

# Regulatory Impact Statement

## Review of the legislative framework for recovery from emergencies

### Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Civil Defence & Emergency Management. The analysis summarised in this RIS has taken place with the assistance of various other government agencies and civil defence practitioners.

The RIS provides a summary of analysis of options to provide a stronger framework for recovery from emergencies. The Civil Defence Emergency Management Act 2002 (the Act) is currently deficient in terms of the mandate it provides for planning and implementing recovery, as well as in supporting the transition from the response phase of an emergency into the initial recovery phase. The budgetary mechanism for Crown reimbursement of response and recovery activities is also problematic.

The scope of the review has been constrained by its terms of reference to aspects of recovery only, rather than wider consideration of the civil defence emergency management framework (i.e. including response). To achieve consistency within the Act, options which propose amendments draw heavily on its existing structure of response provisions. Additionally, because the focus of this stage of the review is on small to moderate-scale emergencies, the breadth of options considered is tailored to this focus, rather than large-scale emergencies.

A number of other initiatives have close links to this work. Key examples concern building emergency management, lessons identified from the Canterbury earthquake recovery, and management of natural hazards under the Resource Management Act 1991. Interconnections between these pieces of work will be a continued focus to ensure the outcomes of these initiatives reflect a joined up approach across government. The Regulations Review Committee is also currently undertaking an inquiry into Parliament's legislative response to future national emergencies.

In many cases quantification of impacts was not possible due to lack of data or comparable situations. Therefore, much of the analysis summarised in this RIS is supported by information provided by emergency management practitioners from Civil Defence Emergency Management Groups, who have been consulted on proposals.

Officials have identified further information is required to develop policy proposals for compensation and liability provisions that will apply to the options in this RIS. Officials will discuss these matters with Civil Defence Emergency Management Groups, Local Government New Zealand, the Insurance Council of New Zealand, selected insurance providers and other agencies before formulating further policy proposals.

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## Executive summary

1. The current legislative framework for managing recovery from emergencies, namely the Civil Defence Emergency Management Act 2002 (the Act) promotes an extensive '4Rs approach' - reduction, readiness, response and recovery - in addressing emergency management. However, the Act has significant shortcomings in relation to managing recovery from emergencies.
2. While the system has not suffered significant failures, a reliance on informal relationships and arrangements makes it vulnerable to failure. Those responsible for managing recovery do not have a legislative mandate, authority or 'backstop' to fall back on to direct others or take action. The absence of this legislative framework diminishes the importance of recovery, in terms of resourcing and advance planning.
3. There are three key issues with the current framework:
  - weak legislative direction in planning for, and management of, recovery;
  - lack of powers to support the immediate transition from response to recovery; and
  - an administratively burdensome Crown reimbursement process.
4. Known issues have been confirmed through consultation with Civil Defence Emergency Management (CDEM) Groups (which implement CDEM arrangements at the local level) and are illustrated by experiences from emergencies such as the 2004 North Island storm, the 2005 Matata floods, the 2006 Canterbury snowstorm and the 2007 Northland storms.
5. The options summarised in this Regulatory Impact Statement (RIS) form the first phase of a review of the legislative framework for recovery from emergencies. This first phase is focussed on small to moderate-scale emergencies; the second phase will focus on large-scale emergencies (i.e. of the nature of the Canterbury earthquakes). Options have been consulted with CDEM Groups.
6. This RIS identifies a preferred package of measures. The package consists of:
  - providing a mandate for Recovery Managers;
  - requiring recovery planning;
  - providing powers for the initial stage of recovery by way of a transition notice; and
  - providing permanent legislative authority to improve the Crown reimbursement process for response and recovery costs.
7. The review to which this RIS relates has links to a number of other pieces of current work. Key relationships include with work on the review of the Canterbury Earthquake Recovery Act 2011, building emergency management and hazard risk management under the Resource Management Act 1991. The subject of the second stage of the review has some synergies with the Regulations Review Committee inquiry into Parliament's legislative response to future national emergencies. The inquiry is, however, focussed on constitutional rather than policy matters.

## Status quo and problem definition

### The current framework: the Civil Defence Emergency Management Act 2002

8. The Act, along with other components such as the National Civil Defence Emergency Management Strategy, and the National Civil Defence Emergency Management Plan (and Guide), form the basis of the CDEM framework in New Zealand. The framework is focussed on 'all hazards' and has an 'all consequences' approach to managing emergencies, rather than dealing with specific scenarios.
9. The Act has very few provisions related to recovery<sup>1</sup>, besides the ability for the Minister of Civil Defence to appoint a Recovery Coordinator who has no recovery specific powers or functions provided in the Act. Recent experiences, such as the Canterbury earthquakes, have emphasised the need for greater focus on recovery.
10. A Recovery Coordinator has never been appointed. In the case of Canterbury, recovery roles were created in new bespoke legislation (i.e. the Canterbury Earthquake Response and Recovery Act 2010, and the Canterbury Earthquake Recovery Act 2011). The role of Recovery Managers exists in the Guide but is not specified in the Act.
11. The Crown provides reimbursement to local authorities for particular activities associated with response to, and recovery from, emergencies. The existing budget for reimbursing local authorities is best suited to small-scale emergencies. The Vote Prime Minister and Cabinet *Non-Departmental Other Expenses: Emergency Expenses* appropriation is \$2.000 million.

### The problem: the current framework does not adequately support recovery

12. Recovery can be complex, involving many parties, many resources and difficult decision making. It requires strong management and effective coordination, to make best use of resources for the recovery effort.
13. Recovery begins on day one of the response. Therefore, recovery functions should integrate and coordinate with those of the response to enable a smooth transition between the response and recovery phases.
14. Following the end of a state of emergency, the Act provides no specific mandate to continue with, or transition from, the use of extraordinary powers and arrangements. Many activities that begin during the response may need to continue into the initial recovery phase for the purpose of stabilising recovery – including inspecting facilities, removing dangerous structures and excluding people from unsafe areas.
15. The Act does not establish roles for Recovery Managers, or clarify their mandate. Existing recovery roles and processes in use set out in documents (such as the Guide to the National Civil Defence Emergency Management Plan) do not have a mandate in primary legislation. The absence of such roles in the Act can undermine Recovery Managers' authority and ability to do their job.

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<sup>1</sup> Recovery, for the purposes of civil defence emergency management (CDEM), is defined in the revised National Civil Defence Emergency Management Plan as *the co-ordinated efforts and processes to bring about the immediate, medium-term and long-term holistic regeneration of a community following an emergency*. The CDEM approach to recovery encompasses the community and four environments: natural; social; built; and economic. Recovery seeks to restore, as quickly as possible, the quality of life of those affected, so that they are able to continue functioning as part of the wider community. The impacts of an emergency may not allow for a 'return to normal'.

16. The existing framework fails to give recovery due prominence. It is deficient in supporting the transition from response to recovery, and the coordination and management of recovery from an emergency. This is evident from a number of small to moderate-scale emergencies; for example, the 2004 North Island storm, the 2005 Matata floods, the 2006 Canterbury snowstorm and the 2007 Northland storms, as well as the 2010 Darfield earthquake when urgent legislation was required to manage the significant scale of the recovery.
17. There are three key issues with the current framework:
- A. lack of mandate for recovery planning and management;
  - B. lack of powers to support the immediate transition from response to recovery; and
  - C. an administratively burdensome Crown reimbursement process.
18. As well as these key problems, there are a number of minor and technical issues that exist across the Act which can be addressed through a legislative amendment process. As they have no regulatory impact, analysis of these issues is not summarised in this RIS.

**(A) Lack of mandate for recovery planning and management**

19. A lack of mandate in the Act for Recovery Managers and their roles can create very challenging situations for those attempting to direct, coordinate and manage the recovery. They may have to rely on goodwill, influence, existing relationships and *ad hoc* arrangements to get things done. While this may have worked to varying degrees in the past, it is not a solid basis for managing recovery or does not provide a legislative 'backstop' where relationships fail or are non-existent.

**(B) Lack of powers to support the initial recovery process**

20. The lack of powers and arrangements in the short-term can undermine a timely, coordinated and effective recovery in the longer-term. Furthermore, it may create a perverse incentive to declare or prolong a state of emergency when only a smaller, specific set of extraordinary powers and arrangements is needed to transition smoothly to, and support, recovery management.

**(C) An administratively burdensome Crown reimbursement process**

21. The process of Crown reimbursement of local authorities for certain activities relating to response to, and recovery from, emergencies is based on circumstances where the government has made the commitment to reimbursement. Despite this, there are administrative procedures in place that mean that, in some cases, this reimbursement essentially needs to be reconfirmed by Parliament before the reimbursement can be made. This requirement is inappropriate given the Crown's commitment to reimbursement when local authorities have met the required criteria.

## Objectives

22. The Minister of Civil Defence set the objectives for the review as:

- signalling the importance of recovery;
- conforming to the core CDEM principle of 'act locally, coordinate regionally, support nationally', which supports local devolution;
- providing authority and a mandate to those directing, managing and coordinating the recovery;
- better supporting a smooth transition from response to recovery;
- providing a flexible and scalable framework applicable to the consequences of any emergency; and
- ensuring a principled approach for the use of extraordinary powers.

23. These objectives guide the assessment of options, which is summarised in the table on pages 7-8.

24. To be consistent with an all hazards approach, mechanisms should anticipate as much as possible the consequences of any emergency, regardless of the cause (it is not feasible to tailor the framework to specific hazards, due to the vast range of variables involved). They should enable effective and proportionate approaches to recovery that can be scaled and adapted to different scenarios.

25. Where possible (and appropriate), any new provisions will draw on existing practices within the Act. For example, the Act provides a regime for penalties in relation to exercise of existing powers under the Act. It is desirable to ensure that any changes draw upon the existing framework where it is fit for purpose, rather than duplicating it.

### **Scope of the review and links to other initiatives**

26. In August 2013, the Minister of Civil Defence determined that a review of the recovery framework would occur in two stages. Stage One of the review focusses on amendments to the Act to include more and stronger recovery provisions for small to moderate-scale emergencies (these provisions will also be available for large-scale emergencies).

27. The Stage Two, to be undertaken subsequently, will seek to develop a blueprint (template) for draft legislation for recovery from large-scale emergencies. This recognises where the emergency's impacts have been catastrophic, significant and unforeseen challenges will arise for recovery. These are likely to require new, custom-made legislation. This stage will link closely with a project underway and led by the Canterbury Earthquake Recovery Authority (CERA) on lessons identified from the Canterbury earthquake experience.

28. There are certain synergies between the recovery review and the Canterbury Earthquake Recovery Act 2011 (CER Act) review. Both are defined as reviewing recovery legislation, and both have similar timeframes, with some legislation scheduled to be introduced this year for the components of each review.

29. At the same time, however, there are sufficient differences in their foci, drivers and intended outcomes, which mean that they cannot be merged in process or their legislative vehicles. The key difference between the recovery review and the CER Act review is that the latter is focussed on the Canterbury experience, whereas the recovery review has a

future focus on emergencies from all hazards and all consequences and is not targeted to an existing situation.

30. The advisory board on the transition of CERA will provide the Minister for Canterbury Earthquake Recovery with a range of advice about the transition of functions and powers held by CERA to other agencies as the recovery progresses. This will provide important insights into the recovery from a large-scale emergency that will have relevance to Stage Two of the recovery review.
31. In addition to the CER Act review, there are a number of other initiatives being undertaken by a range of agencies which have close linkages to the recovery review led by the Ministry of Civil Defence & Emergency Management (MCDEM). These key initiatives include work on building emergency management under the Building Act 2004 (Ministry of Business, Innovation, and Employment) and work on hazard risk management under the Resource Management Act (Ministry for the Environment). The recovery review has sought to (and will continue to) have close links with these initiatives so that the outcomes of all form a coordinated approach.
32. The subject of the review (particularly Stage Two) has some commonalities to the Regulations Review Committee inquiry into Parliament's legislative response to future national emergencies. The inquiry is however focussed on constitutional rather than policy matters.

## Options and impact analysis

### Assessment criteria

33. The analysis of options summarised in this RIS is undertaken against the following assessment criteria:
  - effectiveness – how well the option will achieve the desired effect;
  - efficiency – the relationship between costs and benefits;
  - equity – the distribution of costs and benefits;
  - clarity – the ease with which the processes can be followed and the level of complexity added (or removed) from the framework; and
  - transparency – how transparent measures are for both decision makers and those affected.
34. The review objectives, as outlined in paragraph 22, illustrate some of the key attributes sought. These contribute to the scores obtained by the different options against the assessment criteria.
35. The status quo is used as a baseline for analysis. This means that all of the options are assessed against the status quo using the objectives and assessment criteria. Therefore, the status quo is shown as having no net change.

## Summary of key options and analysis

36. Options for addressing the three aspects of the problem definition are outlined in the summary table before being described in more detail in the following paragraphs. The options are rated using up to three ticks or crosses; a dash signals no significant change from the status quo.

37. The options are not all mutually exclusive and a package of options may be available for addressing each of the aspects of the problem definition. Preferred options are identified where they exist.

Table One: Summary of key options and analysis

Option	Assessment criteria					Key considerations
	Effectiveness	Efficiency	Equity	Clarity	Transparency	
<b>Lack of mandate for recovery planning and management</b>						
1(a) Status quo	-	-	-	-	-	<ul style="list-style-type: none"> <li>Local authorities may or may not appoint a local and Group Recovery Manager.</li> <li>Does not provide a mandate and authority for Recovery Managers to do their job, and support a timely, focussed and effective recovery.</li> <li>Recovery Coordinators can be appointed but have no specific powers under the Act.</li> <li>Allows greatest CDEM Group flexibility.</li> </ul>
1(b)(i) Establish roles and a mandate for Recovery Managers <b>(preferred option)</b>	✓	✓	-	✓ ✓	-	<ul style="list-style-type: none"> <li>Would provide greater clarity for roles.</li> <li>Minimal implementation costs.</li> </ul>
1(b)(ii) Require Group Recovery Managers <b>(preferred option)</b>	✓ ✓	✓	-	✓	-	<ul style="list-style-type: none"> <li>Recovery Managers would exist for each Group.</li> <li>Recovery Managers would have greater authority in particular circumstances with provisions in the CDEM Act mirroring those for controllers under a state of emergency.</li> <li>May increase costs for local authorities (dependent on current practice).</li> </ul>
1(c) Require CDEM Groups to produce recovery plans <b>(preferred option)</b>	✓	✓	-	✓	✓ ✓	<ul style="list-style-type: none"> <li>Recovery planning positions CDEM Groups and other participants to deliver or enable recovery when required.</li> <li>May increase costs for local authorities (dependent on current practice).</li> </ul>
1(d) Provide additional non-legislative guidance	✓	✗	-	-	✓	<ul style="list-style-type: none"> <li>Important in providing support for other measures.</li> </ul>

Option	Assessment criteria					Key considerations
	-	-			-	<ul style="list-style-type: none"> <li>Does not on its own adequately address identified problem.</li> </ul>
<b>Lack of powers to support the initial recovery process</b>						
2(a) Status quo	-	-	-	-	-	<ul style="list-style-type: none"> <li>Lack of powers impairs the ability to transition out of response to recovery.</li> </ul>
2(b)(i) Make selected powers available to assist initial recovery <b>(preferred option)</b>	✓	✓	X	✓	✓	<ul style="list-style-type: none"> <li>Would provide targeted powers for the purpose of initial recovery.</li> <li>Would have potential impacts on property rights.</li> </ul>
2(b)(ii) Transition notice <b>(preferred option)</b>	✓	X	-	✓	✓	<ul style="list-style-type: none"> <li>Would clearly signal the purpose of powers.</li> <li>Would provide a standalone mechanism for making powers available.</li> </ul>
2(c) Expand situations in which state of emergency powers are available	✓	X	X	✓	X	<ul style="list-style-type: none"> <li>Would provide powers in excess to those required for effective initial recovery.</li> <li>Would require broadening of the purpose for declaring a state of emergency.</li> <li>Would conflate response and recovery.</li> </ul>
2(d) Provide for Orders in Council	✓	✓	X	X	X	<ul style="list-style-type: none"> <li>More in step with addressing recovery from large-scale emergencies (out of scope for Stage One).</li> </ul>
<b>An administratively burdensome Crown reimbursement process</b>						
3(a) Status quo	-	-	-	-	-	<ul style="list-style-type: none"> <li>Inefficient as it requires duplication.</li> <li>Inadequate for dealing promptly with large-scale emergencies.</li> </ul>
3(b) Permanent legislative authority <b>(preferred option)</b>	-	✓	-	✓	✓	<ul style="list-style-type: none"> <li>Removes duplication in the approval process.</li> <li>Provides flexibility and ongoing authority for expenditure.</li> </ul>

## Setting direction for recovery planning and management

38. Currently, legislated requirements in the Act for recovery planning and management are significantly less those for response. This means that recovery is often less prepared for than response. Those to whom recovery management falls tend to be less empowered, resourced and supported in practical terms than their response colleagues.

39. This section summarises analysis of feasible options to address planning for, and management of, recovery. There are three preferred options to address this issue (establishing roles and mandates for Recovery Managers, requiring Group Recovery Managers and high-level recovery plans). These options are intended to be taken together as part of a package. The full package is outlined in paragraphs 112-114.

**Option 1(a): status quo**

40. Continuation of the status quo would mean that there continues to be significant variation between CDEM Groups in terms of the resourcing and staffing of the Recovery Managers and preparation of recovery planning. This option presents the risks discussed in paragraph 19.
41. Maintaining the status quo would allow CDEM Groups the greatest flexibility of all the options discussed.

**Options 1(b)(i & ii): amendments regarding Recovery Manager roles (preferred options)**

42. Changes could be made to the Act that would mirror existing sections for Controllers' roles and for response plans; this approach supports administrative simplicity. Legislative changes would provide a strong mandate for managing recovery, in relation to the role and mandate of Recovery Managers. Provisions could:
- establish the role of National Recovery Manager (similar to that of National Controller<sup>2</sup>), and provide that the Director CDEM can delegate certain functions and powers to the National Recovery Manager;
  - provide that the National Recovery Manager may provide national and additional support to a CDEM Group, if the recovery is beyond the capability and capacity of the Group to manage and coordinate;
  - require each CDEM Group to appoint a Group Recovery Manager and alternate persons for the role, and establish powers of delegation for Group Recovery Managers;
  - enable a CDEM Group to appoint a Recovery Manager or Managers (i.e. at the local authority level) at their discretion; and
  - disestablish the role of Recovery Coordinator provided for in the Act (a National Recovery Manager would assume a similar role when required).
43. Option 2(b)(ii) would make the role of CDEM Group recovery manager mandatory and thus would impose a cost on CDEM Groups. Consultation with CDEM groups has confirmed that the extent of this cost would be dependent on the current practice of the CDEM Group (most already have appointed Recovery Managers).

**Option 1(c): require CDEM Groups to produce recovery plans (preferred option)**

44. CDEM Groups are already required to develop CDEM Group Plans, which should include planning for recovery. However, requiring distinct strategic recovery plans under the Act would provide a more comprehensive approach that has a mandate of its own.
45. CDEM Groups would be required to develop a high-level strategic recovery plan in advance of an emergency, and a recovery action plan when required (i.e. after an emergency). Recovery planning would raise the profile of recovery and ensure that recovery managers are well placed to lead recovery should it be required.
46. As with options 1(b)(i & ii), this option would impose a cost on CDEM Groups. Consultation with CDEM groups has confirmed that the extent of this cost would vary

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<sup>2</sup> The role of National Controller is not a full time position, but rather a delegation to an existing MCDEM manager. It is intended similarly that the role of National Recovery Manager is not a full time position.

depending on current practice (a number already undertake recovery planning to varying degrees). The cost of options 1(b)(i & ii) and 1(c) are expected to be offset by prevention of future costs to communities and local authorities from more effective and timely recovery.

**Option 1(d): provide additional non-legislative guidance**

47. A variation on the status quo would be the provision of more guidance or direction through non-regulatory tools. Previous experience has shown these measures alone have only limited success.
48. Non-regulatory options, such as giving greater authority and prominence to Recovery Managers and their roles through awareness campaigns, capability development and strengthening planning documents, were considered; however, they do not in themselves address the identified problem. They will, however, play an important role in supporting other measures.
49. The current 'Recovery Management' Director's Guideline for CDEM Groups and the supporting information series 'Focus on Recovery', provide guidance on how to implement legislation in the Act. The revision of recovery doctrine is scheduled for 2015/16 but is dependent on the legislative process of the recovery review.
50. The transition of CERA to become a Departmental Agency under the Department of the Prime Minister and Cabinet (DPMC) will result in MCDEM (which is also a unit of DPMC) having a closer working relationship with CERA. The connection will support experiences and lessons identified from Canterbury being adopted and shared widely, and also forming an input into Stage Two of the recovery review.

**Powers to support initial recovery during the 'transition phase'**

51. This section summarises analysis of feasible options to address the lack of powers in the Act to support a seamless transition out of the response as the focus shifts to recovery. The preferred package is the provision of powers by way of a transition notice (outlined in paragraphs 59-97).
52. A 'transition phase' exists following an emergency but prior to recovery activities being able to be effectively coordinated, directed and managed under business-as-usual or bespoke statutory regulatory provisions.
53. The definition of recovery activities would be clarified and broadly defined to mean activities carried out under the Act or any civil defence emergency management plan after an emergency occurs, including:
  - the assessment and ongoing monitoring of the needs of a community affected by the emergency;
  - the coordination and integration of planning, decisions, actions and resources;
  - measures to support the regeneration, restoration and enhancement of communities, across the 'four environments' (built, natural, social and economic) and for the cultural and physical well-being of individuals and their community;
  - measures to support the regeneration, restoration and enhancement of communities, including the 'four environments' (built, natural, social and economic) and the cultural and physical well-being of individuals and their community;
  - measures to enable community participation in recovery planning; and

- new measures to reduce risks from hazards and build resilience.

54. The Act provides for powers to be used in response under a state of emergency. While some of these tools have the ability to greatly assist as the focus shifts into the recovery, they cease to be available upon the expiry or termination of a state of emergency. This means that during the critical transition phase out of response into recovery, there is an absence of available powers.

55. The lack of powers to support recovery activities during the transition phase can inhibit the timeliness and effectiveness of recovery, and fail to stop resources being diverted to other activities or purposes. It can stall or undermine progress that has begun during the response, potentially destabilising what has been achieved. This is not just an issue of acting with urgency, but it may negatively impact an effective recovery in the longer term.

56. There are two questions. The first is whether extraordinary powers are necessary and appropriate. Provided they are, the second question is how to make them available. Options to address these questions are outlined in the following sections. There are obviously no non-regulatory options for providing legislative powers.

***Option 2(a): status quo***

57. Maintaining the status quo would maintain perverse incentives, in some cases, for either declaring or extending a state of emergency in order to gain access to extraordinary powers. Further drawbacks associated with preserving the status quo are outlined in the preceding section.

58. Preserving the status quo would not increase costs on CDEM Groups. But neither would it address potentially much greater costs that the community could incur and that might be avoided by a greater mandate for recovery planning and management.

***Option 2(b) (i): powers made available to assist initial recovery (preferred option)***

59. In the transition phase, as in an emergency, there may be circumstances where broader public interests outweigh individual interests. The creation of powers to allow for particular activities in the transition phase would recognise the extraordinary nature of these circumstances and have the potential to reduce long-term costs for communities.

60. Safeguards against the misuse of such powers would be provided by the independence of the decision-maker, the procedure to be followed, the criteria for decisions, and rights of appeal and review. These protections are further discussed below.

*What powers would be available*

61. There are a variety of powers that could be used to support a seamless transition from the shift of focus from response, to recovery. A suite of tools that allow for the type of activities likely needed for this transition phase are adapted from some of those required to respond to an emergency (and are provided for by the Act during a state of emergency).

62. The proposed suite of tools falls between those available under a state of emergency and business-as-usual – the two key regulatory states between which a transition phase would occur. It is, however, worth noting that while long-term recovery often occurs under a business-as-usual regulatory regime, there is a process of returning to ‘normal’ and potentially the recovery process reflects the creation of a ‘new normal’.

63. The powers considered for use in the transition phase are a subset of those currently provided for in the Act for use in a state of emergency. Proposed powers to be made available for the purpose of recovery are limited to:

- carry out works; clear roads and other public places; and remove, dispose of, secure, or make safe dangerous structures and materials;
- provide for the conservation and supply of food, fuel and other essential supplies (such as water);
- disseminate information and advice to the public;
- evacuate premises and places, and exclude people and vehicles;
- enter onto premises (for example, to perform an assessment);
- close roads and public places;
- give directions to stop any activity or to take any action, to limit the consequences of the emergency and potentially for the purposes of coordinating recovery efforts; and
- require information for the recovery (for example, from lifeline utilities).

64. Powers (unless otherwise specified) would be available to the Recovery Manager to use or delegate. This would broadly mirror the content, for Recovery Managers, of sections 10 and 28 of the Act, which relate to delegations and functions of Controllers.

65. Legislative changes making powers available to Recovery Managers would give a safeguard that provides a mandate to give directions and take actions. Amongst other things, this mandate would allow for intervention where existing relationships or arrangements fail, could lead to the diversion of resources and prevent barriers to recovery (for example where private interests might otherwise derail a recovery process). Examples of situations where these powers would make a material difference to recovery include where Recovery Managers:

- need to prevent people from accessing land or using roads that are or may be subject to ground deformation and subsidence;
- give directions to delay rebuilding or earthworks where this would undermine a coordinated approach to restoration of neighbouring land, roads and properties;
- need to conserve limited fuel resources in isolated communities to prevent a run on fuel following an emergency; and
- require information from lifeline utilities to effectively sequence recovery activities.

66. The powers listed above would be backed up by additional powers for the Minister of Civil Defence and the Director CDEM to ensure the powers are exercised only when required. These additional powers are the power for the Minister of Civil Defence to give direction and the power for the Director CDEM to act on default of others. These powers would only be used as a last resort.

### *Safeguards*

67. While the powers would be drawn from those currently in the Act, the purpose under which they are exercised would need to be adapted so that recovery activities are possible (i.e. for the purpose of stabilising progress made during response and ensuring the best start to recovery).

68. The powers would only be able to be used for the purpose of supporting recovery activities during the transition phase and need to be:

- proportionate, reflecting the consequences and scale of the emergency; and
- only exercised to the extent reasonably necessary for the public interest.

69. It is proposed that unless specifically attributed to another role, the powers would be available to the Recovery Manager to use or delegate, just as a Controller has a full range of response powers (and also can delegate). Similarly, there is an expectation that only those powers that can be justified as being needed would be used.

70. The powers would have the ability to impinge on property rights. While the immediacy of the use of powers could impact peoples' access to natural justice, there would still be recourse available (such as judicial review) and compensation.

#### *Compensation, liability, and penalties*

71. Issues of compensation, liability, and penalties are consequential to the establishment of new powers. The Act addresses compensation, liability and penalties regarding the exercise of powers during a state of emergency.

72. It has not been possible to obtain data on the costs of different compensation and liability options. However, it is clear that the application of existing compensation and liability provisions to actions taken under transition notices could have material impacts on CDEM Groups and the insurance sector. Discussion of possible options with relevant parties (i.e. CDEM Groups, Local Government New Zealand, the Insurance Council of New Zealand, selected insurers and other government agencies) is necessary to gain information on the impacts of possible options.

73. No decisions on compensation and liability mechanisms are recommended at this time. Officials will discuss compensation and liability with interested parties before developing advice on proposals (and any associated regulatory impact).

74. Given the similarities between response powers and the recovery powers outlined in the preceding paragraphs, penalties would be provided for under existing provisions in the Act, which allow for individuals to be imprisoned and/or fined no more than \$5,000, and bodies corporate to be fined no more than \$50,000. The proposed penalty provisions have been subject to the Ministry of Justice's 'penalty vet' process. The Ministry of Justice are comfortable overall with the penalty level.

#### *Exercise of powers*

75. The exercise of some of the powers in the preceding paragraphs may in some cases be constrained by other legislation (for example requirements under the Resource Management Act 1991). This may, in certain circumstances, reduce the effectiveness of the powers. This reflects the status quo in terms of the exercise of some powers available under a state of emergency.

76. Recovery powers may in some circumstances interact with powers available under other legislation or in policy. Unless otherwise stated, recovery powers would be able to be exercised alongside those in existing legislation (such as those of the Director of Maritime Safety under the Maritime Transport Act 1994), or policies such as the *Primary Sector Recovery Policy*. If necessary, technical aspects can be addressed during the legislative drafting (and for policies, through operational planning and guidance).

***Option 2(b)(ii): transition notice (preferred option)***

77. Powers could be made available through the use of a 'transition notice', a stand-alone mechanism that could be used if the circumstances of the transition phase warranted the need for extraordinary powers. Transition notices would mirror aspects of a state of emergency and therefore, would provide for a seamless transition from response into recovery.
78. The transition notice would not remain in force for the duration of the entire recovery. Instead, it is intended to bridge the transition phase as the response ends and the focus moves to recovery. Recovery planning would need to prepare for progression from a transition notice into the longer-term recovery process. This will need to be incorporated into recovery planning. Guidance documents will assist CDEM Groups with this planning.

*Scale of transition notice*

79. As states of emergency are able to be declared at both a local and a national level, it holds that any interim recovery measures also be tailored to the scale of the emergency. This could be broadly done by having two types of transition notice: local, and national. Both types mirror provisions in the Act for a local or national state of emergency.
80. Providing for two types of transition notices would offer the ability to appropriately and proportionately target the use of powers to a particular emergency and be consistent with the principle of devolution to local authorities.
81. Transition notices would specify the geographical area to which they apply. This may be for one or more CDEM Group boundaries, districts or wards within those boundaries. This approach mirrors that of a state of emergency declared under the Act.

*Criteria for a transition notice to be issued*

82. Similarly to a state of emergency, a transition notice would be able to be put in place by the Minister of Civil Defence for a national notice or, for a local transition notice, a Mayor, or an elected representative of the local authority affected, or a person appointed by the affected CDEM Group (chosen from the Group members). The Minister of Civil Defence would also be able to put in place a local transition notice if one has not been put in place but the Minister considers it necessary. A diagram of the decision process is given in Diagram One following.
83. In issuing a transition notice, decision-makers would have to have regard to:
- the area affected by the emergency;
  - whether the focus of activities is moving from response to recovery, including but not limited to if a state of emergency is about to be terminated or expire; and
  - whether it is reasonable and necessary in the public interest to invoke extraordinary powers to manage, coordinate and direct immediate recovery activities, so as to ensure a timely and effective recovery in the longer term.
84. The decision to issue a transition notice needs to be predicated on the principle that the notice's purpose is to respond to genuine need after an emergency in specific circumstances.

Diagram One: Process for putting in place a transition notice



85. In some circumstances, there might be a sizeable response, and yet the criteria for declaring a state of emergency may not be met – for instance, the emergency services do not require additional support, and people’s lives and property are not in significant danger. Nonetheless, in these circumstances the recovery might be significant in terms of the coordination required.

86. While allowing a transition notice to be put in place only in circumstances following a state of emergency would set a high threshold for authorising the use of powers, it would be inflexible; inconsistent with principle that recovery powers should be driven primarily by needs on the ground; and may create perverse incentives to declare a state of emergency where circumstances do not fully warrant it. Not linking the exercise of recovery powers to a state of emergency (under the Act or any other Act e.g. the Maritime Transport Act 1994) would offer the additional flexibility of making powers available (where the situation meets the criteria) to recover from emergencies where a state of emergency was not declared.

87. If no state of emergency is declared, the issuing of a transition notice in effect creates a 'stepping up' of powers, as opposed to a 'stepping down' from a larger set of response powers, and this could cause some public concern. The safeguards around the use of the powers should mitigate this concern. It is proposed that a local transition notice issued without a state of emergency having been in place can only be issued with the approval of the Minister of Civil Defence. This additional safeguard provides a very high level of democratic accountability and oversight, and would require the circumstances to be exceptional.

*A transition notice could apply to recovery from any type of emergency*

88. The Act (particularly the state of emergency provisions) and the National Civil Defence Emergency Management Plan provide an enabling framework that supports responses and recovery from any type of emergency. Under the all hazards approach, a transition notice would be applicable to a range of emergencies (i.e. not just limited to earthquakes or other geological or meteorological hazards). Transition notices could also be used, where appropriate, in support of other agencies leading recovery from emergencies (for example maritime oil spill, pandemic, counter-terrorism, drought and biosecurity incursion). There is also potential for the transition notice, similar to a state of emergency, to be written into other pieces of legislation as a trigger for the invocation of extraordinary powers and arrangements.

*Duration of a transition notice*

89. The duration of the transition notice period (during which extraordinary powers would be available) must be of an appropriate length of time to stabilise the response and the transition into recovery. However, the notice should only exist for as long as necessary to carry out vital and immediate recovery activities that could not otherwise be achieved urgently within business-as-usual requirements and processes.

90. Emergency provisions under different legislation (see Appendix One for detail) vary in duration. The preferred option is to set the duration of transition notices at 28 and 90 days for local and national transition notices respectively. These timeframes, while avoiding the administrative burden and impracticality of overly short timeframes which would allow little work to progress, would ensure adequate oversight.

91. There would be the ability to terminate a notice if no longer required, or to renew a notice if a reassessment shows that extraordinary powers are still needed. The ability to terminate early, or to renew, is similar to the approach in the Act for a state of emergency.

92. The declaration of a subsequent state of emergency (e.g. due to an emergency subsequent to the first) over the same area as a transition notice would terminate the transition notice. While this would mean that some recovery powers would cease, they would essentially be replaced by response powers. In practice, recovery activities would largely be put on hold should a new emergency affect the same area.

*Public notification and reporting*

93. A transition notice would be required to be notified publicly (e.g. in the Gazette, and in newspapers), similar to a state of emergency declaration. This approach adheres to the principle that people should be made aware of official decisions or actions that might impact significantly on their property rights and freedom of movement.

94. As an additional safeguard to the use of the extraordinary powers, it is proposed CDEM Groups or local authorities would have to report on what powers had been used and why, and justify the continuing need for a transition notice. Reporting would have to be undertaken by the party which put in place the transition notice. A summary of requirements is outlined in Table Two below.

Table Two: Preferred options for transition notices - reporting

	<b>Local transition notice</b>	<b>National transition notice</b>
<b>Timeframe for reporting</b>	<ul style="list-style-type: none"> <li>• Within the 28 days that the notice is in effect or before the notice is terminated</li> <li>• Applies to each renewal period</li> </ul>	<ul style="list-style-type: none"> <li>• Within every four weeks that a national transition notice is in effect</li> <li>• Applies to each renewal period</li> </ul>
<b>Person to whom the report is provided</b>	<ul style="list-style-type: none"> <li>• Director CDEM</li> <li>• Made public on website</li> </ul>	<ul style="list-style-type: none"> <li>• Minister of Civil Defence</li> <li>• Made public on MCDEM website</li> <li>• Presented in the House of Representatives as soon as practicable (to facilitate debate, should debate occur)</li> </ul>

95. Alternatives exist regarding the level of reporting. These range from no reporting to more regular reporting than that outlined in Table Two. These alternatives were discounted for the reasons outlined below.

96. The existence of reporting requirements plays an important role in subjecting the use of powers to public scrutiny. The absence of reporting on transition notices (and the powers exercised under them) would not offer the required transparency necessary for a process with potentially significant impacts on the public.

97. There is an administrative burden associated with reporting, which must not be so great as to detract from the recovery effort. Therefore, accountability and its cost must be weighed against each other. More frequent reporting than that described in Table Two would add further administrative burden for little gain in transparency. Additionally, if there are multiple reporting periods per transition notice it could unnecessarily add further complexity and may obfuscate the powers exercised.

***Option 2(c): extending state of emergency powers***

98. Under this option, a state of emergency would be extended (i.e renewed) as a means to enable powers to continue to be exercised. This approach would be contrary to the criteria for declaring a state of emergency, as they currently stand in the Act.

99. Additionally, enabling a state of emergency to remain in force or to be renewed under a wider range of circumstances would either make broader powers available for recovery than proposed (since those proposed are a subset of those available during response); or would add significant complexity to the functioning of a state of emergency (i.e. people would be using the same powers for different purposes, potentially causing confusion if the powers were being exercised simultaneously).

***Option 2(d): provide for Orders in Council***

100. Provisions enabling the use of Orders in Council would allow significant powers to amend other legislation. While this could significantly improve the capability to recover

from emergencies, it would be a particularly broad measure that would far exceed the expected requirements of managing recovery from small to moderate-scale emergencies.

101. For constitutional reasons, Orders in Council are generally only provided for where there are exceptional circumstances. For this reason, they would be more appropriate to large-scale emergencies that (fortunately) are extremely rare - and which are not the focus of Stage One of the review and hence the analysis summarised in this RIS. Any options for Orders in Council might fall in the ambit of the second stage of the review.

## **Improving the Crown reimbursement process**

102. Responding to and recovering from emergencies can be expensive. Under certain circumstances (i.e. according to pre-agreed policy criteria), the Crown provides reimbursement to local authorities for the cost of response and recovery activities (for example, for providing welfare to displaced people, or for repairing certain types of essential infrastructure).

103. The *Non-Departmental Other Expenses: Emergency Expenses* appropriation in Vote Prime Minister and Cabinet is \$2.000 million. Following the Canterbury earthquakes, it became clear that the existing budget for reimbursing local authorities for response and recovery costs is inadequate for large-scale emergencies. Councils' response to, and recovery from, a series of smaller emergencies could also deplete the appropriation in any one financial year.

### ***Option 3(a): status quo***

104. A continuation of the status quo would not change the mechanism for providing Crown reimbursement for response and recovery costs. This would mean the issues identified above continue. It would, however, avoid the administration process required to change the mechanism.

### ***Option 3(b): Establishing a permanent legislative authority for Crown financial assistance (preferred option)***

105. A permanent legislative authority (PLA) could be established as a Non-Departmental Other Expense for future reimbursement of response and recovery activities after emergencies. This would provide flexibility and ongoing authority for expenditure i.e. incurred from reimbursing councils, which would be appropriate because emergencies can occur at any time within a financial year, and moreover the consequences of an emergency (and hence response and recovery) can span across financial years.

106. The establishment of a PLA would address the existence of administrative procedures that mean that in some circumstances, reimbursement (even though it meets required criteria) essentially needs to be appropriated. This is inappropriate given the Crown's commitment to reimbursement when it meets requirements.

107. While this option would require changes to the reimbursement mechanism, these changes would not add complexity for local authorities when they make a claim for reimbursement for response and recovery costs.

## **Minor and technical amendments**

108. There is the opportunity to provide limited updates and clarifications to the Act to address a number of minor and technical matters. These amendments have no regulatory impact and are therefore not summarised in this RIS.

## Consultation

109. The following agencies have been consulted on this paper: Accident Compensation Corporation; Canterbury Earthquake Recovery Authority; Departments of Conservation, Internal Affairs; Earthquake Commission; Inland Revenue Department; Land Information New Zealand; Maritime New Zealand; Ministries for the Environment, Primary Industries; Ministries of Business, Innovation and Employment, Culture and Heritage, Defence, Education, Health, Justice, Social Development, Transport; New Zealand Defence Force; New Zealand Fire Service; New Zealand Police; State Services Commission; Te Puni Kōkiri and the Treasury.
110. The Department of the Prime Minister and Cabinet, and Crown Law Office were informed.
111. CDEM Groups have been consulted on the proposals contained in this paper relating to transition notices and Recovery Managers. They helped develop the options that have become these proposals. MCDEM received positive feedback from CDEM Groups on the consultation process.

## Conclusions and recommendations

112. This RIS summarises analysis of options to improve the recovery framework for small to moderate-scale emergencies (however, these options would still be available for large-scale emergencies). The preferred package of options legislative change to the Act to:
- provide a mandate for Recovery Managers;
  - require recovery planning; and
  - provide powers for the initial stage of recovery by way of a transition notice.
113. The preferred package also includes providing a permanent legislative authority to allow for Crown funding of reimbursement for response and recovery costs; and making a number of consequential or minor, technical amendments.
114. The preferred package would improve the tools available for the transition phase as well as strengthen planning and recovery management. The package would represent a significant improvement from the status quo and the alternative options summarised in this RIS. Short-term costs as a result of greater planning and resourcing, are expected to be offset by reduced costs to communities following emergencies.

## Implementation plan

115. The proposals are expected to be implemented through the passage of legislation to amend the Act. A Bill is expected to be introduced in 2015.
116. A number of non-regulatory tools will be used to support implementation. These include revision of the 'Recovery Management' Director's Guideline [DGL 4/05] and 'Focus on Recovery' Information Series [IS5/05] and other fora and capability development for CDEM Group Recovery Managers.
117. Compliance costs will be minimised by MCDEM actively consulting and working closely with CDEM Groups, using existing relationships and regulatory and policy frameworks.

118. The proposed package for recovery is modelled on existing response provisions within the Act. As such, it will achieve a consistent approach that avoids duplication or added administrative complexity. The scope of Stage One of the review prevented it from identifying other enactments that may be suitable for amendment to better support recovery and the transition phase. However, work with other agencies will continue to identify areas of possible improvement, and there may be potential to address these in Stage Two of the review.

119. There is no formal enforcement strategy proposed. This is because the Minister of Civil Defence, and the Director CDEM, have sufficient existing oversight powers of CDEM Groups within the Act. General enforcement measures are included in the Act.

## **Monitoring, evaluation and review**

120. Monitoring, evaluation and review will occur through existing CDEM Group monitoring and evaluation processes, on a three yearly basis. Additional opportunity for evaluation will occur through the CDEM Group planning process which occurs on a five yearly basis.

## Appendix One: Duration of transition notice

Option	Example	Pros	Cons
1. Status quo (no extraordinary powers available)	Current CDEM Act	<ul style="list-style-type: none"> <li>Recovery is seen as business-as-usual</li> </ul>	<ul style="list-style-type: none"> <li>Perverse incentives to extend state of emergency longer in order to utilise the powers it provides</li> <li>Reliance on informal relationships</li> </ul>
2. Seven days	State of emergency under the CDEM Act	<ul style="list-style-type: none"> <li>Very short time would provide frequent checks that the powers are still needed</li> <li>Very quick return to business-as-usual if not renewed</li> </ul>	<ul style="list-style-type: none"> <li>Unlikely to be sufficient time to complete many typical recovery activities (e.g. building demolition)</li> <li>Administrative burden of frequent renewal processes</li> </ul>
3. 28 days	Drinking-water emergency under the Health Act 1956	<ul style="list-style-type: none"> <li>Likely to be able to complete some activities arising from a moderate emergency, with a good check point to reassess need</li> <li>Similar to a drinking-water emergency, which provides similar powers</li> <li>Moderate burden for renewals where needed for a longer period</li> </ul>	<ul style="list-style-type: none"> <li>Unlikely to be sufficient time to complete recovery activities arising from a major/national emergency</li> <li>Much longer than the default maximum duration of a state of emergency, so might be publicly perceived as too long before a formal reassessment of necessity</li> </ul>
4. Three months	Quarantine declaration under the Epidemic Preparedness Act 2006	<ul style="list-style-type: none"> <li>Likely to be able to complete most activities arising from a moderate emergency, and many after a major emergency, with a good check point to reassess need</li> <li>Lower administrative burden for renewals where powers needed for a longer period</li> </ul>	<ul style="list-style-type: none"> <li>Significantly longer than the default maximum duration of a state of emergency, with similar powers, so might be publicly perceived as too long before a formal reassessment of necessity</li> </ul>
5. Dual options (28 days for local transition notice + 90 days for national transition notice) (preferred option)	None	<ul style="list-style-type: none"> <li>Most flexible</li> <li>Most likely to be able to complete most activities arising from a moderate or major emergency, with appropriate checks</li> <li>Least administrative burden for renewals where powers still needed</li> </ul>	<ul style="list-style-type: none"> <li>90 days is significantly longer than the default maximum duration of a state of emergency, with similar powers, so might be publicly perceived as too long before a formal reassessment is made of the necessity to have the transition notice in effect</li> </ul>

Option	Example	Pros	Cons
6. No default maximum (indefinite)	None	<ul style="list-style-type: none"> <li>• Would allow complete flexibility to circumstances arising</li> </ul>	<ul style="list-style-type: none"> <li>• No formal check point to reassess necessity might mean inappropriate duration of powers, beyond point reasonably necessary</li> <li>• Likely to be publicly unacceptable, given the extent powers over movement and property</li> <li>• Inconsistent with similar laws in NZ and overseas</li> </ul>