

# Regulatory Impact Statement: Generic response to emergency events

## Coversheet

Purpose of Document	
Decision sought:	<i>Analysis produced for the purpose of informing final Cabinet decisions.</i>
Advising agencies:	<i>Inland Revenue</i>
Proposing Ministers:	<i>Revenue Portfolio</i>
Date finalised:	<i>19 June 2024</i>
Problem Definition	
<p>Tax relief has been provided during emergency events and in the subsequent recovery phase depending on the nature of the event.<sup>1</sup> Currently, these responses are initiated through a combination of Commissioner of Inland Revenue discretions, Orders in Council and primary legislative amendments.</p> <p>There are timeliness issues with this process. In particular, amending primary legislation, which has been required for major emergencies, can be resource-intensive and creates uncertainty for taxpayers while Parliament considers and passes the legislation, which can take up to a year.</p> <p>A related issue is inadequate ability for Inland Revenue to share the information it collects as part of its function with other agencies responding to an emergency event. There is no legislative disclosure provision that permits Inland Revenue to share this sensitive revenue information in a timely manner with other agencies when requested to do so in an emergency event.<sup>2</sup></p>	

<sup>1</sup> Emergencies are declared under the Civil Defence Emergency Management Act 2002, as either a state of local or national emergency. Emergencies can also be declared under the Biosecurity Act 1993 for biosecurity risks. Under the Civil Defence Emergency Management Act an emergency means a situation that—

- (a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and
- (b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; and
- (c) cannot be dealt with by emergency services, or otherwise requires a significant and co-ordinated response under this Act.

<sup>2</sup> The Tax Administration Act 1994 generally precludes the sharing of sensitive revenue information and there are strong penalties for breaching this restriction. Sensitive revenue information is defined as:

- a) revenue information—
  - i) that identifies, or is reasonably capable of being used to identify, a person or entity, whether directly or indirectly; or
  - ii) that might reasonably be regarded as private, commercially sensitive, or otherwise confidential; or

Withholding this information could result in delays in providing assistance to those affected by the emergency.

### Executive Summary

Although each emergency event has its own characteristics, comparable legislative changes were provided for the Canterbury and Hurunui-Kaikōura earthquakes, and the 2023 North Island flooding events to provide certain individuals and businesses with specific forms of tax relief to ameliorate the impact of those events.

Leaving such taxpayers in a state of uncertainty over their tax positions while they await enactment of the tax relief measures adds to their stress following the event and can lead to a less efficient recovery. It also ties up Inland Revenue resources that could be used on other government priorities. This inefficient process will become increasingly problematic if there are an increasing number of emergency events arising from climate change.

A more streamlined and timely process for initiating those measures that currently require primary legislation could be achieved by building the measures into the legislation and using Orders in Council to activate them when there is an emergency event that warrants their use. This would still leave Ministers with discretion over which measures to apply in a particular emergency.

There may also be scope to change some measures currently activated by Orders in Council to Commissioner of Inland Revenue discretions. Existing Commissioner discretions would not, however, be changed.

*We have considered five options to address this issue:*

**Option One** is to maintain the status quo. When an emergency event occurs, the process of putting together an individual response, including through primary legislation, begins. This process requires policy and operational resources and, in the case of the legislative changes, could take up to a year.<sup>3</sup>

**Option Two** is a step-down approach. This approach would involve initially amending primary legislation to incorporate, on a generic basis, the tax measures from past major emergency events that proved to be useful to affected taxpayers, (such as taxation rollover relief and turning off the bright-line test). The legislation would enable activation of any of those measures by Order in Council in a future emergency. An Order in Council should take no more than two months to activate.

It would also involve changing the current Order in Council power to remit use-of-money interest into a Commissioner of Inland Revenue discretion, to expedite the activation.

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iii) the release of which could result in loss, harm, or prejudice to a person to whom, or an entity to which, it relates:

b) does not include aggregate or statistical data that may contain information about the person or entity to the extent to which the information does not meet the requirements of paragraph (a).

<sup>3</sup> The normal practice is to include amendments in an omnibus tax Bill. In rare cases, such as the COVID-19 pandemic, specific emergency legislation can be enacted under Parliamentary urgency, which allows a government to shorten the time available for debate on legislation and truncate or entirely skip the usual select committee process.

**Option Three** is Option Two with the addition of a limited information sharing power consistent with that already available to other agencies in a national emergency. This additional measure is in response to Inland Revenue being unable, in previous emergencies, to share relevant information to help other agencies deliver assistance.

**Option Four** is Option Three except the information sharing power would be available for all declared emergencies, not just national emergencies.

**Option Five** is Option Three modified to allow a tax deferral of the depreciation recovery income that can arise when a taxpayer receives an insurance payout for a destroyed asset in any emergency, not just a declared emergency (for example, an individual taxpayer's factory burns down). This extension could have a small fiscal cost because it would involve a policy change and the deferral of depreciation recovery income element would be available to taxpayers without needing an Order in Council.

For Options Two, Three and Four (and the other elements of Option Five), simply accommodating the changed process in primary legislation will not have a fiscal cost. Any fiscal cost will only then arise when Ministers decide to activate any of the proposed generic measures in response to a future emergency event.

On balance, officials prefer Option Three –Step-down approach, extended to information sharing in national emergencies. This option is likely to best address the problem, recognising the information sharing limitations that apply to other agencies in an emergency. The approach streamlines Inland Revenue's emergency event response to be more efficient and certain for taxpayers, reduces administrative costs for Inland Revenue, and promotes an overall coherence with a government-wide approach to emergency events and New Zealand's preparedness in responding to the effects of climate change.

### *Risks*

There are risks associated with changing from primary to secondary legislation (for example, an Order in Council) in that it delegates the making of law from Parliament to the Executive, and in one case (the discretion to remit use-of-money interest) from the Executive to the Commissioner. This risk is managed by limiting the power to measures that Parliament has agreed should be available and, for those measures that require an Order in Council, still requiring Ministerial agreement as to which, if any, measures should be activated in a specific emergency. The Governor-General would also need to agree to the Order in Council. In this context, where the secondary legislation would in effect supplement the existing legislation, the risk is low.

Another risk is the inappropriate sharing of sensitive revenue information held by Inland Revenue. The tax legislation generally precludes the sharing of such information, but we consider that sharing information in an emergency is appropriate provided the following safeguards are included:

- Sharing would need to be consistent with the Civil Defence National Emergencies (Information Sharing) Code 2020 (the Information Sharing Code). This Code is made under the Privacy Act 2020 and provides a reasonably wide power to share personal information but only for national emergencies.

- The Commissioner would need to be satisfied about the integrity of the party that has requested the information, and that the information was readily available.
- The Order in Council would enable the sharing of information for only as long as is necessary to fulfil the purpose of the information requests for that event, and within the time limitations set by the Information Sharing Code (i.e. up to 20 working days after the end of a state of emergency).
- A memorandum of understanding would be required between the Commissioner and the party who requested the information specifying the information to be shared.

#### *Stakeholder consultation*

The Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 includes tax relief for individuals and businesses materially impacted by last year's North Island flooding events. Some submissions at Bill stage advocated a more generic approach for emergency events and the FEC recommended this as an area for Inland Revenue to consider in the future.

We have also undertaken targeted consultation on the recommended new process and the measures that it would cover. The parties consulted were the key stakeholder groups that were consulted last year following the North Island flooding events (Chartered Accountants Australia and New Zealand and other accounting groups, Corporate Taxpayers Group, Bankers Association and Jim Gordon Tax Ltd) and government agencies likely to have an interest in this work (Ministry for Primary Industries, Ministry of Social Development, Department of Internal Affairs, the Parliamentary Counsel Office and the Office of the Privacy Commissioner). We also consulted with the Tax System Forum and within Inland Revenue, including with Inland Revenue's Māori Reference Group. Feedback was generally supportive. The Office of the Privacy Commissioner is comfortable with the information sharing proposal. (More information on the feedback is provided under each option.) Both the Legislation Design and Advisory Committee and Federated Farmers were informed about the proposals, Federated Farmers having previously indicated support for making the measures generic.

#### **Limitations and Constraints on Analysis**

The scope of feasible options is limited to some extent by New Zealand's long-standing tax policy settings. These settings have been established in line with a broad-base low-rate framework. This framework supports the consistent application of tax across the economy in a non-distortive manner, and thus any departure, including the provision of concessionary treatment, requires strong justification.

The scope of options has been limited by the time constraints of the project. It is proposed that the changes will be included in the next omnibus tax Bill, scheduled for introduction in August 2024. This means that options that would require extensive policy change or consultation under the Generic Tax Policy Process were ruled out. While targeted consultation occurred with Inland Revenue's key stakeholder channels, longer and public consultation would be required for substantial change, for example, new emergency

measures not used in a previous event. Future work on new measures is not precluded, it is just out of scope for this project.

Assumptions on the impact on affected taxpayers were based on targeted consultation, which may limit the range of perspectives considered.

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

*Geoff Leggett*  
*Principal Policy Advisor*  
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*Inland Revenue*  
s 9(2)(a)

*19 June 2024*

**Quality Assurance (completed by QA panel)**

Reviewing Agency:	Inland Revenue
Panel Assessment & Comment:	The Quality Assurance review panel at Inland Revenue has reviewed the regulatory impact statement (RIS) prepared by Inland Revenue. The panel notes that the scope of options has been limited due to time restraints. The panel considers that information and analysis summarised in the RIS Generic response to emergency events meets the quality assurance criteria.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

1. Tax relief has been provided during emergency events and in the subsequent recovery phase depending on the nature of the event. As noted earlier, emergency events can encompass natural disasters - such as the 2010 and 2011 Canterbury earthquakes and the 2023 North Island floods. They can also include disease outbreaks or pandemics - such as Mycoplasma bovis outbreaks on farms, and the COVID-19 pandemic. Currently, these responses are initiated through a combination of Commissioner of Inland Revenue discretions, Orders in Council and primary legislative amendments.

2. Current tax law enables responses through:

Commissioner of Inland Revenue discretions for:

- remitting late filing and payment penalties
- early withdrawals from or late deposits into the income equalisation deposits scheme, and
- the declaration of an event as an emergency event so support payments to relieve the adverse impacts of that event are not included as family scheme income for Working for Families purposes.

Orders in Council mechanisms for:

- remitting of use-of-money interest (UOMI) charged on late payments of tax
- declaring certain support payments not to be taxable grants or subsidies for goods and services tax purposes
- increasing the write-off thresholds for small tax debt balances, and
- extension of filing times for research and development tax credits.

3. Beyond this, further assistance requires amendments to primary legislation, usually the Income Tax Act 2007. This has been traditionally done when there is an unexpected tax liability that would not have arisen but for the event, such as in the case of the Canterbury and Hurunui-Kaikōura earthquakes, and the 2023 flooding events.

4. Examples of the measures that were provided are:

- deferral of depreciation recovery income
- turning off the application of the bright-line rules for local authority property buy-outs of residential properties,
- capped tax-free employer payments and fringe benefits to support employees who need alternative accommodation and transport, and
- extension of the time period for tax free accommodation allowances for those working away from home on major flood-related reconstruction projects.

5. Some events, such as a drought or a very localised event, have required fewer measures and have been largely handled through Commissioner discretions. However, widespread and/or protracted events have needed a wider set of measures

irrespective of whether they were declared a national or local emergency. This means the proposed generic measures need to cover both.

6. The status quo involves creating an individual response for each emergency event. This includes amending primary legislation following Ministerial and Cabinet approvals. A continuation of these settings means that the entire process can take up to a year to complete depending on the availability of a tax Bill.
7. The Severe Weather Emergency Recovery Act 2023 did provide for Orders in Council to be made to override certain Acts, but the Inland Revenue Acts were not included within its scope and the Act only related to the 2023 North Island flooding events.

### What is the policy problem or opportunity?

8. The status quo has timing and efficiency issues. The root cause of this issue is the time intensive process of creating an individual response to each emergency event, particularly when amending primary legislation is needed. This can be resource-intensive and creates uncertainty for taxpayers while the necessary Parliamentary approvals are obtained, which can take up to a year. This was the case for the 2023 North Island floods.
9. Although the legislation can be backdated to ensure that it applies from the emergency, affected taxpayers are left with uncertainty in the meantime. This process becomes particularly cumbersome if there is more than one major emergency in a year.
10. The aim of providing tax relief is to ensure that taxpayers do not have to stress about their tax affairs following an emergency event. Certainty that tax relief is available when it is most needed is important to taxpayers. Further, tax relief assists in recovery by ensuring that an emergency event does not put a taxpayer in a worse tax position after the event. Conversely, leaving taxpayers in a state of uncertainty over their tax positions adds to their distress following the event and can lead to a less efficient recovery. We have not, however, endeavoured to quantify the benefits from reduced uncertainty.
11. The status quo ties up Inland Revenue resources that could be used on other government priorities. Policy resources, in particular, are required to guide tax relief measures through the Parliamentary process. Delays in implementation also impact on Inland Revenue providing advice and addressing taxpayer queries about their tax positions in the meantime.
12. The status quo will become increasingly problematic if there are an increasing number of emergency events arising from climate change, including increased frequency of severe weather events such as flooding, cyclones and droughts.

### *Related issue*

13. The information that Inland Revenue collects can be of use to other agencies responding to an emergency event. However, there is no permitted legislative disclosure provision that allows Inland Revenue to share this sensitive revenue information with other agencies in such circumstances. In responding to the COVID-19 pandemic, a permitted disclosure provision was included in legislation, but this was specific to the pandemic and does not apply to other emergencies.

14. A recent example of the issue the limitation can create was a request from the Ministry for Primary Industries (MPI) for Inland Revenue to provide identity information to assist in the administration of grants to people who had been displaced because of Cyclone Gabrielle. No information could be shared. In contrast, the Information Sharing Code, issued by the Privacy Commissioner, enables other agencies to share information once the Government has declared a state of national emergency. Withholding information could result in delays in providing assistance to affected taxpayers following an emergency event. Inland Revenue would like to assist in emergency event recovery by having the ability to help these people following an emergency event, subject to adequate safeguards.

### **What objectives are sought in relation to the policy problem?**

15. The solution to the policy problem should be efficient. It should streamline the process to provide relief and certainty to New Zealanders. It should also form part of a cohesive government-wide response. Finally, it should reduce the use of Inland Revenue fiscal and administrative resources. An efficient and certain approach will support lowering taxpayer compliance costs, be enduring, and remove the need for ad-hoc changes to respond to specific emergencies.
16. However, our approach should also take into account the risks associated with devolving discretionary powers. A generic response may result in Ministers or the Commissioner of Inland Revenue having more discretionary powers. There is also the risk that generic provisions in legislation would raise expectations that the measures would be applied after every emergency when that may not be necessary. Therefore, we aim to seek a solution that is consistent with the established principles for devolving power from primary to secondary legislation as outlined in the LDAC guidelines.



## Section 2: Deciding on an option to address the policy problem

### What criteria will be used to compare options to the status quo?

17. We have used the following criteria to assess the options against our objectives:
- Efficiency and consistency: Does the option create an emergency events process that minimises the use of Inland Revenue resources and is consistent with tax policy principles and maintaining the integrity of the tax system?
  - Compliance benefits: Does the option assist taxpayers in complying with the tax law?
  - Coherence: Is the option consistent with a government-wide emergency events approach?
  - Fiscal cost: Does the option minimise fiscal costs?
  - Administrative cost: Does the option minimise administrative costs?
  - Consistent with the guidelines on devolving Parliamentary power: Does the option contain adequate safeguards to manage the risks associated with devolving power from Parliament to the Executive or Commissioner of Inland Revenue?
18. To the extent that there are trade-offs between these criteria, their weighting will be determined in light of the overarching objective of determining an approach that is both efficient and consistent with tax policy principles. We have not included equity as a criterion because it is only really relevant for the last option given its policy nature. The other options considered are more about improved process.

### What scope will options be considered within?

19. The scope of feasible options is limited to some extent by New Zealand's long-standing tax policy settings. These settings have been established in line with a broad-base low-rate framework. This framework supports the consistent application of tax across the economy in a non-distortive manner, and thus any departure, including the provision of concessionary treatment, requires strong justification.
20. The scope of options has been limited by the time constraints of the project. The changes will be in the next omnibus tax Bill, scheduled for introduction in August 2024. This means that options that would require extensive policy change or consultation under the Generic Tax Policy Process were ruled out. While targeted consultation occurred with Inland Revenue's key stakeholder channels, longer and public consultation would be required for substantial change, for example, emergency measures not used in a previous event. Future work on new generic measures is not precluded, but it is outside the scope of this project.

#### *Emergency event definition*

21. As noted earlier, for tax purposes, it is appropriate to rely on the existing definitions of "emergency" and the declarations of an emergency under other legislation. There are existing definitions for local and national emergencies under the Civil Defence Emergency Management Act 2002. This is our preferred definition of emergency. Using the existing government-wide definition would mean Inland Revenue's responses would be compatible with a cross-agency response to emergency events. This definition distinguishes states of national and local emergencies, while still accommodating both types of emergency events.
22. Primary industry biological events (for example, foot and mouth, *Mycoplasma bovis*) covered by the Biosecurity Act 1993 should also be included in the definition.

23. A national state of emergency has been declared three times in New Zealand, in response to:
  - the February 2011 Christchurch earthquake
  - the COVID-19 pandemic, and
  - Cyclone Gabrielle flooding.
24. Setting the definition at the level of only a national state of emergency would generally make the threshold too high and would preclude many events for which emergency tax measures have previously been provided. Option Three does, however, focus on only national emergencies following consultation with the Office of the Privacy Commissioner. This is to align it with the Information Sharing Code, which focuses on national emergencies. It is consistent with the approach available to other government agencies in respect of disclosing private information.
25. Some events, such as a drought or a very localised event, have required fewer measures and have been largely handled through Commissioner of Inland Revenue discretions. We envisage a continuation of that process. However, widespread and/or protracted events have needed a wider set of measures irrespective of whether they were declared a national or local emergency, which means the proposed generic measures need to cover both.
26. The above emergency event definition helps to maintain a coherent government-wide response to emergency events. It also ensures a rigid boundary around use of the generic measures, as a safeguard in devolving Parliamentary power.

## What options are being considered?

### *Option One – Status quo*

27. Option One is to maintain the status quo. To the extent that a legislative response is needed to activate specific tax relief, it is achieved through primary legislation. This process requires policy and operational resources and could take up to a year depending on the availability of an omnibus tax Bill.
28. This option has the benefit of being implemented through primary legislation, which means that Ministers, Cabinet and Parliament must approve each measure.
29. This option does not impact the government-wide emergency events approach because Inland Revenue would continue to respond following a major emergency event.
30. Under this option any fiscal cost is only recognised when the Government agrees to use a particular measure for an emergency event.
31. The main issue with this approach is that it is inefficient and creates uncertainty for taxpayers while the legislation needs to be enacted.
32. Stakeholders were not supportive of this option; all stakeholders were supportive of a change in the status quo. Parliamentary Counsel Office indicated that a move away from the status quo would need to be consistent with LDAC guidelines on devolving Parliamentary powers to secondary legislation.

### Option Two – Step-down approach

33. Option Two is a step-down approach. This approach would use tax measures from past major emergency events as the basis for the generic measures. Those measures have proven to be useful for affected taxpayers. The legislation would enable activation of any of those measures by Order in Council in a future emergency. An Order in Council should take no more than two months to activate.
34. Under the step-down approach, measures generally move down a level in the authorisation process. For example, a measure that is currently enacted through primary legislation would become activated by an Order in Council in a future emergency.
35. It would also mean one current Order in Council mechanism – remission of use-of-money interest – would become a Commissioner of Inland Revenue discretion. However, in that case the Commissioner would still be constrained by legislative criteria, such as maintaining the integrity of the tax system, and would not be obligated to exercise those powers.
36. The following measures have been selected for inclusion in this generic approach:

Measure	Current mechanism	Proposed mechanism	When previously used
Taxation rollover relief <sup>4</sup> for: <ul style="list-style-type: none"> <li>revenue account property</li> <li>depreciable property</li> <li>amortisable land improvements</li> </ul>	Primary legislation	Order in Council	Canterbury and Kaikōura earthquakes, 2023 North Island flooding events
Depreciation amendments associated with rollover relief	Primary legislation	Order in Council	Canterbury and Kaikōura earthquakes, 2023 North Island flooding events
Capped employer payments and fringe benefits, and extended tax-free accommodation period	Primary legislation	Order in Council	Canterbury earthquakes, 2023 North Island flooding events
Income spreading provisions for forced livestock sales	Primary legislation	Order in Council	Mycoplasma bovis outbreak commencing 2017

<sup>4</sup> Deferral of the unexpected income resulting from an insurance payout on a destroyed asset provided the asset is replaced.

Turning off the bright-line test and other time-based land sale rules <sup>5</sup>	Primary legislation	Order in Council	Canterbury earthquakes and 2023 North Island flooding events because local/central government buy-outs were provided in both cases
Information sharing for a specific event	N/A	Order in Council providing Commissioner with discretion to share information for a national emergency, subject to safeguards	COVID-19 pandemic response, through specific primary legislation
Remission of UOMI	Order in Council	Commissioner discretion	Regularly used for large scale emergencies including Hawke's Bay gastro medical event

37. The measures were selected based on research of Inland Revenue's responses to past emergency events. The key criteria used for selection were:
- the measure has been used in multiple past emergency events (either local or national emergency events) or is a measure for a specific type of emergency event (i.e. a biosecurity event)
  - the measure was used by affected taxpayers, and
  - the measure has limited fiscal impact.
38. If a past measure was used by a relatively limited number of taxpayers, was overly complex, or had a significant fiscal cost, it was excluded because the measure would likely not be used in future emergency events. Measures with a significant fiscal cost should continue to be subject to both Ministerial and Cabinet decision-making and Parliamentary approval. This ensures that discretionary decision-making is limited.
39. Several stakeholders suggested measures that were used during the COVID-19 pandemic. These suggestions were considered against our objectives and criteria. For example, based on its application during the pandemic, the carry back of losses proved to be complex. It also had a significant fiscal cost. For these reasons it was not used as a North Island flood relief measure. Therefore, we did not include it in the generic response.
40. It is worth noting that the COVID-19 pandemic was an unprecedented emergency event and a 'high bar' for emergency events. The tax relief measures used, and the authority provided to the Commissioner of Inland Revenue, extended or modified a due date, deadline, time period or time frame or varied an administrative requirement during COVID-19 (under sections 6H and 6I of the Tax Administration Act 1994). These powers should not generally form the basis of a generic response to other emergencies. If an emergency event of the same scale as the COVID-19 pandemic were to occur, these measures should go through the Parliamentary process.

<sup>5</sup> If a residential property is sold within a set period of time after acquiring it, the owner may have to pay income tax on any gain on the sale.

### *Assessment of Option Two*

41. Option Two raises issues because most measures would be activated by Order in Council rather than passed by Parliament, and one would become a Commissioner discretion. However, this option manages this risk by Parliament agreeing to which measures to include in the legislation on a generic basis and retaining Ministerial discretion over which of the measures to activate. The Governor-General would also need to agree to any Orders in Council.
42. Under this option, the definition of an emergency would simply set the boundary as to what events might ultimately lead to activation of tax measures but would not guarantee activation. This also manages expectations that the measures would be applied after every emergency when that might not be necessary.
43. This option is certain and efficient. Rather than starting an individual response, officials and Ministers can select measures from the list to implement through an Order in Council. This is a much quicker process because Orders in Council can be applied within two months. This reduces administrative costs for Inland Revenue because there will be a streamlined process for an emergency event response. It also reduces the period of uncertainty for the affected taxpayers over whether the tax relief will become law and can be factored into their tax returns.
44. It is consistent with tax policy principles because the proposed generic measures have been previously applied after being assessed as being consistent with the principles, and the new information sharing provision requires the Commissioner of Inland Revenue to be satisfied about the integrity of the party that has requested the information.
45. Finally, this option has no fiscal cost because it simply involves a change in the process. If a measure is subsequently agreed to be activated, the fiscal cost is determined at that time.
46. Therefore, overall, this option achieves the objectives of a certain and efficient emergency events response, while reducing compliance and administrative costs, and mitigating devolution of power concerns.
47. Stakeholder feedback generally supported this approach. The only differing views were over whether further measures should be added to those proposed, and the need to be consistent with LDAC guidelines.

### *Option Three – Step-down approach with information sharing (officials' preferred option).*

48. Option Two addresses the primary problem definition but does not address the additional problem of information sharing. Option Three is the same as Option Two but introduces an information sharing power consistent with that already available to other agencies in a national emergency. This additional measure is in response to Inland Revenue being unable in previous emergencies to share information to help other agencies deliver assistance. Such a power would contribute to a more coherent and efficient whole-of-government response. It would be activated by Order in Council. Stakeholders were generally supportive of an information sharing provision being introduced.

49. As noted earlier, the Office of the Privacy Commissioner were concerned that the power should not exceed that provided to other agencies under its Information Sharing Code.
50. Therefore, Option Three involves giving the Commissioner of Inland Revenue a discretion to share sensitive revenue information with other agencies who need that information to help in delivering assistance in an emergency, provided certain safeguards are met.
51. The specific safeguards are:
- The power would only be available for events that are declared national emergencies. The power would need to be consistent with Information Sharing Code.<sup>6</sup>
  - Information could only be shared for as long as is necessary to fulfil the purpose of the information requests for that event, and within the time limitations set by the Information Sharing Code (i.e. up to 20 working days after the end of a state of emergency).
  - The Commissioner of Inland Revenue would need to be satisfied about the integrity of the party that has requested the information, and that the information was readily available.
  - A memorandum of understanding would need to be drawn up and agreed between the Commissioner and the party who requested the information specifying the information to be shared.
52. A limitation of this option is that the information sharing would only be for national emergencies. Ideally other emergencies should also potentially qualify considering the problem being addressed. The 2023 Auckland Anniversary weekend floods, for example, were not initially a national emergency. This limitation was in response to the concerns raised by the Office of the Privacy Commissioner about Inland Revenue having a separate information sharing provision that went beyond that allowed to other agencies under the Information Sharing Code. The Office of the Privacy Commissioner and Inland Revenue subsequently agreed to restrict the proposed Inland Revenue power to align with the Information Sharing Code. This would not preclude our undertaking work with the Office of the Privacy Commissioner at a later stage on the appropriateness of extending the information sharing power to other declared emergencies.
53. Overall, Option Three would have the benefits of Option Two plus would assist in achieving a more coherent government-wide approach for national emergencies. It would only be the same as Option Two for other emergencies. There could be a small increase in administrative costs from having to draw up and agree any memoranda of understanding, but that cost would be limited by the relative rarity of national emergencies.

#### *Option Four – Extend information sharing to other emergencies*

54. Option Four is the same as Option Three except the information sharing power would be available for all emergencies, not just national emergencies. This could be of

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<sup>6</sup> Made under the Privacy Act 2020.

greater use than Option Three and, therefore, result in a more efficient outcome with only a marginal increase in administration costs.

55. Officials considered a legislative solution that involved defining more widely the situations when the Commissioner of Inland Revenue would have discretion to share information with any Government agency that made a reasonable and justifiable request for information needed to help them provide assistance in an emergency. As with Option Three, a proposal to share information would still have needed to be considered against Inland Revenue's obligations under the Tax Administration Act 1994 to maintain the integrity of the tax system. The Commissioner would need to be satisfied about the integrity of the party that has requested the information, and that the information was readily available. It would enable the sharing of information for only as long as is necessary to fulfil the purpose of the information request.
56. Option Four would, arguably, go further than is allowed to other agencies in an emergency in terms of disclosing personal information. The Office of the Privacy Commissioner was concerned about this aspect. We are mindful that they may undertake future work on the Information Sharing Code, and we would not wish to pre-empt the outcome of that work by having, in advance, a wider disclosure provision. For this reason, Option Four is not preferred at this stage.
57. Other stakeholders were generally supportive of this option, but the more constrained information sharing option was not included in the consultation options as a comparison.

*Option Five – Extended definition of emergency when depreciation recovery income arises as a result of an emergency*

58. Option Five is Option Three modified to allow a tax deferral of the depreciation recovery income that can arise when a taxpayer receives an insurance payout for a destroyed asset in any emergency, not just a declared emergency (for example, a taxpayer's factory burns down and needs to be replaced).
59. This extension could have a small fiscal cost because it would involve a policy change and the deferral of depreciation recovery income element would be available to taxpayers as part of the standard tax rules and would not require an Order in Council to activate it.<sup>7</sup>
60. From a tax policy perspective, creating a generic response for emergency events raises questions about the fairness and integrity of the tax system. In theory, a person that has their factory burnt down should have the same tax relief as someone who lost theirs in a widespread flood. Conceptually, these can be similar circumstances leading to depreciation recovery income and, therefore, should be treated the same by the tax system. This argument could also potentially apply to some of the other measures in the proposed set of generic measures. However, with the possible exception of amortised land improvements, there are other tax policy considerations for limiting tax relief to declared emergencies in those cases.

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<sup>7</sup> Specifically, it would involve excluding depreciable property from the taxation rollover relief measures outlined in paragraph 34 and adding a separate income spreading provision into the Income Tax Act 2007 for self-assessed emergencies.

61. Option Five is not our preferred option for two policy reasons. First, it would be difficult to define and substantiate the scope of what would qualify as an emergency under this option. It would effectively leave it to the taxpayer to self-assess an emergency for depreciation recovery income purposes, raising potential compliance issues as well as potential uncertainty for taxpayers. An emergency in such cases would essentially become any external event that irreparably damaged an asset. It would also differ from how other departments define an emergency.
62. Second, it would require a policy change, which would require extensive public consultation that is not possible in the current timeframe for the omnibus tax Bill proposed for introduction later this year. To date, stakeholders have identified major emergencies as the priority.
63. As noted above, this policy change would also likely involve a fiscal cost, albeit probably relatively small and unquantifiable.
64. This option was not specifically consulted on because it was outside the scope of the type of generic responses that earlier submissions had suggested.



### How do the options compare to the status quo/counterfactual?

	Option One – Status quo	Option Two – Step-down approach	Option Three – Step-down approach with information sharing (official’s preferred approach)	Option Four – Step-down approach with wider information sharing	Option Five – Extended definition of emergency
Efficiency and certainty	0	++	++	++	+
Compliance benefits	0	++	++	++	++
Coherence	0	+	++	++	--
Fiscal cost	0	0	0	0	-
Administrative cost	0	++	++	++	-
Rule of law	0	-	-	--	+
Overall assessment	0	++	++	+	0

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

65. Option Three – Step-down approach with information sharing is likely to best address the problem.
66. This approach streamlines Inland Revenue’s emergency event response to be more efficient and certain. It has compliance benefits for taxpayers, administrative costs for Inland Revenue, and it promotes an overall coherence with Government approach to emergency events. This is aided by the inclusion of the information sharing provision, which will help other agencies in their national emergency event recovery. It achieves these objectives with no fiscal cost.
67. It does involve some issues as a result of devolving an aspect of Parliament’s legislative power to the Executive or Commissioner of Inland Revenue, but this risk is managed through ensuring Ministerial approval is still required, and that the responses are not automatically triggered. Parliament will also have to sanction the generic measures that are proposed to be included in the Income Tax Act 2007.
68. This option helps increase our preparedness for more emergency events due to climate change. It future proofs our response and ensures that administrative resources can be used for other Government priorities.

## What are the marginal costs and benefits of the option?

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium, or low for non-monetised impacts</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups (affected taxpayers)	Compliance costs.  Impact was assessed based on targeted consultation with stakeholders.	Nil, as only changes the activation process	Medium (consultation was limited to targeted stakeholders)
Regulators (Inland Revenue)	Administrative costs for Policy and Operational divisions.  Impact assessment based on discussion within Inland Revenue.	Low but unquantifiable as dependent on number of information requests	High (self-assessment of impact on the agency)
Others (Government)	Impact on Government through more efficient process.  Rule of law implications, offset by safeguards.  Impact assessment based on change to policy activation process.	Minimal overall cost, unquantifiable/less than \$1m       Low and non-monetary	Medium
<b>Total monetised costs</b>		Low	Medium
<b>Non-monetised costs</b>		Low	Medium
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups (affected taxpayers)	Higher certainty for affected taxpayers following an emergency event.  Impact was assessed based on targeted consultation with stakeholders.	Medium and non-monetary	Medium (consultation was limited to targeted stakeholders)

Regulators (Inland Revenue)	Ongoing benefit due to reduced administrative costs and certainty. Impact assessment based on discussion internally with different departments.	Low, less than \$1m	High (self-assessment of impact on the agency)
Others (Government)	Ongoing benefit of efficiencies leading to more Inland Revenue resources available for other Government priorities. Improved consistency with government-wide approach to emergency events. Impact assessment based on change to policy activation process.	Low	Medium
<b>Total monetised benefits</b>		Low	Medium
<b>Non-monetised benefits</b>		Medium	Medium

## Section 3: Delivering an option

### How will the new arrangements be implemented?

69. The preferred option (Option Three – Step-down approach with information sharing) would require amendments to the Income Tax Act 2007 and the Tax Administration Act 1994.
70. The selected option would come into force on 1 April 2025. It would be included in the next omnibus tax Bill, scheduled for introduction in August 2024.
71. The usual guidance on the changes would be published on Inland Revenue’s website and in a Tax Information Bulletin shortly after any changes were enacted.
72. Inland Revenue would be responsible for the implementation and administration of the new rules. Inland Revenue will provide guidance to operational departments affected by any changes to ensure there is an understanding of the new rules.
73. Guidance would need to be published by Inland Revenue explaining the changes and the tax implication. There is existing guidance on emergency event tax relief. Consideration would be given as to whether it needs to be updated.

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

74. Policy officials would maintain strong communication channels with stakeholders in the tax advisory community and these stakeholders would be able to correspond with officials about the operation of the new rules at any time. If problems emerge, they will be dealt with either operationally, or by way of legislative amendment if agreed by Parliament.
75. A post-implementation review may be considered at a later stage.