

Civil Contractors New Zealand submission on the Emergency Management Bill

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About Civil Contractors New Zealand

CCNZ is an industry association representing the interests of more than 500 contractor organisations, including large, medium, and small businesses in civil engineering, construction, and general contracting. We also have more than 300 associate members who provide products, support, and services to contractor members.

Our members build and maintain horizontal infrastructure such as roads, bridges, tunnels, dams and power stations, water networks, telecommunications cables and electricity lines, sport and recreation facilities, national defence facilities ports and airports.

These are services a modern and developed economy must have to compete efficiently in world markets and to deliver high living standards for all New Zealanders.

CCNZ has a national office and 12 branches covering the length and breadth of New Zealand. Our members undertake \$10 to \$12b in projects each year and keep about 60,000 people employed.

Introduction

Civil contractors literally shape the earth around us. They play a critically important role in shaping the health, wealth and wellbeing of our communities and our environment. In the recent severe weather events, civil contractors became first responders, mobilising as soon as the storms hit to save lives, protect property, and stabilise affected land and infrastructure.

Our members have been significantly impacted by the recent severe weather events in many towns, cities and regions across the country, committing teams to support response and recovery efforts.

They are inevitably some of the first responders in a natural disaster, conducting work such as clearing debris from bridges during flooding, clearing slips and fallen trees, constructing stop banks to prevent inundation of properties, repairing damage to transport and water networks, supporting rescue efforts and clearing silt.

We note that civil contractors are the ones putting equipment and businesses on the line to repair the damage of these events, and many contractors contribute significant time, effort and resource to response and recovery efforts.

Recommendation

We recommend that the Emergency Management Bill does not proceed in its current form.

We make this recommendation because:

- It is clear from the Regulatory Impact Statements (the last one dated 22 July 2022) that consultation has been targeted and restricted, primarily involving local government and Māori, but not including many communities impacted by emergencies or the businesses responsible for the physical construction and maintenance of infrastructure.
- Given the severe weather events early in 2023, greater cognisance needs to be taken of the views of the impacted communities and businesses.
- Despite the stated intent of the Bill to ‘clarify the roles and responsibility across the emergency management sector’, it does not acknowledge the role of civil contractors in responding to emergencies. While contractors are acting on the behalf of clients, they are the ones with the skills, equipment and knowledge to respond.
- The Regulatory Impact Statements were prepared prior to the severe weather events early in 2023. These events highlighted the total failure of the Emergency Management System to respond in any meaningful way. The Statement and Bill appear to assume that the system is starting from a stable base - that is not a sound assumption to make.
- We propose that further consultation with affected parties is needed, to shape a Bill that genuinely meets the needs of communities and the people who must respond to emergencies, as well as agencies.

Some context around Cyclone Gabrielle response

CCNZ members have the benefit of working in the regions affected by recent severe weather events, in particular Northland, Auckland, Waikato, Coromandel, Bay of Plenty, Gisborne, East Coast and Hawke’s Bay. Not only do our businesses operate in those regions, but they are well connected with their local communities.

Our President (Eskridge), Regional Manager (Bayview), and Chief Executive (Havelock North) all reside in Hawke’s Bay, have experienced the force of Cyclone Gabrielle, and have been personally and professionally involved with the community’s post-cyclone.

Outside of the transport response which has largely been handled by Waka Kotahi NZ Transport Agency, the regional emergency management and civil defence response in Hawke’s Bay has been a failure.

For example:

- It has been reported in the media that early warning signs of rising river levels that would ordinarily trigger evacuation were not communicated to at risk communities. Calls to councils warning of rapidly rising rivers were not taken seriously.
- CCNZ developed a register of available personnel and equipment to respond following the disaster and approached the emergency management office on the second day after the cyclone to offer our industry resources (people and equipment), only to be told “we don’t need your help”.

- With no interest in accepting help forthcoming from the emergency management office, on 22 February (at the request of then Minister Woods), CCNZ was asked to prepare a paper for a Cabinet meeting that evening setting out a plan to support the Hawke's Bay/East Coast apple industry to remove layers of silt suffocating the apple trees (there was at that time a window of about two weeks to save affected trees, with the apple industry generating over \$700m for the Hawke's Bay/East Coast region), and to obtain funding for this and other response initiatives. CCNZ heard nothing until 19 March 2023, when the Hawke's Bay Civil Defence Emergency Management Group responded "your offer of personnel to the relief effort has been forwarded to the relevant POC's. Should your offer be taken up, they will be in contact shortly". We heard nothing further, leaving affected apple trees to needlessly die.
- There appeared to be no obvious overall regional leadership, direction, prioritisation, preparedness, communication, and engagement, leaving local councils to carry the burden for the response.
- There appeared to be a disconnect between decision makers (central government, NEMA leadership), and what was in fact happening on the ground.
- Messages were being broadcast on radio stations for residents to check the civil defence website for updates, but a large section of the community had no access to electricity let alone the internet or cell phone coverage.
- On the arrival of NEMA and Red Cross to impacted areas, locals involved from the start in the rescue and response were told to leave and their help was not needed. This removed local knowledge meaning agencies started from scratch ignoring what had already been done. This caused immediate friction and tension between the communities helping and needing help, and emergency management people.

In other disaster-impacted regions, contact to establish a pool of talent and equipment has only come after a disaster. Yet it is very important that people with practical knowledge of piling, soil stabilisation, water management and other horizontal construction activities have input to the immediate response and are involved in planning.

All of these are symptomatic of a system that is fundamentally broken, and it is for these reasons that we believe there should be a far wider review of the emergency management system in New Zealand.

Draft Emergency Management Bill

With respect to the draft Bill, if it is to proceed, we make the following observations and suggestions.

Purpose of the Act

Clause 3 sets out the purpose of the Act. We believe that two further purposes should be added:

- The needs to be some protection from prosecution or liability for contractors who essentially take on the role of first responders.

At present, the needs of civil contractors are only indirectly acknowledged in the Bill through clients. Yet contractors play a critical role as the people and businesses that hold the equipment, expertise, and regional/geographical knowledge to act as first

responders in emergencies. The needs of contractors and the pivotal role they play should be more directly acknowledged.

We received numerous calls from contractors who responded quickly to the unfolding emergencies, and who acted quickly to save lives, save property, and render land and infrastructure safe, in some cases preventing millions of dollars of damage through action.

One contractor who removed silt to rescue a resident in the emergency was threatened with prosecution for dumping that silt in a sensibly located unauthorised area, despite the lack of any 'authorised area'. Another moved quickly to shore up a retaining wall which, if it had collapsed, would have led to a property being inundated – they were threatened with prosecution for not giving the required 10-days' notice of the works.

Contractors understand health and safety. The decisions must be taken quickly to save lives or property. There needs to be a mechanism to allow emergency works without the risk of prosecution or liability.

- Clause 3(f) specifically provides for the recognition of the role of Māori in emergency management. We submit that there needs to be a similar subclause that specifically recognises the role of the civil contractor in emergency management.

Clause 20 - National Māori Emergency Management Advisory Group

We agree that putting the safety and wellbeing of all New Zealanders at the heart of the emergency response system will require a greater recognition, understanding and integration of Māori perspectives in emergency management. There is a unique capability that Māori will bring to the emergency management system.

Māori should be consulted in planning. However, we do not agree that a new National Māori Emergency Management Advisory Group should be brought into existence through legislation, or in the way described.

In an emergency, whether local or national, given the speed they unfold and the complexity of the disaster, it is essential there is a single fully integrated approach, led and resourced in partnership with all stakeholders. Māori have a critical and special role to play, along with others, in that collective partnership.

Clause 25 – Membership of Emergency Management Committees

Clause 33 – Emergency Management Co-Ordinating Executive

We submit that the emergency management process and initial response should include civil contractors (regionally and via CCNZ nationally) from the outset.

Civil contractors are infrastructure construction experts, and have practical knowledge regarding the construction of roading, bridges, water services, utilities, etc. This includes not only how the infrastructure is constructed, but how it performs under stress, temporary solutions for remediation, site risk and how it can be mitigated, environmental protection, groundwater, etc.

Including contractors early in the decision making and response process will add significant value to the quality of the decision making.

Clause 44 Role of Area Controllers and Local Controllers

Clause 47 Role of Area and Local Recovery Managers

A critical role missing from clause 47 is that of community communication and engagement.

More effective communication plans are needed to co-ordinate disaster response. Clearer plans are needed around how engagement will occur with communities, contractors, first responders, etc.

One of the successes of the Christchurch earthquake response was that every morning, then Mayor Sir Bob Parker and the Civil Defence Controller fronted the media, gave a status update, and talked about what they were going to do in the next 24 hours. Part of leadership in an emergency is keeping the community informed, giving them confidence that things are in hand, and giving them hope that they will get through the emergency.

We know from our own community engagement in Hawke's Bay that many in the community felt let down by the lack of communication and engagement.

These plans should also extend to situations where the power is down for extended periods of time.

Clause 51 Requirements for recognition of critical infrastructure entities and critical infrastructure sectors

The implication of this clause is that recognition of critical infrastructure is considered as each emergency event arises. We submit that this recognition should be automatic for any event.

Clause 73 Content of emergency management committee plan

We submit that the emergency management plan should also include:

- Identification of all stakeholders, their roles in a response, and their respective responsibilities.
- A communication plan to support the response plan.

Clause 100 Emergency powers of Emergency Management Committees and Recovery Managers

We submit that one of the powers vested under this clause should be the power to allocate or apply funding for emergency response work.

As first responders, civil contractors immediately sprang into action despite many being impacted themselves by the weather events. While most can sustain a short period of voluntary work, it doesn't take long for contractor's cash resources to be exhausted.

We submit that there should be protected funding available to enable contractors to act as first responders without putting their own businesses at risk.

Clause 103 Closing roads and public places

We submit that the power to close roads or public spaces should also be exercised to ensure the safety of site workers.

Clause 105 Requisitioning power

Further to our comments on clause 103, clause 105 provides requisitioning power to controllers and constables to control equipment and direct personnel. This is necessary, but

there is some tension as it puts personnel and equipment at risk, potentially without compensation (depending on insurance arrangements). Contractors want to know their people and equipment are being put to the best possible use in the case of an emergency.

More consultation with contractors is needed in this space – in particular with the companies that may be expected to make earthmoving or other specialist equipment available in the case of emergency.

If this issue is properly considered and better mechanisms are put in place for compensating loss and managing health and safety risks, and discussion happens before emergencies, it can enable better outcomes for communities.

CCNZ can play a direct role in this space prior to and during emergencies as it holds registers of members, and has national and regional representation for contractors. This is an area where dialog with CCNZ and its members will have significant value.

Clause 119 Compensation for loss or damage due to exercise of other powers during emergency designations

Consistent with our submission above regarding funding and requisition powers, compensation should be payable for the time (labour) and material cost of a contractor responding to an emergency event.

Clause 122 Protection from liability

We submit that contractors acting as first responders should be protected from liability.

We further submit that protection should not be afforded to anyone for incompetently exercising their responsibilities.

Clause 125 Offence involving obstruction

We presume that this clause would be used in the case of the assault of, abuse of, or aggression toward, road workers (or any other workers on site) as part of the emergency response.

Clause 149 Permanent legislative authority for payment of certain expenses

Many contractors were not compensated following their voluntary efforts in Hawke's Bay. While businesses are willing to volunteer time and effort, this is not sustainable for them in the long-term.

For large scale response and recovery initiatives, compensation for response and recovery works will better enable volunteer capacity. We request contractors are expressly recognised as being eligible for reimbursement in clause 149, and propose the wording under 149 (a) is changed to include the highlighted additional words below.

'to reimburse a local authority for, or to pay public money for the purpose of meeting, expenses incurred by the local authority in connection with an emergency (such as emergency construction works) if the expenses—'

Response debriefs

It is vitally important that we learn from each event. To maximise the value of debriefing, all those impacted by a response need to have an effective channel to provide their feedback and offer ideas for improvement.

Too often these feedback loops are restricted to a small group of stakeholders, often local or central government officials and members from the emergency management system itself.

We submit that there needs to be a more effective mechanism to debrief after emergency response that includes a wide section of stakeholders. Otherwise, nothing will change.

Conclusion

Thank you for the opportunity to make this submission. We would be happy to provide any further information if required.

We would also be happy to appear in person to support this submission.

Kind regards,



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Civil Contractors New Zealand Inc.

