

Building Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Building Act 2004 (the **Building Act**), and proposes 2 new sets of powers to improve the system for managing buildings after an emergency and to provide for investigating building failures.

Managing buildings after an emergency

This Bill proposes new powers that aim to address risks to people and property from buildings during and after an emergency. The proposed amendments seek to create a system that is clear, has proportionate impacts on personal and property rights, and ensures that heritage values are appropriately recognised.

A new scheme of powers under the Building Act is required to manage risks to people and property during and after an emergency. This is because existing business-as-usual powers under the Building Act to manage dangerous and insanitary buildings are inadequate for this purpose. The Canterbury and Kaikōura earthquakes highlighted gaps in current legislation for managing buildings after an emergency, including the need to better manage the transition from civil defence emergency management powers to business-as-usual powers under the Building Act.

The Bill introduces into the Building Act an end-to-end process for managing buildings from response to recovery following an emergency.

The amendments in the Bill—

- provide powers to territorial authorities (and where a state of emergency or transition period is in force, the relevant civil defence emergency management person) to manage buildings during and after an emergency event, including—
 - inspecting and placing notices on buildings:
 - evacuating and restricting entry to buildings:
 - closing roads and cordoning streets:

- requiring further information from building owners, such as detailed engineering assessments:
- demolishing or carrying out works to buildings that pose a risk of injury or death (including through impacts to critical infrastructure) or a risk of damage or disruption to neighbouring buildings, critical infrastructure, and public thoroughfares:
- requiring building owners to remove or reduce risks posed by their building, on a case-by-case basis:
- provide that the Minister for Building and Construction can choose to take direct action and make decisions to manage buildings, when warranted by the scale and impacts of an emergency event:
- provide that the powers can be used when no state of emergency or transition period is in force:
- provide that the powers are available for up to 3 years and can be extended, once only, for a further 3 years:
- provide a requirement that territorial authorities review whether powers are still necessary every 90 days:
- provide for powers of varying durations of 6 months or 3 years (depending on the power):
- provide that the carrying out of works on certain heritage buildings (Category 1 or wāhi tūpuna on the New Zealand Heritage List or buildings on the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list) that pose a risk of injury or death is a ministerial decision and require consultation with Heritage New Zealand for works on other heritage buildings:
- introduce a framework for recognising personal and property rights, including criteria governing the use of the powers, ensuring relevant parties are adequately consulted before decisions to undertake works are made, and an appeal process.

If a state of emergency or transition period is in force under the Civil Defence and Emergency Management Act 2002 (the **CDEM Act**), buildings in a designated area that have been damaged in an emergency event will primarily be managed under the Building Act, with the broader powers under the CDEM Act in relation to buildings available only if necessary or desirable to remove or reduce risks. During a state of emergency or transition period, the relevant CDEM decision-makers will exercise the powers. The Bill sets out a process for deciding how and when to use the new building emergency management powers. The Bill also provides a mechanism to transfer directives made under the CDEM Act to the building emergency management powers in the Bill at the end of any state of emergency or transition period.

Investigating building failures

The Bill proposes amendments to the Building Act that provide the Ministry of Business, Innovation, and Employment (**MBIE**) with a clear set of legislative powers to investigate significant building failures to determine the circumstances and causes of those failures. The key focus of the proposed powers is to learn lessons in order to improve building regulation to help avoid similar occurrences in the future. The Bill proposes that the powers of investigation can be used only when there has been a building failure that resulted or could have resulted in serious injury or death.

Significant building failures can occur as a result of deficiencies in design and construction. These deficiencies can emerge when stress is placed on a building, for example during an earthquake. To date, in the absence of a clear set of legislative powers, investigation of significant building failure by the central building regulator (MBIE) has proceeded on an ad hoc basis with the cooperation of building owners, and relied heavily on incomplete or partially destroyed information.

The amendments in the Bill will enable MBIE, on its own initiative or at the request of the Minister responsible for the Building Act, to investigate the circumstances and causes of building failures, including to—

- secure, or direct any person to secure, the site to be investigated for a reasonable period:
- enter a property and carry out inspections (which may include the taking of samples and evidence):
- require information relating to the building failure from any person who might hold relevant information:
- share relevant information related to the building failure with the regulatory bodies responsible for handling complaints and discipline in the building and construction sector:
- publish reports and findings.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=94>

Regulatory impact assessments

The Ministry of Business, Innovation, and Employment produced regulatory impact assessments on 24 November 2016 and 3 February 2017 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of these regulatory impact statements can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/building-and-construction/ris-managing-buildings-after-emergency-event.pdf>
- <http://www.mbie.govt.nz/publications-research/publications/building-and-construction/ris-building-investigation-powers-for-the-building-regulator.pdf>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill will come into force on a day or days appointed by the Governor-General by Order in Council. Default commencement occurs 6 months after Royal assent. Commencement by 1 or more Orders in Council, rather than on specified dates, is necessary to give sufficient operational flexibility to the administration of the new building management scheme and the new investigation scheme introduced by the Bill.

Part 1 amends the Building Act 2004 (the **principal Act**).

Clause 3 identifies the Building Act 2004 as the principal Act in *Part 1*.

Clause 4 amends section 4, which provides principles to be applied by decision-makers under the Act. *New section 4(1)(d)* is inserted, identifying decision-makers under *new subpart 6B* of Part 2 who are to apply the section 4 principles.

Clause 5 amends section 7 (interpretation), including by inserting a definition of heritage building in an extended form that is to apply to *new subpart 6B* of Part 2.

Clause 6 amends section 11 (which sets out the role of the Chief Executive of the Ministry of Business, Innovation, and Employment) by adding the roles performed by the chief executive under the new provisions relating to the management of buildings located in an area affected by an emergency and the investigation of building failures.

Clause 7 amends section 12 (which sets out the role of certain authorities including territorial authorities), by adding the role of territorial authorities relating to the management of buildings damaged in emergencies (*new subpart 6B* of Part 2).

Clause 8 amends section 15 (which contains an outline of Part 2 of the principal Act), by inserting *new section 15(1)(na)* containing a brief description of *new subpart 6B*.

Clause 9 amends section 41 (which provides for circumstances in which building consent is not required) by adding building work carried out under *new sections 133BR, 133BU, 133BV* in *new subpart 6B* and *new sections 207G to 207M*.

Clause 10 makes a related amendment to section 42 (which requires a building owner who is carrying out building work without a building consent to obtain a certificate of acceptance) by adding a reference to several of the additional circumstances inserted in section 41 by *clause 9*.

Clause 11 inserts *new section 123B* in subpart 6 of Part 2. Subpart 6 provides for the management of buildings that are dangerous, affected, or insanitary. This new section combines with *new section 133BZ* to provide for what occurs when both subpart 6

and *new subpart 6B* of Part 2 apply to a building. If the building is in an area designated under *new subpart 6B*, subpart 6 no longer applies except by continuing to give effect to a notice or other action that was issued or taken under that subpart before the designation.

Clause 12 inserts *new subpart 6B* into Part 2, which is intended to implement the Cabinet decisions on 7 November 2016 in the Cabinet paper “Managing buildings after an emergency event” (see particularly Appendix 1). The new subpart contains a scheme for the designation of areas affected by emergencies, whether or not a state of emergency or a transition period under the Civil Defence Emergency Management Act 2002 (the **CDEM Act**) is in place, and for the management of buildings in a designated area that pose a risk. The new subpart includes provisions that address the scheme’s interaction with subparts 6 and 6A of Part 2 and with the CDEM Act.

New section 133BA describes the purpose of the new subpart and provides that the new scheme applies to all buildings in an area that has been designated (a **designated area**).

New section 133BB is the interpretation provision. *Subsection (1)* contains relevant definitions, including the following:

- **critical infrastructure**, which means a priority building or a building or other infrastructure operated or used by a lifeline utility (under the CDEM Act);
- **relevant CDEM decision-maker**, which means the Minister administering the CDEM Act or a person authorised under that Act to declare a state of emergency or give notice of a transition period and, in *new sections 133BG, 133BH, and 133BI*, includes that authorised person’s successor in office;
- **responsible person**, which means a person who may exercise powers in a designated area;
- **risk**, which means a risk to persons (injury or death), buildings (damage or disruption to use), public thoroughfares (disruption), and critical infrastructure (damage or disruption to operation or use); and, so that all subpart 6 issues in a designated area may be dealt with under the new subpart, risk includes a risk associated with a building being insanitary;
- **secured building**, which means a building for which the New Zealand Defence Force, the Ministry of Foreign Affairs and Trade, or an intelligence or security agency is responsible;
- **state of emergency** and **transition period**, which have the same meanings as under the CDEM Act;
- **works**, which, in relation to a building, includes the demolition of the whole or a part of the building.

In addition, *new section 133BB* provides that—

- the land on which a building is situated includes the land beneath the building and connected surrounding land:

- in the building management provisions, a reference to a building includes a reference to a part of a building;
- when 2 or more territorial authorities are responsible for a designated area, each must act in relation to that part of the area for which it is responsible.

New sections 133BC to 133BI provide for the designation of areas for the purposes of *new subpart 6B* of Part 2.

New section 133BC provides for areas to be designated for the purposes of *new subpart 6B*. If a state of emergency or a transition period is in force under the CDEM Act, certain CDEM Act decision-makers may designate the area under the new subpart. In other circumstances, the area may be designated by the territorial authority that is responsible for the area (with the Minister's approval), or by the Minister. The section allows for the situation where 2 or more territorial authorities may be involved in the designation process.

New section 133BD contains more detailed provision for decisions that relate to the designation of areas under the new subpart—decisions to designate, or to approve or extend a designation, and also decisions to extend the availability of certain powers for the purposes of post-event assessments under *new section 133BP* and works under *new section 133BV*. Under the new section,—

- the decision-maker must be satisfied that the decision is in the public interest and is necessary or desirable for the protection of persons, buildings, public thoroughfares, or critical infrastructure (or, if applicable, for the protection of persons or buildings from the effects of the insanitary condition of a building);
- to the extent that it is practicable, the decision-maker must have regard to a number of matters, including the impact of the emergency, the likelihood of a further emergency occurring, and the principle that risks are preferably managed without the exercise of statutory powers.

New section 133BE provides that a person who designates an area must publicly notify the designation. Provision is made for the mode of publication and the content of the notice. A failure to notify does not invalidate a designation. This section is applied, in a modified form, by other provisions, so that public notification is given of the review (under *new section 133BG*), the extension (under *new section 133BH*), or the termination (under *new section 133BI*) of a designation.

New section 133BF provides that a designation comes into force at the time at and on the date on which it is made. Unless extended or terminated, a designation is in force for 3 years.

New section 133BG requires a designation to be reviewed at least every 90 days.

New section 133BH provides for the extension of a designation. A designation may be extended, once only, for up to a further 3 years. If a relevant state of emergency or transition period is still in force, the designation may be extended by a range of persons, depending who made it. An extension may relate to the whole or a part of the designated area, and must be publicly notified.

New section 133BI provides for the termination of a designation. The same persons who may extend a designation may terminate it, if satisfied that the designation is no longer in the public interest. A termination may affect the whole or a part of a designated area, and must be publicly notified.

New sections 133BJ to 133BX provide for the exercise of powers relating to the management of buildings in designated areas.

New section 133BJ provides for who may exercise powers under the new subpart in relation to buildings in a designated area. A person described in this section is a responsible person for the purposes of *new subpart 6B*. As with the extension and termination of designations, the person who may exercise powers in a designated area varies according to who designated the area and whether or not a state of emergency or transition period is in force. In particular,—

- if there is no state of emergency or transition period in force at any given time, the powers may be exercised by a responsible territorial authority or, if the designation was made by the Minister, by either the Minister or the territorial authority;
- territorial authorities exercise power subject to ministerial direction;
- if a state of emergency or transition period is in force at any given time (no matter when it came into force or ceases to be in force), *new section 133BL* sets out who may exercise the powers.

New section 133BK sets out who may exercise powers under *new subpart 6B* whenever a state of emergency or transition period is in force at the same time as a designation. Depending on which specific power is being exercised, the CDEM decision-makers who may exercise it include a Controller, a Recovery Manager, a constable, a CDEM Group, the Director, or a person acting under their authority.

New section 133BL is concerned with the relationship between powers under the principal Act and the CDEM Act when the 2 overlap. In a designated area, the responsible person may exercise only the new principal Act powers, unless the person believes the exercise of CDEM Act powers is necessary or desirable to remove or reduce risks.

New section 133BM is concerned with the past exercise of CDEM Act powers by CDEM decision-makers when a state of emergency or a transition period that was in force in a designated area comes to an end. *Subsections (2) and (3)* enable the responsible person to continue the effect of a notice, direction, or other requirement under the CDEM Act, that is substantially similar in effect to a notice, direction, or other requirement under *new subpart 6B*.

New section 133BN provides principles that apply to the exercise of powers under *new subpart 6B*. A responsible person must have regard to the following principles:

- the paramount consideration in the exercise of those powers is the protection of human life and safety;

- actions that result in the least restriction of an individual's ability to continue to use and occupy his or her property are preferable:
- actions taken should be proportionate to the risks being managed:
- it is preferable that any restriction of that ability be for no longer than is reasonably necessary:
- as the type and severity of risks arising from an emergency change over time, including on the occurrence of further emergencies or other relevant events, it is important to use up-to-date information and information about possible future events.

New section 133BO requires a responsible person to exercise powers in relation to a secured building in accordance with instructions given by the officer-in-charge of the building.

New section 133BP provides for a responsible person to carry out a post-event assessment of risks posed by a building in a designated area. The section provides—

- the right to enter a building for inspection varies according to the type of building. A simple-unit residential building (defined in *new section 133BB*) or a household within such a building may be entered only with the occupier's consent or under a warrant:
- for other buildings, consent is not necessary to enter, but the responsible person must take any steps the person considers reasonable to obtain consent. After 6 months, however, entry is permitted only with consent or under warrant. This 6-month period can be extended, once only, by up to 3 months:
- entry and inspection (once entry is authorised) may be by any reasonable means, but all reasonable steps must be taken to minimise damage to the building:
- the responsible person must produce evidence of authority on request and, if entering in the occupier's absence, leave a notice explaining the purpose of the entry.

New section 133BQ gives to responsible persons and constables the power to direct the evacuation of a building in a designated area. The person giving the direction must be satisfied that evacuation is necessary to prevent the death or injury of any person in the designated area. An intentional failure, without reasonable excuse, to comply with the direction is an offence (punishable by a \$5,000 fine for an individual and a \$50,000 fine for a body corporate).

New section 133BR empowers a responsible person to put in place measures that keep people at a safe distance from a building or that protect a building. Measures include the installation of barriers to prevent people from approaching the building, measures to prevent or limit public access to a road or public place, measures that allow limited access, and measures to prevent the building or debris from harming people. It is an offence to approach or enter a building after bypassing a measure or to interfere with a measure (individual fine \$5,000, body corporate fine \$50,000). If a measure is in

place for more than 3 months, the owner of the building is liable for any continuing costs, which may be recovered by the responsible person (and which are, in the meantime, a charge on the land on which the building is situated).

New section 133BS empowers a responsible person to place signs or notices that prohibit or restrict the use of a building. The responsible person may place a sign or notice after directing an evacuation under *new section 133BQ* or, in any event, if the person considers it reasonably necessary to remove or reduce risks of injury or death. The section provides for the form and content of the sign or notice. It is an offence to intentionally occupy or use a building other than in accordance with a sign or notice placed under this section (\$200,000 fine), to intentionally interfere with a sign or notice, or to place a similar sign or notice (individual fine \$5,000, body corporate fine \$50,000).

New section 133BT empowers a responsible person to direct the owner of a building or land to give the responsible person information about the building or land, if the responsible person believes the information is reasonably necessary to enable him or her to determine risks and necessary works. The responsible person may give a further direction, and the section provides for the form and content of directions. The building owner may appeal against the direction to the District Court, but otherwise the owner must provide the information and it is an offence to intentionally fail to do so (individual fine \$5,000, body corporate fine \$50,000).

New section 133BU empowers a responsible person to carry out works in relation to a building if the person believes the works are reasonably necessary to remove or reduce risks and must be carried out without delay. In addition,—

- the section requires the Minister's approval and appropriate consultations if the works will involve the demolition of the whole or a part of certain heritage buildings, including buildings identified as Category 1 or wāhi tūpuna. However, a failure to consult does not invalidate decisions and approvals about the works:
- the owner of the building is liable for the costs of the works, which may be recovered by the responsible person (and which are, in the meantime, a charge on the land on which the building is situated).

New section 133BV is concerned with works in relation to a building that a responsible person believes are reasonably necessary to remove risks posed by the building, other than risks referred to in *new section 133BU*. In addition,—

- the responsible person may carry out the works or direct the building owner to do so:
- before making this decision, the responsible person must carry out consultations, consider alternative approaches to demolition, and compare the cost of carrying out the works with the impact on neighbouring homes and businesses of not carrying out the works:
- the section provides for the form and content of a notice of direction:

- the building owner must carry out the directed works, and the responsible person may carry them out if the owner does not:
- if the responsible person carries out the works, the building owner is liable for the costs of the works, which may be recovered by the responsible person (and which are, in the meantime, a charge on the land on which the building is situated):
- a responsible person may carry out works under this section only up to 6 months after the area in which the building is located was designated, but this period may be extended (once only) by up to 3 months:
- it is an offence for a building owner to intentionally fail to comply with a direction under this section (\$200,000 fine).

New section 133BW empowers a responsible person to direct a building owner to carry out works which, although neither *new section 133BU* nor *new section 133BV* applies, the responsible person believes are reasonably necessary to remove or reduce risks so that the building is safe, sanitary, and otherwise suitable to be used or occupied on a long-term basis. In addition,—

- the section provides for the form and content of a notice of direction:
- the building owner must carry out the directed works, and the responsible person may carry them out if the owner does not:
- if the responsible person carries out the works, the building owner is liable for the costs of the works, which may be recovered by the responsible person (and which are, in the meantime, a charge on the land on which the building is situated):
- if works in relation to a simple-unit residential building are not carried out, the building can be used or occupied, but any land information memorandum issued under section 44A of the Local Government Official Information and Meetings Act 1987 must include information about the failure to carry out the directed works:
- if works in relation to a multi-unit residential building or a commercial building are not carried out, the responsible person may continue to exercise powers under *new section 133BR* or *133BS* in relation to the building:
- it is an offence for a building owner to intentionally fail to comply with a direction under this section (\$200,000 fine).

New section 133BX provides that resource consent under the Resource Management Act 1991 is not required for works carried out under *new sections 133BR, 133BU, or 133BV*.

New sections 133BY and 133BZ are miscellaneous provisions that support the scheme in *new subpart 6B* of Part 2.

New section 133BY allows the Minister and a territorial authority performing functions or duties or exercising powers under *new subpart 6B* to disclose information to persons exercising other powers under the principal Act, or exercising powers under

the CDEM Act, in the same area. The information that may be disclosed is information held in relation to the performance of functions or duties or the exercise of powers under the new subpart that the Minister or territorial authority considers may assist the other person in their performance of functions or duties or exercise of powers.

New section 133BZ is concerned with the relationship between *new subpart 6B* and existing subpart 6 (dangerous and insanitary buildings), subpart 6A (earthquake-prone buildings), and subpart 7 (safety of dams) of Part 2, and provides how the provisions of these subparts apply in an area that is designated under *new subpart 6B*. In particular,—

- if a building to which subpart 6 applies (for example, a dangerous building) is in a designated area, subpart 6 continues to apply, but only to the limited extent set out in *new section 123B* (continuation of notices and actions commenced before the designation). Further, *new subpart 6B* prevails in the event of any inconsistency:
- if an earthquake-prone building (subpart 6A) is in a designated area, subpart 6A continues to apply but *new subpart 6B* prevails in the event of any inconsistency. Further, a responsible person may bring forward certain deadlines imposed under subpart 6A if the responsible person believes this is reasonably necessary to remove or reduce risks of injury or death:
- if a dangerous dam is in a designated area, *new subpart 6B* applies to the dam and specified provisions of subpart 7 apply in accordance with *new section 153AA*.

Clause 13 inserts *new section 153AA* in subpart 7 (safety of dams) of Part 2. This new section and *new section 133BZ* provide for what occurs when both subpart 7 and *new subpart 6B* of Part 2 apply to a building. If the building is in an area designated under *new subpart 6B*, subpart 7 continues to apply only by continuing to give effect to a notice or other action that was issued or taken under subpart 7 before the designation.

Clause 14 amends section 175, which empowers the chief executive of MBIE (the **chief executive**) to publish guidance information to assist duty holders and public bodies in the performance of their role under the principal Act. As amended, section 175(1)(c) provides for guidance for building owners and members of the public in relation to the application of, and their compliance with, *new subpart 6B* of Part 2.

Clause 15 amends section 176 (which describes who is a party for the purpose of the principal Act's determinations scheme), by inserting *new paragraph (db)* which refers to a responsible person under *new subpart 6B* of Part 2.

Clause 16 amends section 177, which describes the matters for which a party may apply for a determination under the determinations scheme. *New subsection (4A)* provides that the determinations scheme applies to all decisions under *new subpart 6B* of Part 2 other than a decision under *new section 133BT or 133BU* and a decision of the Minister.

Clause 17 amends section 183, which provides that decisions in relation to which an application for determination has been made are suspended unless the chief executive directs otherwise. *New subsection (2)* adds a further exception to this general position for decisions under *new subpart 6B* of Part 2: decisions under *new section 133BV or 133BW* are the only *subpart 6B* decisions that are suspended for the determinations process.

Clause 18 amends section 185, which provides for the timing and effect of a determination: the default deadline is 60 working days after the chief executive receives the application for determination. *New subsection (2A)* imposes a shorter default deadline (15 working days) if a determination is sought in relation to a decision under *new subpart 6B* of Part 2 that is made within 6 months after the designation of the relevant area. The 15-day period can be extended by up to 60 working days, if the chief executive and parties agree.

Clause 19 inserts *new sections 207C to 207S* into subpart 1 of Part 3, which give powers to the chief executive to investigate building failures. The new sections do the following:

- *new section 207C* provides that the chief executive may investigate a building failure if the chief executive reasonably considers that certain requirements are satisfied. The requirements are that part of the building has failed and that the failure resulted, or could have resulted, in a risk of serious injury or death. The chief executive must investigate a building failure on the request of the Minister if the Minister reasonably considers that the requirements are satisfied:
- *new section 207D* specifies the chief executive's powers of investigation. The section sets the scope of the powers—they may be exercised only to investigate the circumstances and causes of the building failure for certain purposes and only in relation to the investigation site (which is defined):
- *new section 207E* limits the exercise of the powers. A power may be exercised only if that is reasonable. If a power is exercised, it may be exercised for no longer than is reasonable and only in a way that is reasonable:
- *new section 207F* authorises the chief executive to engage a suitable person to exercise powers of investigation to assist the chief executive in the investigation of a building failure:
- *new section 207G* gives the chief executive a power to restrict or prohibit access to the investigation site and to secure the investigation site:
- *new section 207H* gives the chief executive a power to enter the investigation site. The chief executive must reasonably consider that the investigation site contains evidence that may help determine the circumstances or causes of the building failure:
- *new section 207I* restricts entry into a household unit. Either an occupier's consent or a warrant is required. The section provides for how either must be obtained:

- *new section 207J* gives the chief executive a power to inspect, and take samples or other evidence from, the investigation site. There is an extra requirement for samples or evidence that are, or are taken from, personal property:
- *new section 207K* gives the chief executive a power to carry out works at the investigation site that are necessary to enable the chief executive to exercise another power of investigation:
- *new section 207L* gives the chief executive a power to require an owner or occupier of the investigation site to give reasonable assistance to enable the chief executive to exercise another power of investigation. The owner or occupier has a duty to assist:
- *new section 207M* gives the chief executive a power to require any person to provide information or documents that the chief executive reasonably considers may help determine the circumstances or causes of the building failure:
- *new section 207N* restricts the sharing of evidence or information collected in the investigation of a building failure:
- *new section 207O* authorises the chief executive to provide evidence or information to an occupational body. It must be evidence or information collected in the investigation of a building failure that the chief executive reasonably considers is relevant to the occupational body's functions:
- *new section 207P* authorises the chief executive to publish a report about building design or construction after investigating a building failure:
- *new section 207Q* creates an offence of intentionally interfering with an investigation site:
- *new section 207R* creates an offence of intentionally accessing an investigation site in breach of a restriction or prohibition on access:
- *new section 207S* creates an offence of wilfully obstructing, hindering, or resisting the investigation of a building failure or wilfully failing to provide information or documents.

Clause 20 amends section 365, which creates a general offence of intentionally failing to comply with a direction given under the principal Act. *New subsection (1A)* provides that the general offence does not apply where a specific offence of this kind is created (*new sections 133BQ(3), 133BT(8), 133BV(10), and 133BW(9)*).

Clause 21 amends section 367, which creates a general offence of wilfully obstructing, hindering, or resisting a person executing powers under the principal Act. *New subsection (1A)* provides that the general offence does not apply where the specific offence under *new section 207S* applies.

Clause 22 amends section 368, which creates a general offence of wilfully removing or defacing a notice published under the Act, or inciting another person to do so. *New subsection (1A)* provides that the general offence does not apply where the specific offence under *new section 133BS(6)* applies.

Clause 23 amends section 377 (which identifies the persons who may file a charging document for an offence under the principal Act) by adding *new paragraph (ca)*, which identifies a responsible person under *new subpart 6B* of Part 2.

Clause 24 amends section 378 (which imposes a time limit on the filing of charging documents for offences against the principal Act) by adding *new paragraph (ca)*, which identifies a responsible person under *new subpart 6B* of Part 2 as a person whose first knowledge of the offence determines the time limit.

Clause 25 amends section 390, which provides that civil proceedings may not be brought against specified decision-makers under the principal Act. *New subsection (1)(ca) and (cb)* include among these decision-makers a person engaged by the chief executive under *new section 207F* in relation to investigation of a building failure and a responsible person under *new subpart 6B* of Part 2. This clause also corrects a punctuation error at the end of section 390(1)(c).

Clause 26 amends Schedule 1AA by inserting *new Part 2*, which contains transitional, savings, and related provisions relating to the enactment of *new subpart 6B* of Part 2 of the principal Act.

Part 2 contains amendments to enactments other than the Building Act 2004.

Subpart 1 amends the Civil Defence Emergency Management Act 2002 (the **CDEM Act**).

Clause 27 identifies the CDEM Act as the principal Act for this subpart.

Clause 28 amends section 83, which imposes restrictions on disclosure of information received under certain provisions of the CDEM Act. *New subsection (2)* allows a person who has received such information to disclose it to a responsible person exercising powers under *subpart 6B* of Part 2 of the Building Act 2004 in relation to the same area.

Clause 29 amends section 84, which empowers the Minister administering the CDEM Act to give directions in relation to the exercise of powers under that Act during a state of emergency. *New subsections (2A) and (2B)* provide that, if an area is subject to a state of emergency and to a designation under *new subpart 6B* of Part 2 of the Building Act 2004, and if a CDEM decision-maker is the responsible person under that subpart, the Minister may give directions to that responsible person in relation to the exercise of powers under that subpart.

Clause 30 amends section 94J, which empowers the Minister administering the CDEM Act to give directions in relation to the exercise of powers under that Act during a transition period within the meaning of that Act. *New subsections (2A) and (2B)* provide that, if an area is subject to a transition period and to a designation under *new subpart 6B* of Part 2 of the Building Act 2004, and if a CDEM decision-maker is the responsible person under that subpart, the Minister may give directions to that responsible person in relation to the exercise of powers under that subpart.

Subpart 2 amends the Search and Surveillance Act 2012.

Clause 31 identifies the Search and Surveillance Act 2012 as the principal Act for this subpart.

Clause 32 amends the Schedule of the Search and Surveillance Act 2012, by inserting items relating to *new sections 133BP, 207I, and 207J* of the Building Act 2004. The new items identify which provisions of the Search and Surveillance Act 2012 apply to warrants under *new sections 133BP and 207I* of the Building Act 2004 and to samples or evidence under *new section 207J* of that Act.

The *Schedule* contains *new Part 2* to be inserted into Schedule 1AA of the Building Act 2004. *New Part 2* contains 2 clauses:

- *new clause 5* applies if the whole or a part of a designated area, immediately before the commencement of *new subpart 6B* of Part 2, is either subject to a state of emergency or a transition period or affected by an emergency for which no state of emergency is declared and no transition period is notified. The clause provides that, in those circumstances, the provisions of *new subpart 6B* of Part 2 apply to the relevant area after the commencement.
- *new clause 6* provides that **section 207C(1)(a) and (b)** may be satisfied even if the relevant building failure and resulting risk or potential risk occurred before the commencement date.

Hon Jenny Salesa

Building Amendment Bill

Government Bill

Contents

		Page
1	Title	4
2	Commencement	4
Part 1		
Amendments to Building Act 2004		
3	Principal Act	4
4	Section 4 amended (Principles to be applied in performing functions or duties, or exercising powers, under this Act)	4
5	Section 7 amended (Interpretation)	4
6	Section 11 amended (Role of chief executive)	5
7	Section 12 amended (Role of building consent authority and territorial authority)	5
8	Section 15 amended (Outline of this Part)	5
9	Section 41 amended (Building consent not required in certain cases)	5
10	Section 42 amended (Owner must apply for certificate of acceptance if building work carried out urgently)	6
11	New section 123B inserted (Buildings in areas designated under subpart 6B)	6
	123B Buildings in areas designated under subpart 6B	6
12	New subpart 6B of Part 2 inserted	6
	Subpart 6B—Special provisions for buildings affected by emergency	
	133BA Purpose of this subpart	6
	133BB Definitions	7

Building Amendment Bill

<i>Designation of areas for emergency management of buildings</i>			
	133BC	Designation of areas to which this subpart applies	9
	133BD	Decisions about designations (other than termination)	9
	133BE	Public notice of designation	10
	133BF	Commencement and duration of designation	11
	133BG	Periodic review of designation	11
	133BH	Extension of designation	11
	133BI	Termination of designation	13
<i>Management of buildings in designated areas</i>			
	133BJ	Responsible persons may exercise powers under this subpart	13
	133BK	CDEM Act officers as responsible persons	14
	133BL	Powers under this subpart take precedence over CDEM Act powers	15
	133BM	Effect of previously issued CDEM Act notices	15
	133BN	Principles for exercise of powers	16
	133BO	Exercise of powers in secured buildings	16
	133BP	Post-event assessments	16
	133BQ	Evacuation	18
	133BR	Measures to keep people at safe distance and protect building	18
	133BS	Notices and signs on buildings	19
	133BT	Owner directed to give information	21
	133BU	Urgent works to remove or reduce risks	22
	133BV	Works to remove or reduce other risks	23
	133BW	Works for long-term use or occupation of building	25
	133BX	Resource consent not required for certain works	26
<i>Other matters</i>			
	133BY	Sharing of information	26
	133BZ	Application of subparts 6, 6A, and 7 in designated areas	26
13		New section 153AA inserted (Buildings in areas designated under subpart 6B)	27
	153AA	Buildings in areas designated under subpart 6B	27
14		Section 175 amended (Chief executive may publish guidance information)	27
15		Section 176 amended (Meaning of party)	27
16		Section 177 amended (Application for determination)	27
17		Section 183 amended (Decision or exercise of power suspended until determination made)	28
18		Section 185 amended (When determination must be completed)	28
19		New sections 207C to 207S and cross-heading inserted	28

Building Amendment Bill

	<i>Powers of chief executive to investigate building failures</i>	
	207C Investigation of building failure	28
	207D Powers of investigation: purpose and investigation site	29
	207E Limits to powers of investigation	29
	207F Assistance with investigation	29
	207G Power to secure investigation site	30
	207H Power to enter investigation site	30
	207I Power to enter household unit	30
	207J Power to inspect and take samples and evidence	31
	207K Power to carry out works	32
	207L Power to require assistance	32
	207M Power to require information or documents	32
	207N Restrictions on sharing evidence or information	33
	207O Sharing evidence or information with occupational bodies	33
	207P Report with findings of investigation	34
	207Q Offence to interfere with investigation site	34
	207R Offence to access investigation site despite restriction or prohibition	34
	207S Offence to obstruct investigation or fail to provide information or document	34
20	Section 365 amended (Offence to fail to comply with direction of authorised person)	35
21	Section 367 amended (Offence to obstruct execution of powers under this Act)	35
22	Section 368 amended (Offence to remove or deface notices)	35
23	Section 377 amended (Filing charging document)	35
24	Section 378 amended (Time limit for filing charging document)	35
25	Section 390 amended (Civil proceedings may not be brought against chief executive, employees, etc)	35
26	Schedule 1AA amended	36
Part 1		
Provisions relating to Building (Earthquake-prone Buildings) Amendment Act 2016		
Part 2		
Amendments to other enactments		
Subpart 1—Amendments to Civil Defence Emergency Management Act 2002		
27	Amendments to Civil Defence Emergency Management Act 2002	36
28	Section 83 amended (Restriction on disclosure of information)	36
29	Section 84 amended (Minister’s power of direction)	36
30	Section 94J amended (Minister’s power of direction)	37

	Subpart 2—Amendment to Search and Surveillance Act 2012	
31	Amendment to Search and Surveillance Act 2012	37
32	Schedule amended	37
	Schedule	39
	New Part 2 inserted in Schedule 1AA	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Building Amendment Act **2018**.

2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates. 5
- (2) Any provisions of this Act that have not earlier been brought into force come into force on the day that is 6 months after the day on which this Act receives the Royal assent. 10

Part 1

Amendments to Building Act 2004

3 Principal Act

This Part amends the Building Act 2004 (the **principal Act**).

4 Section 4 amended (Principles to be applied in performing functions or duties, or exercising powers, under this Act) 15

After section 4(1)(c), insert:

- (d) in **subpart 6B** of Part 2,—
- (i) a person who may designate an area for the purposes of that subpart: 20
- (ii) a responsible person as defined in **section 133BB(1)**.

5 Section 7 amended (Interpretation)

In section 7, insert in their appropriate alphabetical order:

- heritage building** means,—
- (a) in **subpart 6B** of Part 2,— 25
- (i) a building that is included on the New Zealand Heritage List/Rārangī Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or

- (ii) a building that is included on the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014; or
- (iii) a place, or part of a place, that is subject to a heritage covenant under section 39 of the Heritage New Zealand Pouhere Taonga Act 2014 and is registered under section 41 of that Act; or
- (iv) a place, or part of a place, that is subject to a heritage order within the meaning of section 187 of the Resource Management Act 1991; or
- (v) a place, or part of a place, that is included in a schedule of a district plan because of its heritage value:
- (b) elsewhere in this Act, a building referred to in **paragraph (a)(i) or (ii)** **local authority** has the meaning given to it in section 5(1) of the Local Government Act 2002
- 6 Section 11 amended (Role of chief executive)**
- After section 11(da), insert:
- (db) approves the methodology for the preparation of post-event assessments under **section 133BP**; and
- (dc) approves the form of notices, directions, signs, and post-event assessments for the purposes of **subpart 6B** of Part 2; and
- (dd) investigates building failures under **sections 207C to 207S**; and
- 7 Section 12 amended (Role of building consent authority and territorial authority)**
- Replace section 12(2)(j) with:
- (j) performs functions relating to dangerous, insanitary, or earthquake-prone buildings or buildings located in areas designated under **subpart 6B** of Part 2; and
- 8 Section 15 amended (Outline of this Part)**
- After section 15(1)(n), insert:
- (na) for territorial authorities and for persons performing functions under the Civil Defence Emergency Management Act 2002 to perform functions relating to managing buildings located in areas designated under **subpart 6B**:
- 9 Section 41 amended (Building consent not required in certain cases)**
- After section 41(1)(c), insert:

- (ca) any building work that is carried out under **section 133BR** (which relates to buildings located in areas designated under **subpart 6B**); or
- (cb) any building work that is carried out under **section 133BU or 133BV** (which relate to buildings located in areas designated under **subpart 6B**); or 5
- (cc) any building work that is carried out under the powers of investigation in **sections 207G to 207M** (which relate to building failures); or
- 10 Section 42 amended (Owner must apply for certificate of acceptance if building work carried out urgently)**
- In section 42(1), replace “section 41(1)(c)” with “section 41(1)(c), **or (cb)**”. 10
- 11 New section 123B inserted (Buildings in areas designated under subpart 6B)**
- Before section 124, insert:
- 123B Buildings in areas designated under subpart 6B**
- (1) If a dangerous or insanitary building or a building adjacent to, or adjoining, a dangerous building is located in an area that has been designated under **subpart 6B**, this subpart does not apply to that building while the designation is in force. 15
- (2) Despite **subsection (1)**, this subpart continues to apply to the building for the purposes of— 20
- (a) an action taken in relation to the building under section 124(2)(a) or (b) before the designation:
- (b) a notice issued in relation to the building under section 124(2)(c), or work carried out in accordance with the notice or under section 126, before the designation: 25
- (c) a notice issued in relation to the building under section 124(2)(d) before the designation:
- (d) an action in relation to the building for which a warrant has been issued under section 129(2) before the designation.
- 12 New subpart 6B of Part 2 inserted** 30
- After subpart 6A of Part 2, insert:
- Subpart 6B—Special provisions for buildings affected by emergency
- 133BA Purpose of this subpart**
- (1) The purpose of this subpart is to provide for the management of buildings located in an area that has been affected by an emergency. 35

- (2) This subpart applies to all buildings in an area that is designated under **section 133BD**.

133BB Definitions

- (1) In this subpart, unless the context otherwise requires—
- CDEM Act** means the Civil Defence Emergency Management Act 2002 5
- critical infrastructure** means—
- (a) a priority building; or
- (b) a building or other infrastructure operated or used by a lifeline utility
- defence area** has the same meaning as in section 2(1) of the Defence Act 1990
- designated area** means an area designated under **section 133BC** 10
- emergency** means a situation of a kind described in paragraphs (a) and (b) of the definition of emergency in section 4 of the CDEM Act
- intelligence and security agency** has the same meaning as in section 4 of the Intelligence and Security Act 2017
- lifeline utility** has the same meaning as in section 4 of the Civil Defence and Emergency Management Act 2002 15
- multi-unit residential building** means a residential building that—
- (a) comprises 2 or more storeys; and
- (b) either—
- (i) is a hostel, boardinghouse, or other specialised accommodation; or 20
- (ii) contains 3 or more household units
- New Zealand Defence Force** has the same meaning as Defence Force in section 2(1) of the Defence Act 1990
- officer in charge**, in relation to a secured building, means,—
- (a) for a building referred to in **paragraph (a) of the definition of secured building**, the officer in charge within the meaning of regulation 2 of the Defence Regulations 1990: 25
- (b) for a building referred to in **paragraph (b) of that definition**, the person who is for the time being responsible for the security of the building
- priority building** means a building of a kind described in paragraph (a), (b), (c), or (f) of the definition of priority building in section 133AE(1) that is located in a designated area 30
- relevant CDEM decision-maker**, in relation to an area that is a designated area or is proposed to be a designated area,—
- (a) means— 35
- (i) the Minister responsible for administration of the CDEM Act; or

- (ii) a person who is appointed or otherwise authorised under section 25 of that Act to declare a state of local emergency or give notice of a local transition period (as the case may be) for the area; and
- (b) in **sections 133BG, 133BH, and 133BI**, also includes a person who, at the relevant time, is the successor in office of a person referred to in **paragraph (a)(ii)** 5
- residential building** means a building that is used only or mainly for residential purposes
- responsible person** means a person who is authorised by **section 133BJ or 133BK** to exercise powers under this subpart 10
- risk**, other than in **section 133BU**,—
- (a) means a risk to—
- (i) persons, of injury or death; or
- (ii) buildings, of damage or of disruption to their use; or
- (iii) public thoroughfares, of disruption; or 15
- (iv) critical infrastructure, of damage or disruption to its operation or use; and
- (b) includes a risk of any kind associated with a building that is insanitary within the meaning of section 123
- secured building** means— 20
- (a) a building that—
- (i) is a defence area; or
- (ii) includes a part of a building that is a defence area; or
- (iii) is located on or in a defence area; or
- (b) any other building or a part of any other building that is used by— 25
- (i) the New Zealand Defence Force; or
- (ii) an intelligence and security agency; or
- (iii) the Ministry of Foreign Affairs and Trade
- simple-unit residential building** means a residential building other than a multi-unit residential building 30
- state of emergency** has the same meaning as in section 4 of the CDEM Act
- transition period** has the same meaning as in section 4 of the CDEM Act
- works**, in relation to a building, includes—
- (a) demolition of the whole or a part of the building; and
- (b) works on the land under and around the building. 35
- (2) A reference in this subpart to land on which a building is **situated** is a reference to—

- (a) the land beneath the building; and
 - (b) any land surrounding the building that is used in connection with the use of the building.
- (3) A reference in **sections 133BJ to 133BZ** to a **building** includes a reference to a part of a building, so that powers under those provisions may be exercised only in relation to a relevant part of a building rather than the whole building. 5
- (4) **Subsection (3)** does not limit or affect the way in which any other provision of this Act applies in relation to parts of buildings.
- (5) If 2 or more territorial authorities are required or authorised by this subpart to make a decision or to exercise powers in relation to a designated area, each authority must do so only in relation to that part of the designated area for which that authority is responsible. 10

Designation of areas for emergency management of buildings

133BC Designation of areas to which this subpart applies

- (1) If a state of emergency or a transition period is in force for an area under the CDEM Act, a relevant CDEM decision-maker may designate the whole or a part of that area for the purposes of this subpart. 15
- (2) If an emergency arises and there is no state of emergency or transition period is in force,—
- (a) a territorial authority that is responsible for the whole or a part of the affected area may, with the approval of the Minister, designate the whole or any part of the affected area for the purposes of this subpart; or 20
 - (b) the Minister may, on the Minister's own initiative, designate the whole or any part of the affected area for the purposes of this subpart.
- (3) For the purposes of **subsection (2)(a)**, a territorial authority may request the Minister's approval only for an area for which the authority is responsible, but 2 or more territorial authorities may make a joint request. 25

133BD Decisions about designations (other than termination)

- (1) A person may only make a designation decision if satisfied that the proposed decision is— 30
- (a) in the public interest; and
 - (b) necessary or desirable for the protection of—
 - (i) persons, from injury or death; or
 - (ii) buildings, from damage or disruption to their use; or
 - (iii) public thoroughfares, from disruption; or 35
 - (iv) critical infrastructure, from damage or disruption to its operation or use; or

- (v) persons or buildings, from the effects of the insanitary condition (if applicable) of a building in the relevant area.
- (2) A person making a designation decision must, to the extent that is practicable in the circumstances, have regard to the following matters:
- (a) the scale and degree of the impact of the emergency and of its effects on buildings in the relevant area: 5
 - (b) the likelihood of a further emergency or any other relevant event occurring that could cause—
 - (i) buildings in the relevant area to pose increased or additional risks; or 10
 - (ii) land in the relevant area to pose a risk to a building:
 - (c) the principle that it is preferable that risks be managed, if possible, without the exercise or continued exercise of powers under this subpart.
- (3) A person making a decision to designate an area under **section 133BC(1)** must notify the Minister of the proposed designation. 15
- (4) In this section, **designation decision** means a decision—
- (a) to designate an area under **section 133BC**:
 - (b) to extend a designation under **section 133BH**:
 - (c) by the Minister, to approve a proposed designation under **section 133BC(2)(a)** or approve a proposed extension of a designation under **section 133BH(1)(b) or (c)(ii)**: 20
 - (d) to extend, under **section 133BP(9) or 133BV(9)**, the period during which certain powers may be exercised in a designated area:
 - (e) made after a review under **section 133BG**.
- 133BE Public notice of designation** 25
- (1) A person who designates an area under **section 133BC** must, as soon as practicable, notify the public of the designation by publishing the designation on an Internet site that is publicly accessible free of charge.
- (2) If it is not practicable to comply with **subsection (1)**, the person must publicly notify the designation by any other means that the person considers appropriate in the circumstances. 30
- (3) Notice under this section must—
- (a) describe the designated area; and
 - (b) describe the relevant emergency; and
 - (c) specify the time at which and the date on which the designation decision was made. 35
- (4) A failure to comply with this section does not invalidate a designation.

133BF Commencement and duration of designation

- (1) A designation comes into force at the time and on the date that the designation is made.
- (2) Subject to this section, a designation ends at the end of the day that is 3 years after the date on which it comes into force, unless extended or terminated sooner. 5
- (3) A designation that is extended under **section 133BH** ends at the time and on the date specified in the public notification under **section 133BH(3)**.
- (4) A designation that is terminated ends at the time and on the date specified in the public notification under **section 133BI(4)**. 10
- (5) If a state of emergency or a transition period referred to in **section 133BC(1)** ends before a designation made under that provision ends, the designation continues until it ends in accordance with this section.

133BG Periodic review of designation

- (1) A person described in **subsection (2)** must, at least every 90 days, review each designation under this subpart and, having regard to the matters set out in **section 133BD(1) and (2)**, decide whether the designation is still needed. 15
- (2) The persons are,—
 - (a) for a designation made under **section 133BC(1)**, while the state of emergency or transition period is in force, the relevant CDEM decision-maker who made the designation: 20
 - (b) for a designation made under **section 133BC(1)**, after the state of emergency or transition period ends, the territorial authority that is performing functions or duties or exercising powers under this subpart in relation to the designated area: 25
 - (c) for a designation made under **section 133BC(2)(a)**, the territorial authority that is performing functions and duties and exercising powers under this subpart in relation to the designated area:
 - (d) for a designation made under **section 133BC(2)(b)**, the Minister. 30
- (3) A person who reviews a designation must notify the outcome of the review in accordance with **section 133BE** (and that section applies to the notification as if a reference in that section to a designation were a reference to the outcome of the review). 30
- (4) Notification under **subsection (3)** must include details of any exercise of a power under the CDEM Act in accordance with **section 133BL(2)**. 35

133BH Extension of designation

- (1) Before a designation ends under this subpart, its duration may be extended as follows:

- (a) a designation made under **section 133BC(1)** while the state of emergency or transition period is in force may be extended by—
- (i) the relevant CDEM decision-maker who made the designation; or
 - (ii) another relevant CDEM decision-maker; or
 - (iii) the Minister, on the Minister’s own initiative: 5
- (b) a designation made under **section 133BC(1)** after the state of emergency or transition period ends may, with the Minister’s approval, be extended by the territorial authority that is performing functions or duties or exercising powers under this subpart in relation to the designated area: 10
- (c) a designation made under **section 133BC(2)(a)** may, if no state of emergency was declared and no transition period was notified after the designation was made, be extended by—
- (i) the Minister; or
 - (ii) the territorial authority that is performing functions or duties or exercising powers under this subpart in relation to the designated area: 15
- (d) a designation made under **section 133BC(2)(a)** may, if a state of emergency was declared or a transition period was notified after the designation was made, be extended by— 20
- (i) the Minister; or
 - (ii) the relevant CDEM decision-maker who declared the state of emergency or notified the transition period (as the case may be); or
 - (iii) another relevant CDEM decision-maker: 25
- (e) a designation made under **section 133BC(2)(b)** may, if no state of emergency was declared and no transition period was notified after the designation was made, be extended by the Minister:
- (f) a designation made under **section 133BC(2)(b)** may, if a state of emergency was declared or a transition period was notified after the designation was made, be extended by— 30
- (i) the Minister; or
 - (ii) the relevant CDEM decision-maker who declared the state of emergency or notified the transition period (as the case may be); or
 - (iii) another relevant CDEM decision-maker. 35
- (2) An extension of a designation—
- (a) must be for no more than 3 years;
 - (b) may relate to the whole or a part of the designated area:

- (c) may be made once only.
- (3) A person who extends a designation must—
- (a) notify the extension in accordance with **section 133BE** (and that section applies to the notification as if a reference in that section to a designation were a reference to the extension); and
- (b) include in the notice the time and date to which the designation is extended.

5

133BI Termination of designation

- (1) Before a designation ends under **section 133BF(2) or (3)**, it may be terminated by the persons who may extend the designation under **section 133BH(1)** in the circumstances set out in that subsection.
- (2) A person must not terminate a designation unless the person is satisfied that the designation is no longer in the public interest.
- (3) A termination of a designation may relate to the whole or a part of the designated area.
- (4) A person who terminates a designation must notify the termination in accordance with **section 133BE**, and that section applies to the notification as if a reference in that section to a designation were a reference to the termination.

10

15

Management of buildings in designated areas

133BJ Responsible persons may exercise powers under this subpart

20

- (1) This section and **section 133BK** set out who may exercise the powers under **sections 133BP to 133BW** in a designated area.
- (2) If no state of emergency or transition period is in force at the same time as the designation, the powers may be exercised,—
- (a) if the area was designated under **section 133BC(1)**, by the territorial authority that is responsible for the designated area:
- (b) if the area was designated under **section 133BC(2)(a)**, by the territorial authority that made the designation:
- (c) if the area was designated under **section 133BC(2)(b)**,—
- (i) by the Minister; or
- (ii) on direction by the Minister, by the territorial authority that is responsible for the designated area.
- (3) If a state of emergency or transition period is in force at the same time as the designation, the powers may be exercised by a person described in **section 133BK**.
- (4) The Minister may give directions to a territorial authority that is exercising powers under **subsection (2)**.

25

30

35

- (5) A direction given by the Minister may—
- (a) require a power to be exercised or not to be exercised; and
 - (b) relate to any or all powers under **sections 133BP to 133BW**; and
 - (c) relate to a specified building, a specified class of building, or all buildings in the designated area.
- (6) A territorial authority must comply with a direction.
- (7) The Minister may amend, revoke, or replace a direction at any time.

5

133BK CDEM Act officers as responsible persons

- (1) This section sets out who may exercise powers under **sections 133BP to 133BW** for the purposes of **section 133BJ(3)**.
- (2) The powers may be exercised as follows:
- (a) the power under **section 133BP** (post-event assessments) may be exercised,—
 - (i) during a state of emergency, by a Controller (or a person acting under the Controller’s authority):
 - (ii) during a transition period, by a Recovery Manager (or a person acting under the Recovery Manager’s authority):
 - (b) the power under **section 133BQ** (evacuation), **section 133BR** (measures to keep people at safe distance and protect building), or **section 133BS** (notices and signs on buildings) may be exercised,—
 - (i) during a state of emergency, by a Controller or a constable (or a person acting under that person’s authority):
 - (ii) during a transition period, by a Recovery Manager or a constable (or a person acting under that person’s authority):
 - (c) the power under **section 133BT** (owner directed to give information) may be exercised,—
 - (i) during a state of emergency, by the Director or CDEM Group (or a person acting under the authority of the Director or Group):
 - (ii) during a transition period, by the Director or CDEM Group (or a person acting under the authority of the Director or Group):
 - (d) the power under **section 133BU** (urgent works to remove or reduce risks), **section 133BV** (works to remove or reduce other risks), or **section 133BW** (works for long-term use or occupation of building) may be exercised,—
 - (i) during a state of emergency, by the CDEM Group (or a person acting under the Group’s authority):
 - (ii) during a transition period, by a Recovery Manager (or a person acting under the Recovery Manager’s authority).

10

15

20

25

30

35

- (3) For the purposes of **subsection (2)**,—
- (a) a responsible person who is a Group Controller must comply with section 28(4) of the CDEM Act:
 - (b) a responsible person who is a Local Controller must comply with section 27(2) of the CDEM Act: 5
 - (c) a responsible person who is a Group Recovery Manager must comply with section 30A(5) of the CDEM Act:
 - (d) a responsible person who is a Local Recovery Manager must comply with section 30(2) of the CDEM Act.
- (4) In this section,— 10
- CDEM Group** means a Civil Defence and Emergency Management Group within the meaning of the CDEM Act
- Controller, Director, Group Controller, Group Recovery Manager, Local Controller, Local Recovery Manager, and Recovery Manager** have the same meanings as in the CDEM Act. 15
- 133BL Powers under this subpart take precedence over CDEM Act powers**
- (1) A responsible person who is described in **section 133BK(2)** must not exercise powers under the CDEM Act for the purpose of managing buildings in the designated area.
 - (2) **Subsection (1)** does not apply if the responsible person believes that it is necessary or desirable to exercise a power under the CDEM Act to remove or reduce risks posed by the building that cannot be removed or reduced by exercising powers under **sections 133BP to 133BW**. 20
- 133BM Effect of previously issued CDEM Act notices**
- (1) This section applies if— 25
 - (a) a state of emergency or transition period is in force for a part of the period during which a designation of an area under **section 133BD** is in force; and
 - (b) the responsible person—
 - (i) has exercised a power under the CDEM Act in the area before the area was designated; or 30
 - (ii) exercises a power under the CDEM Act in the area in accordance with **section 133BN(2)**.
 - (2) Before the state of emergency or transition period ends, the responsible person may determine that any equivalent CDEM Act notice that is issued or given in relation to a building in the area (whether or not a notice, direction, or other requirement is issued or given under this subpart in relation to the same building) should continue in force under this subpart. 35

- (3) If a determination is made under **subsection (2)**, the equivalent CDEM Act notice must be treated as continuing in force under the corresponding provision of this subpart, subject to any conditions that the relevant responsible person considers necessary or desirable to remove or reduce risks posed by the relevant building. 5
- (4) In this section, **equivalent CDEM Act notice** means a notice, direction, or other requirement under the CDEM Act of a class that is substantially similar in effect to a class of notice, direction, or other requirement under this subpart.

133BN Principles for exercise of powers

A responsible person exercising a power under any of **sections 133BP to 133BW** in relation to a building must, to the extent that is practicable in the circumstances, have regard to the following principles: 10

- (a) the paramount consideration in the exercise of those powers is the protection of human life and safety: 15
- (b) actions taken should be proportionate to the risks being managed:
- (c) actions should result in minimal restriction of an individual's ability to continue to use and occupy property and any restriction of that ability should be for no longer than is reasonably necessary:
- (d) decisions should be based on—
 - (i) up-to-date information, including information about the possible occurrence of further emergencies or other relevant events and other changes in the type and severity of risks arising from an emergency: 20
 - (ii) information about possible future events. 25

133BO Exercise of powers in secured buildings

A responsible person who is exercising a power under any of **sections 133BP to 133BW** in relation to a secured building must exercise that power in accordance with instructions given to the responsible person by the officer in charge of the building. 25

133BP Post-event assessments

- (1) A responsible person may inspect the exterior and interior of a building (and any land under or around a building) in a designated area and prepare a post-event assessment of any risks posed by the building. 30
- (2) The post-event assessment must be prepared—
- (a) in accordance with the methodology (if any) approved by the chief executive; and 35
 - (b) in writing and in the form (if any) approved by the chief executive.

- (3) If a responsible person has reasonable grounds for believing entry to be necessary for making the post-event assessment of a building, the responsible person may—
- (a) enter a simple-unit residential building or a household unit within a simple-unit residential building only—
 - (i) with the occupier’s consent; or
 - (ii) in accordance with a warrant issued under this section:
 - (b) enter any other building, or any land on which any building (including land under or around a simple-unit residential building) is situated, at any time after taking any steps that the responsible person considers reasonable in the circumstances to obtain the occupier’s consent to entry.
- (4) In entering and inspecting a building or land, or any household unit or other part of a building, a responsible person—
- (a) may use any means that are reasonable in the circumstances; and
 - (b) must take all reasonable steps to ensure that minimal damage is caused to the building.
- (5) A responsible person who does not hold a warrant issued under this section must not enter a building in the presence of the occupier unless the responsible person has—
- (a) told the occupier the reason for the proposed entry; and
 - (b) produced evidence of the person’s identity and authority to enter for inspection; and
 - (c) told the occupier that the occupier may consent, or refuse to consent, to the entry.
- (6) If a responsible person enters and inspects a building or land in the absence of the occupier, the responsible person must, before leaving, leave in the building a notice stating—
- (a) the responsible person’s identity; and
 - (b) the date and time of entry; and
 - (c) the purpose of the entry.
- (7) A notice under **subsection (6)(b)** must be in the form (if any) approved by the chief executive.
- (8) A responsible person must not enter and inspect a building or land under **subsection (3)(b)** after the day that is 6 months after the date on which the designation for the designated area comes into force, except—
- (a) with the occupier’s consent to entry; or
 - (b) in accordance with a warrant issued under this section.
- (9) The period under **subsection (8)** may be extended—

<ul style="list-style-type: none"> (a) by— <ul style="list-style-type: none"> (i) the person who designated the area; or (ii) another person (if any) who can extend the designation of the area under section 133BH: (b) by up to 3 months: (c) once only. 	5
<p>(10) The responsible person must apply for a warrant for the purpose of subsections (3)(a)(ii) and (8)(b) in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, which applies with any necessary modifications.</p>	10
<p>(11) An issuing officer may, on application, issue a warrant to enter a building if the officer reasonably considers that entry is necessary to make a post-event assessment.</p>	
<p>(12) The warrant authorises the responsible person to enter and inspect the building or unit.</p>	15
133BQ Evacuation	
<p>(1) A responsible person or a constable may direct the evacuation of a building in a designated area if satisfied that evacuation is necessary to prevent the death or injury of any person in the designated area.</p>	
<p>(2) A responsible person or a constable may give a direction under subsection (1) before exercising any other power under this subpart in relation to the building.</p>	20
<p>(3) A person who intentionally fails, without reasonable excuse, to comply with a direction—</p> <ul style="list-style-type: none"> (a) commits an offence; and (b) is liable on conviction,— <ul style="list-style-type: none"> (i) in the case of an individual, to a fine not exceeding \$5,000; (ii) in the case of a body corporate, to a fine not exceeding \$50,000. 	25
133BR Measures to keep people at safe distance and protect building	
<p>(1) A responsible person may put in place measures that the person considers reasonably necessary—</p> <ul style="list-style-type: none"> (a) to keep people at a safe distance from a building in a designated area; or (b) to protect a building in the designated area from being damaged. 	30
<p>(2) Measures may include—</p> <ul style="list-style-type: none"> (a) the installation of a hoarding or fence to prevent people from approaching the building; and 	35

- (b) measures that prevent or limit public access, with or without vehicles, to any road or other public place near the building; and
 - (c) measures intended to prevent the building or debris from the building harming people (for example, by the collapse of a roof or wall); and
 - (d) measures that allow limited access for a purpose that the responsible person considers appropriate. 5
- (3) If measures have been in place for more than 3 months,—
- (a) the owner of the building is liable for the costs of continuing to take the measures after that period; and
 - (b) the responsible person may recover those costs from the owner; and 10
 - (c) the amount recoverable becomes a charge on the land on which the building is situated.
- (4) A person who approaches or enters a building after intentionally bypassing a measure put in place under this section—
- (a) commits an offence; and 15
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$5,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$50,000.
- (5) A person who intentionally damages, alters, removes, or otherwise interferes with a measure put in place under this section, or who incites another person to do so,— 20
- (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$5,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$50,000. 25
- (6) **Subsections (4) and (5)** do not apply to a person exercising a power under **section 133BU or 133BV**.

133BS Notices and signs on buildings

- (1) A responsible person may place 1 or more signs or notices on or near a building in a designated area prohibiting or restricting the use of the building if— 30
- (a) the responsible person believes that it is reasonably necessary to remove or reduce risks of injury or death; or
 - (b) an evacuation of the building has been directed under **section 133BQ**.
- (2) A responsible person may place signs or notices on or near a building informing members of the public of the risks posed by the building. 35
- (3) A sign or notice under this section must—

- (a) be in writing and in the form (if any) approved by the chief executive; and
- (b) state—
- (i) the nature and extent of any damage to the building; and
 - (ii) in the case of a sign or notice under **subsection (1)**, whether, how, and to what extent the building can safely be used; and
- (c) be visible to people approaching the building.
- (4) A person must not—
- (a) intentionally occupy or use a building otherwise than in accordance with a sign or notice placed under **subsection (1)**; or
 - (b) permit another person to do so.
- (5) A person who contravenes **subsection (4)**—
- (a) commits an offence; and
 - (b) is liable on conviction to a fine not exceeding \$200,000.
- (6) A person who intentionally damages, alters, removes, or otherwise interferes with a sign or notice placed under this section, or who incites another person to do so,—
- (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$5,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$50,000.
- (7) A person other than a responsible person who intentionally places a sign or notice that is substantially the same in appearance as a sign or notice that may be placed under this section—
- (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$5,000;
 - (ii) in the case of a body corporate, to a fine not exceeding \$50,000.
- (8) It is not an offence against **subsection (7)** if a person intentionally places a sign or notice that—
- (a) prohibits the use of a building; or
 - (b) restricts the use of a building, or informs members of the public of the risks posed by the building, in a way that is consistent with any sign or notice placed under this section.
- (9) **Subsections (4) and (6)** do not apply to a person exercising a power under **section 133BU or 133BV**.

133BT Owner directed to give information

- (1) A responsible person may direct the owner of a building or of any land in a designated area to give the responsible person information about the building or land if the responsible person believes that the further information is reasonably necessary to enable the responsible person to determine— 5
- (a) the risks posed by the building and whether to exercise further powers under this subpart in relation to the building; or
 - (b) what works, if any, are needed to remove or reduce the risks.
- (2) The direction must— 10
- (a) be in writing, in the form (if any) approved by the chief executive; and
 - (b) describe the information required, which may include a full structural assessment, a detailed engineering assessment of observed damage, or other technical assessment; and
 - (c) specify the time and date by which the information must be given (allowing a reasonable time for the conduct of any assessment required); 15
 - (d) specify to whom the information must be given.
- (3) An owner of a building or land who is given a direction under this section must comply with the direction at that owner's expense.
- (4) On receiving information under this section, the responsible person may, in accordance with **subsection (2)**, direct the owner of the building or land to give further information that the responsible person believes is reasonably necessary to comply with the first direction. 20
- (5) The owner of a building or land who is given a direction under this section may appeal to the District Court on the grounds that the direction is unreasonable. 25
- (6) The provisions of sections 209 to 211 apply to an appeal under **subsection (5)**—
- (a) subject to this section; and
 - (b) as if, in those provisions,— 30
 - (i) a reference to a determination were a reference to a direction under this section; and
 - (ii) a reference to the chief executive were a reference to the responsible person who gave the direction; and
 - (c) with any other necessary modifications.
- (7) An appeal under **subsection (5)**— 35
- (a) must be commenced within 10 working days after the appellant receives notice of the direction; and
 - (b) is limited, in the relief that may be granted, to the reasonable costs of complying with the direction.

- (8) A person who intentionally fails to comply with a direction under this section—
- (a) commits an offence; and
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to a fine not exceeding \$5,000: 5
 - (ii) in the case of a body corporate, to a fine not exceeding \$50,000.
- 133BU Urgent works to remove or reduce risks**
- (1) A responsible person may carry out works in relation to a building (or land under or around a building) in a designated area if the person believes that those works— 10
- (a) are reasonably necessary to remove or reduce risks posed by the building; and
 - (b) must be carried out without delay in order to remove or reduce those risks.
- (2) The responsible person (if not the Minister) must obtain the approval of the Minister before carrying out works that involve the demolition of the whole or a part of a heritage building that is— 15
- (a) identified as Category 1 or wāhi tūpuna in the list referred to in **paragraph (a)(i)** of the definition of heritage building in section 7; or
 - (b) referred to in **paragraph (a)(ii)** of that definition. 20
- (3) A responsible person who requests the approval of the Minister under **subsection (2)** must at the same time notify Heritage New Zealand Pouhere Taonga of the request.
- (4) The Minister must consult the Minister responsible for the administration of the Heritage New Zealand Pouhere Taonga Act 2014 at least 24 hours before— 25
- (a) giving an approval under **subsection (2)**; or
 - (b) carrying out the works under **subsection (1)** (if the Minister is the responsible person).
- (5) The responsible person (if not the Minister) must consult Heritage New Zealand Pouhere Taonga at least 24 hours before carrying out any other works in relation to a heritage building. 30
- (6) If works are carried out under this section,—
- (a) the owner of the building is liable for the costs of the works; and
 - (b) the responsible person may recover those costs from the owner; and
 - (c) the amount recoverable becomes a charge on the land on which the building is situated. 35
- (7) Section 130 applies—

- (a) as if the responsible person's decision to carry out works under this section were a warrant issued under section 129(2); and
 - (b) as if a reference in section 129(2) to the territorial authority were a reference to the responsible person; and
 - (c) with any other necessary modifications. 5
- (8) A failure by the Minister or the responsible person to consult or notify in accordance with **subsection (3), (4), or (5)** does not invalidate the Minister's approval or the responsible person's decision to carry out works.
- (9) In this section, **risk** means a risk to—
- (a) persons, of injury or death; or 10
 - (b) critical infrastructure, of damage or disruption to its operation or use.

133BV Works to remove or reduce other risks

- (1) This section applies if—
- (a) a responsible person believes that works in relation to a building in a designated area are reasonably necessary to remove or reduce risks posed by the building; and 15
 - (b) **section 133BU(1)** does not apply.
- (2) The responsible person may—
- (a) carry out those works; or
 - (b) direct the owner of the building to do so. 20
- (3) Before deciding to carry out works or to direct that they be carried out, the responsible person must,—
- (a) at least 10 working days before deciding, seek and consider the views of the following persons if it is reasonably practicable to do so:
 - (i) the owner of the building: 25
 - (ii) the occupiers of the building:
 - (iii) owners and occupiers of neighbouring buildings and of all other buildings that could be damaged, or have their use disrupted, by any measures put in place under **section 133BR or 133BS(1)**:
 - (iv) persons who have an interest in that land under a mortgage or other encumbrance registered under the Land Transfer Act 1952: 30
 - (v) persons who have an interest in that land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952:
 - (vi) Heritage New Zealand Pouhere Taonga, if the building is a heritage building: 35
 - (vii) a statutory authority, if the building is classified or registered by that authority; and

- (b) consider alternative approaches to demolishing the building; and
- (c) without limiting **section 133BN**, take into account the difference between the cost of carrying out the works and the likely impact, on neighbouring homes and businesses, of not carrying out the works.
- (4) A direction under **subsection (2)(b)** must— 5
- (a) be in writing, in the form (if any) approved by the chief executive; and
- (b) be given to the owner of the building, if practicable; and
- (c) describe the works required; and
- (d) state why the works are required; and
- (e) specify when the works must be completed; and 10
- (f) state that, if the works are carried out without a building consent, in reliance on **section 41(1)(cb)**, the owner must apply for a certificate of acceptance after completing the works, in accordance with section 42; and
- (g) state that resource consent under the Resource Management Act 1991 is not required for the works (*see* **section 133BX**). 15
- (5) The owner of a building must carry out works that are directed under **subsection (2)(b)** at the owner's expense.
- (6) If the owner does not carry out the works in accordance with the direction, the responsible person may do so. 20
- (7) If a responsible person carries out the works,—
- (a) the owner of the building is liable for the costs of the works; and
- (b) the responsible person may recover those costs from the owner; and
- (c) the amount recoverable becomes a charge on the land on which the building is situated. 25
- (8) A responsible person must not carry out works under this section after the day that is 6 months after the date on which the designation for the designated area comes into force.
- (9) The period under **subsection (8)** may be extended— 30
- (a) by—
- (i) the person who designated the area; or
- (ii) another person (if any) who can extend the designation of the area under **section 133BH**;
- (b) by up to 3 months;
- (c) once only. 35
- (10) A person who intentionally fails to comply with a direction under **subsection (2)(b)**—
- (a) commits an offence; and

- (b) is liable on conviction to a fine not exceeding \$200,000.

133BW Works for long-term use or occupation of building

- (1) A responsible person may direct the owner of a building to carry out works in relation to the building if—
- (a) **sections 133BU(1) and 133BV(1)** do not apply; and 5
 - (b) the responsible person believes that the works are reasonably necessary to remove or reduce risks posed by the building so that the building is safe, sanitary, and otherwise suitable to be used or occupied by people on a long-term basis. 10
- (2) A direction to carry out works must—
- (a) be in writing, in the form (if any) approved by the chief executive; and
 - (b) be given to the owner of the building, if practicable; and
 - (c) describe the works required; and
 - (d) state why the works are required; and
 - (e) specify when the works must be completed; and 15
 - (f) state whether a building consent is required for the works.
- (3) An owner of a building must carry out works directed under this section at the owner's expense.
- (4) If the owner does not carry out the works in accordance with the direction, the responsible person may do so. 20
- (5) If a responsible person carries out the works,—
- (a) the owner of the building is liable for the costs of the works; and
 - (b) the responsible person may recover those costs from the owner; and
 - (c) the amount recoverable becomes a charge on the land on which the building is situated. 25
- (6) If works directed for a simple-unit residential building are not carried out,—
- (a) the building may be used or occupied or continue to be used or occupied; but
 - (b) the territorial authority that is responsible for the land on which the building is situated must include in a land information memorandum issued under section 44A of the Local Government Official Information and Meetings Act 1987 information concerning the direction and the failure to carry out the directed works. 30
- (7) If the responsible person is not the territorial authority referred to in **subsection (6)(b)**, the person must notify that authority of the direction and the owner's failure to carry out the directed works. 35

- (8) If works directed in relation to a commercial building or a multi-unit residential building are not carried out, the responsible person may continue to exercise powers under **section 133BR or 133BS** in relation to the building.
- (9) A person who intentionally fails to comply with a direction under this section— 5
- (a) commits an offence; and
 - (b) is liable on conviction to a fine not exceeding \$200,000.
- 133BX Resource consent not required for certain works**
- Resource consent under the Resource Management Act 1991 is not required for works that are carried out under **section 133BR, 133BU, or 133BV.** 10
- Other matters*
- 133BY Sharing of information**
- (1) The Minister or a territorial authority may disclose relevant information to any person who is exercising powers under Part 4, 5, 5A, or 5B of the CDEM Act in the same area, whether or not the designation is still in force. 15
- (2) In this section, **relevant information** means information that the Minister or territorial authority—
- (a) holds in relation to the performance of functions or duties or the exercise of powers under this subpart; and
 - (b) considers may assist the proposed recipient of the information in the recipient's performance of functions or duties or exercise of powers. 20
- 133BZ Application of subparts 6, 6A, and 7 in designated areas**
- (1) If a building to which subpart 6 applies is located in a designated area,—
- (a) subpart 6 continues to apply in accordance with **section 123B**; and
 - (b) this subpart applies to the building and prevails in the event of any inconsistency in the operation of the provisions of the 2 subparts. 25
- (2) If an earthquake-prone building (*see* section 133AB) is located in a designated area,—
- (a) both subpart 6A and this subpart apply to that building; and
 - (b) this subpart prevails in the event of any inconsistency in the operation of the provisions of the 2 subparts. 30
- (3) Despite **subsection (2)(a)**, a responsible person may bring forward—
- (a) a due date (including a due date that has been extended), for the provision of any assessment or information under subpart 6A, if the responsible person believes that the imposition of the earlier due date is reasonably necessary to enable the person to determine the matters referred to in **section 133BT(1)**; or 35

- (b) a deadline for completing seismic work under section 133AM (including a deadline that has been extended), if the responsible person believes that the imposition of the earlier deadline is reasonably necessary to remove or reduce risks of injury or death posed by the building.
- (4) If a dangerous dam (within the meaning of section 153) is in a designated area,— 5
- (a) sections 153 to 162 continue to apply in accordance with **section 153AA**; and
- (b) this subpart applies to the dam and prevails in the event of any inconsistency in the operation of this subpart and sections 153 to 162. 10

13 New section 153AA inserted (Buildings in areas designated under subpart 6B)

After section 153A, insert:

153AA Buildings in areas designated under subpart 6B

If a building located in an area that has been designated under **subpart 6B** is a dangerous dam, sections 153 to 162 continue to apply to the dam after the designation only for the purpose of— 15

- (a) an action taken in relation to the dam under section 154(1)(a) or (b) before the designation comes into force:
- (b) a notice given in relation to the dam under section 154(1)(c), or work carried out in accordance with the notice or under section 156, before the designation comes into force: 20
- (c) an action taken in relation to the dam under a warrant issued under section 157.

14 Section 175 amended (Chief executive may publish guidance information) 25

In section 175(1)(c), after “subpart 6A”, insert “or **subpart 6B**”.

15 Section 176 amended (Meaning of party)

After section 176(da), insert:

- (db) a responsible person (other than the Minister) under **subpart 6B** of Part 2: 30

16 Section 177 amended (Application for determination)

- (1) In section 177(1)(b), replace “subsection (2), (3), or (4)” with “subsection (2), (3), (4), or **(4A)**”.
- (2) After section 177(4), insert:
- (4A) Subsection (1)(b) applies to any power of decision of a responsible person under **subpart 6B** of Part 2 other than— 35
- (a) a power of decision under **section 133BT or 133BU**:

	(b) a power of decision of the Minister.	
17	Section 183 amended (Decision or exercise of power suspended until determination made)	
	Replace section 183(2) with:	
(2)	However, the following decisions are not suspended until the determination is made:	5
	(a) a requirement in a notice to fix issued under section 164 to cease building work for safety reasons:	
	(b) any decision under subpart 6B of Part 2 other than a decision under section 133BV or 133BW .	10
18	Section 185 amended (When determination must be completed)	
	After section 185(2), insert:	
(2A)	If an application for a determination relating to any power of decision of a responsible person under subpart 6B of Part 2 is made within the period of 6 months after the date of the relevant designation under section 133BC , the time required, for the purpose of subsection (2), is—	15
	(a) 15 working days after the date on which the chief executive receives the application; or	
	(b) any further time (but not more than 60 working days after that date) that the chief executive and the parties may agree to.	20
19	New sections 207C to 207S and cross-heading inserted	
	After section 207B, insert:	
	<i>Powers of chief executive to investigate building failures</i>	
207C	Investigation of building failure	
(1)	The chief executive may, on the chief executive's own initiative, investigate a building failure if the chief executive reasonably considers that the following requirements are satisfied:	25
	(a) any part of the building has failed in any way, in that it has not performed as expected having regard to the enactments or other legal requirements that applied to the design and construction of the building; and	30
	(b) the failure resulted, or could have resulted, in a risk to any individual of serious injury or death.	
(2)	The chief executive must investigate a building failure on the request of the Minister, but the Minister must not request an investigation unless the Minister reasonably considers that the requirements are satisfied.	35

- (3) The chief executive must, as soon as is reasonably practicable, give written notice to the building owner of the investigation of a building failure, but the notice need not be given before any powers of investigation are exercised.

207D Powers of investigation: purpose and investigation site

- (1) In investigating a building failure under **section 207C**, the chief executive may exercise the powers in **sections 207G to 207M** (the **powers of investigation**). 5
- (2) The powers may be exercised only to investigate the circumstances and causes of the building failure for the purpose of— 10
- (a) learning from the building failure; and
 - (b) informing decisions about the performance of functions and duties and the exercise of powers under this Act; and
 - (c) informing decisions about any matters related to building to help prevent other building failures.
- (3) The powers may be exercised only in relation to the **investigation site**, which means— 15
- (a) all or part of the building; and
 - (b) any of the following that the chief executive reasonably considers relevant to the building failure: 20
 - (i) land under or around the building;
 - (ii) any other building on that land.

207E Limits to powers of investigation

- (1) The chief executive may exercise a power of investigation only if—
- (a) it is reasonable in the circumstances to do so; and
 - (b) for the exercise of a power that has specific requirements, those requirements are satisfied. 25
- (2) A power of investigation may be exercised for no longer than is reasonable, and only in a way that is reasonable, in the circumstances.
- (3) However, a power of investigation may be exercised even if it damages the investigation site. 30
- (4) The chief executive must ensure that the investigation of a building failure does not interfere with any activity whose purpose is to preserve the life of, or prevent injury to, an individual.

207F Assistance with investigation

- (1) The chief executive may engage any suitable person to exercise 1 or more powers of investigation to assist the chief executive in the investigation of a building failure. 35

- (2) The person may exercise a power of investigation—
- (a) in the same way as the chief executive; but
 - (b) subject to any conditions imposed by the chief executive.

207G Power to secure investigation site

- (1) The chief executive may, or any other person must if required by the chief executive,— 5
- (a) restrict or prohibit access to all or part of the investigation site; and
 - (b) secure all or part of the investigation site.
- (2) The chief executive must, as soon as is reasonably practicable, give written notice of the exercise of any powers under this section by— 10
- (a) displaying the notice at the investigation site; and
 - (b) to the extent practicable, giving the notice to the owners and occupiers of the investigation site.
- (3) However, the notice need not be displayed or given before samples, or other evidence, are taken from the investigation site. 15

207H Power to enter investigation site

- (1) The chief executive may enter the investigation site, with or without equipment, if the chief executive reasonably considers that the investigation site contains evidence that may help determine the circumstances or causes of the building failure. 20
- (2) The chief executive must, as soon as is reasonably practicable, give written notice to the owners and occupiers of the investigation site of the exercise of the power of entry, but the notice need not be given before samples, or other evidence, are taken from the site.
- (3) Any person who enters the investigation site under the power of entry must, when first entering the site and on request at any other time, show the following to any occupier of the site: 25
- (a) evidence of the person's identity;
 - (b) the chief executive's written authorisation to enter the site;
 - (c) if applicable, the warrant to enter a household unit. 30

207I Power to enter household unit

- (1) Despite **section 207H**, a person must not exercise the power of entry to enter a household unit that is being used as a household unit except—
- (a) with the consent of an occupier who is at least 14 years of age; or
 - (b) in accordance with a warrant issued under this section. 35
- Entry with consent*
- (2) The person must not enter with the occupier's consent unless the person has—

- (a) told the occupier the reason for the proposed entry; and
- (b) told the occupier that the occupier may consent, or refuse to consent, to the entry.
- (3) The chief executive may enter the household unit, and exercise the other powers of investigation, only in accordance with the conditions of the occupier's consent (if any). 5
- Entry under warrant*
- (4) An issuing officer may, on application, issue a warrant to enter a household unit if the officer reasonably considers that the household unit contains evidence that may help determine the circumstances or causes of the building failure. 10
- (5) The chief executive must apply for the warrant in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, which applies with any necessary modifications.
- (6) The warrant authorises the chief executive to enter the household unit and exercise the other powers of investigation. 15
- 207J Power to inspect and take samples and evidence**
- (1) The chief executive may inspect, and take samples or other evidence from, the investigation site.
- (2) A sample or other evidence— 20
- (a) may be taken from the building, or the land or other buildings, comprising the investigation site; or
- (b) may be, or be taken from, any personal property at the investigation site, but only if the person taking it reasonably considers that the sample or evidence may help determine the circumstances or causes of the building failure. 25
- (3) The chief executive must, as soon as is reasonably practicable, give written notice to the affected owners and occupiers of the investigation site—
- (a) describing what has been or is being taken; and
- (b) explaining why it has been or is being taken; and 30
- (c) specifying where it will be kept.
- (4) The chief executive must return a sample or other evidence to its owner if—
- (a) the chief executive has not provided the evidence to an occupational body under **section 207O**; and
- (b) the evidence is no longer required for the investigation; and 35
- (c) it is practicable to do so.
- (5) The occupational body that has received a sample or other evidence under **section 207O** must return the evidence to its owner if—

- (a) the body no longer requires the evidence in performing its functions described in **section 207O(6)(b)**; and
- (b) it is practicable to do so.
- (6) However, the chief executive or the occupational body need not return a sample or other evidence if the chief executive or body reasonably considers that the owner does not want it returned. 5
- (7) The chief executive or the occupational body may dispose of the sample or other evidence if—
- (a) it is not required to be returned; or
- (b) it is likely to be a risk to public health. 10
- (8) In addition, sections 152, 154, 155, and 159 of the Search and Surveillance Act 2012 apply in relation to any sample or other evidence taken, with any necessary modifications.
- 207K Power to carry out works**
- The chief executive may carry out any works at the investigation site that are necessary to enable the chief executive to exercise another power of investigation. 15
- 207L Power to require assistance**
- (1) The chief executive may require an owner or occupier of the investigation site to give reasonable assistance to enable the chief executive to exercise another power of investigation. 20
- (2) The owner or occupier must give the assistance required by the chief executive.
- 207M Power to require information or documents**
- (1) The chief executive may require any person to provide any information or document that the chief executive reasonably considers may help determine the circumstances or causes of the building failure. 25
- (2) The chief executive must give written notice to the person that specifies—
- (a) the information or document that must be provided; and
- (b) how the information or document must be provided; and
- (c) a reasonable deadline by which the information or document must be provided. 30
- (3) The person must provide the information or document as required by the notice.
- (4) The chief executive may copy or retain any information or document provided.

207N Restrictions on sharing evidence or information

Any evidence or information collected in the investigation of a building failure under **section 207C** must not be provided by any person to any other person unless—

- (a) it is provided in exercising the powers of investigation; or 5
- (b) it is provided with the consent of the persons to whom it relates; or
- (c) it is provided to an occupational body under **section 207O** or is provided because the occupational body is performing its functions described in **section 207O(6)(b)**; or
- (d) it is provided in a report published under **section 207P**; or 10
- (e) it is provided in accordance with another enactment; or
- (f) it is already publicly available.

207O Sharing evidence or information with occupational bodies

- (1) This section applies to any evidence or information that—
 - (a) is collected in the investigation of a building failure under **section 207C**; and 15
 - (b) the chief executive reasonably considers is relevant to an occupational body's functions described in **subsection (6)(b)**.
- (2) The chief executive may provide the evidence or information to the occupational body. 20
- (3) The chief executive must, as soon as is reasonably practicable after providing the evidence or information, give a written notice to—
 - (a) any person to whom the evidence or information relates; and
 - (b) if the evidence was taken from the investigation site under **section 207J**, the affected owners and occupiers of the investigation site. 25
- (4) The notice must—
 - (a) describe what has been provided; and
 - (b) explain why it has been provided; and
 - (c) specify which occupational body it has been provided to.
- (5) However, the chief executive need not give a notice if the chief executive reasonably considers that it would prejudice an investigation by the occupational body. 30
- (6) In this section, **occupational body** means a body—
 - (a) that is established by or under an enactment; and
 - (b) that administers discipline for, or regulates, an occupation involved in the design, construction, or maintenance of any building or works on any building. 35

207P Report with findings of investigation

- (1) The chief executive may, after investigating a building failure under **section 207C**, publish a report about building design or construction that contains—
- (a) the findings of the investigation:
 - (b) recommendations about building design or construction that are based on the findings: 5
 - (c) any other matter related to building design or construction that arises from the investigation.
- (2) Before publishing any content that relates to an identifiable person, the chief executive must— 10
- (a) provide the person with a copy of the content; and
 - (b) specify a reasonable deadline by which the person may comment on the content; and
 - (c) consider any comments received in that period and make any changes to the content that the chief executive considers appropriate. 15

207Q Offence to interfere with investigation site

A person who intentionally interferes in any way with an investigation site without the chief executive's permission or any other reasonable excuse—

- (a) commits an offence; and
- (b) is liable on conviction,— 20
 - (i) in the case of an individual, to a fine not exceeding \$10,000; or
 - (ii) in any other case, to a fine not exceeding \$50,000.

207R Offence to access investigation site despite restriction or prohibition

A person who intentionally accesses an investigation site in breach of a restriction or prohibition imposed under **section 207G** without the chief executive's permission or any other reasonable excuse— 25

- (a) commits an offence; and
- (b) is liable on conviction,— 30
 - (i) in the case of an individual, to a fine not exceeding \$10,000; or
 - (ii) in any other case, to a fine not exceeding \$50,000.

207S Offence to obstruct investigation or fail to provide information or document

A person who wilfully obstructs, hinders, or resists the investigation of a building failure, or who wilfully fails to provide any information or document as required by **section 207M**,— 35

- (a) commits an offence; and

- (b) is liable on conviction,—
- (i) in the case of an individual, to a fine not exceeding \$10,000; or
 - (ii) in any other case, to a fine not exceeding \$50,000.
- 20 Section 365 amended (Offence to fail to comply with direction of authorised person)** 5
- After section 365(1), insert:
- (1A) This section does not apply to a failure to comply with a direction that is an offence under—
- (a) **section 133BQ(3):**
 - (b) **section 133BT(8):** 10
 - (c) **section 133BV(10):**
 - (d) **section 133BW(9).**
- 21 Section 367 amended (Offence to obstruct execution of powers under this Act)**
- After section 367(1), insert: 15
- (1A) This section does not apply to conduct that is an offence under **section 207S.**
- 22 Section 368 amended (Offence to remove or deface notices)**
- After section 368(1), insert:
- (1A) This section does not apply to conduct that is an offence under **section 133BS(6).** 20
- 23 Section 377 amended (Filing charging document)**
- After section 377(c), insert:
- (ca) a responsible person under **subpart 6B** of Part 2, for offences under that subpart; or
- 24 Section 378 amended (Time limit for filing charging document)** 25
- After section 378(c), insert:
- (ca) a responsible person under **subpart 6B** of Part 2, for offences under that subpart; or
- 25 Section 390 amended (Civil proceedings may not be brought against chief executive, employees, etc)** 30
- (1) In section 390(1)(c), replace “: and” with “; and”.
 - (2) After section 390(1)(c), insert:
 - (ca) any person engaged by the chief executive under **section 207F** to exercise a power of investigation to assist in the investigation of a building failure; and 35

- (cb) a responsible person under **subpart 6B** of Part 2 and any person engaged or authorised by a responsible person under that subpart to exercise a power under that subpart; and

26 Schedule 1AA amended

- (1) In Schedule 1AA, replace the cross-heading above clause 1 with: 5

Part 1
Provisions relating to Building (Earthquake-prone Buildings)
Amendment Act 2016

- (2) In Schedule 1AA, after clause 4, insert the Part 2 set out in the **Schedule** of this Act. 10

Part 2
Amendments to other enactments

Subpart 1—Amendments to Civil Defence Emergency Management Act
2002

- 27 **Amendments to Civil Defence Emergency Management Act 2002** 15
This subpart amends the Civil Defence Emergency Management Act 2002).

28 Section 83 amended (Restriction on disclosure of information)

In section 83, insert as subsections (2) and (3):

- (2) Despite **subsection (1)**, the person may disclose to a responsible person information that— 20
- (a) is relevant to the exercise of powers under **subpart 6B** of Part 2 of the Building Act 2004 in an area for which a state of emergency has been declared or a notice of transition period has been given; and
- (b) is to be used in connection with the exercise of those powers in that area.
- (3) In **subsection (2)**, **responsible person** has the same meaning as in **section 133BB(1)** of the Building Act 2004. 25

29 Section 84 amended (Minister’s power of direction)

- (1) In section 84(2), replace “this section” with “subsection (1)”.
(2) After section 84(2), insert: 30
- (2A) **Subsection (2B)** applies if—
- (a) an area is subject to—
- (i) a state of emergency; and

- (ii) a designation under **subpart 6B** of Part 2 of the Building Act 2004; and
 - (b) a person who may exercise powers under this Act in relation to the state of emergency is the responsible person under that subpart (*see section 133BK* of the Building Act 2004). 5
- (2B) The Minister may direct that responsible person—
- (a) to exercise any of the powers conferred on the person under that subpart; or
 - (b) to cease to exercise any of those powers.
- 30 Section 94J amended (Minister’s power of direction) 10**
- (1) In section 94J(2), replace “this section” with “subsection (1)”.
- (2) After section 94J(2), insert:
- (2A) **Subsection (2B)** applies if—
- (a) an area is subject to—
 - (i) a transition period; and 15
 - (ii) a designation under **subpart 6B** of Part 2 of the Building Act 2004; and
 - (b) a person who may exercise powers under this Act in relation to the transition period is the responsible person under that subpart (*see section 133BK* of the Building Act 2004). 20
- (2B) The Minister may direct that responsible person—
- (a) to exercise any of the powers conferred on the person under that subpart; or
 - (b) to cease to exercise any of those powers.

Subpart 2—Amendment to Search and Surveillance Act 2012 25

31 Amendment to Search and Surveillance Act 2012
 This subpart amends the Search and Surveillance Act 2012).

32 Schedule amended

In the Schedule, insert in its appropriate alphabetical order:

Building Act 2004	133BP	Responsible person may obtain and execute a warrant to enter a building to inspect the building and prepare a post-event assessment of risks posed by the building	Subpart 3
	207I	Chief executive may obtain and execute a warrant to enter a household unit and exercise	Subpart 3

207J	powers of investigation when investigating a building failure Chief executive may take samples or other evidence from the investigation site when investigating a building failure	Sections 152, 154, 155, and 159
-------------	---	---------------------------------

Schedule
New Part 2 inserted in Schedule 1AA

s 26

Part 2	
Provisions relating to Building Amendment Act 2018	5
5 Application of subpart 6B of Part 2 where emergency precedes commencement date	
(1) This clause applies if the whole or a part of an area that is designated under section 133BC is—	
(a) subject to a state of emergency or a transition period under the CDEM Act that was in force immediately before the commencement date (<i>see section 133BC(1)</i>); or	10
(b) affected by an emergency, in relation to which no state of emergency has been declared and no transition period has been notified, that arose and was still affecting the area immediately before the commencement date (<i>see section 133BC(2)</i>).	15
(2) The provisions of subpart 6B of Part 2 apply to the area on and after the commencement date as if the state of emergency had been declared, the transition period had been notified, or the emergency had arisen on or after that date.	
(3) In this clause, commencement date means the date on which section 12 of the Building Amendment Act 2018 comes into force.	20
6 Investigation of existing building failure	
(1) The requirements in section 207C(1)(a) and (b) may be satisfied even if the matters to which they relate (the building failure and resulting risk or potential risk) occurred before the commencement date.	25
(2) In this clause, commencement date means the date on which section 19 of the Building Amendment Act 2018 comes into force.	