

# Regulatory Impact Statement: Emergency Management System Reforms

Purpose of Document	
Decision sought:	Agreement to the proposals for the new Emergency Management Bill, aiming to improve system performance and capability, further strengthening Māori participation in emergency management, and improving risk awareness.
Advising agencies:	National Emergency Management Agency
Proposing Ministers:	Minister for Emergency Management
Date finalised:	22 July 2022

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## Problem Definition

The 2017 Ministerial Review into New Zealand's responses to natural disasters and other emergencies (Technical Advisory Group – TAG) identified vulnerabilities in Aotearoa's emergency management system.

Since then, the frequency, duration, complexity and socio-economic consequences of hazard events and emergencies have increased, including those, like the Whakaari White Island eruption of 2019 and COVID-19, which have resulted in multiple fatalities, serious injuries, serious harm to people's wellbeing, and damage to the environment and the economy. These events have also demonstrated that vulnerabilities in the emergency management system identified in the TAG and other reviews remain a challenge.

New Zealand's emergency management system must be improved if it is to realise the Government and public's ambition for a modern and fit-for-purpose system aligned with international best practice.

Currently, the Civil Defence Emergency Management Act 2002 (CDEM Act) provides for a permissive and enabling approach to operational and administrative arrangements for civil defence and emergency management. This has allowed for a measure of innovation and flexibility, enabling Civil Defence Emergency Management Groups (CDEM Groups) to develop best practice arrangements to suit local circumstances. However, in their 2017 report, the TAG found that this approach has led to inconsistent and incompatible approaches between CDEM Groups.<sup>1</sup> TAG also found varying levels of capability and a lack of clarity about roles and responsibilities within the emergency management system.

The lack of clarity extends to various administrative and operational arrangements intended to raise risk awareness in communities and prepare for the impact of emergency events. For example, ambulance services are not included in the definition of emergency services and the CDEM Act does not make adequate provision for the management of concurrent emergencies.

Additionally, there is a lack of recognition of the contribution Māori<sup>2</sup> make to the emergency management system. The CDEM Act is silent on the role of Māori in emergency management, membership on CDEM Groups is limited to local authorities (represented by the mayor or chairperson of that authority), and Māori representation on co-ordinating executive groups is inconsistent across the country. Planning is another crucial element of emergency management. However, there are currently no legislative provisions requiring collaboration with, and mandatory notification to, iwi and Māori partners in emergency management planning.

This lack of formal recognition has resulted in workarounds such as the inappropriate and cumbersome process to reimburse of Māori for costs incurred during an emergency response. It has also resulted in Māori not being consulted in planning and being excluded from response operations. The current state is fundamentally inconsistent with the trajectory of the Māori-Crown Treaty relationship.

Failure to address the issues will degrade the performance of the emergency management system at a time when the frequency, duration, complexity and socio-economic consequences of hazard events and emergencies are increasing.

## Executive Summary

The 2017 Ministerial Review into New Zealand's responses to natural disasters and other emergencies (Technical Advisory Group – TAG) identified vulnerabilities in Aotearoa's emergency management system.

Since then, the frequency, duration, complexity and socio-economic consequences of hazard events and emergencies have increased. This has resulted in multiple fatalities, serious injuries, serious harm to people's wellbeing, and damage to the environment and the economy. These events also demonstrated that vulnerabilities in the emergency management system identified in the TAG and other reviews remain a challenge.

In August 2018, the then Minister for Civil Defence released the Government's response to the TAG report. The Government's response addressed the concerns raised in the TAG report and set the direction for the changes required to deliver better responses to natural disasters and other emergencies. The response set out five key areas for improvement:

- strengthening the national leadership of the emergency management system
- making it clear who is responsible for what, nationally and regionally
- building the capability and capacity of the emergency management workforce
- putting the safety and wellbeing of people at the heart of the emergency response system
- improving the information and intelligence system that supports decision making in emergencies.

For context, attached in Appendix One is an overview of the policy informing the EM Bill as it relates to delivering on the Emergency Management System reforms.

In November of 2021, a paper was considered by Cabinet that addressed the first suite of options to develop the new Emergency Management Bill (EM Bill). This paper also had an associated Regulatory Impact Statement (RIS) that looked at a new legal framework, significant changes for the critical infrastructure sector and initial proposals for ensuring Māori participation throughout the system.

In this RIS, the proposals are assessed against three of the emergency management system reform programme outcomes:

1. **Risk Awareness and Consequence reduction:** communities are enabled to better understand the risks they face and are better prepared to act during and after emergencies, and the impacts of emergencies on people, the economy and the environment are reduced.
2. **Māori participation:** Māori participation is recognised, enabled and valued.
3. **System performance and capability:** the emergency management system is well-coordinated, high performing and enjoys widespread trust and confidence.

Nestled under each outcome are a suite of changes being proposed, each being evaluated with the principles of clarity and operability applied, as well as being evaluated on how well each option meets the intended outcome.

## Clarity

Clarity was chosen as a design principle for the following reasons:

- TAG identified considerable uncertainty about roles and responsibilities within the emergency system
- TAG also noted the desire for greater clarity of processes and legislation expressed by submitters
- in the Government's response to the TAG Report, 'making it clear who is responsible for what, nationally and regionally', is one of the government's five key areas for improvement.

Achieving clarity ensures that proposals make it clear which responsibilities people and agencies in the emergency management system hold, or how responsibilities will be determined in an emergency.

## Operability

Operability describes the extent to which legislation, institutional structures and processes contribute to achieving a high performing system by providing for:

- Flexibility – legislation and operational processes do not impede the exercise of functions and powers and are flexible enough to allow for adaptive responses to emergency events.
- Consistency – participants in the emergency management system can expect broadly similar processes and outcomes that allow for regional and local variations.

Improved operability will contribute to the achievement of a high performing emergency management systems, as encapsulated in the Government's five areas of improvement.

## Limitations and Constraints on Analysis

### Scope

The Regulatory Reform Programme was not intended to be transformative. It was assumed that an amendment Bill would suffice to introduce the necessary changes. However, the amendment Bill was subsequently dropped in favour of a new Bill. The scope remains non-transformative, but the change to a new Bill created the opportunity to address a wider range of issues. Given that major updates of emergency management legislation tend to operate on a 20-year cycle, NEMA took advantage of this opportunity and expanded the scope of the Bill to address the wider issues. This, along with the tight timeframe, has impacted on our ability to provide detailed costings and a cost/benefit analysis.

### Timeline

s9(2)(f)(iv)

This RIS has therefore been prepared under a tight timeframe. The tight timeframe constrained the extent of consultation that could be undertaken. Although the targeted consultation that was undertaken indicated broad support for the change proposals, the project would have benefitted from wider consultation of emergency management academics and practitioners.

### Operational factors

As an emergency response agency, key NEMA staff have been withdrawn on a number of occasions to participate in emergency response and training. This diversion of resources has also impacted on our ability to engage in wider consultation and to deliver detailed costings.

### Responsible Manager(s) (completed by relevant manager)



Adam Allington  
Manager, Policy  
National Emergency Management Agency

Date: 22 July 2022

### Quality Assurance (completed by QA panel)

Reviewing Agency: Department of Prime Minister and Cabinet

Panel Assessment & Comment: The DPMC Quality Assurance Panel has reviewed the Regulatory Impact Statement prepared by NEMA and associated supporting material, and has determined that it Partially Meets the Quality Assurance criteria.

There is a clear policy framework, problem definition and appropriate set of criteria supporting the analysis. The logic behind the preferred proposals is generally clear.

However, there are limitations to the analysis. The work would have benefited from a more robust cost-benefit analysis, and a wider consultation process.

We acknowledge the constraints NEMA has faced in developing the work, which has impacted on goals for the RIS to be complete, convincing, consulted, and clear. In particular, time pressures resulting from the sequencing of the legislative programme have impacted NEMA's ability to consult as widely and as deeply as it might have preferred, develop a wider range of options and develop more robust costings.

The Panel notes these constraints were clearly understood and believes that NEMA made every effort, where possible, to offset these. These efforts have included: identifying where there is stakeholder concern associated with a preferred option and working to identify mitigations. NEMA also updated the RIS to reflect the panel's comments on the first draft.

More broadly, the Panel notes the strong foundation of this work – beginning with the Technical Advisory Group in 2017, and subsequent policy work and sector engagement undertaken by NEMA/DPMC since then. This work is an extension of these efforts, and builds on analysis undertaken for the earlier Cabinet papers and RIS.

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# Section 1: System performance and capability

## Purpose

1. The Government's response<sup>3</sup> to the Technical Advisory Group<sup>4</sup> (TAG) report identified five key areas for improvement:
  - putting the safety and wellbeing of people at the heart of the emergency response system
  - strengthening the national leadership of the emergency management system
  - making it clear who is responsible for what, nationally and regionally
  - building the capability and capacity of the emergency management workforce
  - improving the information and intelligence system that supports decision making in emergencies.
2. The changes proposed in this section of the RIS address the following areas for improvement:
  - strengthening the national leadership of the emergency management system
  - making it clear who is responsible for what, nationally and regionally.

## 1A. Clarifying Roles and Responsibilities of CDEM Groups and local authorities

### What is the issue and the objectives of a solution?

3. Section 17 of the Civil Defence Emergency Management (CDEM) Act 2002 (the Act) sets out the functions for each CDEM Group which apply concurrently to each member local authority. However, Section 64(1) also outlines a separate duty for local authorities to "plan and provide for civil defence emergency management within its district".
4. There is a lack of distinction between the individual duties of local authorities, their functions as members of the CDEM Group, and the collective function of the CDEM Group. This contributes to a wide variation of approaches to emergency management and misunderstanding about roles and responsibilities.
5. The options for managing this misunderstanding must consider the following objectives:
  - Regional and local emergency management is collaborative, and participants are clear on their roles and responsibilities in the emergency management system.

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<sup>3</sup> Ministerial Review – Better Responses to Natural Disasters and Other Emergencies. 17 November 2017. [Ministerial Review: Better Responses to Natural Disasters and Other Emergencies in New Zealand - Technical Advisory Group - 18 January 2018 \(dpmc.govt.nz\)](#)

<sup>4</sup> Delivering better responses to natural disasters and other emergencies – Government response to the TAG's recommendations. August 2018. [natural-disasters-emergencies-government-response-tag-report.pdf \(dpmc.govt.nz\)](#)



- The needs of local communities with different population and risk profiles are understood and accounted for in emergency management planning and decision-making.
6. The CDEM Group structure must enable recognition and participation for the role Māori play in emergency management.

#### What are the options?

7. Three options were considered to address the issue and achieve the policy objectives:

**Option One: Improve role clarity through functional separation**

This option involves specifying the distinct and separate functions of local authorities and CDEM Groups to clarify that:

- CDEM Groups are responsible for regional coordination and governance
- Local authorities are responsible for delivering local emergency management in their communities and for participating in the CDEM Group.

**Option Two: Strengthened regional approach**

CDEM Groups retain the section 17 functions and also have additional, explicit functions including duties to coordinate. Local authorities are removed from section 17 and must 'give effect' to the CDEM Group decisions.

**Option Three: Regional approach with local support**

CDEM Groups retain the section 17 functions and also have additional, explicit functions including duties to coordinate and consult. Local authorities are removed from section 17 but are expected to have capability and capacity to support their CDEM Group.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – lack of role clarity	Option One: functional separation	Option Two: strengthened regional approach	Option Three: regional approach with local support
<b>Clarity</b>	0 The roles and responsibilities of CDEM Groups are not universally understood which leads to inconsistent approaches between different regions.	+	-	+
<b>Operability</b>	0 Lack of clarity leads to inconsistency in the response function.	+	+	+
<b>System performance and capability</b>	0 The possibility and occurrence of role confusion will continue. Response may be impaired and public confidence undermined.	+	-	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

9. The best option to address the problem is Option One: Functional separation. This ensures a consistent approach between all regions in Aotearoa New Zealand. All CDEM Groups will share similar relationships between the local authorities in the relevant jurisdictions. This will go some way towards addressing the inconsistency and incompatibility noted by TAG.
10. This option ensures they each understand their own responsibilities within the emergency management system and across all the 4Rs<sup>5</sup>. It also addresses the unique perspective that local authorities have into the needs of the community and ensures that these are considered in the planning process. This option would strengthen consistency of readiness functions and will ensure alignment between local authority and CDEM Group plans.
11. The achievement of consistency will help improve leadership of the emergency management system and make it clearer who is responsible for what in emergency situations.
12. Feedback from a survey of stakeholders in May 2021 indicated support for clarifying the roles and responsibilities of local authorities in the CDEM Act. The proposal was revised following engagement with local government and CDEM sector stakeholders in February 2022.
13. Submissions following the February engagement showed broad support for clarification of the roles and responsibilities for CDEM Groups and local authorities, but mixed support across the options proposed.
14. The majority of submitters preferred Option One – Functional separation over Option Two – Strengthened regional approach (recommended by TAG). Submitters noted that Option One:
  - highlights that local activity and a place for local delivery is paramount for our community emergency response and welfare support
  - allows for strengthening around legislation and accountability without re-engineering our current model
  - clarifies roles and provides local authorities with the autonomy to manage local events, this is crucial as local authorities understand their communities and have extensive links into networks which can be leveraged during these events.
15. With regards to Option Two, local authorities indicated that they want to remain responsible for their districts and did not want to be directed to implement all decisions of the Group. Local authorities were also concerned about losing autonomy in decision making under Option Two.
16. Option Three – Regional approach with local support was the least preferred option. Submitters indicated that their main concern was about the potential loss of connections with individual communities under this option.

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<sup>5</sup> Risk Reduction, Readiness, Response, Recovery

## 1B. CDEM Group Plan publication

### What is the issue and the objectives for the solution?

17. Many CDEM Groups already publish their group plans. However, the Act does not have sufficient guidance on which materials may be incorporated by reference<sup>6</sup> resulting in confusion and inconsistency across CDEM Groups. CDEM Groups rely on the common law principles for decision making when considering which documents to make publicly available and by what means.
18. The public and those involved in the emergency management system do not have a clear understanding of what information is available and where to find it. Taken together, these shortcomings have raised concerns about accountability, as there is no common standard to assess CDEM Group practices against with respect to the publication of their group plans.
19. The proposal aims to improve clarity and consistency of what information is published across all regions and ensure that all documents that form part of the plan are easily accessible to the public.

### What are the options?

20. Two options were considered to address the issue and achieve the policy objective:

**Option 1: Publish without referenced documents**

Make publication of CDEM Group Plan explicit, allowing for plan documents to be incorporated by reference, but not including requirements to enable access to these.

**Option 2: Publish with referenced documents**

Make publication of CDEM Group Plan explicit but allow for plan documents to be incorporated by reference. These referenced documents must be accessible to the public by reasonable means.

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<sup>6</sup> Incorporation by reference is the act of including a second document within another document by only mentioning the second document in the original document.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – no guidance or requirement to publish	Option One – Publish without referenced documents	Option Two – Publish with referenced documents
<b>Clarity</b>	0 There is no guarantee of what information the public can find to prepare for an emergency. The legislation does not ensure that the public can improve their risk awareness.	0 Plans without specifications for documents incorporated by reference does not improve the consistency of the accessibility of plans, as most CDEM Groups already publish plans.	+ Specifications for documents incorporated by reference ensure that essential information is communicated clearly, and consistently across all CDEM Groups. Clarity of expectations leads to a transparent system ensuring that communities have access to the information required to better understand the risks, and what might happen in the event of an emergency.
<b>Operability</b>	0 A lack of guidance and consistency about the content of Plans impedes the flexibility of responses.	+ This option allows each CDEM group the flexibility to choose how they publish plans and what documents incorporated by reference may contain, and emergencies may be better adapted to.	+ Sets expectations that documents incorporated by reference are available to the public, ensuring that the system earns trust. Limited flexibility and increased costs for CDEM Groups as the guidance for documents incorporated by reference are more prescriptive under this option, but CDEM Groups are still able to choose what may be incorporated by reference.
<b>System performance and capability</b>	0 In the absence of a common understanding about content, there will be no standard and CDEM Group practice will remain inconsistent.	- This flexibility is likely to perpetuate inconsistent practices. The public will not have access to all relevant documentation on a consistent basis, undermining confidence in the system.	+ Although this expectation is not equivalent to a standard, it at least establishes a common understanding that such documents <i>should</i> be available.

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

21. Option Two is the preferred option to address the inconsistencies with current arrangements. Option Two creates requirements to publish making CDEM Groups accountable for improving risk awareness in their communities and can be supported by guidance on the best format and method of publication.
22. This option allows for documents which form the plan to be incorporated by reference, introducing greater specificity of which documents are reasonable to incorporate by reference and similarly sets expectations that these are reasonably available to the public.
23. Local government stakeholders supported the intent to improve accessibility of CDEM Group Plans. Most preferred the option which required publication of the Group Plan but enabled flexibility for documents to be incorporated by reference provided they meet certain principles such as accessibility and transparency. This option was preferred as it was deemed the most practical and cost effective, because documents incorporated by reference are likely to be lengthy and operationally focused.
24. The cost impact of imposing a publication requirement is expected to be low. CDEM Groups and local authorities already have resources to support the production of their existing plans. It is anticipated that any additional requirements as a result of implementing Option Two will be absorbed from within baseline expenditure. Any additional expenditure will be spread out over a number of years by the phased implementation approach planned by NEMA. Costs may also be contained by CDEM Groups exercising their limited discretion under Option Two regarding which documents incorporated by reference are physically published with the Group Plan.

## 1C. Clarifying the role of the administering authority

### What is the issue and the objectives for the solution?

25. Section 23 of the CDEM Act requires that an administering authority be established for each CDEM Group. An administering authority provides administrative and related services for the CDEM Group. The CDEM Act also prescribes who shall be an administering authority and sets out the Minister's powers if CDEM Group members are unable to agree.
26. The current requirements are unnecessarily prescriptive as to who can be an administering authority. This prevents the development of more suitable arrangements by agreement between the CDEM Group members and for tailoring across different regions. The CDEM Act does not make provision for the provision of services between each local authority member of the CDEM Group and the administering authority.
27. The objectives of the proposals are to clarify the organisation arrangements and to provide for more flexibility as to who could act as an administering authority.

## What are the options?

28. Given that the current administering authority arrangements are in primary legislation, the only option considered was the repeal and replacement of section 23 in the Bill. The new section will establish that:
- any member of the CDEM Group (that is a territorial authority or regional council or unitary authority) may be the administering authority by agreement
  - administering authorities must put in place a service level agreement with each local authority member of the CDEM Group
  - there will be one administering authority per Group.
29. If the members of a CDEM Group fail to agree on an administering authority, and if the Group:
- has a regional council as a member, then then the regional council must be the administering authority
  - does not have a regional council as a member, then the existing provision for the Minister to appoint or direct will apply.

## How do the options compare to the Status Quo?

### Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – insufficient role clarity for administering authority	New Bill clause
Clarity	0 The functions of administering authorities are unclear.	+ The requirement to put in place a service level agreement between the administration authority and each local authority member of the CDEM Group will clarify the services and functions of the administering authority.
Operability	0 Lack of clarity regarding whether variations in regional practices can be accommodated	+ The new Bill clause will provide for greater flexibility by empowering local authorities and CDEM Groups to agree among themselves who can be the administering authority.

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

30. The Bill option will provide flexibility for the Group to agree which member local authority will act as the Group's administering authority and how the Group will apportion the costs of administrative and related services among the local authority members.

31. The regional council remains as a default administering authority unless the Group agrees otherwise.
32. Through shared emergency management service agreements, the Group would provide for emergency management across the 4Rs on behalf of its member local authorities. Activities could be delivered on a region-wide basis or tailored to the characteristics of each district, including its hazards and risks and what is needed to manage them.
33. These changes will effectively address the issues regarding interoperability and capability identified in the TAG Report, such as improved shared service arrangements.
34. This option was not consulted on as it is building on previously agreed to work and is not consequential for the operation of CDEM groups.

## 1D. Engaging with communities disproportionately impacted by emergencies

### What is the issue and the objectives for the solution?

35. Section 38 of the CDEM Act requires that all persons exercising functions in relation to the development of CDEM plans must 'have regard' to New Zealand's international obligations<sup>7</sup>, however there are no specific mandatory requirements to support this. These obligations commit New Zealand to an inclusive 'all of society' approach to participation and prioritising equity for people who are disproportionately impacted by emergencies.
36. As emergencies amplify existing inequalities, there is room for New Zealand to do better, and to achieve more equitable outcomes. Inclusive CDEM Group planning catering to the needs of these communities is inconsistent and sometimes insufficient.
37. Our objective is to ensure that community groups representing people who are disproportionately impacted by emergencies can meaningfully participate in the development, implementation, and monitoring of CDEM plans so that the needs of vulnerable people and communities are included at the outset.
38. A secondary objective is to ensure that the emergency management legislative framework contributes to New Zealand's international commitments, including the Sendai Framework and the Declaration on the Rights of Indigenous Peoples.

### What are the options?

39. Only one option was considered to address the inequitable outcomes faced by communities disproportionately impacted by emergencies. This is because
  - engaging with communities disproportionately impacted by emergencies is a requirement under section 38 of the current CDEM Act, but this provision is not supported by specific mandatory requirements.

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<sup>7</sup> New Zealand's international commitments include the UN Convention on the Rights of Persons with Disabilities, the Sendai Framework for Disaster Risk Reduction 2015-2030, and the UN Declaration on the rights of Indigenous Peoples.



- putting the safety and wellbeing of people at the heart of the emergency response system is one of the five key areas for improvement identified in the Government’s response<sup>8</sup> to the TAG report<sup>9</sup>.

40. It is proposed to require CDEM Groups and their local authorities to identify and engage with communities in their area that are disproportionately impacted by emergencies in the development of CDEM Group plans.

41. Under this option, CDEM Groups will be responsible for identifying which communities to consult with as it is likely to vary according to the composition of an area.

#### How do the options compare to the Status Quo?

##### Key

+ better than doing nothing/the Status Quo/counterfactual

0 about the same as doing nothing/the Status Quo/counterfactual

- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – no legislative requirement	New Bill Clause
Clarity	0 It is not clear what CDEM Groups’ responsibilities are to meet NZ’s international requirements, as these are not specified in legislation. Each CDEM Group may use different criteria and expectations to “have regard” to commitments.	+ Each CDEM group and local authority has a clear and unambiguous expectation to identify and engage but has the flexibility to do so in ways that suit the needs of the people in each region.
Operability	0 Individuals and groups that are disproportionately impacted by emergencies are not effectively considered in CDEM Group Plans. This may mean working at haste and not very thoroughly to meet the needs of these groups to ensure they have equitable outcomes.	+ Each CDEM group and local authority is allowed the flexibility to determine the methods and terms of engagement that is most appropriate for the people in its jurisdiction, ensuring that the function of the CDEM group is not impeded in situations that do not work.

#### What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

42. The proposed change will address planning deficiencies that do not effectively consider individuals and communities that are disproportionately impacted by

<sup>8</sup> Ministerial Review – Better Responses to Natural Disasters and Other Emergencies. 17 November 2017. [Ministerial Review: Better Responses to Natural Disasters and Other Emergencies in New Zealand - Technical Advisory Group - 18 January 2018 \(dpmc.govt.nz\)](https://www.dpmc.govt.nz/ministerial-review-better-responses-to-natural-disasters-and-other-emergencies-in-new-zealand-technical-advisory-group-18-january-2018)

<sup>9</sup> Delivering better responses to natural disasters and other emergencies – Government response to the TAG’s recommendations. August 2018. [natural-disasters-emergencies-government-response-tag-report.pdf \(dpmc.govt.nz\)](https://www.dpmc.govt.nz/natural-disasters-emergencies-government-response-tag-report.pdf)

emergencies. It ensures that advocates for these communities are consulted throughout the planning process and that they will not be an afterthought during an emergency.

43. Meaningful participation in planning by communities disproportionately impacted by emergencies will contribute to the achievement of one of the Government's key areas of improvement. That is, it will help ensure that the safety and wellbeing of people is at the heart of the emergency response system. This work will also be further developed in the National Plan over the coming year.
44. Each CDEM group is able to determine who in their region is most impacted and develop specific plans that address the unique needs in each area. This proposal will more effectively meet New Zealand's commitments to international agreements and ensure the most vulnerable in our society are considered in the case of an emergency.
45. Submissions following targeted engagement with local government stakeholders in February 2022 saw strong in principle support for this proposal. Stakeholders agreed it was important to have local knowledge of disproportionately impacted people and groups, and to actively engage with them. It was also noted that those communities wanted representation in CDEM Group plans, so they could better understand services and assistance available to them and what to do in emergencies.

## 1E. Clarifying the roles of Chief Executive and Director of Civil Defence

### What is the issue and the objectives for the solution?

46. The current legal arrangements for the Director of Civil Defence Emergency Management (the Director) require updating to take account of NEMA's establishment in 2019 as an operationally autonomous departmental agency with its own Chief Executive. Along with the National Controller and the National Recovery Manager, the Director is a national statutory role holder.
47. The creation of NEMA has resulted in the need to:
  - improve role clarity and accountability at the national level, with the aim of increasing public and sector confidence and trust in key decision-makers during a state of national emergency or national transition period
  - maintain the current status of the national level emergency response and recovery powers which are significant, extensive, and relatively unconstrained
  - clearly identify the "peacetime / business as usual" roles and functions of NEMA, through the Chief Executive, in particular before and after an emergency response.
48. The objectives of addressing this issue are to ensure that:
  - it is clear to the CDEM sector and the public who the decision-makers are that have responsibility for exercising national level emergency and recovery functions and powers
  - sufficient and robust procedural safeguards are in place to ensure the retention of the national level emergency and recovery functions and powers with minimal constraint on their exercise, and to protect against misuse.

## What are the options?

49. Three options were considered to address the problem and satisfy the policy objectives:

**Option One: Chief Executive holds the Director's role and may delegate or retain functions and powers.**

The Chief Executive holds the Director's role and can choose to retain or delegate any national emergency response or recovery functions and powers to the National Controller or National Recovery Manager, as appropriate.

**Option Two: Chief Executive holds the Director's role and must designate another person to exercise functions and powers.**

The Chief Executive holds the Director's role but must designate a NEMA or State Sector employee holding either the position of National Controller or National Recovery Manager to exercise specific national emergency response or recovery functions and powers (as listed in the EM Bill).

**Option Three – abolish the Director's role and divide powers.**

The Director's role is abolished, with the Director's functions and powers divided between the Chief Executive, and a permanent National Controller and National Recovery Manager. The Chief Executive would have the business as usual/peace-time emergency management functions and powers, and the National Controller and the National Recovery Manager would have the appropriate national emergency response and recovery functions and powers.

## How do the options compare to the Status Quo?

### Key

- +** better than doing nothing/the Status Quo/counterfactual
- 0** about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Option One CE is Director and may delegate	Option Two CE is Director and must designate other people to exercise powers	Option Three Abolish the role of Director
<b>Clarity</b>	0 It remains unclear to the CDEM sector and the public who has the functions and powers.	+	+	+
<b>Operability</b>	0 Safeguards on the exercise of emergency functions and powers will remain insufficient	+	+	0
<b>System performance and capability</b>	0 In absence of role clarity and sufficient safeguards, system performance and public confidence will remain precarious.	+	0	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

50. Option One is the option most likely to deliver optimum results. Having the Chief Executive also holding the Director's role is the most straightforward option, and makes it clear who is accountable for delivering an effective national level emergency response or recovery.
51. There is also potential for greater trust and confidence, given that the Director is the head of the organisation responsible for the emergency management system. This includes from a Ministerial perspective, in view of the ramifications of a national level emergency response or recovery.
52. Option One also has the advantage of enabling the CE to delegate their powers as Director as required. This allows the CE to continue running the organisation and share the load if there's a big emergency that would otherwise distract them.
53. Te Kawa Mataaho – the Public Service Commission has indicated its support for this proposal. It is consistent with prior advice to Cabinet. In 2019, Cabinet was advised that on NEMA's establishment, the Chief Executive/Director roles would be combined, and the CDEM Act amended to reflect this.

## 1F. Critical Infrastructure: Annual Compliance reporting

What is the issue and the objectives for the solution?

54. Currently, critical infrastructure entities are not required to report on how well their organisations are meeting their obligations under legislation. It is difficult to hold critical infrastructure entities to account for non-compliance with significant statutory obligations without annual reporting.
55. As outlined in section 3C of this RIS, additional requirements for levels of service are also being introduced to the Act. This builds on policy proposals introduced and agreed to in the November Cabinet paper and RIS, which focused on defining Critical infrastructure, the entities involved and their responsibilities.
56. Critical infrastructure entities are not required to proactively share information on emergencies which limits the emergency management sectors' ability to plan.
57. The objective is to provide assurance of compliance and an opportunity for entities to internally assess their capability and capacity to respond to events.

What are the options?

58. Given the current absence of a requirement to undertake annual compliance reporting, and in view of the need for primary legislation to ensure compliance, only one option was considered to achieve the policy objective. The proposal is to introduce a clause into the Bill requiring critical infrastructure entities to annually report to NEMA and their regulatory agencies on compliance with their duties under the new EM Act and for entities to be required to make relevant information available to NEMA or CDEM Groups on request.
59. This option would also involve the introduction via the Bill of the power to make regulations setting out the details of reporting requirements.

## How do the options compare to the Status Quo?

### Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – no reporting requirement	Annual reporting requirement
Clarity	0 Roles and responsibilities will be outlined in the Act, but NEMA will not have any oversight or understanding about compliance.	+ It will be clear to critical infrastructure entities what their roles and responsibilities are to complete annual reporting.
Operability	0 Regulatory expectations will be outlined in the new Act but there will be no way to monitor or enforce the action under the Act, thus there will be reduced confidence in the security of the system in an emergency, and the potential to provide urgent fixes in an emergency.	+ NEMA can determine whether or not critical infrastructure entities are complying with their roles and responsibilities under legislation and can take the appropriate actions to ensure that critical infrastructure will perform as expected in an emergency.

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

60. This option will ensure critical infrastructure entities provide details about their compliance with their responsibilities are under the Act.
61. This will allow NEMA to hold critical infrastructure entities to account for non-compliance with significant statutory obligations and provide assurance that critical infrastructure entities are complying these obligations (or clarity on how to rectify situations when they are not). The public can then be confident that critical infrastructure will perform as expected in an emergency.
62. NEMA consulted on this proposal, which received mixed support from sector and agency consultation, but received a positive response from Mayors and CEGs.
63. The impact of the new requirements, such as resourcing implications and duplication of effort were the main concerns raised during consultation. However, NEMA expects that the new reporting requirement will not put significant additional cost and resourcing burdens on critical infrastructure entities. It is expected the cost for government agencies will be minimal as their role is only collation of reporting and not producing these.
64. To address these concerns, NEMA intends to:
  - develop guidance and provide support over the implementation period
  - develop evaluation methodologies that support reporting

- identify opportunities to align reporting under the critical infrastructure legal regime with the requirements and processes of other regulatory reporting regimes where possible.

## 1G. Regulation-making powers

### What is the issue and the objectives for the solution?

65. A new emergency management legal framework is being introduced, which includes both regulations and rules. Both the empowering clause for regulations in the CDEM Act and the regulation-making proposals in the Government Response to the TAG Recommendations include subject matter that is more suitable for secondary legislative instruments and guidance material.
66. Section 115, which empowers the making of regulations, has not been updated since it came into law in 2002. As a result, regulations can be made for matters that would now be appropriately placed into rules. These include setting competency standards or levels to be met by people carrying out specific civil defence emergency management functions (section 115(d)).
67. The same issue affects the regulation-making proposals set out in the Government's Response to the TAG Recommendations. As an example, the Government proposed that regulations should be made to establish minimum standards for CDEM Groups, including performance standards.
68. The objectives here are to ensure that the regulation and rule-making powers are drafted to reflect modern regulatory drafting practices and ensure that the new legal framework is fit for purpose.
69. This work builds on powers and frameworks agreed to by Cabinet in November 2021, and the option is evaluated on the assumption that these changes are the status quo.

### What are the options?

70. Given that the regulation-making powers in section 115 of the CDEM Act require updating, the only option available was to amend the existing legislation in the Bill. Under this option the existing list of regulation-making powers in section 115 of the CDEM Act will be revised before being shifted into the Bill to:
  - remove any out-of-date regulation making powers
  - provide for an empowering clause to make critical infrastructure regulations setting out further detail and procedural matters for planning emergency levels of service and for reporting requirements
  - enable the making of regulations which establish the roles and responsibilities of lead and support agencies with regards to the management of hazards and emergencies
71. The regulation-making powers set out in the Government Response to the TAG Recommendations will be reviewed, to determine what can be proceeded with as part of the legislative reform process and through what legislative or non-legislative mechanism.

### How do the options compare to the Status Quo?

**Key**

**+**

better than doing nothing/the Status Quo/counterfactual

**0**

about the same as doing nothing/the Status Quo/counterfactual

**-**

worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Revised regulation-making
<b>Clarity</b>	<p style="text-align: center;"><b>0</b></p> <p>When the new rule-making powers comes into force, it will be unclear what the purpose of the new rules is. It will also be unclear what matters are appropriate for regulations and which matters are best suited for rules.</p>	<p style="text-align: center;"><b>+</b></p> <p>The matters appropriate for each category of regulations, rules and guidance will be clarified, enabling NEMA to make best use of the tools available.</p>
<b>Operability</b>	<p style="text-align: center;"><b>0</b></p> <p>If this issue is not addressed, full use of the new rule-making power may be achieved. Matters more appropriate for rules may be unnecessarily elevated to regulations, while matters suitable for regulations may be elevated to the primary legislation.</p>	<p style="text-align: center;"><b>+</b></p> <p>A key principle of the new legal framework is that all matters are located in the appropriate legislative (or non-legislative instrument). This is intended to achieve greater flexibility and responsiveness in NEMA's regulatory actions. A structured framework of subject will help achieve this.</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

72. To make full use of the regulatory and non-regulatory tools available, the Bill will need to specify the subject matter for rules and regulations. The proposed update will achieve this, whereas retaining the existing powers will undermine the implementation of a more flexible and response legal framework.
73. NEMA did not consult on this proposal, as this is simply clarifying how other policy options will be implemented.



## Section 2: Further strengthening Māori participation in emergency management

### Purpose

74. The lack of recognition of the contribution Māori make to the emergency management system, along with inconsistent participation in CDEM Groups, does not reflect the trajectory of the Māori-Crown Treaty relationship or the reality of ongoing, significant contributions of Māori to emergency management.
75. The changes proposed in this section of the RIS address the following areas for improvement:
  - recognising the capability that Māori bring to emergency management
  - legislating to enable iwi to participate in CDEM Group planning for and responding to a natural disaster or other emergency
  - bring clarity to the role Māori will perform in the emergency management system.
76. These changes are in addition to a suite of changes from the Cabinet paper and associated Regulatory Impact Statement in November 2021. That paper agreed to proposals in principle, subject to targeted engagement which has now been complete.

### 2A. National Māori Emergency Management Advisory Group

#### What is the issue and the objectives for the solution?

77. In the Government's response to the TAG Report, it was recognised that Māori bring capability to emergency management. Putting the safety and wellbeing of people at the heart of the emergency response system requires greater recognition, understanding and integration of Māori perspectives in emergency management.
78. To ensure Māori participation at the highest level of the emergency management system, a new national body, the National Māori Emergency Management Advisory Group, is being proposed.
79. The objective is to ensure that Ministers, the government and the Chief Executive of NEMA have ongoing access to advice on:
  - the role of Māori in the emergency management system
  - all aspects of the functions of NEMA, as it relates to a Māori perspective
  - NEMA's role to assure that the Crown system delivers for Māori.

#### What are the options?

80. Two options were considered to achieve these objectives. Both involved establishing a new Māori Emergency Management Group at the national level, with one option being an advisory group and the other being a body with decision making authority and accountabilities independent from NEMA.

## How do the options compare to the Status Quo?

### Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	New national Māori advisory Group	New national Māori Body with independent responsibilities and accountabilities
Clarity	0 The extent of the contribution by Māori to emergency management may not be fully appreciated by CDEM practitioners and the public, who may consequently miss opportunities to improved Māori participation and emergency event outcomes.	+	+
Operability	0 Advice on Māori participation in the emergency system will continue to be provided on an ad hoc basis and may not reflect the strategic objective of achieving improved levels of Māori participation across the whole system.	+	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

81. A clause in the Bill requiring the responsible Minister to appointing a National Māori Emergency Management Advisory Group (NMEMAG) is the preferred option because it balances the need for robust Māori participation without conflicting with CE accountability arrangements.
82. The NMEMAG will not provide advice directly to CDEM Groups as this can confuse accountability arrangements. As an advisory group, the NMEMAG does not cut

across the Chief Executive's decision rights. Similarly, it is the Director's role to advise in relation to, and assist in the planning, preparation, co-ordination, and carrying out of, civil defence emergency management. The Director is responsible for providing this advice to CDEM Groups. Therefore, we advise that the NMEMAG functions be limited to providing advice to the NEMA Chief Executive. It is also important to distinguish that the NMEMAG does not have a role in an emergency event but may well consider events through the lens of lessons management.

83. The scope of the advisory group will be broad, and will include:
- providing advice to NEMA on a range of matters relating to the involvement of Māori in the system; and
  - shaping the development of NEMA's advice and guidance to CDEM Groups on roles and responsibilities for Māori at the regional level.
84. Feedback highlighted the importance of having Māori participation at a national level with a strong desire that a national group "have teeth" to support advice to Ministers and agencies on the role of Māori in the system.
85. Establishing the National Māori Emergency Management Advisory Group in primary legislation highlights the importance of input from Māori into the emergency management system and ensures that appropriate consideration of Māori and the Treaty is embedded throughout the system in the development of plans and other future work. This will also contribute to improving the information and intelligence system that supports decision making in emergencies.
86. Establishing a separate Māori body with decision-making and accountabilities independent of NEMA is not preferred as it would cut across NEMA's role, including to act as a Treaty partner and as the government's lead advisor on the emergency management system.

## **2B. Further strengthening Māori participation throughout the emergency management system**

**What is the issue and the objectives for the solution?**

87. In the November 2021 Cabinet Paper and RIS, it was proposed that Māori elect two members with full voting rights to CDEM Group Joint Committees and Coordinating Executive Groups (CEGs). This proposal was subject to targeted stakeholder engagement with the CDEM sector and key Māori partners, including the Ministerial Advisory Committee.
88. Engagement with our partners and stakeholders indicated that:
- the two members on joint committees agreed by Cabinet in November 2021 is insufficient or does not represent an improvement to participation in some regions
  - the number of members should be agreed by local Māori, working with local government, based on their collective understanding of what is appropriate.
89. The policy objective of this piece of work is to ensure clarity for a required minimum number of Māori members of CDEM Groups but does not inappropriately constrain local arrangements.

## What are the options?

90. Three options were considered to achieve the policy objective.

### **Option One – Mandatory minimum of two Māori members**

In this option, there will be a mandatory requirement to have a minimum of two Māori members on CDEM Group JCs and CEGs. This minimum may be exceeded by mutual agreement.

### **Option Two – Māori membership fixed at two members**

This option would see Māori membership fixed at two per JC and CEG. Cabinet agreed to this proposal in November 2021, subject to further engagement with Māori.

### **Option Three – Mandatory Māori membership with no numbers specified**

Under this option, the Bill would mandate Māori membership on JCs and CEGs with no minimum number specified.

91. There will be a cost to membership options, to be absorbed by NEMA's baseline. This is estimated to be \$0.1M to \$0.2M pa (see below: *NEMA costs associated with Issue 2B: Māori Joint committee and Coordinating Executive Group Membership*).

92. However, under options One and Three, there is no certain number of Māori members. In view of this, it is not possible to accurately forecast the cost impact of this proposal. If the cost of covering Māori participation in CDEM Groups and resultant pressure on NEMA baseline is higher than anticipated, then this can be attended to through a future Budget process as necessary.

93. The options were assessed against the following criteria:

- **Participation** – Māori participation is empowered at every level of the emergency management system
- **Operability** – clear and consistent structures and processes contribute to achieving a high performing system while also providing for regional tailoring to suit the needs of local Māori communities
- **Alignment** – aligns with the views of our Māori partners as closely as possible in the circumstances.

## How do the options compare to the Status Quo?

### Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – no provision for Māori membership	Option One – Mandatory minimum of two Māori members	Option Two – Māori membership fixed at two members	Option Three – Mandatory membership with no numbers specified
Participation	0 The status quo does not ensure Māori participation in CDEM Groups or CEGs.	+	+	+
Operability	0 CDEM Group membership is restricted to local authorities, who are represented by either the mayor or chairperson. The membership on CEGs is more flexible, and although many CEGs do have adequate Māori participation, in the absence of a standard process and specified minimums, participation is inconsistent across the country.	+	-	+

Criteria	Status quo – no provision for Māori membership	Option One – Mandatory minimum of two Māori members	Option Two – Māori membership fixed at two members	Option Three – Mandatory membership with no numbers specified
			members, so only having two members reduces this flexibility.	
<b>Alignment</b>	<p style="text-align: center;"><b>0</b></p> <p>The CDEM Act is silent on the importance of the role of Māori in the emergency management system.</p> <p>Feedback highlighted the importance of having Māori participation at every level of the emergency management system. Māori partners supported having appropriate Māori representation on the JC and on CEGS.</p>	<p style="text-align: center;"><b>+</b></p> <p>A legislative minimum of two Māori members is closer to the views of Māori partners in the EM system because:</p> <ul style="list-style-type: none"> <li>• it supports the policy intent more strongly</li> <li>• creates more opportunity for Māori participation and determination of the members to be included in emergency management governance structures; and</li> <li>• better aligns with feedback from Māori partners.</li> </ul>	<p style="text-align: center;"><b>-</b></p> <p>The original proposal to have only two members on each joint committee was not well received by Māori partners and would not be pragmatic for those regions where only two members would constitute a backward step for some CDEM Groups (e.g., Manawatu has 7 Māori participants on the CEG, Taranaki has 3 observers on their Joint Committee).</p>	<p style="text-align: center;"><b>+</b></p> <p>Our Māori partners indicated that iwi and Māori need to determine their own representation. We also heard a desire for 50% membership. Although Options 1 and 2 create greater certainty regarding membership, they also create the risk of defaulting to 2 members only (Option 1) or instituting a requirement for an insufficient number of Māori members in some situations (Option 2). With the ministerial backstop to address the risk of no members being appointed, Option Three provides for a degree of certainty while also allowing flexibility for local Māori to determine the extent of membership.</p>

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

94. Option Three – Mandatory Māori membership with no numbers specified, is the best option to address the problem and meet the policy objective.
95. Minimum standard (Option One) and fixed Māori membership (Option Two) approaches support the policy intent and create more opportunity for Māori participation and determination of the members to be included in emergency management governance structures.
96. Both approaches enable Māori membership to be determined on a region-by-region basis, allowing for local tailoring of appointment processes. The main difference between options One and Two is that there is an additional level of flexibility under Option One, as the minimum numbers can be exceeded by mutual agreement.
97. However, the proposals to include a minimum of two Māori members or to fix the number of Māori members at two were not well received by Māori practitioners and partners. Feedback from a survey of stakeholders in May 2021 indicated dissatisfaction with the minimum and fixed membership proposals. Respondents considered that iwi boundaries may be different to Regional Council boundaries, and that two Māori members may be insufficient to ensure Māori participation in regions incorporating multiple iwi. A common theme in survey responses was that iwi and Māori need to determine their own representation.
98. Our Māori partners voiced strong support for 50% mandatory membership to achieve equitable outcomes. This was a view shared by the Ministerial Advisory Committee (MAC) who recommend introducing minimum legislative requirements for Māori members on JCs and CEGs.
99. A legislated minimum risks creating a default of Māori membership on CDEM Groups. Only Option Three (no specified numbers) has the flexibility to accommodate the highly diverse needs of Māori across the country. The main risk with Option Three is that in the absence of a specified minimum, no or insufficient Māori members may be appointed to CDEM Groups. This risk can be effectively eliminated by the creation of a ministerial backstop through which the Minister for Emergency Management may appoint Māori members to CDEM Groups as required.

## 2C. Liability Protections for Māori members of Joint Committees

### What is the issue and the objectives for the solution?

100. The legal status of CDEM Groups under the CDEM Act and the Local Government Act 2002 is somewhat unclear. The CDEM Groups' standing as a Person Conducting a Business or Undertaking (PCBU) under the Health and Safety at Work Act 2015 (HSWA) is important, because the officers' duty under section 50 of HSWA relates to the officers' role in relation to a PCBU. If the Group is not a PCBU then there is not an officer's duty in relation to it as a PCBU.<sup>10</sup>
101. Under HSWA, a member of the governing body of a local authority elected in accordance with the Local Electoral Act 2001, when acting in that capacity, does not commit an offence under the HSWA for a failure to comply with a duty as an officer.

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<sup>10</sup> This is not related to the issues raised in the Whakaari proceedings.

This means that even if local authority Group members are defined as officers of a PCBU, they cannot be prosecuted for offences under the HSWA for failing to comply with their duties. The protection from liability aims to prevent a chilling effect on local democracy that would result if elected members of councils and other elected positions were to face the risk of prosecution for breach of the due diligence duty.

102. Under the proposals to strengthen the participation of Māori through membership on CDEM Group governance structures, Māori members would be appointed through processes designed locally by Māori (which could include election). Māori members would therefore not be elected in accordance with the Local Electoral Act. In effect, this would mean that Group members elected in accordance with the Local Electoral Act would be protected from prosecution under HSWA, whereas Māori members would not.
103. The objective of the options for change is to remove all uncertainty about the status of CDEM Groups, and the liability of Māori members of CDEM Groups under HSWA in an equitable manner. The intended result of this change is to remove disincentives for Māori to participate in CDEM Groups.

#### What are the options?

104. Three options were considered to address the issue and achieve the policy objectives:

##### **Option One: Amend the Health and Safety at Work Act 2015**

In this option, section 52 of the Health and Safety at Work Act 2015 (HSWA) would be amended via the Emergency Management Bill to include all members of a CDEM Group as office holders with limited liability.

##### **Option Two: Establish that CDEM Groups are not PCBUs in the Emergency Management Bill**

Under this option, the Emergency Management Bill will include a provision clarifying that a CDEM Group is not a Person Carrying a Business or Undertaking. This provision aligns with the proposed clarification that CDEM Groups are responsible for regional coordination and governance, while local authorities are responsible for delivering local emergency management in their communities and for participating in the CDEM Group. This amendment would further mean that no members of the CDEM group would hold the officers' duty as the CDEM Group would not be a PCBU.

##### **Option Three: Protect Māori members via the Emergency Management Bill**

In this option, the Emergency Management Bill would specifically protect Māori members from health and safety related liabilities on Civil Defence Emergency Management joint committees.



## How do the options compare to the Status Quo?

### Key

- +** better than doing nothing/the Status Quo/counterfactual
- 0** about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Option One – amend HSWA	Option Two – CDEM Groups are not PCBUs	Option Three – protect Māori members in the Bill
<b>Clarity</b>	<b>0</b> The status of the CDEM Group as a PCBU would remain indeterminate.	<b>+</b> Protection would be established in the operative legislation.  However, there is uncertainty as to whether CDEM Groups are considered to be a business or undertaking. Amending s 52 to remove liability for members of CDEM Groups would imply that they were (or could be in some circumstances) and this would not resolve the uncertainty about the standing of the CDEM Groups as PCBUs.	<b>+</b> This option goes to the heart of the matter: whether or not a CDEM Group is a PCBU. It would clearly establish that they are not and would do so in the legislation regulating CDEM Groups.  Both Māori and other members would be protected from liability on the same grounds via the same legislation.	<b>-</b> Creating protection from liability for appointed members under HSWA via different legislation to that for elected members could create uncertainty for duty holders.  However, there is uncertainty as to whether CDEM Groups are considered to be a business or undertaking. Having the Bill remove HSWA liability for members of CDEM Groups would imply that they were (or could be in some circumstances) and this would not resolve the uncertainty about the standing of the CDEM Groups as PCBUs.
<b>Operability</b>	<b>0</b> The potential HSWA liability will discourage Māori from participating in CDEM Groups, contrary to	<b>+</b> Protection from liability would be established on the same basis as all other CDEM Group members.	<b>+</b> Protection from liability would be established on the same basis as all other CDEM Group members without unnecessarily amending other legislation.	<b>0</b> Although this option would apparently remove the disincentive for Māori to participate in CDEM Groups, the protection provided by HSWA may

Criteria	Status quo	Option One – amend HSWA	Option Two – CDEM Groups are not PCBUs	Option Three – protect Māori members in the Bill
	specific intent of the reforms.	However, there is uncertainty as to whether CDEM Groups are considered to be a business or undertaking. Amending s 52 to remove liability for members of CDEM Groups would imply that they were (or could be in some circumstances) and this would not resolve the uncertainty about the standing of the CDEM Groups as PCBUs.		be seen as providing additional protection to non-Māori members. Lacking this additional protection, Māori members may be reluctant to participate.  This option does not clarify the status of CDEM Groups.

Proactively Released

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

105. Option Two, establish that CDEM Groups are not PCBUs in the Emergency Management Bill, is the preferred option. This option directly addresses the core of the problem; the uncertainty about the status of CDEM Groups as PCBUs.
106. By extending statutory protection for liability to protect Māori members, Option One upholds the principles of Te Tiriti and creates an equitable position to serve on CDEM Group joint committees. This in turn would allow effective participation for Māori on joint committees as they are not disincentivised to serve due to a lack of protection. This option also keeps the legislative settings easy to navigate and avoids a conflict of laws, keeping the delegation of workplace health and safety regulation under the operative provision in the HSWA.
107. However, given the uncertainty about the status of CDEM Groups as PCBUs, given that CDEM Groups are, pursuing Option One would imply that there were at least some instances in which CDEM Groups could be considered a PCBU and would therefore not resolve the uncertainty.
108. Option Three, creating a provision in the Bill, could create confusion for duty holders as the operative provision protecting local authority members from liability on the basis of conformity with the Local Electoral Act 2001 is in HSWA. This option would add technical layers in legislation that require unnecessary navigation. Local Government representatives would be protected by the HSWA, while Māori members would be protected from the HSWA under our legislation, even if the roles and responsibilities are the same between the two officers. In addition. Option Three does not resolve the uncertainty about the standing of CDEM Groups as PCBUs.
109. Option Two is the only option that clarifies the status of CDEM Groups as not being PCBUs while also ensuring that members of CDEM Groups are protected from liability on the same basis. This achieves the objectives outlined above in that it removes uncertainty about the status of CDEM Groups as PCBUs on an equitable basis.

## Consultation

110. The proposals relating to strengthening the role of Māori in the emergency management system were subject to targeted stakeholder engagement with the CDEM sector and key Māori partners.
111. The Ministerial Advisory Committee on Emergency Management was supportive of the direction of travel of all these proposals but also advised going further in some areas (for example, 50% membership for Māori on Joint Committees, or at least one Māori representative from the geographical area of each territorial authority).
112. MBIE has advised that clearly demarcating that the CDEM Group is not a PCBU, and that its members are not officers, will make the law clearer and avoid the potential inequities and disincentives for elected or non-elected members participating.

## 2D. Inclusion of a Treaty Clause in the Bill

### What is the issue and the objectives for the solution?

113. The current Act is silent on the role of Māori in the emergency management system and on the role of Te Tiriti o Waitangi / the Treaty of Waitangi. The Crown has obligations under the Treaty, but these are not explicitly referred to in the Act.
114. Engagement with Māori partners highlighted that a Treaty clause is essential to support NEMA and other parties to exercise their obligations, powers, and to ensure that the needs of Māori are met equitably and appropriately.
115. A Treaty clause will make the intent of Parliament clear as to how the Bill provides for Te Tiriti o Waitangi / the Treaty of Waitangi in the emergency management context.

### What are the options?

116. Two options were considered to resolve the problem and satisfy the policy objectives:

#### **Option One: General Treaty Clause**

Under this option, a general / or operative Clause is included in the Bill that requires all provisions of the Bill to be read in a manner consistent with the principles of Te Tiriti o Waitangi / the Treaty of Waitangi.

#### **Option Two: Descriptive Treaty Clause and non-legislative measures**

This proposal includes a descriptive Treaty clause which expressly references the Crown's Treaty responsibilities and describes how these are given effect in the Bill. It also considers non-legislative measures that can be taken, such as embedding Te Ao Māori approaches in CDEM Group operations.

## How do the options compare to the Status Quo?

### Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Option One: General Clause	Option Two: Descriptive Clause
<b>Clarity</b>	0 The Crown's Treaty obligations are acknowledged, but it is not stipulated in writing in any central location. This makes it likely that these may not be considered during an emergency.	0 This option would create unclear obligations for role holders, which may mean that they are not adhered to during an emergency.	+ It will be clear how the Crown's Treaty responsibilities have been given effect in the legislation and will ensure that all participants in the emergency management system will know their responsibilities.
<b>Operability</b>	0 The lack of clarity or explicit expectations about what the government must do in the emergency management system will result in ad-hoc approaches that do not effectively consider Māori.	0 Insufficient explicit expectations about what the government must do in the emergency management system will result in ad-hoc approaches that do not effectively consider Māori.	+ The Māori-Crown relationship will be well supported with generalised, but specific information in the legislation that ensures that the needs of Māori can be appropriately planned for and addressed in an emergency.

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

117. Recognition of Te Tiriti o Waitangi / Treaty of Waitangi should not be reliant on having a "catch all" clause in legislation, and this would not be consistent with best practice policy development. A general clause is not recommended as it provides uncertainty during emergency responses. Option Two, a descriptive clause is therefore the preferred option.
118. A descriptive clause provides greater certainty for decision-makers than the operative clause. A descriptive clause will show upfront what Parliament determined is required to comply with the Treaty in the emergency management context.
119. Considering non-legislative measures also ensures that the Treaty is considered through all actions that are taken in the emergency management system, and that a Māori worldview is embedded into the system, creating a more equitable partnership for Māori.

The Ministerial Advisory Committee on Emergency Management was consulted on the two options and advised that its preference was for a general Treaty clause. Other key Māori partners also expressed a preference for a general Treaty clause when this was raised at the conference and at the hui in February 2022.

## Section 3: Risk Awareness and Consequence Reduction

### Purpose

120. A central tenet of the Emergency Management system reforms is to support local leadership and regional tailoring in emergency management. This means enabling communities to respond effectively to emergencies and to better understand the risks they face.
121. The changes proposed in this section of the RIS address the following areas for improvement:
  - improving effective emergency management by reducing risk; and
  - reducing the impacts of emergencies on people, the economy, and the environment.

### 3A. Enable regulations to establish roles and responsibilities of Lead Agencies

#### What is the issue and the objectives for the solution?

122. The concept of Lead Agencies is not in the Act. A lack of a standard statutory definition of a lead agency (and support agencies) across the Emergency Management System and National Security System, contributes to the misunderstanding about what is required of agencies.
123. This work aims to formally establish clear definitions for lead and support agencies across all 4Rs and create clear mechanisms and criteria to determine their roles and responsibilities to improve clarity and lower risk.

#### What are the options?

124. The selected option must provide for the prescription of:
  - the roles and responsibilities of lead and support agencies
  - the mechanisms and criteria by which lead and support agencies are allocated
  - the expectations of, and from, governance
  - the triggers and thresholds that determine the lead agency for a specific event.
125. Three options were considered to achieve this.

**Option One – Emergency Management Regulations.** This option will establish an empowering framework via a clause in the Bill that enables the making of regulations to prescribe the matters set out in paragraph 133. Prescribing these matters will have an impact on the budget and work programme of the agencies involved. In view of this, regulations are appropriate as they must be submitted to Cabinet to make the policy decision in each case.

**Option Two – Emergency Management Rules and guidance.** Under this option, an empowering clause will be inserted in the Bill that enables the Chief Executive of NEMA to make Emergency Management Rules prescribing the matters set out in

paragraph 133. The Rules will be supported by a suite of guidance material that provides context and explains in detail the roles and responsibilities of each lead and support agency.

**Option Three – Emergency Management Bill.** In this option, the matters set out in paragraph 133 will be prescribed in the Bill.

Proactively Released

## How do the options compare to the Status Quo?

### Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Option One – Regulations	Option Two – Rules/ guidance	Option Three – Bill
<b>Clarity</b>	0 There is no established mechanism or definition for a lead agency in the Act, leading to inconsistent approaches. Determining this for each event takes up additional time and resource.	+ It is clear that there must be Lead Agencies and there is a definition of Lead Agencies, and a mechanism for determining them to create certainty of roles and responsibilities.	+ Rules supported by explanatory guidance would be highly effective in achieving clarity about Lead Agencies' roles and responsibilities.  Errors and omissions, or a lack of clarity, can be addressed immediately as they are identified.	+ Roles and responsibilities could be clearly defined initially, but this clarity will tend to be eroded over time by changing circumstances.
<b>Operability</b>	0 The lack of established regulations means that the performance of functions in events is impeded.	+ This will help agencies to improve timeliness for response and recovery activities but retain the flexibility of a risk and hazard-based approach.  This option also achieves a balance between the need for: <ul style="list-style-type: none"> <li>• flexibility; and</li> <li>• legislative effect to ensure compliance</li> </ul>	0 Most flexible and responsive legislative instrument available to NEMA for Lead Agency purposes.  However, Rules do not have the same legislative effectiveness as regulations and primary legislation.	0 Provisions in the Bill would have the most legislative effect.  However, this would come at the direct expense of flexibility and usability of the legislation.



### What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

126. Option One (Emergency Management Regulations) is the best option to address the issues, meet the policy objective and deliver the highest net benefits. This option achieves the optimal balance between having the appropriate legislative effect to require compliance and the need for a flexible instrument to respond to changing circumstances.
127. Primary legislation (Option Three) has the strongest legislative effect and could achieve, at least initially, clarity about roles and responsibilities. However, this would come at the direct expense of flexibility and usability of the legislation. Defining the roles and responsibilities of all Lead Agencies in primary legislation would significantly delay the introduction of the Bill and result in an unfeasibly large and unusable document.
128. Incorporating Lead Agency requirements into primary legislation is the least flexible option of all. The emergency management legislation operates on a 20-year replacement cycle and an approximately 5-year amendment cycle. NEMA's ability to change Lead Agency roles and responsibilities and address new hazards would therefore be severely restrained.
129. Rules would be the most flexible and responsive legislative instrument available to NEMA for Lead Agency purposes. However, Rules are made by the CE without the involvement of Cabinet or the Minister. Given that agreeing to be a Lead Agency will impact that agency's budget and work programme, Cabinet approval with Ministerial consultation is necessary. Moreover, rules do not have the same degree legislative effect as regulations and primary legislation.
130. Agencies were generally supportive of this regulating making power. However, MPI, MfE and Police raised concerns about roles and responsibilities being assigned to them without consideration of their own statutory functions and mandates and budgetary limitations.
131. However, NEMA cannot impose operational or budgetary requirements on these agencies unless this is specifically provided for. There will be no such provision in the Bill, and regulations will be developed in consultation with the relevant agencies.

### 3B. Including ambulance services in the definition of emergency services

#### What is the issue and the objectives for the solution?

132. Ambulance services are not defined as an emergency service in the CDEM Act, despite their role as emergency responders and responsibilities under the Coordinated Incident Management System (CIMS). This has, on occasion, reportedly led to ambulance services being excluded from Emergency Operation Centres (EOC).
133. The objective of this proposal is to ensure that ambulance services are enabled to fully participate in the emergency management system.

#### What are the options?

134. This issue is primarily due to the absence of 'ambulance services' from the definition of emergency services. In view of this, there is only one option available to address

this issue. It is proposed to amend the definition of ‘emergency services’ that will be shifted into the Bill to include Ambulance Services and require ambulance services to be included in the membership of CEGs.<sup>11</sup>

#### How do the options compare to the Status Quo?

##### Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Explicit Legal Status
Clarity	0 It is not clear to some that ambulance services are essential first responders in an emergency and may continue to be excluded from Emergency Operations Centres.	+ It is explicitly stated that ambulance services are an emergency service, and therefore must be included in EOCs and CEGS across all regions.
Operability	0 Potential exclusion from planning for emergencies and the early stages of response mean that ambulance services are unable to perform lifesaving duties effectively.	+ Ensuring that ambulance services are represented in EOCs and GEGs ensures that ambulance services are involved in all 4Rs and can adequately prepare to perform their duties effectively in an emergency.

#### What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

135. Ambulance services being included in the definition of emergency services and included as a member on co-ordinating executive groups ensures alignment with other first responders such as Police, FENZ, and health providers which are already included in the definition of emergency services in the Act.
136. This will also ensure that ambulance services are included in emergencies right from the outset and are able to advise and respond to an emergency and will be better placed to provide lifesaving support.
137. The majority of participants in engagement agreed that ambulance services should be included within the definition of emergency services. Participants also recognised the need to clarify which types of vehicles (e.g., air ambulances) and providers (e.g., private ambulances) are not covered by the proposal.

### 3C. Critical Infrastructure: Planning emergency levels of service

#### What is the issue and the objectives for the solution?

138. Currently, critical infrastructure entities (previously called lifeline utilities) are required to “ensure that [they are] able to function to the fullest possible extent, even though

<sup>11</sup> Currently, it is only optional for the groups to include them.

this may be at a reduced level, during and after an emergency” (section 60(a) CDEM Act). This duty is vague and not measurable.

139. The introduction of minimum planning emergency levels of service (PELOS) is intended to:
- improve readiness and facilitate the response to an emergency event (establishing a specific and measurable level of emergency provision will upgrade the performance and capability of the emergency management system and raise public confidence
  - ensure that by providing access to information on emergency levels of service, that planning to reduce the consequences of an emergency will be facilitated
  - deepen community understanding of the risks that people face and to enhance readiness planning.
140. The Reporting requirements in section 1F of this RIS will allow NEMA to monitor compliance with these requirements, among other responsibilities outlined by the Act.

#### What are the options?

141. Given the vagueness of the duty required under section of the 60(a) CDEM Act, and in view of the need for primary legislation to ensure compliance, only one option was considered to achieve the policy objective. Under this option, the Bill will include clauses requiring critical infrastructure entities to:
- establish and publicly state their planned emergency levels of service; and
  - review their planned emergency levels of service every five years, unless required earlier by the Director due to changing circumstances.
142. The Bill will also include an empowering provision for making critical infrastructure regulations prescribing further detail and procedural matters for planning emergency levels of service.

## How do the options compare to the Status Quo?

### Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Planning requirement
<b>Clarity</b>	<p style="text-align: center;"><b>0</b></p> <p>The exact nature of critical infrastructure requirements will remain unclear.</p> <p>Unclear requirements also means that the inability to assess entities performance will continue.</p>	<p style="text-align: center;"><b>+</b></p> <p>Communities will be better able to prepare for emergencies, based on realistic expectations of service availability.</p> <p>The planning requirement will:</p> <ul style="list-style-type: none"> <li>inform the development of effective readiness and response planning</li> <li>provide better transparency and clarity across the critical infrastructure sector.</li> </ul>
<b>Operability</b>	<p style="text-align: center;"><b>0</b></p> <p>CI entities <i>may</i> be prepared and perform adequately in an emergency, but this will remain untested until an emergency event occurs.</p>	<p style="text-align: center;"><b>+</b></p> <p>Despite the concerns raised by the sector, there is net benefit to New Zealand as a whole given that the planning requirement will:</p> <ul style="list-style-type: none"> <li>• enable other critical infrastructure entities to plan, based on interdependencies and expected emergency levels of service</li> <li>• encourage the development of innovative solutions where scenario planning indicates that services will be severely compromised.</li> <li>• be supported by guidance and other resources to reduce the effort and cost impact of meeting these requirements.</li> </ul>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

143. The proposed clauses to be included in the Bill directly address the policy objectives. In addition, this option will address three of the five key areas for improvement identified by the Government:

- making it clear who is responsible for what, nationally and regionally
- building the capability and capacity of the emergency management workforce
- improving the information and intelligence system that supports decision making in emergencies.

144. NEMA consulted on this proposal, which received overall support from sector and agency consultation, and received a positive response from Mayors and CEGs.

145. Significant support came from agencies and the emergency management sector. However, the electricity, telecommunications, and ports sectors were not in favour of the proposal. Their concerns centred on the potential complexity and cost of the reporting requirement.
146. To address these concerns, NEMA is engaging with the sector on an ongoing basis to define their concerns and develop mitigations. As indicated in this RIS (see *Costs associated with Issues 1F (annual compliance reporting) and 3C (planning emergency levels of service)* below) NEMA believes that the cost will not be as high as the sector expects. NEMA will develop clear guidelines on how to develop PELOS reports and CDEM/NEMA will facilitate the development with the entities. It is also intended to provide for an extended transitional period (up to 24 months).

### 3D. Concurrent Emergencies

#### What is the issue and opportunities for the solution?

147. The Act does not provide explicit guidance for the management of multiple events in one location, particularly concurrent events involving a state of national emergency or national transition period and a local emergency. Except for COVID-19, the Act does not allow for there to be concurrent local and national events declared. This means that if there is a national emergency declared for one event, a Group cannot declare a local state of emergency for a different event.
148. Greater clarity and flexibility is required regarding the management of different concurrent emergencies to enable better system performance. CDEM Groups should have quick access to the full range of powers available to respond to local emergencies whilst also dealing with a state of national emergency or transition period.

#### What are the options?

149. This issue involves the exercise of statutory powers (declarations of emergency). In view of this, only one option, amending the primary legislation, is available to resolve the issue and meet the policy objective. This proposal contains several parts:
- enabling local emergencies concurrently with national emergencies for a different event, regarding the management of concurrent emergencies at a regional and national level,
  - ensuring that locally declared emergencies do not terminate national transition periods in force,
  - and ensuring that resources are prioritised for national emergencies.

## How do the options compare to the Status Quo?

### Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – Clarifying guidance	Amendments
Clarity	<p style="text-align: center;"><b>0</b></p> <p>The lack of flexibility leads to slow reaction or inaction when there are concurrent emergencies, which could have negative outcomes for the emergency management efforts</p>	<p style="text-align: center;"><b>+</b></p> <p>National and local emergencies that happen at the same time are able to be declared as required (i.e., at the same or different times). This will enable quick decisive action to be taken when it is important.</p>
Operability	<p style="text-align: center;"><b>0</b></p> <p>The lack of flexibility means that local emergencies or transition periods may not be declared when there is a national state of emergency (or transition period) in place for a different event due to the requirement to issue a new national notice that would cover that local event</p>	<p style="text-align: center;"><b>+</b></p> <p>Quick action means that the powers that are available under declared states of emergency are available to local authorities when required.</p>

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

150. Amending the legislation is the best option to enable the flexibility to have concurrent national and local events. It will ensure that CDEM Groups have quick access to the full range of powers available to respond to local emergencies without negating the importance of a state of national emergency or transition period.
151. NEMA consulted across the emergency management sector. Consultees were generally supportive, but observed that during concurrent local and national emergencies, there must be provision for the inclusion of local resources/groups.

## Section 4: What are the marginal costs and benefits of the options?

152. It is difficult to determine the cost impact of legislating for additional Māori members on CDEM Groups. It is expected that the cost implications will place a baseline pressure on NEMA. However, given that there is no certain number of Māori members, it is not possible to accurately forecast the cost impact of this proposal (see *2B. Further strengthening Māori participation throughout the emergency management system* above). If the cost of covering Māori participation in CDEM Groups and resultant pressure on NEMA baseline is higher than anticipated, then this can be attended to through a future budget process as necessary.
153. Another area of cost that is hard to quantify is the increased burden of compliance costs and regulatory functions on critical infrastructure entities. However, it is expected that the cost impact will be low to medium given that critical infrastructure entities will not be required to invest in upgrading existing systems or engage additional staff (see *Costs associated with Issues 1F (annual compliance reporting) and 3C (planning emergency levels of service)* below).
154. In a Morrison Low report commissioned by the Department of Internal Affairs into the costs and funding of local government, Councils reported that the costs of complying with new government regulations can often be large and difficult to fund<sup>12</sup>. The report concluded that while larger councils may have sufficient resources to be able to absorb some of these regulatory activities within current staff levels, small councils may need to employ additional resource to manage some of this compliance burden.
155. Nevertheless, it is expected that the overall monetised costs of the suite of options will generally be low, and primarily borne by NEMA. This is due mainly to the incremental rather than transformative nature of the proposals. To achieve the necessary improvements in system performance, the Regulatory Reform Programme has intentionally built on established structures and processes that are already working well.
156. In addition, the system changes will be introduced over an extensive transitional period to minimise the potential cost impact on local government of implementing the reforms, to enable the changes to be delivered from within baselines. This approach includes:
- Ensuring that new CDEM Group Plans are not required immediately upon commencement of the Bill. Approximately half the CDEM Groups have held off updating their CDEM Group Plans in anticipation of these changes and would be undertaking their regular review and updating activities to implement the new requirements upon commencement. The remaining CDEM Groups will have their current CDEM Group Plans remain in effect, provided they were last updated no more than 4 years before Royal Assent of the Bill, until their next scheduled Plan update, at which point their updated Plan must comply with the new requirements in the Bill.

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<sup>12</sup> Department of Internal Affairs Costs and funding of local government July 2018, [https://www.dia.govt.nz/diawebsite.nsf/Files/Central-Local-Government-Partnerships/\\$file/Costs-and-funding-of-local-government-Morrison-Low-report.docx](https://www.dia.govt.nz/diawebsite.nsf/Files/Central-Local-Government-Partnerships/$file/Costs-and-funding-of-local-government-Morrison-Low-report.docx)

- Other changes, such as appointing Māori members, establishing an Administering Authority, developing new Standard Operating Procedures and negotiating cost sharing agreements, will also have a phased implementation. These changes will be further developed and brought into force via secondary legislation such as Regulations, the National Plan or Rules, and the requirement of an appropriate phasing will be included in the development of those instruments.
157. Four CDEM Groups have been identified as needing additional support or expertise to enable compliance with new requirements (Tairāwhiti; the West Coast; the Chatham Islands; and Marlborough). NEMA will provide support and advice through their Regional Engagement to support those CDEM Groups in meeting their obligations, as they do currently. Knowledge transfer from capable CDEM Groups to under-resourced neighbouring CDEM Groups will also be supported and encouraged.

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the preferred option compared to taking no action</b>			
NEMA	Ongoing per annum costs associated with Issue 2B: Māori Joint committee and Coordinating Executive group Membership – funding for additional Māori members on joint committees and coordinating executive groups. See assumptions below in paragraphs 159 and 160.	For coordinating executive group membership (min 3 members) \$68,256 pa to \$136,512 (max 6 members)  For joint committee participation (min 3 members) \$28,800 to \$57,600 (max 6 members)  Total: \$0.1M to \$0.2M pa	Medium
NEMA	Ongoing per annum costs associated with Issue 2A: National Māori Emergency Management Advisory Group – funding for NEMAG. See paras 159-162 below	Fees for participation and associated costs involved in attending NEMAG: \$80,000 pa	



Departments of public service with responsibilities under the Emergency Management Bill	No additional financial resourcing required beyond baselines.	N/A	High
	Non-monetised costs of: <ul style="list-style-type: none"> <li>engagement with the Bill and content as it progresses, including ensuring all roles and responsibilities are mirrored under their primary legislation;</li> <li>negotiating or re-negotiation agreements as to roles and responsibilities; feeding into new SOPs as they are developed, and;</li> <li>implementing new or revising existing training and operating procedures.</li> </ul>	Low	High
Total monetised costs	N/A	\$0.18M to \$0.28M recurring annually	Medium
Non-monetised costs	N/A	Low	Medium

#### Additional non-monetised benefits of the preferred option compared to taking no action

Those with responsibilities under the Emergency Management Bill	Decision-making sits at the right level and with the right people	Medium	Medium
	All involved know their roles and how to execute them	Medium	Medium
	Practices are improved through greater Māori participation and consultation.	Medium	Medium
	Consistent approaches taken by regions, positively impacts the effectiveness of, and confidence in, the Emergency Management System.	Medium	Medium
	Communities are enabled to better understand the risks they face and are better prepared to act during and	Medium	Medium

	after emergencies, and the impacts of emergencies on people, the economy and the environment are reduced.		
NEMA	Decisions to intervene are easier to make and risk of inappropriate decision-making and judicial review is reduced	Low	Medium
	The emergency management system is responsive to the needs and priorities of Government	Medium	Medium
New Zealand Public	Greater confidence that the emergency management system is capable of responding to and actively managing hazards and emergencies	Medium	Medium
	The needs of those disproportionately affected by emergencies are identified and met	Medium	Medium
	Practices identify and meet the needs of Māori.	Medium	Medium
Non-monetised benefits		Medium	Medium

### NEMA costs associated with Issue 2A: National Māori Emergency Management Advisory Group

158. Cost estimates for the proposed National Māori Emergency Management Advisory Group (NMEMAG) are based on the process undertaken to generate fees and costs for the Ministerial Advisory Committee (MAC).<sup>13</sup>
159. The following key assumptions were made:
- Remuneration for members of the NEMAG is calculated at the same rate as the MAC.
  - The NEMAG is classified under the Public Service Commission's Fees Framework 14 as 'Group 4: all Other Committees and other Bodies.'

<sup>13</sup> This committee was established in 2021 to advise the Minister for Emergency Management about recognising Māori participation in the emergency management system.

<sup>14</sup> Cabinet Fees Framework for Members Appointed to Bodies in which the Crown has an Interest.

- For Group 4 bodies, fees are calculated on a daily basis. The NEMAG fits in the level 1 fees category. This means that the fee for:
    - the Chair is \$845 per day
    - committee members is \$635 per day.
160. In addition to fees, travel and accommodation costs were allocated to support the operations of the MAC. On this basis, \$80,000 was budgeted for the Committee's operations.
161. Given the similarities between the Advisory Group and the Committee, \$80,000 will be used as a base estimate for the projected costs of the Advisory Group.

### **NEMA costs associated with Issue 2B: Māori Joint committee and Coordinating Executive Group Membership**

162. In practice, the inclusion of Māori members on CEGs is well advanced, with 12 CDEM Groups already having Māori participation in their CEGs, and a further 2 groups actively seeking Māori members. Groups without existing Māori members are aware of the issue and actively working on options to improve this. The Bill requirements will therefore help solidify existing practice, while legislating to enforce an expectation for Māori membership.

#### **Key assumptions for the costs associated with Issue 2B: Māori Joint committee and Coordinating Executive group Membership:**

163. That NEMA will be funding the additional roles from its baseline.<sup>15</sup>
164. That CEGs and joint committees are Group 4 bodies under the Cabinet Fees Framework, with the following fees being appropriate:
- For CEGs:
    - they fit in the level 3 category, which applies a total daily fee range of \$205 - \$395;
    - the scoring of descriptors indicating the level of expertise and effort involved in carrying out the work of the committee results in a total score of 17 points. That equates to 60% of the 15–19-point range with 60% of the group 4 level 3 maximum rate being \$237.00;
    - CEGs generally meet for around 4 hours. It is assumed that around 2 hours preparation is required per meeting, amounting to a 6-hour working day. The Fees Framework allows for a daily fee to be paid where a total of 6-8 hours is worked in one day. This includes where a member spends time, for example one evening, preparing for a meeting the next day; and

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<sup>15</sup> As noted at paragraph 163 above, there is no certain number of Māori members. In view of this, it is not possible to accurately forecast the cost impact of this proposal. If the cost of covering Māori participation in CDEM Groups and resultant pressure on NEMA baseline is higher than anticipated, then this can be attended to through a future budget process as necessary.

- the total annual costs to Government could amount to a minimum of \$68,256 (based on 3 Māori members) to \$136,512 (based on 6 Māori members), assuming that the 16 CEGs:
  - meet 6 times per year; and
  - meet for 4 hours with 2 hours preparation (i.e., a 6-hour working day)
  - pay their Māori members \$237 per day.
- For Joint Committees:
  - they fit in the level 3 category, which applies a total daily fee range of \$205 - \$395;
  - the scoring of descriptors indicating the level of expertise and effort involved in carrying out the work of the committee results in a total score of 19 puts Joint Committees at the upper end of the 15-19 range. On this basis, the maximum daily fee of \$395 is justified; and
  - the total annual costs to Government could amount to a minimum of \$28,800 (based on 3 Māori members) to a maximum of \$57,600 (based on 6 Māori members), assuming that the 16 joint committees:
    - meet 4 times per year; and
    - meet for 2 hours with 1 hour preparation (i.e., a 3-hour working day)
    - pay their Māori members \$395 per day (pro rata for the hours worked to \$150 per day).

### Costs associated with Issues 1F (annual compliance reporting) and 3C (planning emergency levels of service)

#### Potential cost impact of planning emergency levels of service

165. The cost impact on critical infrastructure entities of the requirement to establish and publicly state their planned emergency levels of service (PELOS) is expected to be low to medium. The CI entities, as part of their emergency planning and operational activity, should already know how various hazards and risk impact their service delivery and asset performance. The PELOS requirements provides a structure on developing a cohesive reporting on how the entity is planning to deliver their services including restoration periods post specific credible event scenarios such as an earthquake on the Alpine or Hikurangi Fault, eruption of Taranaki. It is expected that developing PELOS would require them to collate existing information within the organisation and run a few workshops with other CI entities, CDEM Groups and NEMA.
166. Based on these assumptions the cost is expected to be low to medium. The cost of reviewing their plan every 5 years is expected to be low, as the updated plan will only need significant work if the hazard and/or their own infrastructure has significantly changed. The cost for agencies is expected to be low as their role will be to facilitate engagement with CI entities and support NEMA in the development.

### Potential cost impact of annual compliance reporting

167. The reporting requirement is only an enabling provision in the Bill. Details on the content and information provided in the report is yet to be developed. However, the intention of reporting is to not put significant additional cost and resourcing burden on the entity.
168. It is expected the cost for agencies will be minimal as their role is only collation of reporting and not producing these. The cost to NEMA could be low to medium depending on the level of monitoring and evaluation is required.

Proactively Released

## Section 5: Delivering the options

### How will the new arrangements be implemented?

169. The implementation and transition of the new regulatory framework is a critical phase which will determine the practical success or otherwise of delivering the Programme outcomes.
170. The regulatory framework review is not transformative, however it will impose changes to how the sector operates, for example, through statutory requirements. For the system to remain cohesive and effective, it is important that there is clarity for sector partners about when the changes come into force, how the changes impact their activities, and what tools and resources are available to effect change. As steward, operator and assurer of the emergency management system in Aotearoa New Zealand, it is important that NEMA support stakeholders and partners through the transition and implementation phase, and that the new regulatory framework enables service delivery at the regional and local level.
171. Sitting alongside the Bill project, a Programme Implementation and Transition (PIT) workstream has been stood up, to enable clear and effective implementation of the new regulatory framework and alignment with other projects in the programme including the National Plan review.
172. The PIT workstream will plan and deliver activities to support the emergency management sector, nationally and regionally to achieve the Trifecta Programme outcomes through the implementation and transition phases, so that:
- communities understand the risks they face and are prepared to act during and after emergencies
  - Māori participation is recognised, enabled, and valued
  - the emergency management system is well-coordinated, high-performing and enjoys widespread trust and confidence
  - impacts of emergencies on people, the economy and the environment are reduced.
173. The PIT workstream will:
- work to ensure clarity about the implications and expectations of regulatory changes for CDEM Groups, local authorities, stakeholders, and partners in the emergency management sector
  - strive to be effective in its implementation activities including to anticipate support required, and to engage with key stakeholders and partners
  - collaborate with subject matter experts, CDEM Groups, Māori Emergency Management practitioners, and across NEMA to ensure that:
    - communities are at the heart of this Kaupapa; and
    - every view and opinion has value: we will be free, frank, open and curious.

174. The PIT workstream is working closely with CDEM Groups, especially CDEM Group Managers given their expertise and access to the wider system. It will also be critical to work closely with Māori Emergency Management practitioners, guided by Te Kāhui Mataara<sup>16</sup> and NEMA's new Senior Advisor, Māori Policy Practice Lead to understand 'what good implementation looks like for Māori', and how this workstream can work to implement changes as a Treaty Partner.
175. Government is carrying out a range of reforms that impact on emergency management and local government. As part of planning and workstream activities, we will also need to work with these agencies to minimise disruption. Notably, DPMC, DIA, Ministry of Health, and Ministry for the Environment have intersecting reform programmes that intersects with our work.
176. To deliver the desired Programme outcomes (see purpose section), the outcomes for this workstream are that:
- communities and CDEM sector partners understand how the changes impact them, and are able to effectively implement them – for example, we prepare accessible and intuitive resources that practically support CDEM Groups, local authorities, and CDEM sector partners to implement the changes
  - Māori are enabled and empowered to act as an integral and influential partner in the emergency management system – for example, by ensuring that our implementation activities are inclusive
  - the foundations for inclusive and collaborative future change are set
  - a culture of learning and continuous improvement is embedded – for example, by including review and continuous improvement practices
  - pathways to achieve equitable outcomes across the motu are clear and easy to use reducing the negative impacts of emergencies for people who have been disproportionately impacted
  - NEMA draws on its operator, stewardship, and assurer functions to shape the implementation and transition and position itself as a responsive and reliable partner.
177. The deliverables will be confirmed as part of preparing the workplan – the three main deliverables for the scoping and planning phase are summarised in the table below.

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<sup>16</sup> Te Kāhui Mataara Work Programme will ensure that Māori participation in the emergency management system is recognised, enabled and valued. The programme will see The emergency management sector working with whānau, hapū, marae, iwi and hāpori Māori to build meaningful partnership recognising and enabling Māori participation across all levels of emergency management system.

Deliverable	Purpose	Likely timing	Connection to other work
Workplan	Set out the phases of work and initial scoping of scale and intensiveness, structure (e.g., working grounds), deliverables (e.g., Digital platform), sequencing, resourcing needs, and prioritising for consideration by the Steering Group	Aug/Sept 2022	Policy decisions feed into scope of this work, along with initial decisions about changes to the Plan. Interdependency with the Stocktake (below) and Roadmap project
Stocktake	Identify existing resources within NEMA and across the emergency management sector that will need updating or replacing, and what doesn't already exist that will need to be created.	Aug/Sept 2022	Interdependency with the Workplan for this workstream.
Budget initiative assessment (for Budget 2023)	Source of funding for set-up costs for implementing the Programme, including for CDEM Groups and local government needs to be identified and this may require a Budget initiative.	Aug/Sept 2022	Interdependency with Workplan and Stocktake for this workstream

### How will the new arrangements be monitored, evaluated, and reviewed?

178. NEMA will continue to exercise stewardship over the emergency management system and legislative framework, including ongoing monitoring of implementation and review of products as they are produced (such as CDEM Group Plans) and post facto reviews of local/national emergency responses.
179. In addition, review points are also built into the proposed legislation as follows:
- the National Plan will be reviewed every 5 years
  - critical infrastructure entities will be required to review update their planned emergency levels of service every three years, and report on their compliance with requirements annually, enabling oversight and monitoring at a level not currently possible
  - the secondary legislation empowered by the Act, including regulations and rules, will also have appropriate review periods built in (yet to be determined).