Addendum to Regulatory Impact Statement: Strengthening New Zealand's emergency management legislation

Decision sought	*Further policy approvals for the Emergency Management Bill (No 2)*
Agency responsible	*National Emergency Management Agency (NEMA)*
Proposing Ministers	*Minister for Emergency Management and Recovery*
Date finalised	*18 March 2026*

Background / Context

- This is an addendum to the *Regulatory Impact Statement*: *Strengthening New Zealand's emergency management legislation*[1] (RIS), which was finalised on 15 July 2025. This addendum does not repeat the content of the RIS and should be read alongside it.
- The RIS supported Cabinet's agreement to policies to be implemented via the Emergency Management Bill (No 2) (the Bill), which will replace the Civil Defence Emergency Management Act 2002 (CDEM Act).
- The Bill is currently before the Governance and Administration Committee. This addendum provides analysis on issues and options which have arisen during the select committee process.

Summary: Problem definition and options

What is the policy problem?

Protection from civil liability for actions taken to respond to an undeclared or impending emergency

The Bill provides protection from liability in civil proceedings for persons performing or exercising functions, duties, or powers under the Bill, directly or indirectly in relation to a state of emergency or transition period.

Under the status quo, there is no protection from civil liability for persons performing or exercising functions, duties, or powers under the Bill who take precautionary or preventative actions to lessen the impact of:

- an emergency (as defined in the Bill) that has not yet been declared, and might not be declared because it can be managed without a declaration
- an impending emergency

There is anecdotal evidence that the lack of protection from civil liability for actions taken in the lead up to an emergency, and where an emergency is happening but has not been declared, creates a disincentive for precautionary or preventative measures that could lessen the impact of an emergency.

[1] https://www.regulation.govt.nz/assets/RIS-Documents/Regulatory-Impact-Statement-Strengthening-New-Zealands-emergency-management-legislation.pdf

What is the policy objective? The policy objectives of the Bill are to: • strengthen the role of community and iwi Māori in emergency management • provide for clear responsibilities and accountabilities at the national, regional and local levels • enable a higher minimum standard of emergency management • minimise disruption to essential services, and • ensure agencies have the right tools available when an emergency happens. These objectives are reflected in the criteria used for analysis in the RIS and this addendum.

What policy options have been considered, including any alternatives to regulation?
• Option One: The status quo.
• Option Two: Extend the protection from civil liability to persons performing or exercising functions, duties, or powers under the Bill, who take precautionary or preventative actions to lessen the impact of:
    ○ an emergency (as defined in the Bill) that has not yet been declared, and might not be declared because it can be managed without a declaration
    ○ an impending emergency.
• Two other options have not been considered:
    ○ extend the protection to members of the public responding to an emergency in good faith, without direction, whether or not a state of emergency or transition period has been declared. The Minister for Emergency Management and Recovery decided not to proceed with this option in August 2025 [DPMC report 2025/26-72]
    ○ a broad protection from liability for persons performing or exercising functions, duties, or powers under the Bill, not linked to a state of emergency or transition period.

What consultation has been undertaken? • The issues and options set out in this addendum have arisen through public submissions to the Governance and Administration Committee on the Bill. Due to select committee privilege, consultation on the issues and options has been constrained to central government departments, who are supportive of the preferred option.
Is the preferred option in the Cabinet paper the same as preferred option in the RIS? The Minister's preferred options in the Cabinet paper and NEMA's preferred options are the same.

I have read this addendum to the *Regulatory Impact Statement: Strengthening New Zealand's emergency management legislation* and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:	
Megan Beecroft	
Acting Deputy Chief Executive, Strategic Enablement	
National Emergency Management Agency	
18 March 2025	

Quality Assurance Statement	
Reviewing Agency: NEMA policy (staff who are not involved in the Bill)	**QA rating:** Partially meets
Panel Comment: **Partially meets the quality assurance criteria.** The Panel notes in relation to paragraph 22 the intention to do further work on terminology and thresholds regarding the proposal to apply civil liability protection to an 'impending emergency'. In particular, the Panel considers that further analysis and explanation is needed as to the intersect of an 'impending emergency' with an 'emergency' (as defined in the Bill). This includes if and how this relates to civil liability protections for local authorities and other persons who take actions in response to an incident/event in their own right under other legislation (for example the Local Government Act); rather than to an emergency (as defined by the Bill) as an entity or authorised person acting under functions and powers of the EM Bill. This is important to consider in the final analysis to provide legislative certainty and explain how the proposed extension of civil liability protections to a pre-emergency state impacts the current rights of impacted individuals for compensation for damages.	

Issue: Protection from civil liability for actions taken before an emergency is declared

What is the policy problem or opportunity?

The Bill provides protection from liability in civil proceedings for persons performing or exercising functions, duties, or powers under the Bill, directly or indirectly in relation to a state of emergency or transition period.
Actions taken by persons performing or exercising functions, duties, or powers under the Bill when an emergency (as defined in the Bill) has not been formally declared; or when a situation is developing into an emergency but has not reached the threshold of the definition in the Bill, are not protected under the status quo.
There is anecdotal evidence that this lack of protection creates a disincentive for precautionary or preventative actions that could lessen the impact of an emergency.

1. This issue relates to Objective 5: **ensure agencies have the right tools available when an emergency happens.**
2. Clause 202 of the Bill currently provides for protection from liability in civil proceedings for persons performing functions, duties, or powers under the Bill, directly or indirectly in relation to a state of emergency or transition period.
3. This means that actions taken performing functions duties of powers before a state of emergency is declared (or where one is never declared) do not receive protection from civil liability, even though the Bill gives Emergency Management Committees (EMCs), councils and the Director-General a role in responding to emergencies, regardless of whether a declaration happens.
4. There is anecdotal evidence from submissions on the Bill and in submissions on proposals in the discussion document that was developed for the Bill, that this provides a disincentive to take precautionary or preventative actions that might lessen the impact of the emergency or developing emergency. The submissions indicate that the Bill has not struck the right balance between providing protection from liability when damage is caused by reasonable, good faith actions, and preventing (or compensating for) harm caused by emergency management activity.
5. There is international research that recognises that liability risk, or legal ambiguity, can have a chilling effect on early emergency action and participation[2]. This effect is already acknowledged in the Bill in new measures to protect warning providers from liability for issuing or failing to issue warnings (clause 203 of the Bill), acknowledging that liability concerns can be a barrier to timely warnings.
6. The protections in the Bill are not aligned with approaches taken in the Resource Management Act 1991 (RMA), the Planning Bill, and the Natural Environment Bill, which

[2] Kewalramani D, Choron RL, Whitley D, Teichman A, Raina K, Singh G, Piplani C, Englert Z, Hanna J, Peck GL, Barie PS, Tewari P, Narayan M. Impact of the Good Samaritan Law on bystander intervention willingness and perceived legal risks in India. Impact of the Good Samaritan Law on bystander intervention willingness and perceived legal risks in India - PubMed
Hoffman S, Goodman RA, Stier DD. Law, Liability, and Public Health Emergencies. *Disaster Medicine and Public Health Preparedness*. 2009;3(2):117-125 Law, Liability, and Public Health Emergencies | Disaster Medicine and Public Health Preparedness | Cambridge Core

provide protection for certain parties to act prior to an event to minimise the adverse effects of a potential emergency. These systems already provide protections for precautionary actions that are taken outside of a declared state of emergency.

7. A secondary concern identified in submissions on the Bill is that the status quo provides an incentive to declare emergencies to activate the protections in the Bill. This should not be a driving factor in decision-making on declarations.

Stakeholder views

8. Several submissions from councils and Civil Defence Emergency Management (CDEM) Groups proposed extending the civil liability protections in clause 202 of the Bill. In general, they proposed expanding the protection to cover persons who undertake good faith precautionary or preventative actions to lessen the impact of an emergency as it is developing, and when it is happening but a declaration has not been made. Some submissions proposed more broad immunities, for persons performing or exercising any function, power or duty under the Bill, at any time.

9. The submissions argue that a limited expansion of the current protection to cover precautionary and preventative actions taken in the lead-up to an emergency and in responding to an emergency that that has not been declared, would make them less cautious to take actions that could reduce the potential impact of an emergency, and would remove the incentive to make an early declaration, primarily to activate the protection.

10. Some submissions from volunteer groups, civil contractors, engineers, professional advisers, famers, and iwi Māori argued that there should be civil liability protections (and mechanisms for the reimbursement of costs incurred) for members of the public who respond to emergencies in good faith to save lives or prevent damage to property without being directed to do so.

11. Some submitters recommended full immunity for any person performing or exercising functions, duties, or powers under the Bill at any time.

What options are being considered?

Criteria for evaluating options

12. In this Addendum, the criteria for evaluating options is the same as for the initial Regulatory Impact Statement, as follows:
    a. **Effectiveness:** how well the option meets the policy objectives
    b. **Ease of implementation**: the ease/difficulty of implementation by the actors in the system, and the time required for implantation
    c. **Affordability:** estimated fiscal, administrative, and compliance costs, and whether costs are appropriately distributed across the system
    d. **Te Tiriti o Waitangi:** the extent to which options support the Crown meeting its Treaty obligations

13. The **effectiveness** criterion is weighted double – the discharged Bill was found to be insufficient in addressing issues identified in the Government inquiry into the North Island

Severe Weather events (NISWE Inquiry). It is a priority to ensure that options meet the overall objectives of the reform.

Option One – Status Quo

14. Clause 202 of the Bill carries over the protection from civil liability (immunity from being sued for damages) set out in section 110 of the CDEM Act. The protection under clause 202 covers actions or omissions that are:
    - done or not done in the performance or exercise of functions, duties or powers under the Bill;
    - directly or indirectly in relation to a state of emergency or transition period.
15. The inclusion of the phrase "directly or indirectly in relation to a state of emergency or transition period" means that the protection covers actions taken during a state of emergency or transition period, where loss or damage manifests during or after the state of emergency or transition period has expired or been terminated. It does not cover damage caused by actions taken before a declaration.
16. The protection from liability in clause 202 of the Bill is available to:
    - the Crown
    - Emergency Management Committees (EMCs)
    - employees and officers of the Crown and EMCs
    - any other person with functions, duties or powers under the Bill
    - any person acting under direction of one of the above.
17. Clause 204 of the Bill excludes from protection, actions or omissions that constitute bad faith or gross negligence.

Assessment against criteria

18. The status quo does not, to the extent that it could, support the objective of "ensuring that agencies have the right tools available when an emergency happens", because it provides a disincentive to act when liability protection is not available. This includes situations where a declaration is imminent but has not been made; situations where an emergency (as defined in the Bill) can be managed without a declaration even though there may still be a significant threat to life and property; and situations where an emergency is impending but has not yet happened.

Summary

19. The status quo has limits, in terms of **effectiveness** – incentivising behaviour that will lessen the impact of emergencies before they occur is a key theme in the various inquiries and reviews into events that have prompted the development of the Bill. Anecdotal evidence that current settings provide a disincentive to take reasonable precautionary actions, indicates that the Bill has not struck the right balance between protection from liability and prevention from harm caused by emergency management activity.
20. We have no comments on **implementation** as this Option is the status quo. Regarding **affordability** we note that, to date (to our knowledge), no claims have been made under the

compensation provisions in the CDEM Act, nor have any claims for civil damages in tort been made.

Option Two – Limited extension of protection from civil liability proceedings for actions taken to respond to an undeclared or impending emergency

21. Under this option, the protection from civil liability proceedings in the Bill would be extended to persons performing or exercising functions, duties, or powers under the Bill, who take action to lessen the impact of:

    - an emergency (as defined in the Bill) that has not yet been declared, and might not be declared because it can be managed without a declaration
    - an impending emergency.

22. The exact terminology and used to define the thresholds referred to above will be finalised in drafting, subject to the Minister for Emergency Management and Recovery agreeing final policy under his existing delegation. For general guidance, an impending emergency is considered for this policy to be one that is:

    - temporally close - the event is approaching in the near future
    - expected or likely - there is a real prospect it will occur (not just theoretical).

23. The proposed protection from liability would be available to the Crown and EMCs and their employees and officers, other persons with functions, duties or powers under the Bill, and persons directed by one of the above, as it is for the protection currently set out in the Bill.

Assessment against criteria

24. Option Two would reduce the disincentive for people with functions, duties and powers under the Bill to take preventative actions where an emergency has not been declared, or where an emergency is impending, by providing certainty around the scope of protection from liability for good faith actions taken to lessen the impact of an emergency.

25. Option Two is consistent with the approach in clause 203 of the Bill to extend the protection from civil liability of warning providers where damage is caused directly or indirectly from the issue of, or failure to issue a warning. The purpose of this new protection is to ensure that warning providers are able to make robust decisions to issue warnings without being concerned about potential liability if they make an error.

26. It would also align with the approaches taken in the RMA, the Planning Bill, and the Natural Environment Bill, which provide protection for certain parties to act prior to an event to minimise the adverse effects of an emergency. These systems already provide protections for precautionary actions that are taken outside of a declared state of emergency. Option Two is consistent with the Government's *Roadmap for Investment and Implementation*[3], which aims to "improve [New Zealand's] ability to prepare for, respond to, and recover from all types of emergencies"

27. Option Two would also reduce any incentive for pre-emptive declarations to be made to activate the liability protections in the Bill and would acknowledge the reality that some

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[3] *Strengthening-Emergency-Management-Roadmap-overview-A3-2025.pdf*

emergencies are managed without declaring states of emergency, despite there being a significant threat to life and property.

A corresponding change would be needed to the compensation provisions

28. There is a constitutional principle that compensation is a default expectation when the government interferes with a person's property rights (including the right to sue for damage to property). In the Bill, this principle is reflected in compensation provisions that provide for financial redress where the protection from liability provisions remove the right to redress through the courts (clauses 193 to 201).

29. Implementing Option Two would require a corresponding change to the drafting of the compensation provisions in the Bill (subject to Cabinet agreement), to confirm the right of individuals to limited compensation from the Crown, an EMC, or territorial authority for loss or damage to their personal property in the new circumstances covered by the proposal.

30. Currently, under the Bill, a person who suffers damage to their personal property from the actions of persons performing functions, duties, or powers under the Bill, is entitled to compensation up to $20,000, after insurance claims. There is no cap on compensation for damage to real property or livestock. For a person to be eligible for compensation for damage to their personal property, they need to demonstrate that the harm done to their property outweighs any benefit they may have received. This operates as a significant check on the scope of compensation payable.

Summary

31. Option Two would be more **effective** than Option One in incentivising behaviour that will lessen the impact of emergencies. It provides a better balance between incentives to take reasonable precautionary actions (which could produce significant benefits) and the risks of damage or loss those action may cause (which, on balance, are likely to produce comparatively smaller disbenefits).

32. As there have been no previous claims for compensation under the CDEM Act over its life of 24 years, it is a reasonable assumption that there will be few (if any) claims in the short to medium-term after the Bill is enacted. On balance, therefore, it is expected that the savings from preventative measures taken (improved life safety outcomes and reduced damage to public and private property) will exceed the costs of compensation for any consequential damage to individuals' private property as a result of the measures.

33. Option Two aligns the protections in the Bill more closely with new protections in the Bill for warning providers, and protections related to preventative actions available under the RMA and the proposed Planning Bill and Natural Environments Bill.

34. **Implementation** of Option Two would be relatively straightforward. Guidance to the sector on the scope of the extended protection may be necessary.

35. Regarding **affordability**, there are minimal fiscal, administrative, or compliance costs associated with the proposal. There will be costs associated with developing and publishing guidance on the application of the expanded protection from liability provisions.

Option not considered– Protection from civil liability for “spontaneous” volunteers (legislative)

36. Some submitters proposed a more extensive protection from civil liability proceedings for reasonable and proportionate actions taken to save lives or prevent damage to property, where the actions have not been directed by a person performing or exercising functions, duties or powers under the Bill.

37. These submitters include representatives of volunteer groups, civil contractors, engineers, professional advisers, farmers, veterinarians and iwi Māori. The submissions argue that these groups often take action in the early stages of an emergency, before they have been directed or had the opportunity to be, and prevent what would otherwise be serious loss or damage to life and/or property.

38. This option was one of the proposals consulted on through the discussion document on Bill proposals. The formal proposal was to provide protection from civil liability for persons who “caused loss or damage while undertaking reasonable and significant emergency management actions in good faith, in circumstances where they were unable to seek or be given direction by a Controller or constable”.

39. 9(2)(h) [redacted]

Option not considered - Broad protection from civil liability for good faith performance of functions, duties, and powers (legislative)

40. Under this Option there would be a broad protection from liability for any actions or omissions that were done or not done performing or exercising functions, duties or powers under the Bill, provided they were done in good faith and were not grossly negligent.

41. This Option would extend the general immunity to risk reduction activities, including hazard mitigation planning and discretionary funding decisions (on which hazards to focus resources). It would address current concerns about NEMA’s (and CDEM Groups’) legal exposure in the risk reduction space, highlighted as an issue following the Whakaari/WorkSafe case, which considered NEMA’s general public duty to undertake risk reduction.

42. A small number of submitters, largely entities that are lifeline utilities under the CDEM Act, and organisations representing professional advisers, proposed this broader protection from civil liability for performing their “peacetime” functions and duties.

43. We note that New Zealand’s approach to protection from civil liability (immunity for good faith actions or omissions tied to a state of emergency or transition period) is not aligned with comparable jurisdictions. In a number of Australian states, civil (and criminal) liability protections are not restricted to active emergencies and can apply to mitigation and risk reduction activities. In Canada and the United States there are strong nonliability protections for carrying out discretionary functions, including hazard mitigation planning and funding decisions.

44. In the New Zealand statute book, there is variability as well. For example, section 327 of the Maritime Transport Act 1994 offers similar, event-based immunity to that currently in the CDEM Act and the Bill in relation to oil spill responses. In contrast, section 163 of the Biosecurity Act 1993 offers a broad, good faith, reasonable cause, protection from criminal and civil liability to a wide range of persons for any act or omission in pursuance of any of the functions, powers, or duties conferred on that person by or under the Act, or a pest management plan or a pathway management plan.

45. The more recently drafted Water Services Act 2021 provides protection from civil and criminal liability for specified persons (compliance officers, chief executive, the Water Services Authority) for any act that the person does or omits to do in the performance or purported performance of the person's functions or duties or powers under the Act, in good faith, with reasonable cause.

46. Expansion of the civil liability protections in the Bill at this level would be a significant shift in government policy that would go well beyond the objective "ensure agencies have the right tools available when an emergency happens".

47. While we consider there is merit in reviewing our broader policy settings in the risk reduction area, we do not recommend progressing this work through the Select Committee process for the Bill. This is because:

    - the Government is conducting an inquiry into the fatal landslides that occurred in the Bay of Plenty on January 22. This will inevitably consider risk reduction measures taken (or not taken), and liability issues.
    - there is a complex mix of incentives to consider and balance. Extending protections at this level has potentially significant implications for Crown funding liability.

Te Tiriti o Waitangi impacts

48. Iwi Māori are swift to mobilise resources when an emergency is imminent or happening. This is most evident in the provision of welfare services at marae. When iwi Māori undertake actions that are under the direction, or at the request of, an entity or person with functions, duties or powers under the Act, the proposed expanded civil liability protection will apply. The proposal does not disadvantage iwi Māori or result in any inequitable outcomes.

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

49. As discussed above, and set out in the table comparing options below, Option Two is likely to best address the problem by providing the right protections and incentives to promote actions that will lessen the impact of emergencies.

How do the options compare to the status quo/counterfactual? (preferred option/s shaded green)

	#1 – Status Quo - Protection from civil liability when performing functions, duties or powers during a state of emergency or transition period	#2 – Expanded protection from civil liability for preventative and precautionary actions taken responding to an undeclared or impending emergency
Effectiveness (weighted x2)	0	++ (4) Potential for significant positive impacts if measures incentivise pre-declaration actions that save property and lives.
Ease of implementation	0	0 No specific implementation measures needed. Production of guidance could be warranted.
Affordability	0	0 Minor cost to develop guidance.
Overall assessment	0	4

Costs and benefits of preferred option

50. The benefits of Option Two are difficult to accurately quantify. This is because there have been no previous claims for civil damages in tort, or for compensation under the CDEM Act, to benchmark the proposal against.

51. The benefits of Option Two will accrue primarily to:

- the general public, from improved life safety and reduced damage to property – the 2024 value of statistical life (fatality) calculated by the Ministry of Transport, Waka Kotahi, is approximately $15 million, and the 2024 value of statistical life (serious injury) is $0.776 million.
- agencies and persons with functions, powers and duties under the Bill, and persons directed by them, that respond to emergencies at the local level, through clarified expectations and extended protection from litigation.

52. The proposal is expected to lessen the financial exposure of the Crown, EMCs, and territorial authorities to civil action in tort for negligence (the cost of defending the claims and payment of any judgements on the claims).

53. A disbenefit of Option Two is that expanding the range of actions that are protected from civil liability will, correspondingly, increase the Crown's exposure to compensation payments under the Bill (see paragraph 28 above)]. However, this impact is minimised by the cap on liability for compensation for damage to personal property at $20,000 (subject to a proposed inflation adjustment under a separate policy initiative) and the requirement that the person who suffers damage as a result of CDEM action must have received an overall disbenefit from the action that caused the damage.

54. As there have been no previous claims for compensation under the CDEM Act over its life of 24 years, it is a reasonable assumption that there will be few (if any) claims in the short to medium-term after the Bill is enacted. On balance, therefore, it is expected that the savings from preventative measures taken (improved life safety outcomes and reduced damage to public and private property) will exceed the costs of compensation for any consequential damage to individuals' private property as a result of the measures.

Table A: Summary of costs and benefits for the preferred option

Additional costs of the preferred option compared to taking no action		
Affected group	**Impact**	
	Initial costs (monetised over approx. 4 years)	Ongoing costs (non-monetised)
CDEM Groups (local authority members)	• Minimal if any costs	• Minimal if any costs
NEMA	• One week of staff time, including legal review, to develop guidance - $5,000 based on an FTE figure of $200,000 pa.	• Minimal if any costs
Central government agencies	• Minimal if any costs	• Minimal if any costs
	Non-monetised initial costs	Ongoing costs (non-monetised)
Iwi Māori	low • Minimal if any costs	low • Minimal if any costs
Communities (incl. rural and businesses)	low • Minimal if any costs	low • Minimal if any costs
Lifeline utilities (essential infrastructure providers)	low • Minimal if any costs	low • Minimal if any costs

Additional benefits of the preferred option compared to taking no action		
CDEM Groups (local authority members)	• Clarity of liability protections and expanded scope will promote preventative actions that will reduce the overall costs of emergencies in the long-term.	Medium
Central Government (NEMA and other central government agencies)	• Greater protection from liability for preventative actions and lower risk of litigation.	Medium
Iwi Māori	• Greater protection from liability when undertaking preventative actions under direction	Low
Communities (including Māori, rural and other communities, disproportionately affected communities, businesses and the general public)	• Greater protection from liability when undertaking preventative actions under direction	Low
Lifeline Utilities (essential infrastructure providers)	• Greater protection from liability when undertaking preventative actions under direction	Medium