

Severe Weather Events Recovery Review Panel

18 August 2023

Hon Barbara Edmonds
Associate Minister for Cyclone Recovery
Executive Wing
Parliament Buildings
WELLINGTON 6011

Hon Peeni Henare
Minister of Forestry
Executive Wing
Parliament Buildings
WELLINGTON 6011

Hon James Shaw
Minister of Climate Change
Executive Wing
Parliament Buildings
WELLINGTON 6011

via email

Dear Ministers

SEVERE WEATHER EMERGENCY RECOVERY (CLIMATE CHANGE—FORESTRY) ORDER (NO 2) 2023

On 18 August 2023 the Severe Weather Events Recovery Review Panel (the Review Panel) considered the above draft Order.

As required under section 16 of the Severe Weather Emergency Recovery Legislation Act 2023, please find attached the Review Panel's report on this draft Order, including our recommendations and brief comments.

Yours sincerely

A handwritten signature in blue ink, reading "Denis Clifford", with a horizontal line underneath.

The Honourable Denis Clifford

Convenor, Severe Weather Events Recovery Review Panel

Severe Weather Events Recovery Review Panel

THE REVIEW PANEL

The Honourable Denis Clifford (Convenor)

Steve Wyn-Harris ONZM

Anne Carter

Associate Professor Dr Hamish Rennie

Rachel Devine

REPORT AND RECOMMENDATION OF THE REVIEW PANEL
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SEVERE WEATHER EMERGENCY RECOVERY (CLIMATE CHANGE—FORESTRY) ORDER (NO 2) 2023

1. We have been provided with a draft of the Severe Weather Emergency Recovery (Climate Change – Forestry) Order (No 2) 2023 (the draft Order) for review under section 16 of the Severe Weather Emergency Recovery Legislation Act 2023 (the Act). We provide our recommendations on the draft Order as required by section 16(2) of the Act, based on the following understanding of our remit.
2. The task of the Severe Weather Events Recovery Review Panel (the Panel) is reviewing and making recommendations on the draft Order to assist the relevant Minister to meet the section 8(1) criteria of being satisfied an Order is:
 - a. necessary and desirable for one or more purposes of the Act;
 - b. no broader than reasonably necessary;
 - c. consistent with section 11 (no effect on custody/ detention; no exemption/modification on constitutional legislative entitlements, including the New Zealand Bill Of Rights Act); and
 - d. not an unjustified limit on NZBORA rights and freedoms;

by supplementing the range of information and advice available to the Minister.
3. Paragraphs seven and 14 of the Terms of Reference for the Panel expand on this to provide that:
 - a. the Panel has been appointed to provide expert, technical advice and scrutiny of the draft Orders in Council; and
 - b. the Panel's recommendations may also address:
 - i. whether the draft Order in Council is sufficiently certain and clear, and if they are not, options to improve;
 - ii. the identification of any unintended or unforeseen but likely outcomes of the draft Order in Council, and ways to address these; and

- iii. any other matters the Panel considers relevant to the scope of its review of the draft Order in Council.
- 4. The criteria for the appointment of Panel members found in section 13(3) of the Act reflect the matters on which we consider we are to focus.
- 5. Within that context the Panel's focus is the necessity or desirability of an Order as required in section 8(1)(a)(i) of the Act.
- 6. We have based our review on our collective assessment of the materials provided to us and on our individual experience and expertise, and discussions with officials from the Ministry for Primary Industries. Other than as stated in this report, we have not undertaken any further enquiries.

Reasons Recommendations and Brief Comments

- 7. The draft Order proposes to amend the Climate Change Response Act 2002 (the CCRA) in situations where foresters are unable to re-establish their forest, due to impacts from the severe weather events.
- 8. Our understanding is that this draft Order has two effects. The first is to defer certain dates under the CCRA, 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 (which are defined in the Act).
- 9. The second is to give the Environmental Protection Agency (the EPA) the ability, if it should prove necessary, to take a range of actions to unwind actions taken by foresters without contemplation of either the severe weather events or the amendment provided for in this draft Order.
- 10. To assist in reviewing the draft Order, officials provided the following materials:
 - a. the draft Severe Weather Emergency Recovery (Climate Change - Forestry) Order (No 2) 2023;
 - b. the draft Statement of Reasons;
 - c. a Cabinet paper titled Permission to consult on Proposed Order in Council under the Severe Weather Emergency Recovery Legislation Act 2023: Change to forestry in the Emissions Trading Scheme;
 - d. the consultation document; and
 - e. a table summarising the feedback received during consultation activities.
- 11. We understand the effect of the proposed clause 7 in the draft Order is to provide unfettered discretion to the Environmental Protection Authority (EPA) as to whether to provide relief to foresters by unwinding actions taken by foresters prior to this amendment being enacted. We recommend that this provision should be amended to include criteria which bind the decision of the EPA, related to the purposes of relief under the Act.

12. Based on the information before us, and if the recommendation above is taken into account, we consider that the Minister might reasonably consider the draft Order to be necessary or desirable.

A handwritten signature in blue ink, reading "Denis Clifford", with a horizontal line underneath.

The Honourable Denis Clifford

Date: 18 August 2023

Convenor, Severe Weather Events Recovery Review Panel