

CIVIL DEFENCE EMERGENCY MANAGEMENT AMENDMENT BILL

SUBMISSION TO THE GOVERNMENT ADMINISTRATION COMMITTEE
23 MARCH 2016

EXECUTIVE SUMMARY

We fully support the intention of this Bill. The proposal recognises there is a need to retain some of the powers of regulator beyond a state of emergency, to protect public safety in some form of transition period between response and recovery.

It is our view that the proposals need amendment in the following areas:

1. Transition Period

We recommend the Minister also be required to consider the capacity, ability and likelihood of the local authority to manage the initial stages of recovery in a timely manner. We suggest clause 94A 3(c) and 94B 6(c) be amended to include “whether the necessary actions will occur in a timely manner without a transition period.”

2. Entry on premises and places

We recommend section 94L be amended to include a provision to allow for structural inspections as in section 92 of the Civil Defence and Emergency Management (CDEM) Act. We believe that inspections will be a necessary step in determining if the powers of 94H a(iii) are to be exercised.

3. Placarding of buildings

Placarding of buildings and/or land is not covered in the Bill and we assume guidance will be given or this will be covered by the planning clauses.

We believe that the following may need more consideration:

4. Compensation

We suggest more guidance may be required in terms of consequences and benefits.

We are pleased to see the following:

5. Transition period

Having the ability to invoke inspection powers (as our suggested amendment) without a state of emergency declaration is a big improvement. The recent Wellington earthquake events are an excellent example of where these powers could have been used.

6. Protection from liability

This is an important requirement to ensure that personnel are not discouraged from agreeing to act under the authority of the recovery manager.

SUBMISSION

GENERAL COMMENTS

We fully support the intention of this Bill. The proposal recognises that there is a need to retain some of the powers of regulator beyond a state of emergency to protect public safety in some form of transition period between response and recovery.

At times such as this, structural engineers have important ongoing tasks in assessing buildings and advising local authorities and building owners.

We are pleased to see that under clause 38, the section 110 of the Civil Defence Emergency Management Act 2002 (CDEM Act) provisions apply both during the declared event and the transition period.

SPECIFIC COMMENTS

CLAUSES 8 AND 17 – RECOVERY MANAGERS

We fully support the establishment of the new roles of national, group and local recovery managers. During the transition period, a fully informed person at the appropriate level needs to be able to have a range of powers to address the particular issues that arise in the recovery phase.

CLAUSE 28 TRANSITION PERIODS – NEW PART 5A

We also support the introduction of formal transition periods both at the national and local level, as it is important to have a defined period when they can exercise particular powers needed during the recovery phase. The two levels (national and local) are also supported as they enable the scale of the emergency to be recognised.

We support the concept of the Minister or person appointed under section 25A being able to declare a transition period after a national or local declared event. We also support the Minister being able to declare or approve the declaration of a national or local transition period should an event not be declared. The requirement for the declaration of a transition period to be in the public's best interest is supported and we have suggested that the Minister should be required to consider if the actions are able to occur without intervention in the decision making process.

We fully support this broad definition of a trigger. As set out in our submission to the Ministry of Business, Innovation and Employment (MBIE) in relation to Building Emergency Management proposals, we recommended that life safety be the over-riding objective. We also explained that a transition period is required to provide the time to undertake time-consuming building inspections where there is evidence of damage and where the event is of sufficient magnitude that public safety cannot be automatically guaranteed.

CLAUSE 28 TRANSITION PERIODS – NEW PART 5A – DURATION AND EXTENSION

We note that a national transition period is 90 days and a local transition period is 28 days, and extensions period for both are the same – i.e. 90 days and 28 days respectively. Transition periods may be extended more than once.

As we explained in our submission to MBIE, in Christchurch four years after the state of emergency ended there are still a number of damaged buildings where

access is restricted. The Christchurch experience shows that strengthening existing buildings, undertaking assessments, resolving insurance compensation, and carrying out detailed structural design and construction can be very time consuming.

The demolition process can similarly be very lengthy involving making safe, developing a deconstruction methodology, procuring a contractor and carrying out the demolition.

Therefore 90 day or 28 day reassessments are not practical and we suggest the Minister could have the discretionary power to use longer transition periods – say up to 12 months at a time before a review of the transition period is undertaken. We also consider that any decision about restriction of access or making a building safe remains in place on that building until the issue identified has been addressed. This effectively means that an order on a building could remain indefinitely until demolition has occurred.

CLAUSE 28 TRANSITION PERIODS – NEW PART 5B - POWERS

Strengthening

In the new section 94H, the powers of a Recovery Manager in relation to transition periods include carrying out or requiring to be carried out the:

(iii) removing or disposing of, or securing or otherwise making safe, dangerous structures and materials wherever they may be;

The powers also include being able to direct the evacuation of any premises, exclusion of people (94K), and powers of entry (94L).

Therefore the powers of the Recovery Manager are limited to “making safe”. We assume for buildings that have had their seismic capacity reduced (and had previously not been earthquake-prone), that the powers to require strengthening are those in the Building (Earthquake-prone Buildings) Amendment Act 2016. The powers in this Act include the ability for Territorial Authorities to identify potentially earthquake-prone buildings, to require building owners to undertake assessments, issue notices, and set deadlines that depend in the use, and the seismicity of the area. The mandated strengthening time-frames can be very long – up to 35 years in low risk areas.

Therefore there may be a situation where a building is “made safe”, it meets the definition of being earthquake-prone, and yet it doesn’t need to be strengthened for 35 years.

As indicated to MBIE, section 121 of the Building Act 2004 relating to dangerous buildings specifically excludes earthquakes as the cause of the risk, and hence does not address this situation.

We believe there needs to be an arrangement where a damaged building that has been made safe can be required to be strengthened.

The mechanism we propose is that section 121 “meaning of a dangerous building” of the Building Act be amended so that a building that has undergone any event that has resulted in sudden ‘structural change’ that has reduced its capacity can be classed as dangerous if its new capacity would make it earthquake prone.

SECTION 38 – SECTION 110 AMENDED (PROTECTION FROM LIABILITY)

We fully support the inclusion of the transition period under the Protection of Liability provisions (section 110) of the Act. Ensuring that engineers, who assist with the assessment of buildings, are protected from liability for loss or damage caused by their work (with the exception of any act or omission to act that constitutes bad faith or gross negligence) is critical. Such an extension to the liability protection provisions will ensure the voluntary commitment of New Zealand's professional engineering community during and after civil emergencies.

Assessing and Placarding Buildings

We note the various powers under section 94H during the transition period include directing evacuation, and restricting entry. However powers to undertake assessments and to place placards are not included. This is in contrast to the powers under section 92 of the CDEM Act. We suggest that the powers of section 92 will be required during the transition phase in determining if the powers of section 94H a(iii) are to be exercised. Further, we suggest the inspections required are unlikely to be able to be carried out for a large event during the declaration period and will be a large component of the transition phase of recovery.

Placarding of buildings and/or land is not covered in the Bill and we assume guidance will be given or this will be covered by the planning clauses.

The transition period needs to include these powers to allow sufficient time to provide resources to properly understand and investigate any issues that the event has induced so as the risks can be assessed and buildings can be inspected and placarded.

CONCLUSION

We appreciate the opportunity to make this submission. We wish to appear before the Committee to speak to our submission.

For further information please contact:

Paul Campbell, SESOC President

Graham Dilks, General Manager-
Engineering Leadership, IPENZ

Email Paul.Campbell@opus.co.nz

graham.dilks@ipenz.org.nz

Phone 027 221 2990

04 495 1645

ABOUT SESOC

SESOC is a collaborating technical society of IPENZ, with a membership of approximately 1600 people, most of whom are practising structural engineers. Many of our members have participated in the review of buildings after recent earthquakes, some as volunteers in the immediate safety evaluation phase, many more since in the detailed evaluations during the recovery phase. SESOC is non-political and its aim is to contribute to society and the economy by fostering good engineering practice in our built environment.

ABOUT IPENZ

The Institution of Professional Engineers New Zealand (IPENZ) is the lead national professional body representing the engineering profession in New Zealand. It has approximately 16,500 Members, including a cross-section from engineering students, to practising engineers, to senior Members in positions of responsibility in business. IPENZ is non-aligned and seeks to contribute to the community in matters of national interest giving a learned view on important issues, independent of any commercial interest.