

Submission

to the

Governance and Administration Select Committee

on the

Emergency Management Bill

3 November 2023



About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following eighteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - China Construction Bank
 - Citibank N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - KB Kookmin Bank Auckland Branch
 - Kiwibank Limited
 - MUFG Bank Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

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Summary

4. NZBA welcomes the opportunity to provide feedback to the Governance and Administration Select Committee (**Select Committee**) on the Emergency Management Bill (**EM Bill**). NZBA commends the work that has gone into developing the Bill.
5. We support the objective of the EM Bill to make New Zealand's emergency management response more robust. A more coordinated approach to critical infrastructure planning, delivery and management is likely to mitigate the impact of natural hazards and other threats. Many critical infrastructures are interdependent. Effective management of these interdependencies is key to the success of any emergency management response.
6. Banks will often have an important role to play in emergency management response. New Zealanders should be confident that they will have access to basic banking services in the event of an emergency (in particular, access to cash and transactional banking services). However, banking services are heavily reliant on other critical infrastructures such as power and telecommunications.
7. We submit that further consideration should be given to certain details of the EM Bill to ensure that it achieves its stated objective. The substance of these points is set out in further detail below, but in summary:
 - 7.1. We recommend that the EM Bill could be strengthened by requiring the Minister to publicly consult before recognising an entity as a critical infrastructure entity, or part of a critical infrastructure sector.
 - 7.2. The EM Bill should further recognise the existing and proposed regulatory regimes (such as those set out in paragraph 19 below) that critical infrastructures are already subject to.
8. We [previously submitted](#) on the Department of the Prime Minister and Cabinet's Discussion Document: *Strengthening the Resilience of Aotearoa New Zealand's Critical Infrastructure System (DPMC Consultation)*. Several of the points set out in that submission (**DPMC Submission**) are referred to below.

Public consultation on recognised critical infrastructure

9. As drafted, the EM Bill does not require the Minister to consult with a potential critical infrastructure entity before exercising their powers to recognise that entity as such. NZBA submits that the EM Bill could be strengthened by requiring the Minister to publicly consult before recognising an entity as a critical infrastructure entity, part of a critical infrastructure sector, or considering whether to exempt them from any provisions under the EM Bill.



10. Under clauses 50 to 53 of the EM Bill, the Minister will have the power to:
 - 10.1. recognise critical infrastructure entities;
 - 10.2. remove recognition of critical infrastructure entities; and
 - 10.3. exempt a critical infrastructure entity, or all or part of a critical infrastructure sector, from all or some provisions of the EM Bill.
11. NZBA submits that a requirement for the Minister to consult with an affected entity or sector before exercising their powers under the EM Bill would assist with clarifying matters, particularly where a proposed critical infrastructure entity does not neatly fit within the definition proposed under the EM Bill or only part of the entity's operations are 'critical'. It is conceivable that not all of an entity's or sector's operations should be treated as critical infrastructure.
12. The Minister is required to satisfy themselves of certain criteria, including whether the entity's or sector's assets, systems, networks and services are essential for the effective functioning of the economy or the provision of basic public services.¹ We submit that consulting with an affected entity or sector as part of this process would lead to more informed and therefore effective designation.
13. The EM Bill is currently unclear on whether banking services would meet the definition of critical infrastructure and, if so, to what extent banking services would be captured. We consider that it may be appropriate, subject to consultation, for the payments system, branch and ATM networks to be treated as critical infrastructure. We consider it would be inappropriate for the entirety of a banks' retail and business banking operations to be deemed critical (see also paragraph 20 of our DPMC Submission).
14. As expanded upon from paragraph 17 to 20 below, the banking sector (like many sectors currently classified as "lifeline utilities" under the Civil Defence Emergency Management Act 2002) is already heavily regulated. Consultation could assist in determining which parts of the EM Bill should apply to a given entity or sector, to avoid unnecessary regulatory overlap.
15. Any approach to strengthen emergency management should in our view be proportionate in terms of the duties and requirements that affected critical infrastructure entities are subject to. Consultation would allow the Minister to consider the dependencies amongst the various participants in an infrastructure system.
16. Consultation would also allow the Minister to consider the systemic importance of an entity, its size and resources when determining the extent to which it should be recognised as a critical infrastructure entity and correspondingly, the extent of its

¹ At section 51.



duties under the EM Bill. This will help to ensure smaller entities are not disproportionately burdened.

Consideration of existing and proposed regulatory regimes

17. NZBA submits that there should be a requirement for any regulations proposed under the EM Bill to consider the existing and proposed regulatory regimes critical infrastructures are subject to. Under the EM Bill, the Governor-General will have the broad power to make regulations.
18. As noted at paragraph 12 of our DPMC Submission, we consider that there are already existing and proposed regulatory regimes to address potential barriers to infrastructure resilience in the banking system. A new regime under the EM Bill should be carefully implemented to complement the existing and proposed sector-based regulatory regimes and promote coordination between any new government agency responsible for infrastructure resilience and existing sectoral regulators.
19. Without such considerations, there is a risk for potential crossover and regulatory duplication, particularly for sectors that are already highly regulated such as the banking sector. As noted in our DPMC Submission:
 - 19.1. In terms of the infrastructure needed to support cash and payments as critical services, the Financial Markets Infrastructures Act currently has five key, systemically important payments operating systems that may fall within scope.
 - 19.2. The RBNZ is looking at establishing an industry wide business continuity plan for the supply of cash, and has been working with the sector to explore bank resiliency, with a focus on branches, ATMs, cash-in-transit and the associated response options required to support the ongoing services related to cash and payments.
20. Schedule 1 of our DPMC Submission summarises some of the existing and proposed regulatory regimes that relate to infrastructure resilience in the banking system.

Conclusion

21. NZBA is happy to provide further detail on the above submission if useful.