



Factsheet: Changes to the Civil Defence Emergency Management Act 2002 in relation to COVID-19

On 13 May 2020 changes to the Civil Defence Emergency Management Act 2002 (CDEM Act) were made to ensure a nationally consistent approach to the response to and management of risks arising from COVID-19, and to better deal with concurrent emergencies during COVID-19. These changes are in place until up to 12 May 2022 (two years from commencement of the COVID-19 Public Health response Act 2020), unless revoked earlier.

The key changes are:

- allow for a state of local emergency to be declared for a non-COVID-19 emergency when a state of national emergency or national transition period are in place for COVID-19 to deal with concurrent emergencies;
- provide that declaring a local state of emergency for emergency that is not related to COVID-19 (e.g. a flood) does not terminate any national transition period in force for COVID-19;
- allowing a local transition period for a non-COVID-19 related emergency when a national transition period for COVID-19; and
- require ministerial approval for any declaration of a state of local emergency or local transition period for COVID-19 related matters.

Changes to enable non-COVID 19 emergencies alongside COVID-19 response and recovery

The changes to the CDEM Act provide for CDEM groups to declare a state of local emergency for non-COVID-19 emergencies when a state of national emergency or national transition period is in place for COVID-19 related matters (s66(4), s68(7) and 94E(8) of the CDEM Act).

Normally the CDEM Act provides for only one state of emergency to be in place for an area or part area at a time, with a local state of emergency terminated by declaring a state of national emergency. In order to ensure that Civil Defence Emergency Management Groups continue to have access to emergency powers

for a non-COVID-19 related emergency to enable quick response to ensure life safety, the changes allows a state of local emergency for non-COVID-19 reasons to remain in place despite notice of a National Transition Period being given.

Non-COVID-19 state of local emergency does not terminate a national transition period for COVID-19

The CDEM Act provides that a declaration of a state of local emergency automatically terminates a transition period.

However, COVID-19 requires a co-ordinated national response, and therefore if a national transition period is in place, we need to ensure that both the COVID-19 recovery continues to be enabled by CDEM groups, whilst also ensuring the Groups have access to the special powers to manage the response to local (non-COVID-19) related emergencies.

Where a national transition period for COVID-19 is in place, the change in new s94E(8) provides that it is not terminated when a state of local emergency for non-COVID-19 emergency is declared.

Allowing a local transition period for a non-COVID-19 related emergency when a national transition period for COVID-19

Section 94B(13) provides that if a national transition period is in force for COVID-19, it does not prevent a local transition period being given for any other emergency that is not related to COVID-19.

Normally the CDEM Act does not allow a national and local transition period to be in place at the same time for the same area (or part area) – the national notice would need to be amended to cover both events. Section 94B(13) allows Civil Defence Emergency Management Groups to access recovery powers for non-COVID-19 related emergencies. For example to undertake works after an earthquake.

Ministerial approval required for COVID-19 related state of local emergency or local transition period

COVID-19 is a matter that affects all New Zealanders and is being managed nationally. Sections 68(6) and s94B(12) require the Minister of Civil Defence approval must be sought prior to any local transition period being given for COVID-19. If no National Transition Period is in place, it will be possible for Civil Defence Emergency Management Groups to give notice of their own local transition periods in relation to COVID-19. This could make it more difficult to ensure a nationally coordinated approach to COVID-19 across all alert levels.

The additional ministerial test would help determine whether giving notice of local transition period is required given the national management of COVID-19 and the COVID-19 Public Health Response Act 2020. The CDEM Act already provides a similar type provision where ministerial approval is needed where a local transition period is proposed and no prior state of emergency was in place for the emergency.

The COVID-19 Public Health Response Act 2020 will impact but not replace the CDEM Act in relation to COVID-19

The COVID-19 Public Health Response Act 2020 creates a comprehensive legal framework to support the Government's alert level system to limit the spread of COVID-19 in New Zealand, and other measures necessary respond to COVID-19 over the next 2 years, or until COVID-19 is sooner brought under control. With COVID-19 Public Health Response Act 2020, there is less likely to be a need for the powers under the CDEM Act.

Section 6 of the CDEM Act provides that the *CDEM Act does not limit, is not in substitution for, and does not affect the functions, duties, or powers of any person under the provisions of any enactment or any rule of law.*

This means that CDEM Act powers should not be used in substitution for other legislation, such as the Public Health Response Act 2020, but complement it by enabling access to emergency powers to fill any gaps (where circumstances require).

If a second wave of COVID-19 meant national coordination of the CDEM response became necessary again, the COVID-19 Public Health Response Act 2020 does not prevent the ability to declare a state of national emergency or giving a notice of a national transition period for COVID-19 related emergencies.