Proposed Critical Infrastructure amendments to Civil Defence Emergency Management Act

The National Emergency Management Agency requests your organisation’s feedback on several proposed amendments to the Civil Defence Emergency Management Act 2002 in relation to Critical Infrastructure (Lifeline Utilities).

This document incorporates the nine proposed amendments as well as space for you to provide your organisation’s feedback on each proposal.

Background to these proposals

This targeted consultation is being undertaken as part of the National Emergency Management’s Regulatory Framework Review Programme (also known as the “Trifecta Programme”). The Programme brings together three projects that have significant alignment:

* amendments to the Civil Defence Emergency Management Act 2002 (the Act);
* review of the National Civil Defence Emergency Management Plan Order (the Plan) 2015 and the accompanying Guide to the National CDEM Plan (the Guide) 2015;
* development of the National Disaster Resilience Strategy (NDRS) Roadmap.

More information about the Programme is available at <https://www.civildefence.govt.nz/regulatory-framework-review-trifecta-programme/>

A Critical Infrastructure workstream and working group were established as part of the work on the Act amendments. The working group members include representatives from:

* The Department of the Prime Minister and Cabinet
* The Treasury
* New Zealand Lifelines Council
* National Emergency Management Agency
* Civil Defence Emergency Management Group
* Infrastructure Commission (advisory role only)

The proposed amendments in this document have been developed by the working group. The proposals reflect the discussions, research and engagement undertaken to date by the working group and wider sector in recent years. The working group also considered comparative legislation in other jurisdictions such as Australia, Canada, South Africa and EU countries.

Consultation

We are seeking your organisation’s feedback as part of a targeted stakeholder consultation.

Through this consultation we are seeking to:

* 1. Understand the potential impact of proposed changes on the sector entities and responsible agencies;
  2. Help identify any issues that have not been considered during the development of proposal;
  3. Help identify potential practical and financial implications of the proposed changes.

Your feedback will help inform the development of a Civil Defence Emergency Management Act Amendment Bill which, pending Ministerial and Cabinet decisions, would be introduced by the end of 2021.

Submitter details

We ask that you provide feedback as an organisation using a single copy of this form.

Please ensure you fill in the box below to indicate who the feedback form is from.

|  |  |
| --- | --- |
| Contact details | |
| Name (first and last) |  |
| Organisation |  |
| Position |  |
| Email address |  |
| Phone number |  |

Please complete this form and email it to [trifecta@nema.govt.nz](mailto:trifecta@nema.govt.nz) by **28 June 2021**. If your organisation has no comments to make, please return with ‘no comments’ in the body of the email.

If you would like to discuss the proposal in person (or virtually) with a member of the Programme team, please email us and we will endeavour to arrange a meeting.

## Terminology

The term ‘Lifeline Utilities’ needs updating to make it more current, accurately reflect the criticality of identified infrastructure and services, better aligned with other OCED countries, and fit for purpose.

Almost all the OECD countries, including Australia, have moved away from the term ‘Lifeline Utilities’. They consider ‘Critical Infrastructure’ to more accurately encompass the infrastructure and services that underpin the functioning of society and the economy, and that are integral to the prosperity of the nation.

**We propose that the terminology *‘Lifeline Utilities’* be replaced with *‘Critical Infrastructure’.***

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| Feedback on proposal 1: Terminology | |
| Do you support this proposal *(please select)* | |
| Yes | No |
| Please describe what, if any, impact this would have on your organisation: | |
| *Please type your comments here* | |
| Do you have any other feedback on this proposal? | |
| *Please type your comments here* | |

## Lead Agency

The role of Lead Agency can be found in the National CDEM Plan Order 2015 (s14) <https://www.legislation.govt.nz/regulation/public/2015/0140/latest/whole.html#DLM6486422>

NEMA’s Regulatory Framework Review Programme has a separate workstream focused on Lead Agency. This will look more broadly at confirming lead agency roles and responsibilities, including NEMA’s purpose, defining lead agency, risk coordinating agencies and unified control arrangements.

**The Lead Agency proposed for Critical Infrastructure sectors are:**

* *Transport (including air, land and maritime) – Ministry of Transport (MOT)*
* *Energy (including electricity, fuel & gas) – Ministry of Business Innovation and Employment (MBIE)*
* *Telecommunications (including mobile and broadband) – MBIE*
* *Water (including potable, waste and storm) – Department of Internal Affairs (DIA) – note this may change once the regulator and new entity are fully established*
* *Broadcasting – MBIE*

*Note: as outlined in item 3 below, the Schedule 1 will be reviewed as part of this program and Lead Agencies will be updated based on the sectors identified.*

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| Feedback on proposal 9: Lead Agency | |
| Do you support this proposal *(please select)* | |
| Yes | No |
| Please describe what, if any, impact this would have on your organisation: | |
| *Please type your comments here* | |
| Do you have any other feedback on this proposal? | |
| *Please type your comments here* | |

## Schedule 1

Currently, Lifeline Utilities are set out in Schedule 1 to the Civil Defence Emergency Management Act 2002. To add or remove an entity or entities from the Schedule requires an Order in Council. This type of legislative arrangement is no longer recommended due to its inflexibility and the considerable time and effort required to make updates.

**There are two options for designating an entity as a Critical Infrastructure entity:**

* ***Option one – Regulations:*** *The Bill provides for regulations relating to Critical Infrastructure entities, which could include creating a list of such entities. The Minister would make recommendations based on the application of specified criteria*
* ***Option two (preferred option)*** *– The Minister determines, by Gazette notice[[1]](#footnote-1), Critical Infrastructure entities. The Minster would be required to consult with NEMA and apply specified criteria (see item 4) including minimum consultation requirements.*

*Note: A review of the current Schedule 1 is still required to be completed by the middle of 2022. Schedule 1 will be carried forward for 6 to 12 months, while the new list is developed for conversion into either Regulations or a Gazette notice.*

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| Feedback on proposal 3: Schedule 1 | | |
| Which option do you support *(please select)* | | |
| Option one | Option two | Another option *(please describe below)* |
| If you selected ‘Another option’ please describe what your organisation would like to see | | |
| *Please type your comments here* | | |
| Please describe what, if any, impact your selected option would have on your organisation: | | |
| *Please type your comments here* | | |
| Do you have any other feedback on this proposal? | | |
| *Please type your comments here* | | |

## Definition

The definition of Lifeline Utilities needs updating to make it more current, accurately reflect the criticality of identified infrastructure and services, better aligned with other OCED countries, and fit for purpose.

The definition of ‘Critical Infrastructure’ should encompass services that are essential for everyday life and aligned with international best practice.

**We propose that ‘Critical Infrastructure’ be defined in the Civil Defence Emergency Management Act as:**

*Critical Infrastructure is essential and enabling assets, systems, services and supply chains. For the purposes of this Act, Critical Infrastructure entities are defined in the Critical Infrastructure notice issued under (Schedule 1 replaced as outlined in proposal 3).*

*Note: As outlined in proposal 3, the current Schedule 1 will be carried forward for another 6-12 months while being reviewed as part of the Programme - refer to item 2 above)*

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| Feedback on proposal 2: Definition | |
| Do you support this proposal *(please select)* | |
| Yes | No |
| Please describe what, if any, impact this would have on your organisation: | |
| *Please type your comments here* | |
| If you have another definition, what would it be? | |
| *Please type your comments here* | |
| Do you have any other feedback on this proposal? | |
| *Please type your comments here* | |

## Critical Infrastructure criteria

We want to create flexibility to assess and capture sectors and services that meet the definition of Critical Infrastructure and are aligned with other jurisdictions.

The criteria for Critical Infrastructure will support the Minister in deciding Critical Infrastructure entities and sectors for inclusion (or removal) in the list (see proposal 2). **We propose that the following criteria for Critical Infrastructure be included in the Civil Defence Emergency Management Act 2002:**

1. *Infrastructure qualifies for declaration as Critical Infrastructure, if*
   1. *The functioning of such infrastructure is essential for the economy, national security, public safety and the continuous provision of basic public and other infrastructure services, and*
   2. *The loss, damage, disruption or immobilisation of such infrastructure may severely prejudice:* 
      1. *The functioning or stability of the nation*
      2. *The public interest with regards to safety and the maintenance of law and order, and*
      3. *National security*
2. *In determining whether the qualifying requirements contemplated in the section above are met, one or more of the following criteria must be applied:*
3. *The infrastructure must be of significant economic, public, social and strategic importance;*
4. *The nation’s ability to function, deliver basic public services, or maintain law and order may be affected if a service rendered by the infrastructure is interrupted, or if the infrastructure is destroyed, disrupted, degraded or caused to fail;*
5. *Interruption of service rendered by the infrastructure, or the destruction, disruption, degradation, or failure of such infrastructure will have a significant effect on the environment, the health or safety of the public or any segment of the public, or any other infrastructure that may negatively affect the functions and functioning of the infrastructure in question;*
6. *The declaration as Critical Infrastructure is in pursuance of an obligation under any binding international law or international instrument, and*
7. *Any other criteria which may, from time to time, be determined by the Minister by notice in the Gazette, after consultation with NEMA*

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| Feedback on proposal 4: Critical Infrastructure criteria | |
| Do you support this proposal *(please select)* | |
| Yes | No |
| Please describe what, if any, impact this would have on your organisation: | |
| *Please type your comments here* | |
| Do you have any other feedback on this proposal? | |
| *Please type your comments here* | |

## Service levels during and after emergency

There are a number of gaps and inconsistencies with the obligations on Lifeline Utilities currently outlined in the Civil Defence Emergency Management Act 2002 and the National Civil Defence Emergency Management Plan Order 2015.

The current wording for primary obligations for Lifeline Utilities sectors is that they ‘be operational to the fullest possible extent, even if it is at a reduced level’. This is vague and not measurable. There are no mechanisms set out in the Act for sectors to establish minimum service levels or provide assurance of performance during and after an emergency event.

Clarifying and agreeing expectations about levels of service during and after emergencies is a critical element to achieving objective 16 of the national Disaster Resilience Strategy: *Address the capacity and adequacy of Critical Infrastructure systems, and upgrade them as practicable, according to risks identified.*

The ability of infrastructure systems to function during adverse conditions and quickly recover to acceptable levels of service after an event is fundamental to the wellbeing of communities.

Establishing minimum service levels would enable critical customers to better understand their vulnerabilities and interdependencies, build resilience and plan for response to and recovery from infrastructure failure.

**We propose the following requirements on Critical Infrastructure providers to maintain, minimum service level requirements for before, during and after emergencies:**

*All Critical Infrastructure must understand the range of hazards that could impact service delivery and interdependencies amongst the Critical Infrastructures and must publicly state planning minimum levels of service expected during and after emergencies based on the range of hazards and interdependencies identified in conjunction with the Critical Infrastructure lead and risk owning agency and relevant CDEM Groups.*

*The planning minimum levels of service expected during and after emergencies must be measurable and time bound and updated at 2-year intervals.*

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| Feedback on proposal 5: Service levels during and after emergency | |
| Do you support this proposal *(please select)* | |
| Yes | No |
| Please describe what, if any, impact this would have on your organisation: | |
| *Please type your comments here* | |
| Do you have any other feedback on this proposal? | |
| *Please type your comments here* | |

## Emergency response and recovery plans (Supporting Plans)

There are a number of gaps and inconsistencies with the obligations on Lifeline Utilities currently outlined in the Civil Defence Emergency Management Act 2002 and the National Civil Defence Emergency Management Plan Order 2015.

The Act allows for supporting plans for Lifeline Utilities but does not impose an obligation for Lifeline Utilities sectors to create sector-specific response plans that would enable effective and efficient response during major disruption to services. Currently the only supporting plan that exists is the National Fuel Plan.

Having sector-specific response plans in place will contribute to the success of objective 16 of the National Disaster Resilience Strategy: *Address the capacity and adequacy of Critical Infrastructure systems, and upgrade them as practicable, according to risks identified.*

**We propose the following requirements for the development of sector specific response and recovery plans:**

*Each Critical Infrastructure lead agency (or agencies) in collaboration with NEMA and the Critical Infrastructure sector must develop sector specific response and recovery plans (supporting plans section 9) for each sector as described in Schedule 1 outlining the roles and responsibilities for readiness, response and recovery, coordination and communications arrangements.*

*The response plans are to be updated at 2-year intervals.*

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| Feedback on proposal 6: Emergency response and recovery plans (Supporting Plans) | |
| Do you support this proposal *(please select)* | |
| Yes | No |
| Please describe what, if any, impact this would have on your organisation: | |
| *Please type your comments here* | |
| Do you have any other feedback on this proposal? | |
| *Please type your comments here* | |

## Reporting, monitoring and evaluation

There is currently no mechanism in the Civil Defence Emergency Management Act 2002 or the National Civil Defence Emergency Management Plan Order 2015 for Lifeline Utilities sectors to provide assurance of performance during and after an emergency event.

There is currently no provision for Lifeline Utilities to provide assurance that they are meeting the requirements set upon them in the Act and/or the Plan.

There is also no obligation for Lifeline Utilities sectors to proactively report on how well the various organisations/entities in a sector are meeting their obligations under the CDEM framework.

**We propose the following arrangements for reporting, monitoring and evaluation of Critical Infrastructure entities:**

*Critical Infrastructure entities must provide an annual statement to the lead agency demonstrating their ability to comply with the duties and responsibilities under the Civil Defence Emergency Management Act 2002 signed by the entity Chief Executive or equivalent authority.*

*Auditing: The lead agency to audit the entities to ensure information provided for accuracy and that the entity has the capability and capacity to meet duties and responsibilities under this Act. The lead agency may also audit the entities post an emergency if deemed necessary.*

*The lead agency must confirm respective sector’s ability to meet their requirement to NEMA annually and make relevant information available to NEMA on request.*

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| Feedback on proposal 7: Reporting, monitoring and evaluation | |
| Do you support this proposal *(please select)* | |
| Yes | No |
| Please describe what, if any, impact this would have on your organisation: | |
| *Please type your comments here* | |
| Do you have any other feedback on this proposal? | |
| *Please type your comments here* | |

## Information sharing requirements before, during and after emergencies

There is currently no requirement in the Civil Defence Emergency Management Act 2002 or the National Civil Defence Emergency Management Plan Order 2015 for Lifeline Utilities to proactively share information for situational awareness on a business as usual basis and immediately before, during and after emergencies.

**We propose the following requirements for information sharing for emergency management purposes:**

*Critical Infrastructure entities must proactively, and as requested share information with lead agencies, risk owning agencies, other Critical Infrastructure entities and/or NEMA for monitoring and planning.*

*Immediately before, during and after an event, Critical Infrastructure entities must proactively, and/or on request, share information to the lead agency for purposes related to situational awareness of the event, and its anticipated or actual consequences.*

*Any information provided by Critical Infrastructure entities for Emergency Management purposes will be protected in accordance with (relevant legislative requirements, e.g. Privacy Act 2020).*

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| Feedback on proposal 8: Information sharing requirements before, during and after emergencies | |
| Do you support this proposal *(please select)* | |
| Yes | No |
| Please describe what, if any, impact this would have on your organisation: | |
| *Please type your comments here* | |
| Do you have any other feedback on this proposal? | |
| *Please type your comments here* | |

Any other feedback

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| Any other feedback? |
| Do you have any other comments you would like to provide in relation to updating the arrangements for Critical Infrastructure/Lifeline Utilities? |
| *Please type your comments here* |

1. The New Zealand Gazette is the official newspaper of the New Zealand government. It is an authoritative journal of constitutional record and contains official commercial and government notifications that are required by legislation to be published. [↑](#footnote-ref-1)