

Building Amendment Bill

Government Bill

As reported from the Transport and Infrastructure Committee

Commentary

Recommendation

The Transport and Infrastructure Committee has examined the Building Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This is a Government bill that seeks to amend the Building Act 2004. It would also make consequential amendments to the Civil Defence Emergency Management Act 2002 and the Search and Surveillance Act 2012. The bill proposes two new sets of powers to improve the system for managing buildings after an emergency and to provide for investigating building failures.

The bill aims to address risks to people and property from buildings during and after an emergency. It seeks to create a system that is clear, has proportionate effects on personal and property rights, and ensures that heritage values are appropriately recognised.

The bill proposes amendments to the Building Act that would 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 proposed powers would enable MBIE to learn from building failures, and allow them to improve building regulation to help avoid similar occurrences in the future.

The bill is in two parts. Part 1 contains the amendments to the Building Act, and Part 2 contains the amendments to the Civil Defence Emergency Management Act and the Search and Surveillance Act.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Exercise of powers by a responsible person

Clause 12 would insert new subpart 6B in Part 2 of the Building Act (comprising new sections 133BA to 133BZ), to create special provisions for buildings affected by an emergency.

New section 133BN sets out principles for the exercise of powers by responsible persons. (Those who would be considered responsible persons, able to exercise powers in specified areas and circumstances, are specified in new sections 133BJ and 133BK.)

In the bill as introduced, paragraph (c) of new section 133BN states that the actions of a responsible person should result in minimal restriction of an individual to continue to use and occupy property, and that any restriction should be for no longer than is reasonably necessary.

We recommend amending this to replace “an individual” with “an owner or occupier” to improve consistency with other provisions in the bill.

Power to enter a building or land

We agree with submitters that, as introduced, the bill lacks clarity about what buildings or land a responsible person could enter.

We recommend inserting new section 133BNA to give a responsible person, or a police constable, the clear power to enter a building or land for specified purposes. Our proposed new section sets out the purposes and the requirements they must fulfil when exercising the power of entry.

Works to remove or reduce risk

The bill sets out the circumstances and conditions under which works to remove or reduce risk could occur. These are divided into three categories. Section 133BU deals with urgent works to remove or reduce risks, section 133BV relates to works to remove or reduce other risks, and section 133BW covers works for long-term use or occupation of a building.

As introduced, these provisions lack clarity as to when each scenario would apply, and what the relationship between the scenarios would be. We recommend inserting an example following each section to clarify when each provision would apply.

We also recommend inserting new section 133BV(1)(c), and replacing section 133BV(3)(a)(iii), to further clarify the situation under which section 133BV would apply.

We recommend amending section 133BU(1) and 133BW(1) so that their structure is consistent with the other sections, making them easier to read.

Updates relating to the Land Transfer Act

Proposed new section 133BV(3)(a)(iv) and (v) refer to provisions in the Land Transfer Act 1952. After the bill was introduced that Act was repealed and replaced with the Land Transfer Act 2017. We recommend amending this section so that it refers to the correct Act.

Directions to carry out work

Proposed new sections 133BV and 133BW deal with notices directing building owners to carry out work. Under sections 133BV(4)(c) and 133BW(2)(c) as introduced, a direction would need to describe the works required. Some submitters expressed concern at the prescriptive nature of these criteria. We recommend amending these sections so that notices must describe the outcome the works should achieve, rather than describing the work itself.

Application for determination

Clause 16 of the bill proposes amending section 177 of the Building Act by inserting new provisions describing the matters for which a party may apply for a determination under the determinations scheme. As introduced, subsection (4A) described these matters in negative terms, by listing only the decisions that could not be reviewed.

We recommend amending section 177(4A) to clarify that a power of determination would only apply to powers of decision under sections 133BR, 133BS, 133BV and 133BW.

This amendment would simplify the determination provisions, providing a positive description of what can be reviewed following an emergency, and is in line with the original policy intent of the bill.

We also recommend inserting new section 177(6) so that decisions of the Minister, or actions of a Territorial Authority undertaken in accordance with a direction of the Minister, would not be subject to the determinations process. This is consistent with the original policy intent of the bill.

Timeframes for determinations

Clause 18 proposes the amendment of section 185, which provides for the timing and effect of a determination. Under the Act at present, the default deadline is 60 working days after the chief executive receives the application for determination. The bill as introduced proposes inserting new subsection (2A) which would allow a shorter default deadline of 15 working days or a longer period, of not more than 60 working days, if the chief executive and the parties agreed.

We recommend amending section (2A)(b) so that the 15-day deadline would not apply if the chief executive considered the subject matter of the decision to be complex, or relevant to other buildings in the designated area. In these cases, the ordinary rules about timing in section 185(2) would apply.

We also recommend the insertion of new sections 185(2B) and (2C). Subsection (2B) would require the chief executive to notify the applicant of the deadline established under subsection (2), and the reasons for their decision. This would provide more transparency in the decision-making process.

Subsection (2C) provides that the timeline established under section 185(2)(a) or (2A)(a) would not begin until the requirements of section 178 had been met, including providing prescribed information.

In addition new clause 18(3) would amend section 185(3) to provide that the timeline established under section 185(2)(a) or (2A)(a) would not begin until additional documents required under section 186(3)(a) had been provided.

Investigation of building failure

Clause 19 would insert new sections 207C to 207S regarding the powers of the chief executive to investigate building failures. In section 207C as introduced, it is not clear if follow-up investigations could take place. We recommend inserting new section 207C(4) to confirm the ability to undertake follow-up investigations.

Immunity against civil proceedings

Clause 25 would amend section 390, which provides that civil proceedings may not be brought against the persons listed in section 390(1) for any act or omission they did in good faith.

We recommend inserting section 390(1)(cc) so that this provision was also extended to constables. This would provide constables with the same immunity granted to responsible persons.

Dam owners' responsibilities

As introduced, the bill would not make any changes to section 135 of the Building Act. This section requires owners of dams to provide classification and certification to the regional authority. However, we consider that this section as it stands contains timelines for compliance that are unworkable in some situations.

We recommend inserting new clause 12A into the bill to amend section 135(2) of the Act to resolve this issue.

Appendix

Committee process

The Building Amendment Bill was referred to the committee on 11 September 2018. The closing date for submissions was 25 October 2018. We received and considered 25 submissions from interested groups and individuals. We heard oral evidence from 8 submitters.

We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to the committee on the powers contained in clause 12.

Committee membership

Darroch Ball (Chair)

Paul Eagle

Matt King

Jan Logie

Jami-Lee Ross

Alastair Scott

Hon Aupito William Sio

Tim van de Molen

Hon Meka Whaitiri

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Jenny Salesa

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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:

- constable** has the same meaning as in section 4 of the Policing Act 2008
- heritage building** means,— 25
- (a) in **subpart 6B** of Part 2,—

- (i) a building that is included on the New Zealand Heritage List/Rārangi 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 5
- (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 10
- (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: 15
- (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: 20
- (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 25
- 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 30
- 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**: 35

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
- (cc) any building work that is carried out under the powers of investigation in **sections 207G to 207M** (which relate to building failures); or

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10 Section 42 amended (Owner must apply for certificate of acceptance if building work carried out urgently)

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In section 42(1), replace “section 41(1)(c)” with “section 41(1)(c), **or (cb)**”.

11 New section 123B inserted (Buildings in areas designated under subpart 6B)

Before section 124, insert:

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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.
- (2) Despite **subsection (1)**, this subpart continues to apply to the building for the purposes of—
 - (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:
 - (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.

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12 New subpart 6B of Part 2 inserted

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.
- (2) This subpart applies to all buildings in an area that is designated under **section 133BD** **133BC**. 5

133BB Definitions

- (1) In this subpart, unless the context otherwise requires—
- CDEM Act** means the Civil Defence Emergency Management Act 2002
- critical infrastructure** means— 10
- (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**
- 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 15
- 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 20
- 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
- (ii) contains 3 or more household units 25
- 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: 30
- (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 35

relevant CDEM decision-maker, in relation to an area that is a designated area or is proposed to be a designated area,—

- (a) means—
 - (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)**

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

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
 - (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—

- (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—
 - (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

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

<p>works, in relation to a building, includes—</p> <p>(a) demolition of the whole or a part of the building; and</p> <p>(b) works on the land under and around the building on which the building is situated.</p> <p>(2) A reference in this subpart to land on which a building is situated is a reference to—</p> <p>(a) the land beneath the building; and</p> <p>(b) any land surrounding the building that is used in connection with the use of the building.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p style="text-align: center;"><i>Designation of areas for emergency management of buildings</i></p> <p>133BC Designation of areas to which this subpart applies</p> <p>(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.</p> <p>(2) If an emergency arises and there is no state of emergency or transition period is in force,—</p> <p>(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</p> <p>(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.</p> <p>(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.</p> <p>133BD Decisions about designations (other than termination)</p> <p>(1) A person may only make a designation decision if satisfied that the proposed decision is—</p> <p>(a) in the public interest; and</p> <p>(b) necessary or desirable for the protection of—</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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<ul style="list-style-type: none"> (i) persons, from injury or death; or (ii) buildings, from damage or disruption to their use; or (iii) public thoroughfares, from disruption; or (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. 	5
<p>(2) A person making a designation decision must, to the extent that is practicable in the circumstances, have regard to the following matters:</p> <ul style="list-style-type: none"> (a) the scale and degree of the impact of the emergency and of its effects on buildings in the relevant area: (b) the likelihood of a further emergency or any other relevant event occurring that could cause— <ul style="list-style-type: none"> (i) buildings in the relevant area to pose increased or additional risks; or (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. 	10
<p>(3) A person making a decision to designate an area under section 133BC(1) must notify the Minister of the proposed designation.</p>	20
<p>(4) In this section, designation decision means a decision—</p> <ul style="list-style-type: none"> (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): (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. 	25
<p>133BE Public notice of designation</p>	30
<p>(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.</p>	
<p>(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.</p>	35
<p>(3) Notice under this section must—</p> <ul style="list-style-type: none"> (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.
- (4) A failure to comply with this section does not invalidate a designation.
- 133BF Commencement and duration of designation** 5
- (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. 10
- (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)**.
- (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. 15
- 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. 20
- (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: 25
- (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:
- (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: 30
- (d) for a designation made under **section 133BC(2)(b)**, the Minister.
- (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). 35
- (4) Notification under **subsection (3)** must include details of any exercise of a power under the CDEM Act in accordance with **section 133BL(2)**.

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— 15
 - (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: 20
 - (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—
 - (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 25
 - (iii) another relevant CDEM decision-maker:
 - (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: 30
 - (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—
 - (i) the Minister; or 35
 - (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.

- (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— 5
- (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. 10

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. 15
- (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. 20

Management of buildings in designated areas

133BJ Responsible persons may exercise powers under this subpart

- (1) This section and **section 133BK** set out who may exercise the powers under **sections 133BP to 133BW** in a designated area. 25
- (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: 30
 - (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. 35

- (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)**. 5
- (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. 10
- (6) A territorial authority must comply with a direction.
- (7) The Minister may amend, revoke, or replace a direction at any time.

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)**. 15
- (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): 20
 - (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,— 25
 - (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):
 - (ba) the power under **section 133BR** (measures to keep people at safe distance and protect building) or **section 133BS** (notices and signs on buildings) may be exercised,— 30
 - (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): 35
 - (c) the power under **section 133BT** (owner directed to give information) may be exercised,—

<ul style="list-style-type: none"> (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): 	5
<ul style="list-style-type: none"> (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,— <ul style="list-style-type: none"> (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
<ul style="list-style-type: none"> (3) For the purposes of subsection (2),— <ul style="list-style-type: none"> (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: (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. 	15
<ul style="list-style-type: none"> (4) In this section,— <p>CDEM Group means a Civil Defence and Emergency Management Group within the meaning of the CDEM Act</p> <p>Controller, Director, Group Controller, Group Recovery Manager, Local Controller, Local Recovery Manager, and Recovery Manager have the same meanings as in the CDEM Act.</p> 	25
<p>133BL Powers under this subpart take precedence over CDEM Act powers</p>	
<ul style="list-style-type: none"> (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. 	30
<ul style="list-style-type: none"> (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. 	35
<p>133BM Effect of previously issued CDEM Act notices</p>	
<ul style="list-style-type: none"> (1) This section applies if— 	

- (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** **133BC** 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
 - (ii) exercises a power under the CDEM Act in the area in accordance with **section 133BN(2)****section 133BL(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.
- (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.
- (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:

- (a) the paramount consideration in the exercise of those powers is the protection of human life and safety;
- (b) actions taken should be proportionate to the risks being managed;
- (c) actions should result in minimal restriction of ~~an individual's ability~~ the ability of an owner or occupier 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;
 - (ii) information about possible future events.

133BNA Power to enter building or land

- (1) A responsible person or a constable may enter a building or land for the purpose of exercising the power under **section 133BQ** (evacuation).
- (2) A responsible person may enter a building or land for the purpose of exercising a power under— 5
- (a) **section 133BR** (measures to keep people at safe distance and protect building); or
- (b) **section 133BS** (notices and signs on buildings); or
- (c) **section 133BU** (urgent works to remove or reduce risks); or
- (d) **section 133BV** (works to remove or reduce other risks); or 10
- (e) **section 133BW** (works for long-term use or occupation of building).
- (3) A person who is exercising a power of entry under this section must—
- (a) carry proof of identity; and
- (b) on request by the owner or occupier (including a request made at a later time),— 15
- (i) produce that proof of identity; or
- (ii) produce evidence or give a general explanation of the authority under which the person is acting and the power that the person is exercising.

133BO Exercise of powers in secured buildings 20

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.

133BP Post-event assessments 25

- (1) A responsible person may inspect the exterior and interior of a building ~~(and any land under or around a building)~~ or any land in a designated area and prepare a post-event assessment of any risks posed by or to the building.
- (2) The post-event assessment must be prepared— 30
- (a) in accordance with the methodology (if any) approved by the chief executive; and
- (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— 35
- (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, or any other land in the designated area, at any time after taking any steps that the responsible person considers reasonable in the circumstances to obtain the occupier's consent to entry. 5
- (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 10
- (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— 15
- (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. 20
- (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 25
- (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— 30
- (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— 35
- (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.
- (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. 5
- (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.
- (12) The warrant authorises the responsible person to enter and inspect the building or unit. 10

133BQ Evacuation

- (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. 15
- (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.
- (3) A person who intentionally fails, without reasonable excuse, to comply with a direction— 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.

133BR Measures to keep people at safe distance and protect building 25

- (1) A responsible person may put in place measures that the person considers reasonably necessary—
 - (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.
- (2) Measures may include— 30
 - (a) the installation of a hoarding or fence to prevent people from approaching the building; and
 - (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 35
 - (d) measures that allow limited access for a purpose that the responsible person considers appropriate.

- (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
 - (c) the amount recoverable becomes a charge on the land on which the building is situated. 5
- (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
 - (b) is liable on conviction,— 10
 - (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,— 15
- (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.
- (6) **Subsections (4) and (5)** do not apply to a person exercising a power under **section 133BU or 133BV**. 20

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—
- (a) the responsible person believes that it is reasonably necessary to remove or reduce risks of injury or death; or 25
 - (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.
- (3) A sign or notice under this section must— 30
- (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 35
 - (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)**— 5
- (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,— 10
- (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— 15
- (a) commits an offence; and
 - (b) is liable on conviction,— 20
 - (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. 25
- (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** 30
- (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—
- (a) the risks posed by the building and whether to exercise further powers under this subpart in relation to the building; or 35
 - (b) what works, if any, are needed to remove or reduce the risks.

- (2) The direction must—
- (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 5
 - (c) specify the time and date by which the information must be given (allowing a reasonable time for the conduct of any assessment required); and
 - (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. 10
- (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. 15
- (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.
- (6) The provisions of sections 209 to 211 apply to an appeal under **subsection (5)**—
- (a) subject to this section; and 20
 - (b) as if, in those provisions,—
 - (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 25
 - (c) with any other necessary modifications.
- (7) An appeal under **subsection (5)**—
- (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. 30
- (8) A person who intentionally fails to comply with a direction under this section—
- (a) commits an offence; and
 - (b) is liable on conviction,— 35
 - (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.

133BU Urgent works to remove or reduce risks

- (1) ~~A This section applies if a responsible person may carry out believes that~~ works in relation to a building ~~(or land under or around a building)~~ in a designated area ~~if the person believes that those works—~~
- (a) are reasonably necessary to remove or reduce risks posed by the building; and 5
 - (b) must be carried out without delay in order to remove or reduce those risks.
- (1A) The responsible person may carry out those works.
- (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— 10
- (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. 15
- (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— 20
- (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. 25
- (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. 30
- (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 35
 - (c) with any other necessary modifications.

- (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 5
 - (b) critical infrastructure, of damage or disruption to its operation or use.

Example

A building that is not a heritage building has been damaged by an earthquake. The responsible person believes that, if works to prop and brace the walls of the building are not carried out without delay, the building might collapse and, because of the building's location, cause death or injury. So, this section applies and the responsible person may carry out the works. 10

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)(b)** does not apply; and
 - (c) there will be ongoing disruption of a public thoroughfare or of the use of another building or of critical infrastructure because the responsible person has— 20
 - (i) put in place measures under **section 133BR** or placed 1 or more signs or notices under **section 133BS**; and
 - (ii) decided that those measures, signs, or notices must remain in place until the works referred to in **paragraph (a)** are carried out. 25
- (2) The responsible person may—
- (a) carry out those works; or
 - (b) direct the owner of the building to do so.
- (3) Before deciding to carry out works in relation to a building, or to direct that they be carried out, the responsible person must,— 30
- (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;
 - (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)**;~~ 35

- (iiia) owners and occupiers of other buildings, and owners and operators of critical infrastructure, whose use is disrupted by the measures put in place under **section 133BR** or by the signs or notices placed under **section 133BS**:
- (iv) persons who have an interest in ~~that land~~ the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act ~~1952~~ 2017: 5
- (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~~ section 138 of the Land Transfer Act 2017: 10
- (vi) Heritage New Zealand Pouhere Taonga, if the building is a heritage building:
- (vii) a statutory authority, if the building is classified or registered by that authority; and
- (b) consider alternative approaches to demolishing the building; and 15
- (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—
 - (a) be in writing, in the form (if any) approved by the chief executive; and 20
 - (b) be given to the owner of the building, if practicable; and
 - (c) describe the intended outcome of the directed works ~~required~~; and
 - (d) state why the works are required; and
 - (e) specify when the works must be completed; and
 - (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 25
 - (g) state that resource consent under the Resource Management Act 1991 is not required for the works (*see* **section 133BX**). 30
- (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.
- (7) If a responsible person carries out the works,— 35
 - (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.

- (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—
- (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.
- (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.

Example

A building that is not a heritage building has been damaged by an earthquake. The responsible person believes that works to prop and brace the walls of the building are necessary to remove or reduce the risk of the building collapsing but need not be carried out immediately. In the meantime, the responsible person prohibits entry to the building and also an adjacent building by exercising powers under **section 133BR or 133BS**. Until the works are completed, use of the 2 buildings will be disrupted. So, this section applies and the responsible person may carry out the works or direct the building owner to do so.

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~~
 - ~~(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.~~
- (1) This section applies if—
- (a) a responsible person believes that works in relation to a building are reasonably necessary to remove or reduce risks posed by the building; and
 - (b) **sections 133BU(1)(b) and 133BV(1)(c)** do not apply; and
 - (c) the responsible person believes that the works are reasonably necessary to make the building safe, sanitary, and otherwise suitable to be used or occupied by people on a long-term basis.

- (1A) The responsible person may direct the owner of the building to carry out those works.
- (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 5
 - (c) describe the intended outcome of the directed works ~~required~~; and
 - (d) state why the works are required; and
 - (e) specify when the works must be completed; and
 - (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. 10
- (4) If the owner does not carry out the works in accordance with the direction, the responsible person may do so.
- (5) If a responsible person carries out the works,—
- (a) the owner of the building is liable for the costs of the works; and 15
 - (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.
- (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 20
 - (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. 25
- (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.
- (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. 30
- (9) A person who intentionally fails to comply with a direction under this section—
- (a) commits an offence; and 35
 - (b) is liable on conviction to a fine not exceeding \$200,000.

Example

A building that is not a heritage building has been damaged by an earthquake. Urgent works are not required and re-entry to the building need not be prohibited. However, the responsible person believes that works on a damaged wall are necessary to make the building safe, sanitary, and otherwise suitable for long-term use or occupation. So, this section applies and the responsible person may direct the building owner to carry out the works.

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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.**

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*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.
- (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.

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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.
- (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.
- (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

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- (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

12A Section 135 amended (Owner must provide classification of, and certificate for, dam to regional authority)

Replace section 135(2)(a) and (b) with:

- (a) if the dam is commissioned before the day on which regulations that prescribe criteria and standards for dam safety come into force, 3 months after those regulations come into force; or 15
- (b) if the dam is commissioned on or after the day on which regulations that prescribe criteria and standards for dam safety come into force, 3 months after the dam is commissioned.

13 New section 153AA inserted (Buildings in areas designated under subpart 6B) 20

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— 25

- (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: 30
- (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)

In section 175(1)(c), after “subpart 6A”, insert “or **subpart 6B**”. 35

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:

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)**”.

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(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—

(a) section 133BR (measures to keep people at safe distance and protect building); or

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(b) section 133BS (notices and signs on buildings); or

(c) section 133BV (works to remove or reduce other risks); or

(d) section 133BW (works for long-term use or occupation of building).

~~(a) a power of decision under section 133BT or 133BU;~~

~~(b) a power of decision of the Minister.~~

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(3) After section 177(5), insert:

(6) In subsection (4A), responsible person does not include—

(a) the Minister acting as responsible person under section 133BJ(2)(c)(i); or

(b) a territorial authority acting on direction by the Minister under section 133BJ(2)(c)(ii); or

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(c) a territorial authority complying with a direction given by the Minister under section 133BJ(4).

17 Section 183 amended (Decision or exercise of power suspended until determination made)

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Replace section 183(2) with:

(2) However, the following decisions are not suspended until the determination is made:

(a) a requirement in a notice to fix issued under section 164 to cease building work for safety reasons:

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(b) any decision under ~~subpart 6B~~ of Part 2 other than a decision under **section 133BV or 133BW section 133BR or 133BS.**

18 Section 185 amended (When determination must be completed)

(1) In section 185(1), replace “subsection (2)” with “this section”.

(2) After section 185(2), insert:

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- (2A) ~~If~~ Despite subsection (2), if an application for a determination relating to any power of decision of a responsible person under **subpart 6B** of Part 2 **section 133BR, 133BS, 133BV, or 133BW** 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— 5
- (a) 15 working days after the date on which the chief executive receives the application, unless **paragraph (b)** applies; 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 the time required under subsection (2), if the chief executive considers that further time is necessary because the subject-matter of the decision in relation to which the determination is to be made— 10
 - (i) is complex; or
 - (ii) is relevant to other buildings in the designated area.
- (2B) The chief executive must, before the expiry of the period in **subsection (2A)(a)**,— 15
- (a) decide whether **subsection (2A)(b)** applies; and
 - (b) if the chief executive decides that it does apply, notify the applicant for the determination of—
 - (i) the time required under subsection (2); and 20
 - (ii) the reasons for the chief executive’s decision.
- (2C) The period specified in subsection (2)(a) or **(2A)(a)** does not begin until the application for the determination has complied with the requirements of section 178. 25

(3) In section 185(3), after “subsection (2)(a)”, insert “or **(2A)(a)**”. 25

19 New sections 207C to 207S and cross-heading inserted

After section 207B, insert:

Powers of chief executive to investigate building failures

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: 30
- (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 35
 - (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.
- (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. 5
- (4) A building failure may be investigated under this section more than once (for example, in 1 or more follow-up investigations after an earlier investigation ends).
- 207D Powers of investigation: purpose and investigation site** 10
- (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**).
- (2) The powers may be exercised only to investigate the circumstances and causes of the building failure for the purpose of— 15
- (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. 20
- (3) The powers may be exercised only in relation to the **investigation site**, which means—
- (a) all or part of the building; and
- (b) any of the following that the chief executive reasonably considers relevant to the building failure: 25
- (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— 30
- (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.
- (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. 35

- (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. 5
- (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. 10

207G Power to secure investigation site

- (1) The chief executive may, or any other person must if required by the chief executive,—
 - (a) restrict or prohibit access to all or part of the investigation site; and
 - (b) secure all or part of the investigation site. 15
- (2) The chief executive must, as soon as is reasonably practicable, give written notice of the exercise of any powers under this section by—
 - (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. 20
- (3) However, the notice need not be displayed or given before samples, or other evidence, are taken from the investigation site.

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. 25
- (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. 30
- (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:
 - (a) evidence of the person’s identity: 35
 - (b) the chief executive’s written authorisation to enter the site:
 - (c) if applicable, the warrant to enter a household unit.

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. 5

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. 10

- (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).

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. 15
- (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. 20
- (6) The warrant authorises the chief executive to enter the household unit and exercise the other powers of investigation.

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. 25
- (2) A sample or other evidence—
- (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. 30
- (3) The chief executive must, as soon as is reasonably practicable, give written notice to the affected owners and occupiers of the investigation site— 35
- (a) describing what has been or is being taken; and
 - (b) explaining why it has been or is being taken; and
 - (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
 - (c) it is practicable to do so. 5
- (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. 10
- (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.
- (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. 15
- (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. 20
- 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.
- 207L Power to require assistance** 25
- (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.
 - (2) The owner or occupier must give the assistance required by the chief executive.
- 207M Power to require information or documents** 30
- (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.
 - (2) The chief executive must give written notice to the person that specifies—
 - (a) the information or document that must be provided; and 35
 - (b) how the information or document must be provided; and

- (c) a reasonable deadline by which the information or document must be provided.
- (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. 5
- 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 10
- (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 15
- (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 20
- (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. 25
- (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. 30
- (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. 35

- (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.

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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;
 - (c) any other matter related to building design or construction that arises from the investigation.

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- (2) Before publishing any content that relates to an identifiable person, the chief executive must—

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- (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.

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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,—
 - (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.

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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—

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- (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.

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- 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**,—
- (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)**
- 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)**;
- (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:
- (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)**.
- 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)**
- 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)

- (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 5
 - (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 10
 - (cc) a constable who exercises a power under **section 133BQ**; and

25A Section 402 amended (Regulations: general)

In section 402(1)(x), replace “specifying” with “prescribing”.

26 Schedule 1AA amended

- (1) In Schedule 1AA, replace the cross-heading above clause 1 with: 15

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. 20

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 25

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— 30
 - (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.
- 29 Section 84 amended (Minister’s power of direction)**
- (1) In section 84(2), replace “this section” with “subsection (1)”. 5
- (2) After section 84(2), insert:
- (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 10
- (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).
- (2B) The Minister may direct that responsible person— 15
- (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)**
- (1) In section 94J(2), replace “this section” with “subsection (1)”. 20
- (2) After section 94J(2), insert:
- (2A) **Subsection (2B)** applies if—
- (a) an area is subject to—
- (i) a transition period; and
- (ii) a designation under **subpart 6B** of Part 2 of the Building Act 2004; and 25
- (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).
- (2B) The Minister may direct that responsible person— 30
- (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

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:

5

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 powers of investigation when investigating a building failure	Subpart 3
	207J	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.	

Legislative history

15 August 2018
11 September 2018

Introduction (Bill 94–1)
First reading and referral to Transport and Infrastructure
Committee