

# Submission

to the

## Governance and Administration Select Committee

on the

## Emergency Management Bill (No 2)

15 February 2026



## 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 seventeen 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 (New Zealand) Limited
  - 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
  - Rabobank New Zealand Limited
  - SBS Bank
  - TSB Bank Limited
  - Westpac New Zealand Limited

## Contact details

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## Introduction

4. NZBA welcomes the opportunity to provide feedback to the Governance and Administration Select Committee on the Emergency Management Bill (No 2) (**Bill**). NZBA commends the work that has gone into developing the Bill.
5. As we have previously submitted, NZBA supports the objective of the Bill – to make New Zealand’s emergency management response more robust.<sup>1</sup> A coordinated approach to critical infrastructure planning, delivery and management is likely to mitigate the impact of natural hazards and other threats. The frequency and severity of natural hazards, while unpredictable, are increasing; our emergency management response needs to be sufficiently flexible and responsive to these emerging risks.
6. Our key submissions are:
  - 6.1. The Minister’s recognition power and the secondary legislation-making powers provided for in the Bill should be subject to more robust procedural requirements, given the significant consequences of being recognised as an essential infrastructure provider.
  - 6.2. The Bill should expressly provide that any act or omission by the Director-General, a lead agency or an essential infrastructure provider that is reasonably necessary to develop, agree, or implement a sector response plan is specifically authorised for the purposes of the Commerce Act 1986 (**Commerce Act**).
  - 6.3. Information provided by essential infrastructure providers and other persons for the purposes of emergency management should be subject to greater protections, and the Bill should clarify that the Official Information Act 1982 (**OIA**) does not override the information-sharing protections in the Bill.

## Recognition power and secondary legislation-making powers

### *Scope of designation*

7. As we have previously noted, an entity may be responsible for providing both essential infrastructure and non-essential infrastructure. Recognition as an essential infrastructure provider should identify the functions and roles each participant performs in the supply chain and clarify that an essential infrastructure provider is only treated as such (and that the requirements under the Act only apply) to the extent that the essential infrastructure provider provides an essential service.

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<sup>1</sup> See [NZBA's submission](#) on the 2023 Emergency Management Bill and, more recently, [our submission](#) on NEMA’s Discussion document: *Strengthening New Zealand’s emergency management legislation* (2025).



8. Recognition will, in many cases, significantly increase the legal obligations of an entity in relation to its essential infrastructure. It is important that non-essential infrastructure provided by that entity is not captured by the recognition, as this would lead to increased regulatory burden without furthering the purposes of the Bill.
  - 8.1. As we have previously submitted, we agree that it is important that New Zealanders have confidence that they will have access to basic banking services (in particular, cash and payment services) during and after an emergency, and acknowledge that banks (as well as other participants) play a role in ensuring these services are available.
9. We submit that the recognition by Order in Council of an entity as an essential infrastructure provider should specify the essential infrastructure and / or the specific infrastructure components that the entity is responsible for providing.

#### *Designation process*

10. The Bill provides, at clause 75, that before the Minister may make a recommendation to the Governor-General to recognise an entity, or class of entities, as an essential infrastructure provider, the Minister must:
  - 10.1. be satisfied that the entity or class of entities provides, or is responsible for providing, essential infrastructure;
  - 10.2. consider any potential negative implications, effects or costs of recognising the entity or entities, including for the entity or entities; and
  - 10.3. take all practicable steps to consult the entity or entities that the Minister considers will be substantially affected by the recommendation.
11. In our view, these procedural requirements are relatively light touch, particularly given the significant consequences that can result from being recognised as an essential infrastructure provider.
12. NZBA submits that the Bill should provide more certainty about the procedural requirements before an entity is recognised as an essential infrastructure provider. For example, the Bill could be amended to more closely align with the procedural requirements for the designation of financial market infrastructures under the Financial Market Infrastructures Act 2021 (**FMI Act**)<sup>2</sup> or the procedural requirements that must be followed elsewhere in the Bill (for example, clauses 211 (in relation to the regulation-making power) and 213 (in relation to the rule-making power)).

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<sup>2</sup> See [subpart 1](#) of Part 3 of the FMI Act.



13. We also consider that the Minister should be required to have regard to additional mandatory considerations before recommending that an entity be recognised, such as requirements for the Minister:
  - 13.1. to be satisfied that recognition is necessary to achieve the purposes of the Act;
  - 13.2. to evaluate the likely benefits and costs of recognition; and
  - 13.3. to consider whether an entity is subject to existing sectoral regulations, or there are other means in place of recognition, that may be used to achieve the purposes of the Act.

#### *Procedural requirements for guideline-making power*

14. We note that the Director-General may issue guidelines, codes or technical standards, including in relation to essential infrastructure providers (clauses 14(d) and 15(4)). The Director-General is required to consult with the relevant persons and organisations that have responsibilities under the Act, but is otherwise not subject to any procedural requirements before exercising its guideline-making power.
15. We submit that the Director-General should have to comply with additional procedural requirements before exercising its power to issue guidelines, codes or technical standards. These could be similar to the procedural requirements in clauses 211 (in relation to the regulation-making power) and 213 (in relation to the rule-making power).

#### *Power to grant exemptions from regulations*

16. Under clause 76, the Minister may only exempt essential infrastructure providers from provisions of the Act. Similarly, the Director-General may only grant exemptions from compliance with rules made under clauses 212. However, the Bill does not provide the Minister with the power to grant exemptions from regulations.
17. We submit that the Minister should have an equivalent power to grant an exemption from compliance with regulations made under clause 210.

#### **Sector response plans**

18. NZBA has previously submitted that the Bill should promote and facilitate coordination between essential infrastructure providers, sectoral regulators and government agencies that are responsible for emergency management, including that there should be statutory protections from the application of the Commerce Act for emergency planning to promote sector-wide coordination.
19. The Bill provides that the Director-General may develop and approve sector response plans that address the response to, and recovery from, disruption to essential infrastructure by a class of essential infrastructure providers (clause 104).



20. Developing sector response plans and coordination across essential infrastructure providers to respond to an emergency may require competitors to share information or align processes in ways that could risk breaching the Commerce Act.
21. In particular, the Commerce Act prohibits entering into or giving effect to a contract, arrangement or understand that contains:
  - 21.1. a “cartel provision” – being a provision that has the purpose, effect or likely effect of fixing prices, restricting output, or allocating markets between competitors (see section 30 of the Commerce Act); and
  - 21.2. a provision that has the purpose, effect or likely effect of substantially lessening competition in a market (see section 27 of the Commerce Act).
22. To ensure that essential infrastructure providers, lead agencies, and other persons can fully and lawfully engage in mandated planning and coordination activities, it is, in our view, important that the Bill provides explicit statutory protections. The absence of such protections could create a chilling effect that discourages necessary collaboration.
23. For example, New Zealand banks worked collaboratively to support customers during the impact of Cyclone Gabrielle in 2023. This included actions such as assisting other banks with the installation of Starlink connections in Gisborne, and combined efforts to ensure hardware such as EFTPOS machines were delivered. It took considerable time and effort to ensure these types of actions were compliant with the Commerce Act; in time-sensitive situations such as emergency responses, this can risk hindering the timely provision of essential infrastructure to impacted New Zealanders.
24. Accordingly, NZBA submits that the Bill should expressly provide that any act or omission by the Director-General, a lead agency or an essential infrastructure provider that is reasonably necessary to develop, agree or implement a sector response plan is specifically authorised for the purposes of the Commerce Act.
25. This could be achieved by way of the Bill expressly stating that such conduct is authorised for the purposes of section 43 of the Commerce Act, which provides that nothing in Part 2 (Restrictive Trade Practices) applies to any act or thing that is specifically authorised by an enactment.
26. For completeness, we note the progress of the Commerce (Promoting Competition and Other Matters) Amendment Bill through the House. While there may be avenues to lawfully collaborate in responding to emergencies under that bill (for example, by way of class exemptions), our submissions in paragraphs 24 – 25 would provide clarity and certainty for essential infrastructure providers.
27. NZBA also submits, in relation to sector response plans, that they are unlikely to be able to operate in isolation of other critical infrastructure capabilities, and may



therefore require some level of integration. For example, a financial sector response plan will rely on parallel energy and telecommunication plans.

28. Coordination of these sector plans will likely benefit from a centralised (i.e. government-supported) function or entity. We note that this is the approach taken in Australia, where dedicated functions and personnel are responsible for engaging, encouraging, and guiding cross-sector collaboration in times of emergency.

### **Information-sharing protections**

29. We have previously submitted that information-gathering powers under the Bill should be accompanied by appropriate information-sharing protections to protect against improper use or disclosure by recipients, given that information that relates to essential infrastructure is likely to be sensitive.
30. The Bill partially accounts for this point, providing that:
  - 30.1. an essential infrastructure provider that receives any information for the purposes of the Act must only be used or disclosed for the purposes of the Act (clause 74(g));
  - 30.2. a recipient of information collected pursuant to an information-gathering power in the Bill may disclose or use that information only for the purposes of the Act (clause 173(3)); and
  - 30.3. it is an offence to intentionally disclose information in breach of clause 74(g) or clause 173 (clause 186).
31. Our understanding is that these provisions should allow a government agency to refuse an information request for information that has been shared by an essential infrastructure provider under section 18 of the OIA.
32. However, we submit that, for the avoidance of doubt, the Bill should clarify that the OIA does not override the information-sharing protections in the Bill, to clarify the relationship between the two enactments.
33. We also note that the information-sharing protections put forward in the Bill are relatively light touch compared to other legislation, particularly given the potential sensitivity of information that might be shared.
  - 33.1. The Deposit Takers Act 2023 ("**DT Act**"), for example, prohibits reckless disclosure of information, includes a duty to protect the confidentiality of information and has more significant penalties for unauthorised disclosure (see sections 442 to 447).
34. We submit that the information-sharing protections in the Bill should align more closely with other legislation, such as the DT Act.



## **Additional submissions**

### *Content of clause 74(b) plans*

35. Under clause 74(b), an essential infrastructure provider must develop and maintain a plan to ensure that its essential infrastructure is able to function to the fullest possible extent during and after an emergency. The Bill does not otherwise provide any detail as to the content of the plan. Instead, it provides that regulations may prescribe matters that an essential infrastructure provider must address in their plan (clause 210(c)).
36. NZBA submits that the Bill should provide more certainty about the nature and the content of the plan or the subject matter of the regulations.
37. For example, the FMI Act provides that standards for FMI contingency plans may provide for the following matters:
  - 37.1. the purpose for which designated FMIs must have FMI contingency plans;
  - 37.2. the content of those plans – for example, the scenarios the plan must cover, and strategies and methods that must be included in the plans for dealing with those scenarios;
  - 37.3. the interaction of those plans with the designated FMI's rules;
  - 37.4. the persons responsible for maintaining, activating, or implementing those plans;
  - 37.5. arrangements for obtaining the financial resources needed to activate and implement those plans; and
  - 37.6. the reviewing, updating or testing of those plans.<sup>3</sup>

### *Powers of lead agencies to perform their functions under the Bill*

38. Under clause 83, the national emergency management plan may identify a government agency as the lead agency for emergencies caused by or contributed to a particular hazard if the agency is authorised by legislation, or has expertise to manage the response.
39. However, the Bill does not provide a lead agency with any additional statutory powers to perform their role or functions in relation to emergency management. It is not clear whether a lead agency would need to rely on powers under other existing legislation (if any) – for example, in the case of the Reserve Bank of New Zealand, the Banking (Prudential Supervision) Act 1989.

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<sup>3</sup> See section 34 of the FMI Act.



40. We submit that the Bill should make clearer what powers a lead agency has to perform its functions under the legislation.