

26 August 2020

Office of the Privacy Commissioner

[Privacy.code@privacy.org.nz](mailto:Privacy.code@privacy.org.nz)

**Re: Revocation and Replacement of the Civil Defence National Emergencies (Information Sharing) Code under the Privacy Act 2020**

The National Emergency Management Agency (NEMA) has welcomed the opportunity to comment on the revocation and replacement of the Civil Defence National Emergencies (Information Sharing) Code (Code).

NEMA's role is to work across central government and with local government, communities, iwi, and business to create an emergency management system that is ready and able to provide an effective and integrated response to, and recovery from, emergencies (as defined in the Civil Defence Emergency Management Act 2002 (CDEM Act)).

**Amendments to the Code**

NEMA supports the amendments to the Code to reflect the Privacy Act 2020. However, NEMA considers the following amendments should be made to ensure agencies can carry out their functions, and the Code is fit for purpose and provides flexibility to future-proof information sharing directly related to emergency events:

- **General Comments**

The Code is used by people making quick decisions in challenging quick-paced circumstances during emergency events. It is essential that the Code is drafted in plain English to enable persons responding to an emergency to interpret the Code without the need for legal assistance.

NEMA also considers that any words requiring a definition should be included in the Code (for example, the definition of emergency etc), and there should be very minimal cross referencing to other enactments (if any).

- **Clause 6 - Collection, use and disclosure of personal information for permitted purpose**

The Privacy Act 2020 includes new Information Privacy Principle (IPP) 12 which concerns the disclosure of personal information outside of NZ. In summary, IPP 12(1) prohibits the disclosure of personal information to persons/agencies outside New Zealand, other than on certain circumstances.<sup>1</sup>

Clause 6(2) and (3) of the Code state that Clause 6 modifies IPP 2, 10 and 11 in certain circumstances. As currently drafted, the Code does not propose any modifications to IPP 12 of the Privacy Act 2020.

NEMA considers that there should be a new sub-clause which modifies the IPPs (in particular IPP12) to enable personal information to be shared with foreign governments and other foreign entities (for example National Government Organisations) that might be involved in an emergency or have citizens impacted by an emergency (as per clause 6 of the Code). For example, following a large scale earthquake information on survivors found or those injured or dead may need to be shared with embassies in order for them to advise family/next of kin in other countries or enable persons affected by an emergency to receive assistance from their embassy/consular.

- **Application to emergency events**

The Code only applies when there is a declared state of national emergency<sup>2</sup>.

There have only been two states of national emergency in New Zealand's emergency management history – the 2011 Christchurch earthquake event and the March 2020 COVID-19 event. The majority of states of emergency declared under the CDEM Act are states of local emergency<sup>3</sup>.

#### **States of Local Emergency**

Civil Defence Emergency Management Groups (CDEM Group) have authority to declare a state of local emergency under s68 of the CDEM Act for the area or part area of the CDEM Group (the Minister of Civil Defence also has authority to declare a state of local emergency for any area of the Group (section 69)). Similar to a state of national emergency, a state of local emergency only lasts 7 days, and may be extended more than once (or terminated early).

The majority of states of emergency declared under the CDEM Act are states of local emergency.<sup>4</sup>

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<sup>1</sup> For example, IPP 12(2) provides an exemption if, the disclosure to a foreign person or entity is, on reasonable grounds - necessary to prevent or lessen a serious threat to (i) public health or public safety; or (ii) the life or health of the individual concerned or another individual, and it is not reasonably practicable in the circumstances for the agency to comply with the requirements in IPP 12(1).

<sup>2</sup> And lasts for 20 working days after the declaration expires or is terminated

<sup>3</sup> A list of declared states of local emergency can be found on <https://www.civildefence.govt.nz/resources/previous-emergencies/declared-states-of-emergency/>

<sup>4</sup> A list of declared states of local emergency can be found on <https://www.civildefence.govt.nz/resources/previous-emergencies/declared-states-of-emergency/>

The information sharing obstacles which arise during a state of national emergency also arise during a state of local emergency, however the impacts may relate to a reduced geographical scale of people compared to a state of national emergency.

NEMA has previously raised with the Office of the Privacy Commissioner the number of barriers and issues that have emerged with information sharing between agencies during recent emergency events. In particular, the need for agencies to collect, use and disclose personal information directly connected to all these emergencies. Some of the reasons why personal information may be needed, include the identification of needs (household goods and services, temporary housing, psychosocial support, animal welfare etc.) and providing for those needs.

The Information Privacy Principles (IPPs) in the Privacy Act and restrictions on information sharing can result in sub-optimal outcomes for the community including experiencing multiple agency outreach activities, uncoordinated delivery of services and/or gaps in delivery of services.

These challenges have also extended to the lifeline utilities sectors, for example where electricity retailers have found themselves unable/not willing to share information on people who were medically dependent on electricity, due to privacy reasons, during a major blackout.

While we understand from the Office of the Privacy Commissioner that much of the information sharing issues experienced in emergencies may be an educational issue, rather than a gap under the Privacy Act, agencies and utilities have advised that given the heightened risk environment surrounding privacy breaches there is a reluctance to share information unless expressly permitted. Furthermore, there are no quick mechanisms to resolve information sharing disputes during an emergency event.

It is NEMA's position is that to ensure support and delivery of services to persons impacted by an emergency event and their communities, the Code should be expanded to include:

- a) Declarations of state of local emergency<sup>5</sup>
- b) Notice of national/local transition periods<sup>6</sup>

### **Transition periods**

The Code states at clause 3(2) that to *'assist with the recovery from a national emergency, this code continues to apply in relation to such an emergency for a further 20 working days after the date on which a state of national emergency expires or is terminated.'*

Clause 4 Permitted purpose also refers to the *'...recovery from, an emergency...'*

In 2016, the Civil Defence Emergency Management Act was amended to include transition periods. A transition period is the critical phase which enables a seamless transition from the end of the initial emergency response period, into recovery in the short, medium and long term - to assist the community's recovery from the emergency situation.

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<sup>5</sup> Section 68 and 69 of the Civil Defence Emergency Management Act 2002

<sup>6</sup> Section 94A and 94B of the Civil Defence Emergency Management Act 2002

Similar to a declaration of a state of national emergency, only the Minister of Civil Defence can give notice of a national transition period.<sup>7</sup> CDEM Groups, or the Minister of Civil Defence, can give notice of a local transition period (similar to states of local emergency).

National transition periods are similar to states of national emergency in that they are rare and cover very serious national level emergencies.<sup>8</sup> During national transition periods there can be nationally led programmes to delivery things like welfare services where personal information may need to be collected and shared in order to ensure people get the support they need following an emergency.

Local CDEM Groups may need to share information following a local transition period. For example to provide for identification of needs (household goods and services, temporary housing, psychosocial support, rebuild and economic activity) and providing for those needs to enable recovery.

It is also noted that not all states of emergency are followed by a transition period. Accordingly, NEMA considers clause 3(2) of the Code should be amended to apply to both transition periods (national and local) and for 20 working days following a declared state of emergency.

NEMA also considers that the Office of the Privacy Commission should give consideration to whether the Code should be extended to cover non-declared emergencies which meet the definition of 'emergency' in section 4 of the CDEM Act.

### **Other emergency events**

Note that not all emergencies require a declaration of a state of emergency. The Civil Defence Emergency Management System not only responds to emergencies under the CDEM Act but also can support emergencies primarily led out of other legislation. For example, there was no declaration of state of emergency for the 2019 Christchurch Mosque attack, the 2019 Whakaari/White Island eruption or the recent Auckland drought events. The mosque attacks were primarily dealt with by Police but the CDEM Act definition of 'emergency' could be met and allow for a welfare response.

Emergency is defined in section 4 of the CDEM Act. To qualify as an emergency, all three limbs of the definition must be met.

*Emergency means a situation that - :*

- a) *is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; **and***
- b) *causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; **and***
- c) *cannot be dealt with by emergency services, or otherwise requires a significant and co-ordinated response under this Act. **[emphasis added]***

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<sup>7</sup> Section 94A of the Civil Defence Emergency Management Act 2002

<sup>8</sup> There have only been two national transition periods – for the Kaikōura, Hurunui and part of the Marlborough districts following the 2016 Kaikōura earthquake and Tsunami event and in 2020 for COVID-19. A list of local and national transition periods given can be found at <https://www.civildefence.govt.nz/resources/previous-emergencies/transition-periods/>

A key component of this test is in part (c) – that the situation *cannot be dealt with my emergency services, or otherwise requires a significant and co-ordinated response under the CDEM Act*. This is a high threshold, which extinguishes CDEM emergency events from other local incidents, such as a house fire.

As outlined above, NEMA considers that the Office of the Privacy Commissioner should give consideration to amending the Code to include non-declared emergencies under the CDEM Act.

NEMA welcomes the opportunity to discuss NEMA's submission further if that would be helpful.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Sarah Stuart-Black', is positioned above the typed name.

**Sarah Stuart-Black**  
Deputy Chief Executive NEMA  
Director Civil Defence Emergency Management