



## Requiring a structural assessment

### Power to require a structural assessment

Recent changes to the Civil Defence Emergency Management Act 2002 (CDEM Act) provide that a Controller or a constable<sup>1</sup> under a state of emergency or a Recovery Manager or a constable under a transition period may direct the owner of a structure, or owners of structures of a particular type, to obtain an assessment of the effect of the emergency (and any related subsequent events) on the structures that they own (s91(2) and 91N(2)).

Under the Civil Defence Emergency Management Act 2002, a structure includes a building. Although a Controller, Recovery Manager or constable could direct an assessment of any type of structure, the example below focuses on buildings as it is considered this power is likely to primarily be used to require assessments of buildings to ensure they are not damaged and therefore, unsafe to occupy, after an emergency or a subsequent event.

The CDEM Act already provides the ability for certain persons to require information that is reasonably necessary for the exercise of civil defence emergency management and is in the possession of the person who is asked to provide the information (s76 and 94I). The changes to the legislation address a gap that there were no powers available to direct an owner to carry out an assessment to ensure that a building is safe after an emergency or if things change after an emergency, for example, due to a significant aftershock.

Existing obligations on building owners, e.g. Health and Safety at Work Act 2015 and Residential Tenancies Act 1986, require building owners to ensure that a building is safe. However, those obligations are wide-ranging and are not specific as to the type of building checks that may be required following a particular emergency event. The new assessment provision in the CDEM Act is not inconsistent with the wide-ranging obligations of building owners/landlords under this legislation.

### When might the power be used?

A Controller or Recovery Manager (or person acting under their authority) may require an assessment when (but not limited to):

1. an owner of a structure has not undertaken an assessment and there is reason to be concerned that an emergency or any related subsequent event may have had an effect on the structure making it unsafe.

2. there are concerns about the effect of an emergency or any related subsequent events on a type of structure and owners of that type of structure have not had an assessment. For example, a Recovery Manager becomes aware that assessments of buildings have found problems with a particular design feature or aspect of a building structure after an event and therefore, uses the power to ensure that there have been appropriate assessments of buildings with these design features or aspect of building structure.

### Safeguards on the use of the power

There are a number of safeguards against the inappropriate use of the power to require a building assessment including:

- A Controller or Recovery Manager (or person acting under their authority) may not give a direction requiring an assessment unless they have had regard to whether the structure or type of structure may, in the circumstances, pose a risk to injury or a risk to the safety of life or the safety of other property (s91(3) and 94N(3)). This provides a safeguard against blanket application of the provision where there is no reason to be concerned regarding the risk of injury or safety to people/property of the structure.
- A building owner can appeal the direction to the District Court on the grounds that the direction is unreasonable. However, any appeal against the direction does not automatically operate as a stay of the direction. If a direction is found to be unreasonable by the Court, the relief is limited to the reasonable costs associated with obtaining the assessment.
- The exercise of the power is subject to the statutory tests in s94G (i.e. including that the exercise of power must be in the public interest; necessary or desirable to ensure a timely and effective recovery; and proportionate in the circumstances).
- The ability to direct an assessment is time limited to the state of emergency or transition period.
- The assessment is limited to the effect of a particular emergency (and any related subsequent event).

<sup>1</sup> A constable may exercise the power to require an owner to obtain a structural assessment

## Who decides the type of the assessment required?

The Controller or the Recovery Manager or person acting under their authority (which may be a territorial authority building control manager) decides the type of assessment that should be undertaken. The person needs to consider what would be reasonable in the circumstances to assess if a building poses a risk to injury or a risk to the safety of life or the safety of other property.

A direction must state the purpose of the assessment and specify the assessment required (i.e. a full assessment or an assessment of a specific element of the building) and specify the reasonable time frame within which the assessment must be concluded and provided to the person giving the direction. The person giving the direction should consider the date that the state of emergency or transition period expires in setting the time frame in which the information needs to be provided. This will ensure there is sufficient time for the assessment to be received and any action required to be undertaken completed.

## Who pays the cost of an assessment?

The cost of an assessment is at the owner's expense. As outlined above, a building owner has the ability to appeal a direction to the District Court on the grounds that the assessment is unreasonable. Any relief is however limited to the reasonable costs associated with obtaining the assessment.

## Other powers in the CDEM Act 2002 that may apply to structures

In addition to the power to require an assessment of a structure, the CDEM Act 2002 provides a number of powers that can be used during a state of emergency or transition period to manage structures, including buildings, as follows:

- power of entry any premises or place e.g. for the purposes of an inspection (s87 and 94L);
- ability to 'mark' any property e.g. placard a building (s92 and 94H);
- ability to 'examine' any property (s92 and 94H);
- carry out or require to be carried out works, which includes works on structures and buildings (s85 and s94H);
- removing or disposing of, or securing or otherwise making safe, dangerous structures and materials wherever they may be (s85 and s94H) – this includes demolishing a building;
- require information in the possession of the person (e.g. a copy of a building assessment that an owner has obtained – s76 and s94I);
- evacuation of premises and places (s86 and s94K);
- power to give directions to any person to stop any activity that may cause or substantially contribute to the consequences of an emergency; (s91 and 94N).

## How does the power work with the powers under the Building Act 2004?

The CDEM Act powers do not limit or are not a substitute for functions, duties or powers in other enactments (s6). The Building Act 2004 provides for powers to manage buildings, such as dangerous buildings and earthquake prone buildings (as defined in the Building Act 2004). Where these powers are appropriate they should be used. For example, the Building Act 2004 may be used where there are good reasons to consider a building is dangerous (e.g. it has had floor collapses in an emergency). The definition of dangerous structures under the CDEM Act is not the same as the definition of dangerous building under the Building Act 2004.

## What happens if a building assessment shows that a building poses a risk of injury or safety to persons or property?

The types of actions taken will depend on the seriousness of the concerns. The table below is illustrative as each situation would need to be considered on a case by case basis.

Example	Powers in CDEM Act 2002 that might be exercised	Other matters
Assessment shows no concerns		If there is a subsequent event, an additional assessment may be required.
Assessment shows some signs of concerns but further assessment is necessary	Require another assessment (section 91(2) or 94N(2)).	Further assessments should be undertaken by the owner. However, if this does not occur, there may need to be another assessment that goes into more detail on the area of concern. The building may be placarded under section 92 or section 94H.

Example	Powers in CDEM Act 2002 that might be exercised	Other matters
Assessment shows that remedial work is needed to make the building safe for continued occupation	CDEM Group or Recovery Manager could require works to be carried out or otherwise making safe, dangerous structure under s85(1)(a) or s94H(a).	
Assessment shows that there is significant concern that the structure is unsafe or may be unsafe with a moderate aftershock	Require the evacuation of premises (s86 or s94K)  A CDEM Group or Recovery Manager could require works to be carried out or otherwise making safe, dangerous structure under s85(1)(a) or s94H(a).	

### Is the assessment publicly available?

A Controller or a Recovery Manager (or person acting under their authority) may only use or disclose the building assessment obtained under s91 and 94N only for the purposes of the CDEM Act 2002 (s83). This means that the information for example, cannot be put on a Land Information Memorandum or used for purposes under other legislation (e.g. the Building Act 2004) without the owner's consent.

The reason for this is that the purpose of obtaining the information is to ascertain the effect of an emergency (or subsequent event) on the building structure and the ability to use the relevant CDEM Act 2002 powers where the information shows that there concerns about the risk of injury or safety to persons or property from the building structure (e.g. require evacuation).

The outcome of the Controller or Recovery Manager considering the assessment and taking action may be publicly available, for example, the building may be placarded, evacuated or demolished if the building was found to pose a risk to injury or safety or persons or property as a result of the assessment undertaken.

The person who directs the building owner to undertake an assessment is required to use reasonable endeavours to notify the occupiers of the direction (s91A and s94NA). Therefore, tenants should be aware that an assessment of the building is being undertaken.