



**TCF Submission to the Governance and Administration Committee
On the Emergency Management Bill 2023
1 November 2023**

Introduction

1. Thank you for the opportunity to make a submission on the Emergency Management Bill 2023 (the Bill).
2. This submission is provided by the New Zealand Telecommunications Forum (TCF). The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF member companies represent 95 percent of New Zealand telecommunications customers.
3. The TCF supports the policy intent behind the Bill, to improve the performance of the emergency management system. The focus of our submission is on the provisions concerning critical infrastructure entities (CIEs). There are some aspects of the proposed framework for managing risks relating to critical infrastructure in planning for and contributing to emergency management that we think will not be effective, including the proposed planning for emergency levels of service.

Contents of this submission

4. We cover the following matters in this submission:
 - a. Summary
 - b. An introduction to telecommunications emergency preparedness and response
 - c. The fragmented approach to regulating for critical infrastructure resilience

- d. Defining and identifying critical infrastructure
- e. The proposed duties of CIEs
 - i. Sector emergency response plans
 - ii. Information sharing
 - iii. Emergency levels of service
 - iv. Reporting
 - v. Cost assumptions
- f. Powers of the Director
- g. Lead agencies for critical infrastructure.

Summary

- 5. The TCF supports the policy intent behind the Bill, to improve the performance of the emergency management system. However we are concerned that the Bill is being progressed in isolation from other policy work on resilience of critical infrastructure, and without any overarching strategy. This will result in a fragmented and overlapping approach.
- 6. We also have concerns about aspects of the Bill that impose obligations on CIEs. The most significant of these are:
 - a. The proposed planning for **emergency levels of service (PELOS)**. We agree with the Ministry of Business, Innovation and Employment (MBIE) that PELOS will not achieve the goal to provide assurance of performance during and after an emergency event. This is because of the significant number of assumptions and caveats operators would need to add when setting standards around restoration times, matters that are beyond the control of the CIE, and the unintended consequences for prioritising resources during a real event. We submit that PELOS be removed from the Bill, and that the Committee recommend that officials instead report back as part of the broader work on critical infrastructure resilience being led by the Department of Prime Minister and Cabinet (DPMC). The DPMC work will address minimum standards, interdependencies between critical infrastructure sectors, and provide greater clarity on which functions of CIEs are considered to be critical.
 - b. **Requirements for CIEs to deal with multiple parts of government** as part of the emergency planning and response process. Our experience is that

dealing with multiple government and local government stakeholders is inefficient and diverts resources from vital network restoration work during an emergency. Instead we recommend that any information sharing or reporting obligations are to a central agency that then has responsibility to share with others in central or local government.

- c. Related to the above point, the Bill provides **no clarity on the roles and responsibilities of the lead agencies** for each critical infrastructure sector vis-a-vis NEMA and CDEM groups. Without this we run the risk of overlapping work across agencies, some things falling between the cracks, and overall regulatory confusion. We recommend that the Bill be amended to state the functions of lead agencies.
- d. The **timeframes for complying with the new CIE obligations** need a closer look. The two year delayed commencement for CIEs to get ready to meet some of the new obligations does not apply to the new requirement to develop sector response plans. We also note that the delayed commencement will be of limited value because there is also two years to Gazette CIEs and sectors. We think the new obligations for CIEs should commence two years from the date entities and sectors are Gazetted.
- e. In considering our points about the proposed obligations for CIEs we ask that the Committee also think about **costs**. The regulatory impact statements for this Bill significantly underestimate the costs of compliance. Our members will need to implement new systems and employ more people in order to comply with these new obligations. We estimate that the costs of complying with the obligations in this Bill and the new regime for critical infrastructure resilience being proposed by DPMC could be similar to compliance with health and safety regulation.

An introduction to telecommunications emergency preparedness and response

- 7. The telecommunications sector is a provider of critical infrastructure. Our infrastructure includes the physical assets (such as fibre optic cables and cell towers) and IT systems needed to run telecommunications networks that New Zealanders rely on during emergencies and in normal times.
- 8. Telecommunications is a lifeline utility under the Civil Defence Emergency Management Act 2002, a category of lifeline referenced in the transitional provisions of the Bill, and we understand it would be gazetted as a critical infrastructure sector if the Bill becomes law (see clause 50(a) of the Bill).
- 9. Our members take emergency preparedness and response very seriously. At the individual company level this is done through the business continuity planning and

incident response process. Each network operator has its own plan for managing risk, minimising impact on customers, and restoring services as quickly as possible.

10. At the sector level, during an emergency, we come together as the Telecommunications Emergency Forum (TEF). The role of the TEF is to enable effective coordination of emergency response across the sector when an event may impact national or regional telecommunications. The TEF acts as a conduit between its members and the National Emergency Management Agency, Regional Lifelines Groups, other critical infrastructure and government. It is the sector coordinating entity for telecommunications under the current Act. The TEF is administered by the TCF and has 20 members, including Transpower. Membership is open to any telecommunications provider that wishes to join, regardless of whether they are members of the TCF or not.
11. To provide an example, the TEF was activated during Cyclone Gabrielle earlier this year. If you are interested, a copy of the TEF Post Incident Report is available [here](#).
12. Recent resilience work across the sector includes:
 - a. working with TEF members to improve operational processes and standardise reporting
 - b. engaging through NEMA's Inter-Infrastructure Coordination Working Group to discuss cross sector improvements and planning for civil defence events
 - c. producing a [report for Ministers](#) setting out industry plans for enhancing resilience and suggesting areas where government and the sector could work together
 - d. gearing up to start work with NEMA on a sector wide emergency response plan.
13. Our members invest in the resilience of their networks on an ongoing basis. Examples of work currently on the go include: building more diversity into core networks that connect cities and towns, investing in mobile connectivity that is enabled by satellite which will provide additional redundancy when terrestrial mobile networks are down, improving network capability through 5G and network capacity upgrade programmes, exploring alternative pathways to bridges to get fibre across rivers, auditing and investing in backup power requirements, risk assessments to avoid single points of failure, and the [NGCC/Hourua](#) partnership on the new public safety network which will improve communications for emergency services.

Fragmented approach to regulating for critical infrastructure resilience

14. Before getting into our comments on the contents of the Bill, we would like to express concern about the fragmentation and lack of coherence of recent government policy work on the resilience of critical infrastructure. In addition to this Bill, there is a range of resilience-related work being undertaken across different government agencies, including:
 - a. [Proposals from the Department of Prime Minister and Cabinet](#) to introduce a new regulatory regime to lift the resilience of critical infrastructure, with minimum resilience standards contemplated as a solution.
 - b. The [Inquiry into the North Island Severe Weather Events](#) (currently underway), which is considering whether the emergency management system is fit for purpose.
 - c. A proposed [National Policy Statement on Natural Hazard Decision Making](#) (led by the Ministry for Environment) which, as currently proposed, would apply to telecommunications infrastructure.
 - d. Te Waihangā is doing a review of [asset management practices](#) of critical infrastructure.
15. There is also work going on at the local government level, including resilience plans being produced by regional councils. The framework for National Built Environment Plans, which are required to be developed under new legislation replacing the Resource Management Act (RMA), includes the ability for regional resilience standards to be set.
16. We are concerned that this work has progressed without an overarching national strategy and vision on the resilience of critical infrastructure, multi-agency governance, government analysis of the interdependencies between critical infrastructure sectors, and mechanisms to bring critical infrastructure sectors together with government to discuss resilience objectives and targets. These are needed for effective policy making.
17. We share the concerns expressed by MBIE (in the [Cabinet paper](#) that preceded the introduction of the Bill), that progressing the Bill separately from other policy work on regulating for resilience of critical infrastructure, including work being progressed by DPMC, could lead to regulatory confusion and unnecessary compliance costs for government and CIEs.
18. We agree with MBIE that it would be preferable to have a single integrated reform process. Ideally this would mean not progressing this Bill further until the DPMC work has caught up. If this is not possible then we think two things need to happen:

- a. The Government needs to share its overarching strategy and design for the resilience policy work, including which agencies are responsible for what. This needs to be done while the Bill is being considered by the Committee, to inform the Committee's report back.
- b. There needs to be a strict focus in the Bill on emergency response and preparedness, leaving consideration of any minimum standards for critical infrastructure resilience for the DPMC process.

Defining and identifying critical infrastructure

19. Critical infrastructure is defined in clause five of the Bill to mean "assets, systems, networks, and services that are necessary for the provision of public services and are essential to public safety, national security, economic security, or the functioning and stability of New Zealand". Critical infrastructure entities are those recognised by the Minister under clause 50(a) or entities that are part of a critical infrastructure sector. Critical infrastructure sectors are recognised by the Minister under clause 50(b). Clause 50 establishes a process for the Minister to recognise entities and sectors by notice in the Gazette. Clause 51 sets out criteria and factors the Minister must be satisfied of before making a Gazette notice.
20. Telecommunications is currently a lifeline utility under the 2002 Act, and we would expect it to be gazetted as a critical infrastructure sector under the new legislation. While we support the definition of critical infrastructure proposed in the Bill, and understand the advantages of the Gazette process, we query the proposed timeline of up to two years to determine the list of critical infrastructure entities and sectors.
21. While the transitional provisions (clause 10 of schedule 1) provide that existing lifeline utilities are saved for two years and deemed to be critical infrastructure entities, there will still be problems if the Minister has up to two years to Gazette critical infrastructure. The difficulties concern:
 - a. The parts of the declared sectors that are considered to be critical. We need to know which parts of our business will be subject to the obligations. For example, with telecommunications, would data centres be included?
 - b. The sectors that may be subject to determination for the first time. There are issues for these sectors in gearing up, and for other sectors who will need to collaborate with them (for example on the sector response plans).
22. We submit that critical infrastructure will need to be Gazetted earlier than the two years currently allowed in the Bill, to provide certainty and enough time to gear up to meet the obligations proposed in the Bill. We understand the Bill has a two year delayed commencement, to provide time for critical infrastructure to comply with

some of the new legal requirements (for planning emergency levels of service and annual compliance reporting). This two year period will be of little use if the Government also has two years to Gazette the list of entities and sectors that will have to comply with the obligations. We submit that critical infrastructure will need two years to comply, from the date that critical infrastructure entities and sectors are Gazetted, not from Royal Assent.

The proposed duties of CIEs

23. The Bill proposes a number of obligations for CIEs. We comment on the following obligations:
- a. sector emergency response plans
 - b. information sharing
 - c. reporting
 - d. emergency levels of service.

Sector emergency response plans (clause 54(1)(c))

24. Clause 54(1)(c) requires CIEs to “develop, or contribute to the development of, plans relating to responding to and recovering from emergencies that are specific to the sector in which the entity operates”. These sector plans need to be reviewed and updated every three years, and be made available to the Director on request.
25. We support the development of sector response plans, and will shortly start work with NEMA to develop a telecommunications sector response plan. Our first plan will cover the fundamentals (similar to the National Fuel Plan) and would be updated in later years to include any additional requirements once they become law.
26. However, we question the timeframe for complying with the obligation to have sector plans. Unlike some other provisions concerning CIEs, the obligation to have a sector response plan will not have a two year commencement (see clause 2(b)). NEMA advice is that a sector response plan takes at least 18 months to develop, and requires engagement across sectors.
27. We therefore recommend that the obligation to have a sector response plan ready to go also have a delayed commencement, to give critical infrastructure sectors time to do the work. Having more time is also necessary when we consider that the Bill, as currently drafted, gives the responsible Minister up to two years to Gazette the sectors that will need to meet the obligation. Infrastructure operators will need certainty on the Gazetted sectors so that we can work collaboratively on our sector plans, and address interdependencies between critical infrastructure sectors.

28. To achieve this we recommend amending clause 2(1)(b)(iii) to also include section 54(1)(c). Clause 2(1)(b) should also be amended so that the provisions that relate to certain duties of CIEs come into force two years from the date that CIEs and sectors are Gazetted, not from the date of Royal assent, for the reasons discussed earlier in this submission.

Information sharing

29. Clause 55 imposes both proactive information sharing obligations on CIEs as well as an obligation to provide information on request. The requirement concerns information that is “relevant for the purposes of planning and monitoring in relation to emergencies”. The expectation is to share information before, during, and after an emergency.

30. We agree that information sharing is critical when planning for and during an emergency. However, we think aspects of what have been proposed go further than is necessary:

- a. We question the assumption that information sharing will not happen unless it is legislated for. In our experience CIEs are very willing to share information. We propose that instead we start with a voluntary approach. As part of this approach NEMA would provide information sharing guidance and expectations, and a secure platform and process for sharing that information.
- b. To be efficient, information sharing obligations should not be to multiple agencies or office holders. Instead CIEs should only be required to share information with one central government agency that then has the role of sharing it with others who need to know, and has a process in place to deal with commercially sensitive information. Clause 55 contemplates information being provided to the Director of NEMA, as well as “specified bodies”. Specified bodies in relation to a particular CIE means the “responsible department” (responsible for administering the Act), one or more responsible public service agencies relevant to the entity, and relevant Emergency Management Committees. Our experience (including during Cyclone Gabrielle) is that a proliferation of information requests from multiple government agencies and regional lifelines diverts focus and resources from vital network restoration work.

31. There are also areas where important details do not seem to have been worked out, and there is no regulation making power for information sharing requirements contemplated in clauses 143 and 145. This includes, for example, the need to:

- a. Have an understanding ahead of time on the format and process for information sharing. Consistency makes it much easier to provide, receive, understand and collate information.
- b. Agree ahead of time what sort of information is “relevant” for the purposes of planning and monitoring in relation to emergencies. Not agreeing this in advance could result in delays and debate when information is sought during an emergency.

32. We recommend that clause 55 of the Bill require the Director to engage with CIEs and sectors to agree these matters ahead of time.

Emergency levels of service (clause 57)

33. Clause 57 would require CIEs to “establish and maintain planning emergency levels of service in respect of its critical infrastructure” (PELOS). Clause 2 provides that commencement of this requirement will be delayed for up to 24 months, to give CIEs time to comply.

34. Clause 143(f) allows the Governor-General, by Order in Council, to make regulations “setting out matters of detail and procedure relating to critical infrastructure entities’ planning for emergency levels of service”.

Our concerns about PELOS

35. The TCF agrees in principle that critical infrastructure must be able to function and recover quickly to support the wellbeing of affected communities. However, we do not support the proposed introduction of PELOS. MBIE was of the same view in its interdepartmental comment in the [Cabinet paper](#)¹ seeking agreement to the first tranche of policies to be included in the Bill.

36. We have the following concerns about PELOS:

- a. Introducing the concept of minimum service levels will not achieve the goal to provide assurance of performance during and after an emergency event. This is because of the significant number of assumptions and caveats operators would need to put on restoration times.
- b. Minimum standards that prescribe response or recovery times are problematic when matters are beyond the control of the CIE. For example when a service relies on the input of another service or the impact of a natural hazard outside human control impedes the ability to restore the service.

¹ See para 121 on page 22.

- c. Developing minimum standards is difficult because there is no one event that is the same and responses differ depending on the level of disruption and damage.
- d. Because we don't know what the next event will look like, it is impossible to know ahead of time whether it is possible to comply with a set of standards.
- e. Prioritisation of service to priority customers, like emergency services and communities occurs in the real time of an event, with decisions being made to implement the best practical solutions as fast as possible. Being tied to a set of service levels and reporting against these during an event is not possible and may drive unintended consequences in how priorities are decided.
- f. PELOS could create unnecessary concern, and result in resources being allocated in an inefficient way, because of assumptions about worst case scenarios.
- g. It is not possible to set PELOS without a national strategy that (among other things) sets out what is important in terms of restoration and where the focus should be. For example, does the government want to prioritise restoration to services such as hospitals? Work on PELOS cannot proceed until the broader policy work on resilience of critical infrastructure is progressed by DPMC. That work contemplates the introduction of minimum standards, and needs to produce a national strategy, and address interdependencies between critical infrastructure sectors.
- h. The [Cabinet paper](#)² seeking approval for introduction says that NEMA will develop guidance for CIEs on how to meet the requirements and what scenarios to use. It's not clear where the resources for this work will come from given limited resourcing of NEMA to date. We note there was no new money in Budget 2023. Any requirements for PELOS should not proceed unless NEMA is provided with adequate resources to carry out this additional work.
- i. The Bill doesn't include any information on the standards CIEs will be required to comply with. This is saved for regulation (clause 143 (1) (f)). Imposing PELOS is significant, and CIE's should be able to submit on the proposed obligations as part of the lawmaking process. If officials haven't had time to do the work, then the legislative process should be slowed down.

² See para 9.

What to do instead

37. There are a number of tools (existing, planned and used in other countries) that provide a level of assurance of performance during and after an emergency event. These include:
- a. Business continuity plans and risk assessments - already undertaken as part of BAU.
 - b. The sector response plans, proposed in the Bill, which will enhance coordination across and between sectors concerning restoration activity.
 - c. The minimum standards (for investment in resilience) being proposed by DPMC as part of its policy work on the regulation of resilience for critical infrastructure. If minimum standards are being considered through the DPMC process, they should not be included in this Bill. This Bill should be focused on emergency response and preparedness. Duplication should be avoided.
 - d. The various tools in the [OECD toolkit](#) on critical infrastructure resilience, designed to ensure multi-sector collaboration, including the building of partnerships to agree on a common vision and achievable resilience objectives. The OECD recommends starting with strategy and voluntary mechanisms before considering regulation. The point is to begin with dialogue and a participatory process, not jump to enforceable standards.
 - e. If the issue is more about community expectations on what to expect when essential infrastructure is affected, then awareness raising is a tool at our disposal. For example, the TCF is working with the Civil Defence communications team to co-design a public awareness programme to inform people about how they can prepare for an event and loss of communications. This will be more valuable than PELOS which will be unavoidably focused on worst case/unlikely scenarios and will risk causing undue concern.

Reporting (clause 58)

38. Clause 58 imposes an annual obligation on CIEs to report on their compliance with the legislation. In addition to an annual report there is an obligation to provide information on request to support government consideration of the entity's compliance.
39. Clause 143(g) allows the Governor-General, by Order in Council, to make regulations "prescribing reporting requirements for critical infrastructure entities". Clause 145(1)(b) enables the making of regulations relating to CIE's "prescribing matters of detail relating to reporting requirements".

40. We have the following questions and concerns about the annual reporting requirements:

- a. Is it necessary to have these reporting requirements if the Government has a power to request information under clause 55? We think there will be an overlap in the information provided under clauses 55 and 57, and submit that clause 57 be removed from the Bill. Compliance reports would be onerous for CIEs to prepare and for NEMA to review. NEMA will be aware of incidences of non-compliance without these reports and can take action as required. If these reporting requirements are to be retained, we make the comments below.
- b. Is it necessary to have both regulation making powers? Regulation making powers for CIEs (for both reporting and PELOS) seem to have been duplicated in clauses 143 and 145.
- c. The reporting obligation has similar problems to the information sharing obligation (discussed above), as reporting is to the Director and “one or more responsible public service agencies relevant to the entity”. CIEs should only have to report to one place, with one set of information. The relevant government agency should take responsibility for sharing the information with others in government. If other government agencies have questions, they should be required to direct these through the one responsible agency, to avoid a proliferation of overlapping requests.

Cost assumptions behind the new obligations

41. The Bill proposes a number of new or expanded obligations for CIEs, which will impose significant costs on CIEs, including engaging more staff and implementing systems to do the compliance work. Our members estimate that the resourcing required to meet the obligations under the Bill (and those proposed by DPMC) will be at a similar level to that required for health and safety.

42. The obligations, which cannot be met through BAU, include:

- a. Implementing PELOS and reporting on it
- b. Developing sector response plans (which take around 18 months) and updating them every three years
- c. New information sharing obligations, potentially to multiple agencies
- d. New reporting obligations, potentially to multiple agencies
- e. Participating in the development of the national strategy and emergency management plan, and local plans.

43. In the [Cabinet paper](#) seeking policy approvals for the final tranche of policies to be included in the Bill, the responsible Minister said it is difficult to quantify the increased burden of compliance costs on CIEs (para 100). The Minister went on to say that the expected cost impact would be low to medium given that CIEs would not be required to invest in upgrading existing systems or engage additional staff. That assessment is incorrect, as outlined above.
44. We ask that the Committee think about the issue of compliance costs as it considers our proposed changes to some obligations. Reporting the Bill back without PELOS, for example, would enable CIEs to more usefully focus new resourcing on sector response plans which will make a difference. We also note that principles based regulation, which provides some level of choice on how to comply, can help to manage costs by enabling the use of existing systems.

The powers of the Director should be more specific about prioritisation

45. The Bill includes extensive powers for the Director, including the power to make emergency management rules (in clause 147). We submit that the Bill needs to make it more explicit that the Director has a role in ensuring critical infrastructure operators get priority access to restore networks during an event. While NEMA has explained that it has operational policy and procedure to this effect, it is not observed in practice. We suggest that elevating the obligation would assist with its observance.
46. One of the biggest challenges for us during Cyclone Gabrielle was that telecommunications was not prioritised as critical infrastructure by people coordinating the emergency response on the ground. Critical telecommunications equipment was not included on aircraft and frigates going to affected areas. Our technicians and vehicles were not considered essential so had restricted access or were sometimes denied access to affected regions to repair infrastructure. This hindered our ability to restore networks, which had flow-on effects for emergency efforts in terms of being able to communicate with those needing help and knowing what was happening in affected areas.

Emergency Management Committees and critical infrastructure

47. Subpart 2 of the Bill provides for Emergency Management Committees at the local level. The members are the local authorities in the area and Māori members. Clause 33 provides that each Emergency Management Committee must appoint and maintain an Emergency Management Co-ordinating Executive. The members are from the local authorities, Police, Fire and Emergency, ambulance service and one or more Māori members. Other persons can be co-opted by the Emergency

Management Committee. There is no mention of involvement from critical infrastructure sectors.

48. We suggest that clause 30 (re the powers of emergency management committees) be amended to include a requirement to communicate and coordinate activities with critical infrastructure sectors. In a local event this is the place where coordination happens and decisions get made.
49. We also suggest that the Committee (and officials and drafters) consider how coordination will work if there are multiple local emergency management committees operating in an emergency situation that extends beyond one region. Will there be coordination across emergency management committees?

Lead agencies for critical infrastructure sectors (clause 146)

50. The intention (from the Cabinet papers) is that a lead agency be identified for each critical infrastructure sector. Clause 146 provides that regulations may be made relating to the role and responsibilities of lead and support agencies in emergency management. These regulations can also prescribe the mechanism and criteria used to allocate lead and support agencies, provide for governance and specify triggers and thresholds that determine the lead agency for a specific event.

The Bill needs to be more specific about the role and functions of lead agencies

51. We are concerned that there is not enough information in the Bill on the role and functions of lead agencies vis-a-vis NEMA and CDEM groups. This point was made by MBIE in its comment in the [Cabinet paper](#) seeking the policy approvals for the Bill (referenced earlier in this submission). MBIE also made the point that no decisions had been made to resource agencies to take on lead agency functions under the Bill. We also note the advice of the Legislation Design and Advisory Committee (referenced at page 49 of the [Cabinet Paper](#) seeking approval to introduce the Bill) that some matters concerning agency responsibilities should be in the primary legislation.
52. Not specifying the roles of lead agencies could have the following consequences:
 - a. multiple agencies could take it upon themselves to carry out overlapping functions, which will result in confusion and additional costs for government and CIEs trying to make sense of it all
 - b. lead agencies could take different or inconsistent approaches across different critical infrastructure sectors - the legislation should require a consistent approach

- c. some matters falling between the cracks of interdepartmental responsibility (if no agency is assigned responsibility)
- d. a lack of clarity for CIEs on who is responsible for what and who they should be dealing with (e.g. what is a NEMA matter and what is a lead agency matter)
- e. CIEs needing to deal with more than one agency during an emergency, which diverts resources from vital network restoration work.

53. We therefore submit that the Bill should, at a high level, state what the functions of lead agencies for critical infrastructure are. These functions should not duplicate functions of NEMA and CDEM groups. A regulation making power could remain for further details.

The TCF would like to appear before the Committee

54. The TCF would like to appear before the Committee to speak to this submission. In the meantime if you have any questions, please contact kim.connolly-stone@tcf.org.nz in the first instance.

[submission ends]