

Regulatory Impact Statement: Severe Weather Emergency Recovery Bill

Coversheet

Purpose of Document	
Decision sought:	<i>Cabinet agreement to the introduction of legislation to provide an Order in Council mechanism to support efficient and effective recovery in the areas affected by the recent severe weather events</i>
Advising agencies:	<i>The Department of the Prime Minister and Cabinet</i>
Proposing Ministers:	<i>Minister for Cyclone Recovery and Minister for Emergency Management</i>
Date finalised:	<i>21 March 2023</i>
Problem Definition	
<p>The recent severe weather events in the North Island have caused widespread damage to land, waterways, infrastructure and roading. The existing legislative framework constrains the timely and efficient recovery from these events.</p>	
Executive Summary	
<p>The recent severe weather events in the North Island, including Cyclones Hale and Gabrielle and the Auckland floods, have caused widespread damage to land, waterways, infrastructure, businesses and homes. The extent of the damage is on a comparable scale to that caused by the Canterbury and Hurunui/Kaikōura earthquakes.</p> <p>We are now moving away from the response phase and into a long period of recovery. The recovery needs will be broad and complex, and the damage caused to date may be further exacerbated by future weather events. The recovery has two main objectives. First, to bring back normality to those affected as quickly as possible so individuals can get on with their lives and their operations. The second is to restore and enhance the infrastructure on which communities and the economy depends.</p> <p>One of the ways of enabling the above is to look at the existing regulatory settings. There is a need to ensure that the recovery can proceed as efficiently and effectively as possible and is not unnecessarily constrained by the existing regulatory environment. The status quo regulatory environment has been designed for non-emergency times. Some laws that work well during “normal” times are not fit for purpose for emergency situations and the associated recovery phase.</p> <p>For these reasons, it is proposed that a mechanism is created to enable the regulatory environment to be modified, where necessary, for a limited time to support an efficient and effective recovery. Similar steps were taken following the Canterbury and Hurunui/Kaikōura earthquakes and it is proposed that this model is followed again as part of the response to the recent severe weather events.</p>	

Based on the analysis presented in this Regulatory Impact Statement, the preferred option is to enact legislation enabling legislation to be modified, where necessary to support recovery, by Order in Council.

Given the constitutional considerations and impact of such a proposal, the use of this mechanism will be constrained by appropriate limitations and safeguards. These include the establishment of a Review Panel that will provide advice to the relevant Minister on proposed orders; a requirement on Ministers to engage with affected communities or persons (including affected Māori interests); a specified list of enactments that may be modified; and a requirement that orders be made for the purpose of the Act, which is to respond to and recover from specified recent severe weather events.

Orders made under the Act and the Act itself will be kept under review. The Act will be time limited and is currently proposed to self-repeal after three years, if not repealed sooner. Orders will be automatically revoked after five years, if not revoked sooner.

Limitations and Constraints on Analysis

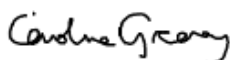
The RIS has been prepared under significant time constraints to ensure requisite powers are available to facilitate recovery in an expedient manner.

The options considered within this RIS have largely drawn on experience of developing appropriate regulatory frameworks to address previous events (i.e. the Christchurch and Hurunui/Kaikoura earthquakes).

The recommended option is to create a mechanism for modifying legislation via Orders in Council so the existing regulatory framework can be temporarily modified to enable an efficient and effective recovery from the recent severe weather events and provide regulatory relief to those most severely affected. This RIS is focussed on the proposed Order in Council mechanism with the risks and mitigations within the implementation of the preferred option discussed in more detail.

DPMC continues to work with relevant agencies, the Legislation Design and Advisory Committee and the Treaty Provisions Oversight Group to ensure that the proposal in this RIS provides for an appropriate balance of power between the Executive, Parliament and the Courts, and has appropriate safeguards in place.

Responsible Manager(s) (completed by relevant manager)



Caroline Greaney
Chief Advisor, Cyclone Recovery Legislation
Department of the Prime Minister and Cabinet

22 March 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	The Regulatory Impact Statement was assessed by an independent panel which included panellists from the RIA Team in the Treasury, the Department of the Prime Minister and Cabinet, and the Ministry of Justice.
Panel Assessment & Comment:	The independent inter-agency RIS QA panel has reviewed the RIS and has concluded that the RIS partially meets the quality criteria. In reaching this view, the panel is mindful that the RIS has been written under significant time constraints, given the context, and there has been limited opportunity for consultation. The panel considers that the RIS provides reasonable evidence that the scale of damage justifies bespoke legislation and makes good use of relevant experience and readily accessible information in reaching a preferred option.

Section 1: Diagnosing the policy problem

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

Recent severe weather events have caused significant damage

1. Three severe weather events have occurred in 2023, with Cyclone Hale impacting parts of the North Island between 8 January and 12 January, heavy rainfall resulting in wide scale flooding in the Northland, Auckland, Waikato and Bay of Plenty regions between 26 January and 3 February, and the most significant event, Cyclone Gabrielle, crossing the North Island between 12 February and 16 February. These events resulted in a number of local state of emergencies being declared, and a national state of emergency being declared on 14 February 2023.
2. In addition to the damage to residential and commercial property and infrastructure due to the earlier events, Cyclone Gabrielle is expected to have caused the most weather-related damage and disruption to businesses and the primary sector since Cyclone Bola in 1988. There have also been significant impacts on transport networks across the country, particularly in Tairāwhiti, Hawke's Bay, Northland, Tararua, Bay of Plenty, the Coromandel, and parts of Auckland. A number of these areas were also affected by the severe weather events that occurred in the Upper North Island in late January 2023.
3. The cyclones and floods that hit the North Island in the first quarter of 2023 are likely to have widespread and long-lasting impact on regional infrastructure and economies. During Cyclone Gabrielle, 11 people were killed, 10,000 were displaced, 315 houses were 'red stickered', and 10 state highways and 19 local roads were closed or partially closed for repairs.
4. The regions worst hit by Cyclone Gabrielle (Northland, Bay of Plenty, Tairāwhiti, and Hawke's Bay) account for 12 percent of New Zealand's GDP, 67 percent of New Zealand's apples, 86 percent of kiwifruit, 88 percent of avocados, and 98 percent of squash. In addition, they account for 26 percent of beef and 17 percent of sheep. Most Auckland schools were closed for two days.
5. During the Auckland floods, four people were left dead, 277 homes received red stickers, while State Highway One between the Harbour Bridge and Brynderwyn was damaged at several locations from slips and flooding. State Highway 16 was closed because of flooding between Kumeu and Wellsford.
6. While there have also been significant flooding events in the South Island (for example, in the Buller and Marlborough districts) in recent months, these have been able to be managed under a combination of normal legislative processes and Civil Defence Emergency Management Act powers during a local transition period.
7. While the full impact of these events is still being assessed, it is clear that the extent of damage, and the scope of the recovery required, is significant.

Recovery needs are likely to be complex

8. The affected areas are moving away from the initial emergency and response phase into the recovery phase, where the impact of the severe weather events and the community needs are broader and more complex. The scale and extent of the recovery effort required is not fully known at this stage. It is possible that further weather events may exacerbate the damage that has occurred due to the severe weather events to date within 2023.

9. Recovery efforts are also complex because measures may be needed in areas that are not directly affected by the severe weather events but there are flow on impacts outside of the affected area. For example, a re-routed road may have impacts where it connects to the neighbouring local authority or state highway.

An appropriate and adequate regulatory framework is required

10. New Zealand's existing statutory requirements and powers are too constraining or not adequate to deal with the recovery in a timely, efficient and effective manner. A drawn-out recovery has adverse impacts on the wellbeing of people and communities, particularly children and young people, and can impact on the viability of businesses and their staff. An efficient and effective recovery will enable communities to rebuild (e.g. repairing damaged infrastructure) and support their local economies to be revived (e.g. through businesses being operating normally) as quickly as possible. For instance:
 - a. **there is no relief from legislative obligations after an emergency:** New Zealand does not have legislation that can relax legislative requirements in the aftermath of an emergency (for example, to provide relief from tax deadlines). This may result in perverse outcomes whereby individuals, groups and business need to redirect their resources and focus from recovery efforts to instead focus on accessing relevant files from flood damages properties in order to meet the usual deadlines. A need to continue to comply with meeting administrative requirements could be perceived as unfair or unduly harsh in the aftermath of the emergency.
 - b. **there is no flexibility to adapt legislation to changed requirements:** New Zealand does not have legislation that allows for a greater degree of flexibility, within appropriate boundaries, in the aftermath of an emergency. There is a need to speed up standard legislative processes and cut through impediments to recovery where appropriate. Checks and balances will need to be implemented to ensure that any modification to legislative processes are appropriate and consistent with the needs of the communities involved in the recovery.
 - c. **there is no means to address the volume of changes required:** New Zealand does not have legislation that caters to the sheer volume of decisions likely to be required or a mechanism that allow for speedy and timely decisions.
11. In terms of (b), where legislation does not allow for truncated processes it can have significant impacts on affected communities. For example, the difference between a roading project taking six months or 18 months may be the difference between whether a community is impacted in the way it carries out its daily activities and can maintain its population and their businesses, or whether it impedes everyday activities, and the population and economies decline.
12. Truncated recovery can also help reduce mitigate against other issues such as rebuilding on damaged land, if measures like opening up new land are used. Truncated recovery is important so communities themselves can plan ahead and make decisions about their recovery.
13. The severe weather has had a significant impact on a number of individuals and businesses in the affected areas. Given this, in a number of instances, it will be very hard, if not impossible, for businesses and individuals to meet legislative obligations at this time. People can become overwhelmed by the extent of matters they have to deal with following an emergency. During this time, it can be difficult for people to remember, and manage, some business as usual regulatory tasks where it is safe or appropriate to allow an extension of timeframes or modifications of regulatory requirements. It would be

unreasonable to expect individuals and businesses to meet obligations given the impact the weather has had on their lives and operations.

14. Without change, the status quo would likely develop into significant impacts for affected communities, such as population loss, community decline and business closures. For individuals and businesses who struggle to meet existing regulatory requirements, it is likely to result in increased stress and anxiety due to the uncertainty associated with not being able to meet legal obligations. When people and businesses start receiving insurance payouts and are making decisions about their future, having truncated recovery processes in place can help communities retain their people and businesses, compared to if there is a perception that the recovery is not progressing as quickly as it could be due to the status quo regulatory environment.

What is the policy problem or opportunity?

Regulatory framework needs to be in place as soon as possible

15. The scale of the impacts of the severe weather events requires temporary recalibration of the usual regulatory and planning environment to allow the pace of the recovery to gain momentum. The status quo regulatory framework has not been designed to deal with the early stages of the recovery phase from a major emergency. It has been designed in the context of being appropriate for “non-emergency” times. Without temporary modification however, this is likely to have negative consequences on the recovery phase, including the negative impacts on individuals and businesses outlined above.
16. While these changes are necessary, it is important to note that the constitutional impact of what is proposed is significant and therefore these changes must be time-limited. While there may be justification for a more enduring framework enabling temporary modifications following emergencies of this scale, that is not within the scope of this RIS.
17. Temporary modifications to legislative provisions need to be drafted, enacted and brought into force as soon as possible, rather than in the weeks or months that would be required to pass an Act of Parliament. Modifications to powers and duties are needed to speed up standard processes, cut through impediments to recovery and enable timely decision-making given the sheer volume of decisions that would need to be made by a range of decision-makers (e.g. relevant Ministers, local authorities etc.). A regulatory framework for recovery also needs to be flexible enough to deal speedily with changing circumstances should further weather events exacerbate the damage that has occurred to date.
18. A timely and flexible mechanism (with mandatory constraints) is required to change a limited range of enactments to enable the next phase of recovery of the affected areas. These changes will relieve those most affected of unnecessary burdens and give confidence that an enabling framework is in place to maximise recovery opportunities and efficiencies.
19. The wide-ranging impacts of the severe weather events and the possibility of further weather events exacerbating known, and yet to be known, damage from the severe weather events require an enabling regulatory framework as soon as possible, to positively influence the pace and trajectory of the recovery.
20. Agencies have undertaken an initial assessment and, to date, have identified approximately 35 instances within the existing framework where regulatory change is desirable to support an efficient and timely response to the severe weather events.
21. The majority of the modifications identified to date provide relief from existing statutory obligations (for example, extending timeframes for meeting a particular obligation).

Agencies have also indicated that the majority of these modifications need to be made within the next two months to provide effective relief. It is likely that the number of proposals will continue to develop as a greater understanding of the impacts of the severe weather events, and how best to address them, becomes clearer.

What objectives are sought in relation to the policy problem?

22. The impetus for the proposed legislation is to assist affected areas, councils and communities to recover from the severe weather events. The objectives are to:

- a. support economic recovery, planning processes, rebuild and recovery of land, infrastructure, people, and built and natural environments;
- b. enable safety enhancements and improved resilience of infrastructure;
- c. ensure that an adequate and appropriate regulatory framework is in place as soon as possible, to expedite the pace and trajectory of the recovery, increase resilience and avoid placing undue burdens on those most directly affected; and
- d. give people and communities affected by the severe weather events confidence that an enabling regulatory framework is in place to maximise recovery opportunities.

Section 2: Deciding upon an option to address the policy problem

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

23. The following criteria will be used to evaluate options against the status quo:

- a. Timeliness - the degree to which each option enables recovery activities in the immediate to short-term
- b. Adaptability - the degree to which each option is adaptable as the pace and nature of the recovery evolves, including the ability to adapt to any further events that exacerbate existing damage
- c. Efficiency - the degree to which each option is able to be implemented without unduly drawing on parliamentary resources or impacting the governments legislative programme.
- d. Supports confidence - the degree to which each option provides public confidence that the most appropriate and adequate regulatory framework is in place.
- e. Safeguards - the degree to which each option provides checks and balances to be undertaken to determine the appropriateness of the proposed modifications to primary legislation or proposed implementation of secondary legislation.

24. In considering each option there are trade-offs to be considered between criterion A, B, and C with criterion E whereby the checks and balances proposed within each option also allow for a timely, adaptable, and efficient recovery. Consideration will be given as to how each option will enable this balance. Achieving this balance will strengthen the option against criterion D.

25. In line with the objectives outlined above criterion A, B, and E are weighted more highly when considering each option as they address the key tension between enabling a nimble recovery while ensuring legislative modifications are appropriate to the circumstances.

What scope will options be considered within?

Lessons learnt from past events have informed proposals

26. The options considered to support a timely and efficient recovery from the severe weather events have largely drawn on the experience of developing appropriate regulatory frameworks to address previous emergency events (i.e. the Christchurch and Hurunui/Kaikōura earthquakes). Where possible, within the timeframes available, these past frameworks have been expanded or improved upon to ensure lessons learnt from past frameworks are incorporated where appropriate in the current context.

27. International research shows that truncated processes are commonly used. The Lincoln Institute for Land Policy¹ in its evaluation of six country recovery including New Zealand

¹ [Johnson, L. A., & Olshansky, R. B. \(2017\). After Great Disasters: An In-Depth Analysis of How Six Countries Managed Community Recovery. Columbia University Press.](#)

found: 'Stated simply, the post-disaster environment consists of a compressions of urban development activities in time and in a limited space'Other researchers describe the time compression as one of the characteristics of post-recovery, but it is the predominant characteristic and is, therefore, the key to understanding recovery.....The world of post-disaster recovery becomes a different world, where the community does not function as it does in normal times or in normal places.

28. In developing the proposals consideration has also been given to the recommendations of the Regulations Review Committee who, in December 2016, completed an inquiry into Parliament's legislative response to future national emergencies² following the Christchurch earthquakes. For instance, the proposals include an option for bespoke legislation tailored to the needs of this emergency, that any legislation that would enable the modification of primary legislation through second legislation include a positive list of Acts that can be modified (this recommendation was also picked up in the development of the legislation to support the recovery from the Hurunui/Kaikoura earthquake).

Consultation was limited due to timeframes available

29. In the time available, the Department of the Prime Minister and Cabinet has not been able to undertake substantive consultation on the content of the proposed Bill itself, although it has had discussions with a number of relevant government agencies, the Legislation Design and Advisory Committee (LDAC) and the Treaty Provisions Oversight Group (TPOG).
30. Feedback from LDAC has been focussed primarily on the safeguards to be included in the proposed legislation, while TPOG has provided valuable assistance in designing legislation that reflects and incorporates the principles of Te Tiriti o Waitangi. As referenced above, government agencies have been asked to identify enactments that would be appropriate to be the subject of a future order in council.
31. Officials met with the technicians that support the National Iwi Chairs Forum to discuss the proposals. The discussion with the NICF acknowledged actions taken by Māori, iwi and hapū to provide social supports into affected communities quickly, and the importance of the Māori community-led response. In relation to the Bill, the feedback centred on the swift pace at which the proposed legislation would be progressed and how it fits with the wider approach to recovery.

What options are being considered?

32. The issues identified to be addressed arise from existing legislative settings. As such, there are no non-regulatory options available to wholly or partly achieve the objectives set out above. An analysis of the regulatory options is set out below.

Option 1: Status quo (no legislative changes at all)

33. The status quo option is not supported as the standard timeframes and processes are insufficient to deal with the scale of the damage caused by the severe weather events. There are a number of existing statutory obligations that businesses and individuals will not be reasonably be able to meet due to damage caused by the severe weather. For example, completing land information memorandums, review of Local Government bylaws, sale and supply of alcohol licensing, local government annual reporting will require more

² https://www.parliament.nz/resource/en-NZ/51DBSCH_SCR71932_1/4c3e70120c8c2d0189705b2f2b1e0575ed1746fa

flexibility while resourcing is limited due to redeployment to the immediate response; as will range of processes that provide assurance that building work is code compliant. Maintaining the status quo will not provide for appropriate relief from these obligations.

34. In addition, maintaining the status quo would place significant time pressures on those undertaking recovery works and those in need of recovery support. These factors are likely to result in a slow, complex and contentious recovery process, reduced public confidence and diversion of resources from the recovery.

Option 2: Direct amendment of statutes by Parliament

35. Under this option, amending legislation would be developed by each relevant Minister on a case-by-case basis, approved by Cabinet and then presented to the House of Representatives either as individual amendment bills or as an omnibus bill.
36. This option is not supported. Given the number of modifications identified likely to be required to support an efficient and effective recovery (likely more than 10), passing these all via primary legislation through Parliament would take a significant amount of time and would likely mean the modifications would not be in place in time to be effective. Further, this option would take up a significant amount of Parliament's time, impacting on other government legislative priorities.
37. It would be possible to progress each Bill under urgency or extended sitting hours, but this would reduce some of the usual safeguards provided by the legislative process, such as extensive public consultation or parliamentary consideration as would be provided for through select committee under normal timeframes, without any countervailing benefit. However, this option would allow for the usual BORA vetting of primary legislation to take place, that would not be required under option 3. This option would also allow for additional opportunities to review legislation and clarifying any ambiguities or concerns as they arise through each stage of the parliamentary process.
38. Further, until each Bill had made its way through the House, those affected by the severe weather would still be subject to the standard legislative regime which would increase the burden placed upon them to comply while resources are reallocated to more immediate recovery or response measures.

Option 3: Provide an order in council mechanism to modify legislation (*preferred option*)

39. Under this option an order in council mechanism would be established to allow modification of enactments (including plans and bylaws), for a limited period of time to assist communities in the areas of the North Island affected by extreme weather events and relevant local government organisations and central government to respond to, and recover from, the impacts of severe weather events. This option would see that all orders made under the legislation will be automatically revoked on 31 March 2028 (if not revoked sooner) and that the Act itself will self-repeal on 31 March 2026 (if not repealed sooner).
40. No new orders could be made after the end of the third year, but orders made could be in place for up to five years. These time period have been determined to be the most appropriate as it is not envisioned that new Orders in Council will need to be made beyond the first three years. However, it is anticipated that due to the scale and types of damage caused by the severe weather events it is likely that some Orders in Council will need to endure for up to five years. Importantly, orders will be kept under review to ensure that they are not in place for longer than is necessary.

41. This mechanism was successfully used to respond to the Canterbury earthquakes (under the now revoked Canterbury Earthquake Response and Recovery Act 2010 and the Canterbury Earthquake Recovery Act 2011) and Hurunui/Kaikōura earthquakes (under the now revoked Hurunui/Kaikōura Earthquake Recovery Act 2016) for a range of recovery activities.
42. The order in council mechanism is the most efficient and appropriate means of resolving both immediate and future problems for which the scope is currently unclear. This is because the nature of the order in council mechanism is such that it will be able to address a range of issues affecting the likely pace and trajectory of the recovery. It will allow the immediate exercise of powers to resolve some recovery problems, while also enabling powers to be held in reserve and used when future issues emerge.
43. The proposed option may be controversial as the delegation infringes established principles of the rule of law. Measures can be put in place that will partially, but not fully, mitigate these concerns and these are discussed below.

Retrospectivity

44. It would be possible for orders in council to apply from the date each order is made. This option is not supported as it would not provide for recovery activities, done in good faith, from the beginning of the severe weather.
45. Therefore, the preferred option is to allow orders in council to have retrospective effect to the date of the first severe weather event (Cyclone Hale, 8 January 2023), where necessary. This may be contentious, as generally legislation should operate prospectively not retrospectively. There will be circumstances, however, where actions will have been taken to respond to or recover from the severe weather, and it is appropriate that those actions are protected, even if retrospectively, given that the policy objective is to lift burdens from affected communities, subject to applicable general law. It is anticipated that advice on the need for retrospectivity for each proposed order would be provided to the Minister at the point the making of an order is considered.

Checks and Balances

46. The delegation of Parliament's legislative power via an order in council mechanism is a significant option. As such, procedures for bringing these powers into effect need to be scrutinised, and the controls and safeguards need to be attached to their exercise. The primary check is the requirement that the powers can only be exercised for the specified purposes of the legislation. The secondary check is that the effect of the orders in council would be limited to areas affected by the severe weather. In addition, the following checks and balances are proposed for inclusions to limit the use of this mechanism.

Sunset clause

47. It is proposed that the legislation and any order made pursuant to it will apply for a fixed period. As noted above this will mean that the parts of the Act that enable new order to be made will expire after three years, if not revoked or repealed sooner, and orders will be revoked after five years. This is in line with the timeframes of the now expired Canterbury Earthquake Recovery Act 2011.
48. These time period have been determined to be the most appropriate as it is not envisioned that new Orders in Council will need to be made beyond the end of the third year. However, it is anticipated that due to the scale and types of damage caused by the severe weather events it is likely that some Orders in Council will need to endure for up to five years.

Importantly, orders will be kept under review to ensure that they are not in place for longer than is necessary.

Review Panel

49. The Canterbury Earthquake and Hurunui/Kaikōura Review Panels performed an important function in advising Ministers on proposed orders in council under the Canterbury and Hurunui/Kaikōura legislation. It is proposed that a similar Panel be established to examine proposed orders and provide advice to Ministers before the order is made. The relevant Minister would be required to take the Panel's report into consideration, ensure the Panel's recommendations are publicly available and present a copy of the Panel's recommendations to the House of Representatives.
50. It is proposed that in appointing members of the Review Panel, the Minister for Cyclone Recovery must ensure that collectively members have knowledge, experience and expertise in:
 - a. law (including if possible, the Māori land tenure system under Te Ture Whenua Maori Act 1993), public administration, or local government;
 - b. environmental protection, biodiversity, or climate change; and
 - c. local and/or regional Māori or local community groups in the severe weather events affected areas;
 - d. emergency response and recovery;
51. The Review Panel must also include members with knowledge of local perspectives in the severe weather events affected areas of mana whenua, mātauranga Māori, tikanga, and te ao Māori.
52. Due to the proposed size of the Review Panel it is likely that its membership will be made up with individuals who have expertise and knowledge in a number of the above areas. This will allow the Review Panel to be responsive and act in division where appropriate.
53. The Review Panel will be convened by a former High Court Judge. Someone with this level of experience has been determined to be appropriate as they will have experience in dealing with, and providing free and frank comment on, complex issues.
54. In addition, officials have approached population-based agencies such as Whaikaha seeking potential nominations for the panel to represent their particular population groups.

Engagement

55. Both the international and previous domestic experience with responding to disasters has highlighted the importance of engagement with local community throughout the recovery process. As such, it is proposed there be a requirement that the relevant Minister engages with individuals and groups they consider appropriate given the proposed effect of the order. Those engaged with would then have at least three working days to provide comments.
56. Requiring engagement with persons the Minister considers appropriate and requiring the Minister to take into consideration their comments, provides a greater degree of transparency, provides for participatory rights and is a check on the Executive. This is aligned with the requirements within the Hurunui/Kaikōura legislation which built on the lessons learnt during the Canterbury recovery, where there was no such mandatory consultation. We anticipate the development of regional ways of working, bringing together

agencies, local organisations, Māori and communities, and that these groups will be an avenue for engagement on proposed orders.

Regulations Review Committee

57. In the interest of minimising unnecessary public concern or controversy regarding the limitations on the right to seek redress from the Courts, it is proposed that draft orders are provided to the Regulations Review Committee (or to leaders of all the political parties if the House is adjourned). This will enable cross party engagement on all draft orders before Ministerial recommendations are made.
58. The Regulations Review Committee would continue to have its usual jurisdiction to examining all final orders and investigate complaints about those orders. The disallowance mechanism set out in the Legislation Act 2012 would apply to all orders. This means that the House of Representatives, via the Regulations Review Committee's supervisory function, can monitor the exercise of the order in council power and ensure that it is being exercised within the limits Parliament intended. Moreover, any persons aggrieved at the operation of an order in council, can complain to the Regulations Review Committee, which can then carry out a technical scrutiny on behalf of the House. The Committee can then recommend that the House disallow any order made.

Other controls

59. The Bill proposes a positive list of Acts an order can modify, and also a list of excluded Acts (for example, the New Zealand Bill of Rights Act 1990 and the Electoral Act 1993). While this list will contain many similarities to the one included in the Hurunui/Kaikōura Earthquakes Recovery Act 2016 the proposed list of Acts an order can modify will be updated within the Bill to reflect the particular needs of the recovery.
60. There are still significant unknowns with regards to the recovery. While care has been taken to identify a list of Acts that may require modification, circumstances may change. To address this issue, the Bill proposes mechanisms to allow new Acts to be added, subject to positive resolution in the House.
61. In the interest of increasing transparency and openness of decision-making it is proposed that reasons for Ministerial recommendations be made publicly available. This includes the Minister needing to publish reasons as to why a draft order is appropriate and required. Doing so recognises public interest in the exercise of the power and allows greater public confidence in the decisions being made.
62. The proposed checks and balances are aligned with the requirements within the Hurunui/Kaikōura legislation, which itself built on the lessons learnt during the Canterbury recovery. The engagement with iwi/Māori has been further strengthened by drawing upon the lessons learnt during the COVID-19 pandemic response regarding how better to support this engagement. This is particularly important in the context of the areas affected given the wide range of iwi, hapu Māori landowners, Māori community and Treaty settlement entity interests impacted.

How do the options compare to the status quo?

	Option 1 – Status Quo	Option 2 – Direct amendment of statutes by Parliament	Option 3 - Provide an order in council mechanism to modify legislation
Timeliness	0	+ (This option would allow legislative amendments to support recovery to be implemented in the medium-term)	++ (This option would allow legislative modifications to support recovery to be implemented in the immediate term)
Adaptability	0	0 (This option would not be responsive to changing priorities within the recovery and would require further legislative amendments to be considered individually)	++ (This option would be responsive to changing priorities within the recovery and allow legislative modifications to be made where required)
Efficiency	0	-- (This option would burden the parliamentary workload and would require the Government’s legislative programme to be adapted to accommodate each piece of recovery legislation, potentially delaying other government priorities)	- (This option would require a short-term adaptation of the Government’s legislative programme in order to enact the Bill)
Supports Confidence	0	+ (While legislative changes to support recovery would be able to be signalled, it would not provide public confidence that that the most appropriate and adequate regulatory framework is in place)	++ (This option would provide public confidence that that the most appropriate and adequate regulatory framework is in place to support recovery)
Safeguards	0	-- (Effectiveness of normal checks and balances would be reduced due to legislative amendments needing to be passed in expedited manner, e.g. significantly reducing	- (While this option would not provide the same level of parliamentary scrutiny as the full parliamentary process would allow it does enable appropriate

		select committee, limited opportunity for public submissions)	checks and balances to be implemented)
Overall assessment	0	-/--	++

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

63. To facilitate response and recovery in affected areas, the preferred option is to enact legislation to provide an order in council mechanism to modify legislation, with appropriate controls to temper this power.

What are the marginal costs and benefits of the option?

64. Due to the nature of the proposals detailed above it is not usefully possible to complete the table below.

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups			
Regulators			
Others (eg, wider govt, consumers, etc.)			
Total monetised costs			
Non-monetised costs		<i>(High, medium or low)</i>	
Additional benefits of the preferred option compared to taking no action			
Regulated groups			
Regulators			
Others (eg, wider govt, consumers, etc.)			
Total monetised benefits			
Non-monetised benefits		<i>(High, medium or low)</i>	

Section 3: Delivering an option

How will the new arrangements be implemented?

66. The preferred option requires the creation of an Act of Parliament, which is proposed to be enacted through the Severe Weather Emergency Recovery Bill 2023. The Bill is planned to be introduced, passed and implemented as soon as possible.
67. As outlined above, a review panel will be established to support oversight of the Order in Council process whereby the panel will review any proposed Order in Council. This panel will then provide a report to the relevant Minister(s) regarding the appropriateness of the use of secondary legislation to support recovery activities. The Minister(s) must then have regard to this advice before making any recommendation to the Governor-General regarding enacting an Order in Council.
68. An important aspect of implementation will be ensuring all panel members, particularly the Chair, are well briefed on the expectations of the Panel and its obligations under the proposed legislation.

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

69. All proposed orders in council will be subject to the oversight and safeguards outlined above to ensure they are only made where necessary to support an efficient recovery. It is likely that the making of orders will be centrally co-ordinated by DPMC to ensure consistency across the order making process.
70. It is proposed that all orders in council under this legislation would expire after five years and the Act itself will also self-repeal after three years, unless revoked or repealed sooner.
71. The Minister for Cyclone Recovery will be required to report to Parliament, at least every six months, on the operation of the Act, including a list of the Orders made under the Act during the period with a description of each order.
72. The Minister will also be required to keep orders under review. This will be supported by the regulatory stewardship role of departments which includes monitoring how the law is working in practise and providing advice to the relevant Minister. This includes advice on whether there is an ongoing need for any Orders in Council made, or whether they need to be revoked at an earlier date.