



# Orders in Council under the severe weather emergency legislation

The Severe Weather Emergency Recovery Legislation Act 2023 (the Act) came into force on 13 April 2023 ([Severe Weather Emergency Legislation Act 2023 No 4, Public Act Contents – New Zealand Legislation](#)).

As well as making urgent changes to statutes to facilitate recovery in the areas affected by recent weather events, the Act enabled the Governor-General to make Orders in Council to modify other statutes to provide those affected by the severe weather with relief from legislative requirements that are overly burdensome. Modifications are also permitted where necessary to enable prompt action for an efficient and timely recovery.

## Why is this needed?

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.

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.

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. For example:

- there is no relief from legislative obligations after an emergency, which 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 damaged properties in order to meet the usual deadlines;
- there is no flexibility to adapt legislation to changed requirements; and
- there is no means to address the volume of changes required to allow for speedy and timely decisions.

For these reasons, the Government found it desirable to establish a mechanism 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 this model is being followed again as part of the response to the recent severe weather events.

## What can Orders in Council be used for?

The objectives of the Order in Council process are to:

- support economic recovery, planning processes, rebuild and recovery of land, infrastructure, people, and built and natural environments;
- enable safety enhancements and improved resilience of infrastructure;
- 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
- give people and communities affected by the severe weather events confidence that an enabling regulatory framework is in place to maximise recovery opportunities.

To achieve those purposes, while also ensuring the Orders in Council go no further than absolutely necessary, section 7 of the Act sets out the parameters for the scope of any proposal as follows.

a) *It must grant exemptions from, modify, or extend permitted legislation.*

Schedule 2 of the Act lists the statutes that may be amended through this process. If a statute is not listed, it can be added through the same Order in Council Process. There are currently no plans to add additional statutes to Schedule 2.

b) *It must be connected to a severe weather event and regarding an affected area*

Orders in Council must be in connection with a specified severe weather event, and must also be limited to a severe weather events affected area.

### Specified severe weather events are:

- Cyclone Hale, which crossed the North Island during the period commencing on 8 January 2023 and ending on 12 January 2023.
- Heavy rainfall commencing on 26 January 2023 and ending on 3 February 2023 in the Northland, Auckland, Waikato, and Bay of Plenty regions.
- Cyclone Gabrielle, which crossed the North Island during the period commencing on 12 February 2023 and ending on 16 February 2023

### Severe weather event affected areas are:

- The districts or regions of the local authorities affected (whether directly or indirectly) by one or more severe weather events.
- The districts or regions of the local authorities where land, infrastructure, other property, resources, or services are required to support an area affected by one or more severe weather events.
- The parts of the coastal marine area (within the meaning of section 2(1) of the Resource Management Act 1991) that are part of, or adjacent to, those districts and regions.

c) *It must be necessary or desirable for the purpose of the Act*

Consideration must be given to whether there are any alternatives available (such as amending legislation by standard amendment bill process, or using discretion to choose not to apply a penalty), and if so, what the outcomes of using those alternatives would be.

If there are no alternatives, or they would have undesirable effects, then consideration must be given to whether the proposed amendment would be necessary or desirable for the purpose of the Act.

### The purpose of the Act

Section 3 tells us the purpose of the Act is to **assist communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events** and, in particular, to:

- Provide for the **planning, rebuilding, and recovery of affected communities and persons**, including:
  - the rebuilding of land, infrastructure, and other property of affected communities or of any affected persons;
  - the development, building, or rebuilding of land, infrastructure, or other property or access to resources or services in areas not affected by the severe weather events; safety enhancements to, and improvements to the resilience of, that land, infrastructure, or other property;
  - facilitating co-ordinated efforts and processes for short-term, medium-term, and long-term recovery;
  - facilitating the restoration and improvement of the economic, social, and cultural well-being, and enhancing the resilience, of affected communities or of any affected persons; and facilitating the restoration and resilience of the environment.
- Provide for **economic recovery**.

The Act also has the purpose of:

- ensuring that certain activities normally undertaken by people and agencies interacting with government agencies, Crown entities, and local authorities can continue to be undertaken after the severe weather events (whether in the same or a different way); and
- supporting the operation of other legislation or enabling it to be relaxed or operate more flexibly, to take account of:
  - the severe weather events; or
  - actions taken to respond to, or recover from, the severe weather events.

d) *It must be no broader than is reasonably necessary to address the need for the order*

The modification must go no further than is reasonably necessary to achieve its purpose/policy objective. In working out if this is the case, consideration should be given to the scope, time, geographical limits and the viability of alternatives.

## What is the Order in Council Process?

### *Who is responsible for proposing Orders in Council?*

The agencies responsible for the statutes listed in Schedule 2 will propose Orders in Council and take them through the Order in Council process. For example, amendments to the Local Government Act 2002 will be progressed by the Department of Internal Affairs. They are not being centrally managed by any one agency, though the Department of Prime Minister and Cabinet is providing guidance and support to agencies as they navigate the process.

There will be Orders in Council where multiple agencies have an interest, with multiple statutes needing to be amended to achieve the desired amendment. For example, complex amendments involving land, road/rail corridors, and resource management. For these complex Orders in Council agencies will work together with a nominated lead agency and lead Minister, to enable the policy development, approvals and consultation processes to take place in a joined-up way.

### *When will the Orders in Council be made?*

The Order in Council process is following a tranche approach, with scheduled tranches of Orders in Council progressing along set timelines. This is to manage the workload of high numbers of Orders in Council to be drafted and advised on, while ensuring proper processes are followed to inform quality decision-making.

There are five tranches currently planned. The table below provides a high-level timeline for the five tranches.

### **TIMELINE FOR TRANCHES 1-5 OF THE ORDER IN COUNCIL PROCESS**

<b>Milestone</b>	<b>Tranche One</b>	<b>Tranche Two</b>	<b>Tranche Three</b>	<b>Tranche Four</b>	<b>Tranche Five</b>
Cabinet approval of policy decisions	1 May	6 June	26 June	3 July	24 July
Ministerial public engagement on the draft policy	Tuesday 2 May - Friday 5 May minimum (but could extend to Friday 12 May if longer period needed)	Weds 7 June - Tuesday 13 June minimum (but could extend to Tuesday 20 June if longer period required)	Tuesday 27 June - Friday 30 June minimum (but could extend to Monday 10 July if needed)	Tuesday 4 July - Friday 7 July minimum (but could extend to Tuesday 18 July if needed)	Tuesday 25 July - Friday 28 July minimum (but could extend to Monday 7 August if needed)
Review Panel and Regulations Review Committee consideration of draft Order in Council	Thursday 18 May - Tuesday 23 May, plus Wednesday 24 May to incorporate feedback/changes	Thursday 29 June - Tuesday 4 July	Wednesday 19 July - Friday 21 July	Thursday 27 July - Monday 31 July	Wednesday 16 August - Friday 18 August
Cabinet confirmation of Order in Council	Tuesday 6 June	Monday 24 July	Monday 7 August	Monday 28 August	Monday 4 September
Submission of the Order to the Executive Council	Tuesday 6 June	Monday 24 July	Monday 7 August	Monday 28 August	Monday 4 September
<b>Enactment</b>	<b>Wednesday 7 June</b>	<b>Tuesday 25 July</b>	<b>Tuesday 8 August</b>	<b>Tuesday 29 August</b>	<b>Tuesday 5 September</b>

The first tranche of Orders in Council is well underway, with Cabinet having considered the policy decisions for three different Orders in Council on Monday 1 May. Public consultation on

the first tranche will take place between 2 and 12 May, and is being undertaken by the Department of Internal Affairs, Land Information New Zealand, and the Ministry for Primary Industries. More information is available from agency websites.

### **What orders are being proposed?**

The Orders in Council proposed under tranche one will amend statutory timeframes that councils or landowners in affected areas are unable to meet, and ensure that those subject to provisions under the Climate Change Response Act 2002 are not adversely affected due to the weather events.

Officials at agencies are currently undertaking initial policy work for the second tranche of Orders in Council, which will be considered on 31 May. Announcements will be made by the responsible agencies as to the content of those tranches and the process for consultation after 31 May.

Government agencies will be reaching out directly to councils, iwi/Māori and stakeholders in the coming weeks to discuss potential changes to be made to statutes through the Order in Council process to address needs or barriers identified on the ground and ensure they are included in future tranches.

### **How can I feed into the process?**

The Order in Council process provides three key opportunities for input:

- The policy development stage – Information from you can help us determine what Orders may be required.
- The Review Panel stage – The Convenor of the Severe Weather Events Review Panel may invite additional ad hoc subject matter experts to attend meetings to assist with their analysis of draft Orders in Council. These invitees could be anyone whose qualifications or experience would be of assistance to the Panel.
- The ministerial public consultation phase - Through the Minister's public consultation on the policy objectives for each Order in Council, where targeted consultation with subject matter experts may also be undertaken.

Agencies will be reaching out via their existing communication channels to identified stakeholders to feed into these stages.

#### *What if there are other existing agreements or requirements for consultation?*

The Severe Weather Emergency Recovery Legislation Act does not alter any existing consultation requirements in other legislation, such as that in Treaty of Waitangi Settlement Acts. Agencies are developing engagement plans for their proposed Orders in Council and ensuring that such obligations are accounted for in those plans.

Where the consultation requirements of other legislation are not amended and they are not able to be satisfied within the timelines of the scheduled tranches, an Order in Council may begin the process in one tranche and be concluded in a later tranche once their consultation is complete.

### **Where can I see the Orders in Council that have been made?**

All Orders in Council will be published on the legislation website (<https://legislation.govt.nz>). There is currently a box on the top right-hand side of the homepage dedicated to highlighting new severe weather legislation, and new Orders in Council will be added to this box when they are made.