responses and should build on what has been learned from the legislation developed in response to the Christchurch Earthquake in 2011, the Kaikōura earthquake in 2016, and the North Island severe weather events at the beginning of 2023.

Having such a framework in place will mean councils know what to expect when severe weather or another crisis hits and know where to focus their energy.