

Report on
Operation of the Severe Weather Emergency Recovery Legislation Act 2023
since 13 April 2023

**Presented to the House of Representatives by the Associate Minister for Cyclone Recovery
pursuant to section 33 of the Severe Weather Emergency Recovery Legislation Act 2023**

[UNCLASSIFIED]

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Introduction

The Severe Weather Emergency Recovery Legislation Act 2023 (the Act) is the second Act passed in response to the heavy rain events in the upper North Island and Cyclones Hale and Gabrielle in January and February 2023. The single broad policy for the Act is to ensure that Government agencies and Crown entities, and affected local authorities and communities, can appropriately respond to or recover from the recent severe weather events, or both, including by providing the Government with flexibility to facilitate, enable, and expedite the recovery.

The Act enables the Governor-General to make Orders in Council (Orders) to modify other statutes to provide those affected by the North Island severe weather events with relief from legislative requirements that are overly burdensome in this context. Modifications are also permitted where necessary to enable prompt action for an efficient and timely recovery.

Prior to the finalisation of an Order, the Act requires the relevant Minister to provide a copy of the draft Order to the Regulations Review Committee and the Severe Weather Recovery Review Panel.

As the Minister responsible for the administration of the Act, I am also required under section 33 to present a report on the operation of the Act to the House of Representatives (the House) at least every six months. These reports must, for the period covered by that report, include a list of the Orders made under the Act during that period and a brief description of those orders.

This report provides information on Orders made under the Act between commencement of the Act and the date this report is presented to the House, in accordance with section 33.

Orders in Council

Severe Weather Emergency Recovery (Local Government) Order 2023

This Order amends the Local Government Act 2002 (LGA) to make changes for local government administration by simplifying legislative processes, extending statutory timeframes for key documents to be published, and allowing councils to continue to collect rates and provide services to the community in an efficient and effective manner.

Clauses 5 (relating to the requirement under section 15 of the LGA for all local authorities in a region to enter into a triennial) and clause 6 (relating to the requirement under section 40 of the LGA for local authorities to publish local governance statements within 6 months after each triennial general election) are treated as having come into force on 12 February 2023 and the rest of the Order came into force on 9 June 2023. Clauses 5 and 6 are revoked on the close of 1 September 2023 and the rest of the Order is revoked on the close of 30 June 2024.

Severe Weather Emergency Recovery (Climate Change—Forestry) Order 2023

The Order extends deadlines for certain forestry matters under the Climate Change Response Act 2002 (the CCRA). The extensions apply only to affected persons in defined circumstances. An affected person is:

- an individual whose usual residence is in a directly affected area; or
- a body corporate or an unincorporated body whose address for service or for notices is in a directly affected area; or
- any person for whom the relevant forest land is in a directly affected area.

A directly affected area is an area in the districts of certain territorial authorities that were affected by the severe weather events defined in the Act (the severe weather events).

The deadlines that are extended are deadlines for providing documents or for surrendering or repaying units.

This Order is treated as having come into force on 12 February 2023 and is revoked on the close of 31 December 2024.

Severe Weather Emergency Recovery (Rating Valuations—Hastings District Council) Order 2023

This Order modifies the Rating Valuations Act 1998 only in respect of Hastings District Council's general revaluation as at 1 August 2022 (the modified revaluation).

The Order requires the modified revaluation to be completed using a modified method by the end of 30 June 2023. The modified method assesses values for a rating unit by excluding the effects of event damage to the rating unit. Event damage is damage that directly resulted from a severe weather event, as defined in section 4(1) of the Act.

The Order also modifies provisions about notices and documents, roll maintenance, and the objections procedure as they relate to the modified revaluation. The modifications ensure that the modified revaluation is implemented, and remains implemented, in a way that reflects the modified method.

The Order is revoked on the close of 30 June 2026, or on any earlier date on which the Council's next general revaluation (after the modified revaluation) is implemented.

Severe Weather Emergency Recovery (Resource Management—Burning of Waste) Order 2023

The Order makes the burning of waste in the open air on certain land (permitted burn land) a permitted activity. The burning of waste in the open air would otherwise be a prohibited activity under the Resource Management Act 1991, the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, and the Hawke's Bay Regional Resource Management Plan, the Hawke's Bay Regional Coastal Environment Plan, or the Tairāwhiti Resource Management Plan (the relevant legislation). The permitted burn land:

- must be in the region of the Hawke's Bay Regional Council or the district of the Gisborne District Council; and
- must be rurally zoned and primarily used for agricultural or horticultural purposes on a commercial scale; but

- must not be in the Hastings or Napier Airshed (areas defined under the Resource Management (National Environmental Standards for Air Quality) Regulations 2004).

The relevant legislation is modified to allow the burning of waste in open air only if the owner or the occupier of the permitted burn land or their authorised person:

- burns the waste on permitted burn land; and
- complies with the permitted activity standards set out in the Schedule.

Regulation 16A of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 is also temporarily modified in respect of an exceedance of a contaminant in an airshed in the region of the Hawke's Bay Regional Council or the district of Gisborne District Council that results from a waste burning activity. The effect of the modification is that the exceedance of a contaminant in the airshed must be ignored in determining whether the ambient air quality standard for the relevant contaminant has been breached in the airshed, without the need to make an application to the Minister.

The Order came into force on 5 July 2023 and is revoked on the close of 15 December 2023.

Severe Weather Emergency Recovery (Waste Minimisation) Order 2023

The Order modifies, exempts from, and extends legislation relating to waste minimisation in response to circumstances created by the severe weather events defined in the Act. The legislation affected by the order is the Waste Minimisation Act 2008, the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009, and the Waste Minimisation (Information Requirements) Regulations 2021.

The Order came into force on 25 July 2023 and is revoked on the close of 24 July 2025.

Severe Weather Emergency Recovery (Temporary Accommodation) Order 2023

This Order modifies the RMA by treating the construction, installation, or use of temporary accommodation in certain locations affected by the severe weather events defined in the Act as a permitted activity. This means that a resource consent is not required for the activity.

Temporary accommodation is accommodation provided for persons displaced from their normal place of residence because of a severe weather event and that is able to be removed or relocated at the expiry of the order. Temporary accommodation that complies with the requirements is a permitted activity.

The owner of land on which temporary accommodation is sited must either apply for a resource consent in respect of the temporary accommodation before the close of 9 February 2026 or remove the accommodation by the close of 9 August 2026.

The territorial authority in respect of land on which temporary accommodation is located must provide information about the accommodation on an Internet site to which the public has free access.

The Order is treated as having come into force on 1 June 2023 and is revoked on the close of 9 August 2026.

Severe Weather Emergency Recovery (Land Transport Funding) Order 2023

This Order streamlines requirements in the Land Transport Management Act 2003 for the funding of road and rail recovery activities arising out of the severe weather events.

The Order came into force on 1 September 2023 and is revoked on the close of 30 June 2024.

Severe Weather Emergency Recovery (Climate Change—Forestry) Order (No 2) 2023

This Order has two main effects. The first is to defer certain dates under the Climate Change Response Act 2002 to allow foresters more time to establish, or re-establish, forest species on their land, where efforts to do so have been affected by the severe weather events.

The second is to give the Environmental Protection Authority the ability, if it should prove necessary, to take a range of actions that will enable foresters who meet the criteria to benefit from the additional time.

This Order is treated as having come into force on 1 April 2023 and is revoked on the close of 1 January 2028.

Severe Weather Emergency Recovery (Local Government Act 2002—Long-term Plan) Order 2023

This Order modifies the Local Government Act 2002 in relation to long-term plan requirements, including consultation documents for the adoption or amendment of a long-term plan, Auditor-General reports, and pre-election reports. It applies to named affected local authorities.

The modifications apply only in respect of an affected local authority's next long-term plan and pre-election report (being the long-term plan that is due to commence on 1 July 2024 and continue in force until the close of 30 June 2027 and the pre-election report that is due to be completed and published before the nomination day for the 2025 triennial general election of the affected local authority's members).

The Order comes into force on 5 October 2023 and is revoked on the close of 30 June 2027.

Severe Weather Emergency Recovery (Resource Management—Time Extensions) Order 2023

This Order modifies the RMA to provide relief to councils in Hawkes Bay and Tairāwhiti/Gisborne who are struggling to deliver services under the RMA including compliance and enforcement functions and the implementation of national direction.

The Order amends 338(4) of the RMA, giving affected councils an additional 12 months to commence proceedings for RMA non-compliances. This means that prosecution action could be taken against parties up to 24-months after the contravention giving rise to the charge for the offence first became known, or should have become known to the council (instead of the current 12 months in the RMA).

The Order also provides councils and communities additional time to comply with national direction instruments:

- the National Policy Statement for Freshwater Management 2020;

- the Resource Management (Stock Exclusion) Regulations 2020; and
- the National Planning Standards.

Clause 7 (relating to the date by which certain stock must be excluded from certain water bodies under the Resource Management (Stock Exclusion) Regulations 2020) is treated as having come into force on 30 June 2023 and the rest of the Order comes into force on 21 September 2023. Clause 5 (relating to the requirement under section 338(4) of the RMA to bring enforcement action for specified offences within 12 months of the date on which the non-compliance first became known or should have become known) is revoked on the close of 22 September 2025 and the rest of this order is revoked on the close of 31 December 2027.

Severe Weather Emergency Recovery (Resource Management—Extension of Water Take Resource Consent) Order 2023

This Order grants a small number of existing water take and use consent holders the ability to continue to exercise their existing consents while their new consent application is considered. This means that the RMA will operate as if these people had applied for their new consents within the normal timeframe, as if the severe weather events had not disrupted their application. This is limited to water permits in the Tūtaekurī, Ahuriri, Ngaruroro, or Karamū catchments.

This Order is treated as having come into force on 12 February 2023 and is revoked on the close of 31 March 2028 under section 17 of the Act.

Severe Weather Emergency Recovery (Waste Management) Order 2023

The Order modifies the RMA by treating particular activities in respect of temporary waste facilities and some types of landfills as permitted activities, subject to certain requirements in the order being met. Particular activities in respect of other types of landfills are treated as controlled activities subject to certain requirements in the order being met.

The Order came into force on 20 September 2023, and it will be revoked on the close of 31 March 2028.

Severe Weather Emergency Recovery (Resource Management—Streamlined Planning Process) Order 2023

This Order will support the implementation of recovery plans by enabling new housing and papakāinga areas (and related activities) to be able to deliver permanent housing solutions sooner than under normal processes.

The Order modifies Part 5 of Schedule 1 of the RMA. This would enable specified local authorities to rezone land by using a modified version of the Streamlined Planning Process in the RMA. This process would be known as the Severe Weather Emergency Recovery Streamlined Planning Process.

The Order acts as the Ministerial direction, meaning specified local authorities would not need to apply to use the process, instead they must only notify the Minister they would want to use the Severe Weather Emergency Recovery Streamlined Planning Process. The content of a direction under clause 78 of schedule one is incorporated directly into the draft Order.

The Order comes into force on 20 September 2023 and is revoked on the close of 20 September 2026.

Severe Weather Emergency Recovery (Local Government) Amendment Order 2023

The Order removes regulatory barriers that will delay councils from making decisions related to buying properties that were severely impacted by Cyclone Gabrielle and the early 2023 severe weather events.

This Order will temporarily suspend section 97 of the Local Government Act 2002 (LGA) for Auckland and Napier Councils for the remainder of the financial year (ending 30 June 2024), by amending an earlier Order that provided the same relief for other councils (the Severe Weather Emergency Recovery (Local Government) Order 2023).

Additionally, the Order clarifies that the section 97 suspension in this amendment, and in the earlier Order created for the same purpose, applies to decisions about category three Future of Severely Affected Locations property buy outs.

The Order came into force on 26 September 2023. This Order will be revoked upon revocation of the initial the Severe Weather Emergency Recovery (Local Government) Order 2023 on the close of 30 June 2024.

Severe Weather Emergency Recovery (Waka Kotahi) Order 2023

This Order facilitates the recovery and rebuild of the road network in locations affected by the severe weather events, by amending current legislative processes to reduce timeframes for matters such as consenting.

The effect of this draft Order is that, for Waka Kotahi, an activity consent is provided for to use state highway land to repair state highways, and use land adjoining temporarily, to facilitate the repair of state highways.

The following legislation is modified through this Order:

- the Resource Management Act 1991;
- the Public Works Act 1981;
- the Conservation Act 1987;
- the Reserves Act 1977;
- the Freshwater Fisheries Regulations 1983; and
- the Wildlife Act 1953.

The Order came into force on 6 October 2023 and is revoked on the close of 31 March 2028.

Severe Weather Emergency Recovery (KiwiRail Holdings Limited) Order 2023

This Order facilitates the recovery and rebuild of the rail route in locations affected by the severe weather events, by amending current legislative processes to reduce timeframes for matters such as consenting.

The effect of this Order is that, for KiwiRail, an activity consent is provided for to use state land for rail routes, and use land adjoining temporarily, to facilitate the repair of rail routes. Powers of acquisition are also provided for Awatoto and Eskdale Valley locations.

The following legislation is modified through this Order:

- the Resource Management Act 1991;
- the Public Works Act 1981;
- the Conservation Act 1987;
- the Reserves Act 1977;
- the Freshwater Fisheries Regulations 1983;
- the Wildlife Act 1953; and
- the Railways Act 2005.

The Order came into force on 6 October 2023 and is revoked on the close of 31 March 2028.