2 November 2023

Committee Secretariat

Governance and Administration Committee

Parliament Buildings

Wellington

Dear Committee members

Emergency Management Bill

1. Orion New Zealand Limited (Orion) welcomes the opportunity to make a submission on the Emergency Management Bill.
2. We have a unique perspective given our experience in the 2010-2011 Canterbury earthquake sequence. However, we are very conscious that we face a rapidly changing and massively different energy environment in the decades ahead. The changing landscape facing Orion is primarily driven by three factors – climate change, new technology and increasing demand for electricity.

About Orion

3. We own and operate the electricity distribution infrastructure in Central Canterbury, including Ōtautahi Christchurch. Our network is both rural and urban and extends over 8,000 square kilometres from the Waimakariri River in the north to the Rakaia River in the south; from the Canterbury coast to Arthur's Pass. We deliver electricity to more than 220,000 homes and businesses and are New Zealand's third largest Electricity Distribution Business (EDB).
4. Our principal subsidiary is Connetics and their core business is the design, construction and maintenance of overhead power lines and underground cables and associated equipment. Specialists in electrical distribution, Connetics supports Orion with the design and build expertise to maintain and develop our network and provides these services to other electricity distribution businesses around New Zealand. Together Orion and Connetics make up the Orion Group.

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5. Under the existing Civil Defence Emergency Management Act 2002 (**CDEMA**), Orion is a lifeline utility, and must ensure it is able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency.[1] We must be across the 4Rs of reduction, readiness, responsiveness and recovery in order to meet this obligation.
6. Our community is increasingly dependent on our electricity distribution service, so it's essential we identify and manage our key risks. Our community especially depends on electricity during and after High Impact Low Probability (HILP) events such as major earthquakes or storms.
7. Orion was put to the test with the Canterbury Earthquake Sequence and we immediately responded to the events drawing on our earlier preparation.[2] Recently, we were pleased to be able to provide assistance to North Island communities in the aftermath of Cyclone Gabrielle.[3]
8. We continue to prepare for future natural disasters and emergencies, and our Asset Management Plan 2023 summarises the steps we are taking to manage our key operational risks in relation to natural disasters and other risks.

Summary

9. Orion supports the introduction of the Emergency Management Bill but we have some real concerns about the new proposals in relation to clause 57 – obligation to establish, review, and publish planning emergency levels of service "PELOS" and clause 58 – obligation to report annually to the Director and relevant regulatory departments or agencies. We ask that these clauses be removed from the Bill.
10. There is little detail about what will be required of critical infrastructure entities in order to meet the obligations in these clauses 57 and 58. That said, the obligations are potentially onerous and in the case of clause 58 would seem to cut across the existing regulatory framework for EDBs.
11. If these clauses are retained, we ask that the Bill is amended to require the Minister to consult with critical infrastructure entities before making regulations about "PELOS" and annual compliance reporting.
12. Other submissions we make include –

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[1] See section 60(a).
[2] For example, approximately two thirds of consumers lost power in the February 2011 earthquake. By the end of the next day Orion had restored power to 50% of our consumers; by the end of the week 86%; and within ten days 95%. With the exception of cordoned areas (and feeders originating within cordoned areas), Orion restored all consumers that wanted power within 24 days.
[3] See https://www.oriongroup.co.nz/our-story/the-latest/cyclone-gabrielle-recovery

a. Clarifying the meaning of sector in clause 5,
b. Introducing an obligation to consult with prospective critical infrastructure entities before designating as such under clause 51,
c. Re-examining the need for sector plans in clause 54, and
d. Ensuring there are sufficient legal protections for sharing information under clause 55.

13. We support in principle the submission of Electricity Networks Aotearoa.

Clause 5 – Interpretation

Definition of critical infrastructure, critical infrastructure entity, and critical infrastructure sector

14. The Bill proposes that there will no longer be references to lifeline utilities. This term will be replaced by the terms critical infrastructure, critical infrastructure entity, and critical infrastructure sector.
15. We agree with the new definitions of critical infrastructure and critical infrastructure entity – but we do have some concerns about the new concept of critical infrastructure sector. We refer to our comments below about clause 51 but there is a lack of clarity as to how far the term "sector" extends. Are the entities carrying on business that are listed in Part B of Schedule 1 of the CDEMA indicative of a sector or part of a sector? For example, is electricity distribution a sector or part of a wider electricity sector?

Clause 51 – Requirements for recognition of critical infrastructure entities and critical infrastructure sectors

16. The Bill proposes that the Minister will recognise, by way of *Gazette* notice, entities, sectors, or groups of entities that are critical infrastructure entities or related to critical infrastructure. The Minister will need to be satisfied that the criteria in clause 51(2) are met, after having regard to one or more of the factors in clause 51(3). There are a number of factors in clause 51(3) but we note that there is no one factor that looks at the potential effects of the costs imposed on the entity concerned and its ability to recover those costs.
17. In our submission, it appears that current lifeline utilities will be recognised under clause 50(a) as critical infrastructure entities because they will almost certainly come within the clause 51 criteria. This is supported by the transitional provision in the Bill which deems existing lifeline utilities to be critical infrastructure entities for a period of 2 years.[4] Subsequently, we envisage that Orion will be recognised

[4] See clause 10 of Schedule 1.

as a critical infrastructure entity after the transitional period.

18. However, we note that the process of recognition does not provide for consultation with the entity concerned and given the extent of the duties imposed on critical infrastructure entities we would expect a consultative process to apply in the case of entities that have not been lifeline utilities in the past. By way of example, potentially our service provider Connetics could be recognised as a critical infrastructure provider, and ideally we would expect the Government to consult with Connetics first before it recognised Connetics as such.

Clause 54 - Duties of critical infrastructure entities

19. New clause 54 sets out the duties of critical infrastructure entities. To some extent, the duties replicate previous duties under the CDEMA and those contained in the National Civil Defence Emergency Management Plan Order 2015.[5] For example, a lifeline utility is under an obligation to have a plan for functioning during and after an emergency.
20. However, under the Bill, a critical infrastructure entity must, amongst other things, in respect of its critical infrastructure
    - Develop, or contribute to the development of, plans responding to and recovering from emergencies that are specific to the sector in which the entity operates: (i.e. sector wide plans) (clause 54(1)(c)), and
    - Review and update the sector plans, and its own plan for functioning during and after an emergency, every three years (clause 54(1)(d)).
21. It is not clear what will be required of sector plans, and how they fit into the overall scheme of emergency management documents. Will they form part of the emergency management committee plans? They are not specifically referred to in clause 73 of the Bill which sets out the contents of emergency management committee plans. If this requirement is retained, it would be desirable for the Government to provide templates for these sector plans so that there is some equivalency across sectors.
22. The requirement to review the plans every three years will come around fairly quickly. However, that said the three yearly review cycle could be synchronised with EDB Asset Management Plans, and for those EDBs that are subject to price quality regulation under the Commerce Act 1986, it will provide an

[5] See https://www.legislation.govt.nz/regulation/public/2015/0140/latest/DLM6486453.html?src=qs

avenue for the reset of each default price path.

23. In any event, we question whether such plans should be mandated by statute – particularly for EDBs. Whilst EDBs provide electricity distribution services across Aotearoa New Zealand, EDBs of themselves might have different needs and requirements. A sector approach may not be appropriate as such and simply place more costs on EDBs. Furthermore, EDBs are used to responding to various types and scales of events and are well placed to do so using current processes and communication channels. We are not sure that sector plans will add anything further to what EDBs are already doing.
24. EDBs have worked with the Electricity Engineers' Association of New Zealand Inc. (EEA) to develop a "Resilience Guide" (July 2022) for its members. It provides a detailed framework for EDBs to assess the vulnerabilities of their assets to extreme events including natural disasters or major asset failures, prepare risk mitigation plans, and develop operational contingency and response plans for immediate, post-event actions. This approach has been developed without a statutory requirement to do so and allows each EDB to assess its own preparedness and plan and respond accordingly.

Clause 55 - Information-sharing obligations of critical infrastructure entities

25. The Bill provides for a new obligation in relation to information sharing, where the information is relevant for the purposes of planning and monitoring in relation to emergencies. This includes sharing information before, during and after an emergency. We understand the reasoning behind this provision - that requiring critical infrastructure entities to proactively share information about their operational capability and status of their network and services with responsible agencies and other critical Infrastructure entities may improve situational awareness during an emergency event for both NEMA and others.
26. Certainly, our experience has been that during an emergency we have provided information about the state of our network (for example areas affected, number of customers currently off etc.) to other lifeline entities as requested. The most useful information for other parties has been information that is up to date.
27. We recently submitted to DPMC on its Discussion *Document Strengthening the resilience of Aotearoa New Zealand's critical infrastructure system.* The Discussion Document asked what we thought the government should do to enable greater information sharing with and between critical infrastructure owners and operators. We noted that there would need to be robust rules around the sharing and use of the information for **resilience purposes** (a broader concept than emergency preparedness). Information provided by critical infrastructure owners may be commercial in confidence or sensitive

information relating to specific security procedures or systems used by the asset owner. Potentially it could also include personal information.

28. We have some concerns about this clause because it is not clear to us what information will need to be shared under clause 55. It could potentially be very wide, and there could be onerous expectations about what will be provided. We would not want this provision to create a burden for EDBs, particularly during an emergency. Similarly, we would not want the receipt of the information to create a legal burden for the receiving party. In other words, we do not want it to create a legal obligation that requires specific action on behalf of the other parties who are provided with the information.
29. Therefore, we support the sharing of information but we think the clause would benefit from further analysis as to the type and quantity of information required. We would also expect there to be protection from liability relating to the sharing of the information by the critical infrastructure entity in accordance with this clause.[6] For example, no liability should attach to the critical infrastructure entity where it shares personal information. (This is not necessarily covered by Information Privacy Principle 11 or section 24 of the Privacy Act 2020).

Clause 57 – Obligation to establish, review, and publish planning emergency levels of service

30. In the Bill, there is a new obligation on critical infrastructure entities to establish, review, and publish planning emergency levels of service (PELOS) in respect of its critical infrastructure. The Bill provides that PELOS must be reviewed at least once every 5 years, and at an earlier time if the Director requests a review. PELOS are required to be published on the entity's Internet site. There is no detail on what PELOS will be, as PELOS will be set out in regulations.[7] Clause 57 comes into force 2 years after the Bill becomes an Act.
31. Orion **does not support** the introduction of PELOS and asks that clause 57 is deleted from the Bill. If the Committee determines to retain PELOS, we ask that the Bill is amended to provide that the Minister must consult with critical infrastructure entities before recommending to the Governor-General to make PELOS regulations. We also ask that the PELOS are reviewed at a **minimum** every 5 years and the reference to "*at an earlier time if the Director requests a review*" is deleted.

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[6] We acknowledge that clause 56(1) provides that a person who receives information under clauses 54 or 55 may use or disclose that information only for the purposes of the Emergency Management Bill.

[7] See clause 145 of the Bill which provides for regulations prescribing matters of detail and procedure for planning emergency levels of service as well as prescribing matters of detail relating to reporting requirements.

32. We note that the Government has said that PELOS is intended to:[8]
    - improve readiness and facilitate the response to an emergency event (establishing a specific and measurable level of emergency provision will upgrade the performance and capability of the emergency management system and raise public confidence),
    - ensure that by providing access to information on emergency levels of service, that planning to reduce the consequences of an emergency will be facilitated, and
    - deepen community understanding of the risks that people face and to enhance readiness planning.
33. Plus, the Government is hopeful that PELOS will[9]-
    - enable other critical infrastructure entities to plan, based on interdependencies and expected emergency levels of service, and
    - encourage the development of innovative solutions where scenario planning indicates that services will be severely compromised.
34. Given the lack of details about this scheme, it is not clear to us how the above aspirations are going to be met. Our submission is that it is unsatisfactory to introduce a regime, where there are no meaningful details of what the regime might entail, and how this might affect the parties that are expected to comply with it or where there are existing overlapping obligations that already exist e.g. provision of participant rolling outage plans with the System Operator under the Code.[10]
35. The Government has acknowledged criticism of the PELOS proposal,[11] but the Cabinet Paper records that that the critical infrastructure proposals are intended to set consistent standards against which the somewhat vague and unmeasurable duty in section 60(a) of the CDEM Act can be assessed,[12] and provide a level of assurance that critical infrastructure entities can fulfil this duty in the event of an emergency.
36. Our submission is that if the problem is with the duty that is imposed on lifeline utilities under the CDEMA, then the better approach is to address the issues with the duty rather than introduce a new regime of standards and reporting on those standards.
37. Furthermore, we are still concerned about the potential cost of this reform if it is to proceed. Orion is

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[8] See the Regulatory Impact Statement: Emergency Management System Reforms, page 43.
[9] Above n5, page 44.
[10] The Electricity Participation Code, Part 9 Security of Supply, Clauses 9.6 to 9.13
[11] For example see the Cabinet Paper Emergency Management System Reform Proposals, at https://www.civildefence.govt.nz/assets/Uploads/publications/emergency-management-bill/PR-207-RELEASE-Emergency-Management-Reform-Proposals.pdf and discussion of the MBIE concerns about PELOS at paragraph 121.2
[12] That duty is also replicated in clause 54(a) of the Emergency Management Bill. The Regulatory Impact Statement: Emergency Management Reforms also records that the electricity sector were not in favour of the proposal.

non-exempt from the Commerce Commission's price quality regulation under Part 4 of the Commerce Act 1986. Given the current timing of this proposal, the costs of the work will not be factored into our regulated revenue for our current price path which ends on 31 March 2025, and given the timing of this reform is unlikely to be factored into the next default price path for 2025-2030 which will set our revenue for that period. The Commerce Commission will issue a final decision on the next default price path in November 2024.

38. The Government is of the view that the costs to comply with PELOS will not be as high as the sector expects. In the Regulatory Impact Statement, the Government's position is that the cost impact will be low to medium given that the critical infrastructure entities will not be required in invest in upgrading systems or engage additional staff.[13] However, we question the basis for this assumption, given that PELOS have not yet been developed.

Clause 58 – Obligation to report annually to Director and relevant departments or agencies

39. New clause 58 requires that a critical infrastructure entity must report annually to the Director and 1 or more responsible public service agencies relevant to the entity regarding the entity's compliance with its obligations under the new Act, and if requested to do so provide relevant information to the Director or a relevant chief executive to support the consideration of the entity's compliance. There is no detail about what is to be included in any compliance reporting and this is also going to be the subject of regulations.
40. Orion does not support clause 58 and asks that the clause be deleted from the Bill.
41. The Regulatory Impact Statement for the Bill records that

> *54. Currently, critical infrastructure entities are not required to report on how well their organisations are meeting their obligations under legislation. It is difficult to hold critical infrastructure entities to account for non-compliance with significant statutory obligations without annual reporting.*
>
> *…*
>
> *57. The objective is to provide assurance of compliance and an opportunity for entities to internally assess their capability and capacity to respond to events.*

42. EDBs **are** required to report publicly on how they are meeting their obligations. Section 54Q of the Commerce Act 1986 states that all electricity lines companies are subject to information disclosure

[13] See paragraph 153 of the Regulatory Impact Statement: Emergency Management Reforms.

regulation. The Electricity Distribution Information Disclosure Determination 2012[14] provides that EDBs must provide details of risk policies, assessment and mitigation in their Asset Management Plans including

- Strategies used to identify areas of the network that are vulnerable to high impact low probability events and a description of the resilience of the network and asset management systems to such events;
- Details of emergency response and contingency plans.[15]

43. If the provision is retained, it is unclear what the legal effect of these compliance reports will be, especially if an entity reports that it has not complied with its statutory obligations.
44. The Regulatory Impact Statement states that the proposal will allow NEMA to **hold critical infrastructure entities to account** for non-compliance with significant statutory obligations and provide assurance that critical infrastructure entities are complying with these obligations (or clarify how to rectify situations when they are not).[16]
45. It is not clear what "holding to account" means or whether there will be any repercussions for critical infrastructure entities that do not comply with their statutory obligations. The Bill does not spell this out.
46. In light of the existing disclosure requirements, we question the need for separate compliance reporting and suggest that if additional reporting is required about matters relating to emergency management then this is included in the Information Disclosure requirements under the Commerce Act 1986, and that clause 58 is therefore deleted.
47. If the clause is retained, we submit that there also needs to be a consultation requirement in the Bill such that the Minister must consult with critical infrastructure entities before recommending to the Governor-General to make regulations in relation to compliance reporting requirements.

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[14] See https://comcom.govt.nz/__data/assets/pdf_file/0015/321171/Electricity-Distribution-Information-Disclosure-Determination-2012-Consolidated-6-July-2023.pdf

[15] The Determination notes that asset risk management forms a component of an EDB's overall risk management plan or policy, focusing on the risks to assets and maintaining service levels. Asset Management Plans should demonstrate how the EDB identifies and assesses asset related risks and describe the main risks within the network. The focus should be on credible low-probability, high-impact risks. Risk evaluation may highlight the need for specific development projects or maintenance programmes. Where this is the case, the resulting projects or actions should be discussed, linking back to the development plan or maintenance programme. By way of example, see Part 3.8 of the Orion Asset Management Plan at https://www.oriongroup.co.nz/assets/Our-story/Publications/Orion-AMP-2023.pdf

[16] See paragraph 64 of the Regulatory Impact Statement: Emergency Management Reforms.

Clause 143 – General regulations and clause 145 – regulations relating to critical infrastructure entities

48. It is not clear to us why there are regulation making powers in clause 143(f) and (g) as well as clause 145. They appear to cover the same matters although worded in a slightly different way. We suggest that clause 143(f) and (g) should be deleted.
49. In accordance with our submissions made above we also suggest that clause 145 is amended to provide that the Minister must consult with critical infrastructure entities before recommending to the Governor-General to make regulations under this provision.

Conclusion

50. Thank you for the opportunity to provide this submission. We do not wish to be heard in support of this submission.
51. We do not consider that any part of this submission is confidential. If you have any questions about this submission please contact Vivienne Wilson, Policy Lead, Orion New Zealand Ltd at vivienne.wilson@oriongroup.co.nz

Yours sincerely

Vivienne Wilson
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