



20 December 2023

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Copy to:
Minister of Media and Communications
Parliamentary Under Secretary to the Minister for Infrastructure and the Minister Responsible for the RMA

Dear Ministers

Briefing for incoming ministers: bringing greater coherence to government work on resilience of critical infrastructure

Introduction

1. Congratulations on your recent election. You will no doubt be considering your priorities for the National Security and Intelligence, Infrastructure, and Emergency Management and Recovery portfolios. As you do we very much hope that the Government can bring greater coherence to the various work streams that touch on resilience of critical infrastructure.

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2. In this briefing we:
 - a. provide an introduction to the telecommunications sector and the resilience work that is currently underway
 - b. outline the government resilience work we are currently engaging with
 - c. share our ideas on how greater coherence can be achieved through strategy, rationalising existing work and having a lead agency responsible for policy and coordination work on critical infrastructure
 - d. offer views on some of the initiatives that are currently in play, with particular focus on the Emergency Management Bill and the DPMC work on resilience of critical infrastructure).

Introducing the TCF and the telecommunications sector

3. The New Zealand Telecommunications Forum (TCF) is the industry body representing over 95 percent of the telecommunications sector. Our members include the operators of fixed line (fibre and copper) and mobile networks, retail service providers and tower companies.
4. Telecommunications infrastructure is critical to ensuring New Zealanders can communicate, access services and run their businesses. It becomes even more critical during emergencies and natural disasters. Telecommunications is a lifeline utility under the Civil Defence Emergency Management Act 2002, and would become a critical infrastructure sector when the Emergency Management Bill becomes law.
5. The telecommunications sector invests around \$1.62 billion per year to maintain and upgrade its networks. Te Waihanga (in its [State of Play report](#)) notes that the sector is well placed in terms of the services that New Zealanders can access, compares favourably with other countries in the OECD, and performs strongly relative to other infrastructure sectors.
6. Following the extreme weather events of 2024 the sector is doing even more to enhance resilience. Our members are building more diversity into their core networks (which connect cities and towns), investing in backhaul resilience, improving network capability through 5G and capacity upgrade programmes, exploring alternative pathways to bridges for fibre crossings, investing in mobile connectivity enabled by satellite, and auditing and investing in backup power requirements.
7. On the emergency management side the TCF runs the Telecommunications Emergency Forum (TEF), to coordinate activity during an emergency. The TEF is the sector coordinating entity under the Civil Defence and Emergency Act. We will shortly start work (with NEMA and MBIE) on a new sector wide emergency response plan, in line with the requirements in the Emergency Management Bill. In the meantime we are working with TEF members to improve operational processes and reporting and

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coordination with NEMA, regional civil defence management and other critical infrastructure sectors. At the individual company level, each network operator has a business continuity plan and incident response process for managing and minimising impacts on customers during an emergency, and restoring services as quickly as possible.

8. Further information about the TCF and the telecommunications sector can be found in our Briefing to Incoming Ministers (attached) and our recent [Industry Report](#).

Greater coherence for government work on the resilience of critical infrastructure

9. Telecommunications and other critical infrastructure sectors need your help to bring greater coherence to government work on the resilience of critical infrastructure. In recent months our sector has needed to engage in the following processes:
 - a. [DPMC proposals](#) for a new regulatory regime for resilience of critical infrastructure
 - b. The [Emergency Management Bill](#) (recently introduced) which contains new obligations for critical infrastructure
 - c. The [Government Inquiry](#) into the Response to the North Island Weather Events, which is also likely to make recommendations about the emergency management system
 - d. The proposed [National Policy Statement for Natural Hazard Decision Making](#) (which if adopted would make it much more difficult to build and upgrade infrastructure)
 - e. The Te Waihanga review of [asset management practices](#) of critical infrastructure
 - f. Commerce Commission expectations (for regulated companies) concerning investment in resilience.
10. Resilience related work is also being carried out by the Ministry of Business, Innovation and Employment, the Treasury and Crown Infrastructure Partners. There is also work going on at the local government level, including resilience plans being produced by regional councils and lifelines councils. There is no coordinated approach being taken to this regional work, a lack of shared data sources concerning hazards, and an absence of central government and funding support.
11. The TCF is concerned that progressing all of this work separately, without some sort of strategy or plan, brings risks of regulatory confusion, duplication and unnecessary and inefficient compliance costs for both industry and the Government.
12. Of particular concern is the potential for overlapping minimum standards and reporting and information sharing requirements across the Emergency Management Bill and through the

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regulatory regime that DPMC is considering (if the Government decides to continue with this work).

Greater coherence could be achieved through a stocktake, a strategy and having a lead policy agency for the resilience of critical infrastructure

13. We recommend the Government take an all of government and cross sector approach to the resilience of critical infrastructure. This is vital because of the interdependencies between areas of critical infrastructure and the increasing exposure to natural hazards and other threats (such as cyber attacks) that can affect the delivery of crucial services. The June 2023 [DPMC discussion document](#) on lifting the resilience of New Zealand's critical infrastructure does a good job setting out the issues.
14. Greater coherence and a cross government approach could be achieved by identifying a lead policy agency, and taking stock of existing initiatives and rationalising the work that is currently on the go. A strategy or overarching plan for government work on resilience of critical infrastructure would also be useful. This would show critical infrastructure and other stakeholders what the Government is seeking to achieve across the system, explain how various initiatives fit together, and which agencies would be responsible for what.
15. The absence of a strategy was, in our view, a surprising omission in the [DPMC discussion document](#). [OECD best practice](#) for governments looking to develop critical infrastructure resilience policies is to start with work to assess interdependencies, put information sharing mechanisms in place, build partnerships, foster collaboration and develop a strategy for resilience of critical infrastructure that sets out a vision with objectives that everyone can get behind. New Zealand has not yet done any of this work.
16. The OECD also recommends that the above steps be taken, and voluntary approaches be put in place, before considering whether new regulation is required. New Zealand is not currently following this advice and is instead proposing to move directly to new regulation, through additional regulatory requirements in the Emergency Management Bill and possibly through the regulation that is being proposed by DPMC (if the Government decides to continue with that work). If the Government is going to put time and resources into the resilience of critical infrastructure, we recommend starting with the foundations, as described above and recommended by the OECD.

Cross agency coordination

17. While there are many agencies doing separate work on resilience of critical infrastructure, there is no government agency responsible for understanding the interdependencies between critical infrastructure, no forum for information exchange, no centrally provided (or funded) information

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about the natural hazards that threaten the resilience of all sorts of critical infrastructure, and no policy lead. It doesn't make sense for local councils, individual government agencies, and each sector to be tackling these issues independently.

18. We understand the Government is considering the establishment of a new National Infrastructure Agency (to deal with funding, investment, procurement and delivery), and looking at the functions of existing agencies with a role in infrastructure. As you do this we recommend that one of the agencies with policy experience (perhaps Te Waihanga or DPMC) is mandated and resourced to take on the analysis, information gathering and sharing, and coordination functions we mention above. A central agency responsible for policy on resilience of critical infrastructure could complement the funding and investing activities of a National Infrastructure Agency, and provide independence from those making funding decisions. We also stress the importance of rationalising any reporting or information sharing requirements if a new agency (or function in an existing agency) is established.

Minimum standards need to be coupled with investment

19. The telecommunications sector is already focused on resiliency and making significant investments in resilient infrastructures. However, if the Government wants to go beyond current resiliency and speed of improvements, and introduce legislation that contains minimum standards, then a funding mechanism is required.
20. We note other countries that have introduced regulation and minimum standards have complemented this with government co-investment. For example, while Australia has implemented the regulatory regime that DPMC is interested in, it has also invested in telecommunications resilience through the Strengthening Telecommunications Against Natural Disasters Programme, the Mobile Network Hardening Programme, and the Telecommunications Disaster Resilience Innovation Programme. These programmes offer grant and match funding.
21. Industry economics are at play and affect the investments telecommunications companies can make. Investment in network improvements and new technology, to meet rising consumer expectations, is increasing while revenues across the sector are decreasing. This means that the telecommunications sector cannot, on its own, fund resilience initiatives that have no commercial viability. This is often the case in remote regions with complex geography and low user numbers where infrastructure costs are much higher. Consumers are generally not prepared to pay these additional costs but generally expect continuous and high quality connectivity no matter where they are. Partnerships and co-investment from government and other parties is therefore needed to help fund non-economic initiatives, as has been done in Australia and other countries.

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Compliance costs would likely flow through to consumers

22. The Government would also need to recognise that the cost of new regulatory requirements for resilience of critical infrastructure would flow through to consumers. We estimate that the combined administrative burden from the regulatory regime being considered by DPMC (if progressed), alongside new obligations in the Emergency Management Bill (if passed), would be similar in scale to the cost of complying with health and safety legislation.

The resource management system contains regulatory barriers to resilience of critical infrastructure

23. If the Government wishes to improve the resilience of critical infrastructure, we recommend looking at regulatory barriers. For the telecommunications sector the resource management regulatory system is a barrier. The National Environmental Standards for Telecommunications (NESTF - secondary legislation under the Resource Management Act) sets key standards for us in terms of where and how we can locate infrastructure, and its size and height. These standards are critical to what we can do in building, maintaining, extending and strengthening our networks. NESTF is also critical for ensuring national consistency in the deployment of telecommunications infrastructure. Unfortunately the NESTF has not kept pace with changes in technology that support enhanced resilience, and changes in the built environment. It is in urgent need of updating.
24. We have provided a more detailed briefing on resource management issues to the Minister for RMA Reform and the Minister for the Environment, including suggested quick wins from updating the NESTF under the RMA as part of a first tranche of resource management reform.

Suggested changes to the Emergency Management Bill

25. We understand that the Emergency Management Bill (the Bill), introduced by the previous Government, has been revived. As a sector we support 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 that this could result in a fragmented and overlapping approach.
26. You may be considering possible changes to the Bill. While our recommendation is to slow down the passage of the Bill so that the suggested strategy and coordination work can be done, [our select committee submission](#) on the Bill recommends some changes to the Bill if it progresses in its current form. These concern:
- a. The proposed **planning for emergency levels of service (PELOS)**, which will not achieve the goal of providing assurance of performance during and after an emergency event. This is because of the significant number of assumptions and caveats operators would need to

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add when setting standards around restoration times, matters that are beyond their control, and the unintended consequences when it comes to prioritising resources during a real event. Our reliance on other critical infrastructure (such as electricity and roading) also makes these proposed standards impractical. We submit that PELOS be removed from the Bill.

- b. **Requirements for critical infrastructure entities to deal with multiple parts of government** as part of the emergency planning and response process. Our experience is that dealing with multiple central 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 (with necessary confidentiality requirements).
- c. The **lack of clarity on the roles and responsibilities of 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 obligations for critical infrastructure entities** need a closer look. The two year delayed commencement for entities to get ready to meet some of the new obligations does not apply across the board, including to the very resource intensive sector response plans. We think the new obligations should commence two years from the date entities and sectors are gazetted.
- e. The **compliance costs for critical infrastructure entities have been significantly underestimated**. Our members will need to implement new systems and employ more people to comply with the new obligations. We estimate the costs of complying with the obligations proposed in the Bill and the new regime for regulating resilience of critical infrastructure (being proposed by DPMC) could be of the same magnitude as compliance with health and safety regulation. This is another reason to ensure there isn't duplication across resilience initiatives, that reporting and information sharing requirements are rationalised, and that PELOS is removed from the Bill.

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A meeting to discuss

27. We would very much appreciate a meeting to discuss the issues raised in this letter.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Paul Brislen', with a horizontal line extending to the right.

Paul Brislen
Chief Executive