

24 March 2023

Hon David Parker, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Severe Weather Emergency Recovery Bill**

### **Purpose**

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1. We have considered whether the Severe Weather Emergency Recovery Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 25370/4.6). We have prepared it in an extremely short timeframe due to the compressed timeframes for the Bill. We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.

### **The Bill**

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3. The Bill is intended to enable the next phase of recovery following the heavy rain events in the upper North Island and Cyclones Hale and Gabrielle in January and February 2023. It follows the Severe Weather Emergency Legislation Act 2023, which directly amended several Acts to allow for recovery activity.
4. The principal purpose of the Bill is to assist communities and local authorities affected by severe weather events to respond to, and recover from, the impacts of those events and, in particular, to:
  - a. provide for planning, rebuilding, and recovery of affected communities and persons, including rebuilding of land, infrastructure, and other property; and
  - b. provide for economic recovery.
5. The Bill also has the purpose of:
  - a. ensuring that governmental activity can continue to be undertaken following the severe weather events;
  - b. supporting the operation of other legislation or enabling it to be relaxed or operate more flexibly to take account of the severe weather events; and
  - c. amending other Acts to facilitate recovery from the severe weather events. This includes amendments to local government legislation and the Resource Management Act 1991.
6. The Bill can apply to geographical areas indirectly affected by the severe weather events in some circumstances. This includes where land or infrastructure is required to support an area affected by one or more of these events.

## Order in Council mechanism

7. The Bill enables the Governor-General to make Orders in Council, on the recommendation of the relevant Minister, to grant exemptions from, modify, or extend provisions of certain legislation. This process, which is based on the Hurunui/Kaikōura Earthquakes Recovery Act 2016, aims to facilitate recovery without needing to anticipate every power or statutory provision that may need to be amended to achieve the Bill's purpose.
8. The enactments that can be amended by order are set out in Schedule 2 of the Bill, although there is provision to add enactments to this list. Orders can have retrospective effect as specified in the Bill.
9. It is unusual to delegate to the Executive the power to modify certain Acts of Parliament. The Bill provides for several safeguards around the order-making process, including the following:
  - a. The relevant Minister must be satisfied that:
    - i. the order is necessary or desirable for one or more purposes of the Act, and is not broader than reasonably necessary;
    - ii. the order does not grant an exemption from or modify a requirement or restriction imposed by the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Bill of Rights Act, the Judicial Review Procedure Act 2016, or the Parliamentary Privilege Act 2014; and
    - iii. the order does not limit or is a justified limit on the rights and freedoms in the Bill of Rights Act.
  - b. The relevant Minister must engage with appropriate persons or the public generally on a proposed order, except where the Minister is satisfied that engagement is impracticable in the circumstances or that urgency requires the order to be made without that engagement.
  - c. The draft order must be reviewed by the Severe Weather Events Recovery Review Panel (the Panel), which is appointed by the Minister and convened by a former or retired High Court Judge. The relevant Minister must have regard to the Panel's recommendations on the draft order.
  - d. A Minister cannot recommend the making of an order that allows other Acts to be amended unless satisfied that it is necessary or desirable for one or more purposes of the Act and complies with other specified restrictions, including that in paragraph 9 a. ii. above. The Minister must also provide a draft of any order specifying additional Acts to the leader of each political party represented in Parliament and be satisfied that there is unanimous, or near unanimous, support for the order from those leaders prior to recommending the making of the order.
  - e. Orders must be kept under review. If passed, the provisions of the Act allowing for the making of orders will be repealed on 31 March 2026 (some provisions will be repealed earlier), and orders will be revoked on 31 March 2028 (if not sooner) along with the rest of the Act.

## Conclusion

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10. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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