

SUBMISSION TO THE EMERGENCY MANAGEMENT BILL 2023

Date: 2 November 2023

EXECUTIVE SUMMARY

1. The NZ Airports Association (NZ Airports) welcomes the opportunity to make a submission on the Emergency Management Bill 2023
2. NZ Airports is making this submission because 21 of our members are Lifeline Utilities listed in Schedule 1 of the Civil Defence Emergency Management Act 2002 (CDEM Act). This gives us a broad insight into the role and responsibilities of Lifeline Utilities and how they operate in emergencies.
3. This submission will focus on the provisions relating to Critical Infrastructure Entities (CIEs).

THE NEW ZEALAND AIRPORTS ASSOCIATION (NZ AIRPORTS)

4. NZ Airports is the industry association for New Zealand's airports and related businesses. Its members¹ operate 46 airports across the country including the international gateways to New Zealand. This infrastructure network is essential to a well-functioning economy and enables critical transport and freight links between each region of New Zealand and between New Zealand and the world.

AIRPORTS' ROLE IN EMERGENCY MANAGEMENT

5. Airports are the crucial transport hubs for regions and districts during the time-critical situations when Emergency Management would operate. In contrast to land transport, air transport does not have highly vulnerable, 'long ribbon' access corridors which slips, debris, or land deformation at any point can block road vehicles or trains until the complete length is repaired and operational. Airports are also able to provide much more timely transportation of essential supplies and people than maritime transport, where it may take several days for shipping to be loaded and then travel to the region's port.
6. The necessity of airports for the air transport system, and aviation's overall focus on safety and reliability has created a strong regulatory framework intended to build airports' resilience and capacity to regain operational status as quickly as possible.

¹ Our member airports: Ardmore Airport, Ashburton Airport, Auckland Airport, Bay of Islands Airport, Chatham Islands Airport, Christchurch Airport, Dunedin Airport, Gisborne Airport, Hamilton Airport, Hawkes Bay Airport, Hokitika Airport, Invercargill Airport, Kaikohe Airport, Kaitaia Airport, Kapiti Coast Airport, Marlborough Airport, Masterton Airport, Matamata Aerodrome, Motueka Airport, Nelson Airport, New Plymouth Airport, North Shore Airport, Oamaru Airport, Palmerston North Airport, Pauanui Airfield, Pukaki Airport, Queenstown Airport, Rangiora Airfield, Rotorua Airport, Takaka Airport, Taupo Airport, Tauranga Airport, Te Kowhai Airport, Thames Aerodrome, Timaru Airport, Wairoa Airport, Wanaka Airport, Wellington Airport, West Auckland Airport, Westport Airport, Whakatane Airport, Whanganui Airport, Whangarei Airport.

7. Airports² are already required to be highly resilient under aviation's controlling legislation, the Civil Aviation Act 1990 (soon to be replaced by the 2023 Act). This requirement is entirely separate from the CDEM Act's requirements on all Lifeline Utilities.
8. Lifeline Utility airports' unique position in relation to performance in Emergency Management situations is due to Civil Aviation Rule Part 139 creating an obligation on certificated airports to have Aerodrome Emergency Plans (AEPs). The AEPs include on-field and near-field aircraft accidents, airport security threats, and natural disasters.
9. There is also a Civil Aviation Rule requirement for airports to have a secondary power source, which met by having emergency generators to power to airfield lighting, air navigation aids, and other purposes.
10. Due to the Civil Aviation Rules, certificated airports already engage with CDEM committees and emergency services because of Part 139 and its requirement to hold biennial (at least) exercises. In addition, as transport hubs, airports are well supported by Police and health services during the airport's normal operations. Airports will also have some aeromedical transportation capacity.
11. A relevant yet often overlooked aspect of airports in New Zealand is that they act as a highly flexible network, forming in effect a cooperative whole to provide their services to aircraft operators.
12. However, each airport has separate ownership³, predominately the relevant local authority which either manages the airport directly or through a Council-Controlled Organisation. The local authority also holds Civil Defence Emergency Management responsibilities. This predominant ownership model does benefit the overall CDEM system in aligning ownership interests with the CDEM/Lifeline Utility requirements. That said, Civil Aviation Rules' and Lifeline Utilities' obligations are fulfilled irrespective of ownership or management model.
13. These high levels of operational resilience, and available facilities as a result of being both Lifeline Utilities and public transport hubs, have made airports into spontaneous welfare hubs during emergency management events.
14. Members of the public now gather at airports during Emergency Management events because the airport has facilities such the presence of airport staff, large areas of indoor shelter for people, a secure electrical power supply (as mentioned in paragraph 9, connectivity through Wi-Fi and the internet, accessible toilets, food outlets (sometimes), and good road access and parking.

CRITICAL INFRASTRUCTURE ENTITIES PROPOSALS

15. NZ Airports welcomes the opportunity this Bill creates to modernise through a regulation making power the definition of those goods and service suppliers that should be considered as Critical Infrastructure Entities (CIE) under the eventual Act.
16. That definition will entail a much-needed clarification of the essential linkages between individual CIEs, between CIEs and other parts of society and economy, and between CIEs and government agencies. The clarification should reflect the higher levels of interdependence required in modern technologies and the additional complexity of developed economies.

² Airports with these resilience requirements are 'certificated' which signifies that they have, amongst other things, reached the standard to support commercial passenger flights.

³ There are few cross-ownership situations, for example notably of Auckland International Airport Limited owning 25% of Queenstown Airport Corporation. Queenstown Lakes District Council owns the remainder of Queenstown Airport, and also owns the entirety of Wanaka Airport.

17. We also welcome the greater flexibility of the proposed Critical Infrastructure designation process than that of the CDEM Act. Listing Lifeline Utilities as a Schedule in the CDEM Act is an inflexible method that cannot easily allow for technological or other changes, nor for a Lifeline Utility to lose that role if it is no longer necessary.
18. NZ Airports submits that the relative scale of different sized CIEs will have to be recognised in the designation process. This is particularly important if the relevant Minister can designate an entire sector as CIEs.
19. It would be impractical, unworkable, and unfair if equivalent CIE responsibilities were demanded for all entities in a sector, irrespective of each CIE's size, staffing, resources, or its importance to the functioning of New Zealand's economy. We would suggest a system of tiers for CIE airports that would reflect each airport's importance to the national network, the population it serves, and the existence of alternatives – either other airports or land transport options.
20. NZ Airports welcomes the proposed two-year process in the Bill to review and replace Schedule 1 of the 2002 CDEM Act with a new criteria and designated set of CIEs.
21. NZ Airports has an expectation that there will be an increased number of airports that are declared to be CIEs under the eventual EM Act, but we would reinforce the point made above: not all CIEs will require the complete set of expectations and responsibilities that apply to the most important CIEs. If small airports are designated CIEs, they may require some government assistance to purchase necessary capital equipment, such as the back-up generators noted in paragraph 9, or radio communications equipment.
22. We would also note that some airports are in areas that have very high numbers of tourists in proportion to their permanently resident population, and this should be taken into consideration in the CIE designation process. Tourists have unique vulnerabilities in Emergency Management situations as they lack the friends and families that residents can turn to for alternative shelter, food sources, and transport. The tourists will also need higher rates of evacuations than the permanent resident population as they will have no rebuilding or recovery tasks. A modernised CIE designation process should account for such differences in the area served by each CIE.

INCREASED INFORMATION SHARING

23. NZ Airports welcomes proposals in the Bill for greater sharing of information within the Emergency Management hierarchy as those legislative changes will enable airports to plan more easily for events and to deliver their own Critical infrastructure responses.
24. The eventual information sharing requirements and procedures must be clear, achievable, and proportionate to the EM system requirements. For example, the information must be used by Emergency Management planners for meaningful planning, and not simply become a requirement it be supplied by the CIE because the information might be useful at some point.

PLANNED EMERGENCY LEVELS OF SERVICE

25. Planned Emergency Levels of Service (PELOS) are an extension of the current requirements on Lifeline Utilities, which are considered ineffective and unenforceable. As certificated airports that are already performing beyond the current Lifeline Utility standard due to CAR Part 139, we would welcome a higher standard for those CIEs we in turn have to rely on for our operations.
26. While NZ Airports supports the concept of PELOS, the resulting PELOS requirements on CIEs must be:
 - a. Based on a small number of realistic emergency scenarios

- b. For scenarios agreed with and by the regional EM Committees as that region's scenarios that every CIE in that region must meet
 - c. Publication of a CIE's PELOS must be mindful of relevant security issues. The same aspects of the CIE that makes the entity critical infrastructure are also those aspects that make it a target for deliberate disruption. The governance of this issue needs to be carefully considered, and a balance struck to reflect the differences between distinct types of CIEs.
27. We would question if the complete PELOS needed to be available to the public or would be of much use if it was. Publication does raise the risk of unrealistic expectations causing a backlash against the higher profile CIEs when complex Emergency Management situations do not turn out as hoped or are resolved as quickly as stated in the PELOS. Publication of the full PELOS is not required for the regulation of a CIE's planning and preparations – that is the task of government agencies. The complete PELOS should be available to other CIEs from NEMA or the region's Emergency Management Committee, and a simpler version made available to the public by the CIE on its website.
28. NZ Airports welcomes the two-year delay on PELOS regulations coming into effect as there is substantial policy work involved in its concepts, definitions and linkages.
29. Annual reporting on PELOS (if required by the Act) should be using standardised forms that are easy to adjust and update from year to year. It would be ideal if airport's current planning for their Aerodrome Emergency Plans was accepted as fulfilling their CIE PELOS requirement.
30. We also note that the actual level of service following a natural disaster will depend on:
- a. the availability of Air Traffic Control operators at the airport and Airway's delivery of its PELOS, plus other methods of air traffic control such as Fire and Emergency New Zealand (FENZ) controlling unmanned aerial vehicles used for rescue operations,
 - b. fuel CIEs being able to supply the airport,
 - c. ground handling companies being able to provide sufficient trained staff,
 - d. electricity CIEs restoring power supplies to the airport,
 - e. water CIEs being able to supply adequate volumes of potable water to the airport,
 - f. telecommunications CIEs being able to provide connectivity to the airport, and
 - g. Government agencies being present if required (i.e. Police, Customs, MPI and AvSec).
31. NZ Airports submits that government agencies and their performance should also be included within the CIE regulations (or a public sector equivalent) as their performance in an Emergency Management situation are equally essential as any CIE. As noted in paragraph 30(g) above, CIEs will depend on some government agencies to be able to operate.

OTHER MATTERS FOR CONSIDERATION

32. NZ Airports has a strong preference for the responsibilities and regulations on CIEs to be pragmatic and achievable, and the matching powers for responsible agencies to be minimal in their impact on the CIEs.
33. We would question if responsible agencies (the Bill's phrase) are the best choice for sector Emergency Management planning and overseeing CIE's preparation and response because the conflicting roles of being both the sector's regulator and/or policy steward, while also holding its EM planning function may be difficult to adequately fulfil.

34. NZ Airports submits that it is inevitable that the responsible agency's main role of safety regulation and/or policy stewardship will overshadow the Emergency Management aspects, especially if the agency's budgets and staff resources are constrained.
35. Performance of the duties on CIEs spelt out in Section 12 of Schedule 2 – to have business continuity plans and cooperate effectively with other CIEs and Emergency Management Committees - is a matter of some professional judgement. As such, it is best left to experienced professionals in a dedicated EM or resilience agency, rather than be an occasional task for the responsible agency's staff.
36. NZ Airports submits that the Select Committee's consideration of the Bill has to include some appropriate principles of cost sharing and cost recovery, i.e. – what costs should fall on the CIE owner, and what could and should be recovered from the government and the broader economy.
37. NZ Airports believes that the CIE's additional costs of returning to business as usual should be borne by the CIE as a normal business would have to, as should the usual costs of the CIE's normal business operations during the event and recovery. Normal business charges will be billed to users.
38. However, if a CIE airport has acted as a collection/distribution and evacuation hub for a region during an Emergency Management event, then the costs of doing that should be re-imbursed by the Government to reflect the wider benefit to the region and nation.
39. This then leads to the question of any excessive costs falling on CIEs to build or maintain a higher level of resilience. There appears to be a presumption by the Bill's drafters that CIEs, being both critical and infrastructure, have a very high degree of market power and so can simply recover the added costs of resilience through using their market power to raise prices on their customers. However, many infrastructure providers are constrained by the Commerce Commission in how they can increase charges or prices. The Commerce Act currently restricts price increases for such infrastructure to being that needed to fund business as usual and not allowing capital spending beyond that which will be used in business as usual. We note this legislative restriction is also hampering investment for climate resilience and emission reduction.
40. This raises a further question: should the cost of making CIEs more resilient and able to operate in an emergency fall entirely on their usual customers through pricing, or be more widely spread across society via government contribution of some part?
41. NZ Airports would like to see provisions in the Bill that give both greater flexibility and clarity of obligations within the Emergency Management legislation regarding the reimbursement for smaller private businesses and individuals of their costs incurred at the direction of the Emergency Management Committees. At present, if those small businesses and individuals are not 'pre-organised' and in the system beforehand, they are not re-imbursed for their costs.
42. NZ Airports also submits that the Civil Aviation Authority (CAA) needs to have a stronger system of control over private flights entering the airspace over Emergency Management situations. Currently, airspace can be declared restricted but there is no enforcement mechanism to keep sightseers out or private aircraft from delivering small quantities of supplies to individuals. These flights add to the airspace management burden and hinder the use of authorised aircraft in the EM response.
43. NZ Airports asks for the Bill's consideration to include greater provision for control by the EM authorities of the airspace (using the CAA's and the EM Act's powers) and specifically of private and General Aviation flights into and out of the EM area. This use of private aircraft could be co-ordinated to give greater benefit to the emergency needs of the affected people.
44. NZ Airports would welcome the opportunity to appear before the Select Committee and answer questions on this submission.

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