

Severe Weather Events Recovery Review Panel

3 July 2023

Hon Barbara Edmonds
Minister for Cyclone Recovery
Executive Wing
Parliament Buildings
WELLINGTON 6011

Hon David Parker
Minister for the Environment
Executive Wing
Parliament Buildings
WELLINGTON 6011

via email

Dear Minister

SEVERE WEATHER EMERGENCY RECOVERY (WASTE MINIMISATION) AMENDMENT ORDER 2023

On 3 July 2023 the Severe Weather Events Recovery Review Panel (the Review Panel) considered the above draft Order.

As required under section 16 of the Severe Weather Emergency Recovery Legislation Act 2023, please find attached the Review Panel's report on this draft Order, including our recommendations and brief comments.

The Panel could clearly see the problem of the unexpected nature of the waste to be disposed of and of its volume and the potential for the cost of that to deter proper disposal and for the usual systems of waste facility operators to be overwhelmed for some time.

However, the Panel was not able to reach an unqualified opinion that the draft Order was necessary or desirable based on the information provided. The potential benefits of the proposal were not clearly articulated against the possible risk of undermining the purpose of the primary legislation (the Waste Minimisation Act 2008) and the uncertainty of how the proposed measures would be implemented.

Further comments on the proposed draft Order are attached.

Yours sincerely



The Honourable Denis Clifford

Convenor, Severe Weather Events Recovery Review Panel

Severe Weather Events Recovery Review Panel

THE REVIEW PANEL

The Honourable Denis Clifford (Convenor)

Anne Carter

Natalie Coates

Dr Charlotte Severne

Rachel Devine

Horiana Irwin-Easthope

REPORT AND RECOMMENDATION OF THE REVIEW PANEL
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SEVERE WEATHER EMERGENCY RECOVERY (WASTE MINIMISATION) AMENDMENT ORDER 2023

1. We have been provided with a draft of the Severe Weather Emergency (Waste Minimisation) Order 2023 (the draft Order) for review under section 16 of the Severe Weather Emergency Recovery Legislation Act 2023 (the Act). We provide our recommendations on the draft Order as required by section 16(2) of the Act, based on the following understanding of our remit.
2. The task of the Severe Weather Events Recovery Review Panel (the Panel) is reviewing and making recommendations on the draft Order to assist the relevant Minister to meet the section 8(1) criteria of being satisfied an Order is:
 - a. necessary and desirable for one or more purposes of the Act;
 - b. no broader than reasonably necessary;
 - c. consistent with section 11 (no effect on custody/ detention; no exemption/modification on constitutional legislative entitlements, including the New Zealand Bill Of Rights Act); and
 - d. not an unjustified limit on NZBORA rights and freedoms;
 by supplementing the range of information and advice available to the Minister.
3. Paragraphs seven and 14 of the Terms of Reference for the Panel expand on this to provide that:
 - a. the Panel has been appointed to provide expert, technical advice and scrutiny of the draft Orders in Council; and
 - b. the Panel's recommendations may also address:
 - i. whether the draft Order in Council is sufficiently certain and clear, and if they are not, options to improve;

- ii. the identification of any unintended or unforeseen but likely outcomes of the draft Order in Council, and ways to address these; and
 - iii. any other matters the Panel considers relevant to the scope of its review of the draft Order in Council.
4. The criteria for the appointment of Panel members found in section 13(3) of the Act reflect the matters on which we consider we are to focus.
 5. Within that context the Panel's focus is the necessity and desirability of an Order as required in section 8(1)(a)(i) of the Act.
 6. We have based our review on our collective assessment of the materials provided to us and on our individual experience and expertise. Officials from the Ministry for the Environment attended a session with the Panel to discuss the proposal. Other than as stated in this report, we have not undertaken any further enquiries.

Reasons Recommendations and Brief Comments

7. The draft Order proposes to make temporary changes to the Waste Minimisation Act 2008 (WMA) and relevant regulations to:
 - a. exempt waste created by the severe weather events from the waste disposal levy;
 - b. create a 'wash-up' provision to provide for reconciliation of disposal data and levy obligations;
 - c. give discretion to the Secretary for the Environment to waive or extend levy payment and reporting deadlines; and
 - d. give discretion to the Secretary for the Environment to distribute waste levy allocations to territorial authorities that have not met planning obligations due to the severe weather events.
8. Our understanding is that this proposal stems from two distinct concerns. First, that the continuing to impose the levy on waste arising from the Weather Events creates a perverse incentive against responsible waste disposal, as people will choose not to dispose of waste responsibly in disposal facilities due to the levy. Secondly, an unspecified number of waste disposal facility operators may find it difficult to meet their reporting obligations as a result of the Weather Events and the volume of waste generated and yet to come (which has not been quantified in any way).
9. We understand the effect of the Order is to exempt operators of waste disposal facilities from paying the levy (who will pass that saving on to the users of the waste disposal facility), providing them with more time to report about waste and recover their costs before paying the levy to the government and for the government to have more flexibility in responding to requests for administrative leniency in associated paperwork.
10. To assist in reviewing the draft Order, officials provided the following materials:
 - a. a coversheet summarising the proposals;
 - b. the draft Severe Weather Emergency (local government) Order 2023;
 - c. the draft Statement of Reasons;

- d. a Cabinet paper titled Proposed Orders in Council under the Severe Weather Emergency Recovery Legislation Act 2023 – Tranche 2: Waste Minimisation Act;
 - e. the consultation documents; and
 - f. a table summarising the feedback received during consultation activities.
11. The Panel could clearly see the problem of the unexpected nature of the waste to be disposed of and of its volume and the potential for the cost of that to deter proper disposal and for the usual systems of waste facility operators to be overwhelmed for some time.
 12. However, the Panel was not able to reach an unqualified opinion the draft Order was necessary or desirable based on the information provided.
 13. The potential benefits of the proposal were not clearly articulated against the possible risk of undermining the purpose of the primary legislation (the Waste Minimisation Act 2008).
 14. For example, the perceived risk of bad behaviour by citizens due to the maintenance of the levy was not quantified relative to other costs imposed by waste facility operators. Information about the need for funds to invest in waste management infrastructure planned before the Weather Events or in response to the Weather Events relative to the revenue foregone through removing the levy was not provided.
 15. The scale, nature and duration of administrative problems faced by waste facility operators was not clearly identified. This raised uncertainty about the need for altered practices over time and how the proposed measures would be implemented to respond to that problem.
 16. The Panel are also concerned that removal of reporting requirements and subsequent lack of waste management data will lead to unintended consequences in the medium to long-term, including removing the ability to inform waste management measures during later recovery stages.
 17. For example, it was unclear how these proposals and their duration were consistent with international best practice. Systems to manage waste following a natural hazard emergency have been developed by many countries and international agencies, such as the UN Environment Programme and UN Office for the Coordination of Humanitarian Affairs. Accessing those systems and learnings will help ensure that timely data is collected for good decision-making at each stage of the recovery process and legislative responses can be tailored to those phases.
 18. The Panel raised concerns with Ministry for the Environment officials that consultation with iwi, hapū, and Māori was insufficient, particularly when regarding whenua Māori entities that have been significantly impacted on by Cyclone Gabrielle. Officials advised that they completed the necessary “statutory consultation”, i.e, the consultation over a minimum period of three days as required under section 9 of the Act. However, officials also advised that they did not engage specifically on the WMA draft Order due to the limited time available to undertake pre-engagement and the administrative nature of the proposals.

19. The panel would encourage the inclusion of Whenua Māori entities as part of future consultation processes e.g. Tairāwhiti Whenua who represent over 60 Māori landowning entities in Tairāwhiti.

A handwritten signature in blue ink, reading "Denis Clifford", with a horizontal line underneath.

The Honourable Denis Clifford

Date: 3 July 2023

Convenor, Severe Weather Events Recovery Review Panel