I hereby give notice that an ordinary meeting of the Emergency Committee will be held on:

**Date:** Thursday, 2 April 2020  
**Time:** 10.00am  
**Meeting Room:** These meetings will be held remotely and can be viewed on the Auckland Council website  
**Venue:** https://councillive.aucklandcouncil.govt.nz/

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**Te Kāhui Ngārahu / Emergency Committee**  
**OPEN ADDENDUM AGENDA**

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**MEMBERSHIP**

**Mayor**  
Hon Phil Goff, CNZM, JP

**Deputy Mayor**  
Deputy Mayor Cr Bill Cashmore

**Councillors**  
Cr Josephine Bartley  
Cr Dr Cathy Casey  
Cr Fa’anana Efeso Collins  
Cr Pippa Coom  
Cr Linda Cooper, JP  
Cr Angela Dalton  
Cr Chris Darby  
Cr Alf Filipaina  
Cr Christine Fletcher, QSO  
Cr Shane Henderson  
Cr Richard Hills  
Cr Tracy Mulholland  
Cr Daniel Newman, JP  
Cr Greg Sayers  
Cr Desley Simpson, JP  
Cr Sharon Stewart, QSM  
IMSB Chair David Taipari  
Cr Wayne Walker  
Cr John Watson  
Cr Paul Young  
IMSB Member TBC

(Quorum 11 members)

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**Sarndra O’Toole**  
**Kaiarataki Kapa Tohutohu Mana Whakahaere / Team Leader Governance Advisors**  
1 April 2020

Contact Telephone: +64 9 890 8152  
Email sarndra.otoole@aucklandcouncil.govt.nz  
Website: www.aucklandcouncil.govt.nz

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**Note:** The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted. Should Members require further information relating to any reports, please contact the relevant manager, Chairperson or Deputy Chairperson.
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Te take mō te pūrongo

Purpose of the report

1. To provide a general explanation of the emergency powers and roles that apply during the current state of national emergency relating to COVID-19, to seek a delegation from the committee of its emergency powers to the Group Controller, and to ratify any decisions taken by the Group Controller under those emergency powers since a state of national emergency was declared on 25 March 2020.

Whakarāpopototanga matua

Executive summary

2. On Wednesday 25 March 2020, the Government declared a state of national emergency under the Civil Defence Emergency Management Act 2002 (CDEMA) in order to manage the spread of the COVID-19 epidemic in New Zealand. The Minister of Civil Defence took this step because it is considered that what is required to combat COVID-19 is of such a degree that it will require a coordinated response from local and central government.

3. The declaration activated a number of powers of various actors at both the national and local level, including the national Director of Civil Defence Emergency Management (Director), the National Controller, local Civil Defence Emergency Management Groups and local Group Controllers.

4. An explanation of the emergency powers that apply during the current state of national emergency relating to COVID-19, and the roles of the various actors involved in responding to the emergency, is contained in Attachment A to this report.

5. For the period in which the Emergency Committee is in operation, it is deemed to be the statutory committee required under section 12(1) of CDEMA, and will have all the functions and powers of the Civil Defence and Emergency Management Group Committee (CDEM) as set out in the Governing Body Terms of Reference (GB/2020/32). This report is therefore being brought to the Emergency Committee in its capacity as the CDEM Group under CDEMA.

6. The CDEM Group has a number of powers during an emergency conferred on it under section 85 of CDEMA. In practice, the section 85 powers of CDEM Groups are generally delegated to the Group Controller to enable the efficient and effective use of those powers during emergencies. As there is no standing delegation in place, staff recommend that this committee delegate those powers to the Group Controller.

7. Since the declaration of national emergency, the Group Controller has also been taking decisions under the direction of the Director of Civil Defence Emergency Management that are necessary to respond to the evolving situation. To ensure that there is no question over the legal validity of those decisions, staff recommend that the Committee ratify all decisions taken by the Group Controller since the declaration of a national emergency on 25 March 2020.
Ngā tūtohunga
Recommendation/s
That the Emergency Committee:

in its capacity as the Civil Defence and Emergency Management Group under Civil Defence Emergency Management Act 2002:

a) note the general explanation of the emergency powers and roles that apply during the current state of national emergency relating to COVID-19;

b) delegate to the Group Controller all emergency powers conferred on the Group by section 85 of Civil Defence Emergency Management Act 2002; and

c) ratify any decisions of the Group Controller exercising the emergency powers under section 85 of Civil Defence Emergency Management Act 2002 taken since the declaration of a state of national emergency on 25 March 2020.

Horopaki
Context

8. For the period in which the Emergency Committee is in operation, it is deemed to be the statutory committee required under section 12(1) of CDEMA, and will have all the functions and powers of the Civil Defence and Emergency Management Group Committee as set out in the Governing Body Terms of Reference.¹ This report is therefore being brought to the Emergency Committee in its capacity as the CDEM Group under CDEMA.

9. On Wednesday 25 March 2020, the Government declared a state of national emergency under CDEMA in order to manage the spread of the COVID-19 epidemic in New Zealand. The Minister of Civil Defence took this step because it is considered that what is required to combat COVID-19 is of such a degree that it will require a coordinated response from local and central government.

10. Since the declaration of a national emergency the Group Controller and Auckland Emergency Management have been providing support to the All of Government health-led, phased response, prioritising and co-ordinating the regional non-health Civil Defence and Emergency Management interagency response and sharing and collaborating with partner agencies on the provision of materials, services, information and any other resources.

11. This has required the Group Controller to take decisions to, amongst other things:

- provide for the relief of distress, including emergency food;
- to prohibit or regulate land, air, and water traffic; and
- to disseminate information and advice to the public.

12. To ensure that the Group Controller has the necessary powers to continue to take these actions it is necessary that the CDEM Group delegate its powers under section 85 of CDEMA to the Group Controller.

Tātaritanga me ngā tohutohu
Analysis and advice

13. The key actors in the current state of national emergency and the key legislation applying in the current COVID-19 pandemic are set out in Attachment A to this advice.

¹ GB/2020/32
14. It is important to note that because a state of national emergency has been declared, the
response will be largely driven by the national Director of Civil Defence Emergency
Management. This is because during a state of national emergency, the Director has the
power to control the performance of the functions and duties, and the exercise of the powers
of CDEM Groups and Group Controllers.²

15. The specific powers of the CDEM Group that apply when a state of emergency is in force
are set out in ss 85 of CDEMA. Under s 85 the CDEM Group has powers (in this case to be
exercised under the control of the Director) to:

- carry out, or require to be carried out, works and clearing roads and other public
  places
- provide for the rescue of endangered persons and their removal to areas of safety
- set up first aid posts, and provide for first aid to be given to casualties
- provide for the relief of distress, including emergency food, clothing, and shelter
- provide for the conservation and supply of food, fuel, and other essential supplies
- prohibit or regulate land, air, and water traffic
- undertake emergency measures for the disposal of dead persons or animals
- disseminate information and advice to the public
- enter into arrangements, including employment arrangements, with any person for the
  purpose of carrying out civil defence emergency management
- provide equipment, accommodation, and facilities for the exercise of any of the above
  powers.

16. In practice, the section 85 powers of CDEM Groups are generally delegated to the Group
Controller to enable the efficient and effective use of those powers during emergencies. This
delegation is usually included in the Civil Defence Emergency Management Group Plans
that CDEM Groups must adopt under section 48 of CDEMA or made by CDEM Groups
during an event.³

17. Auckland Council’s Civil Defence Emergency Group Plan does not include such a delegation
and no delegation has yet been made in the context of this national emergency. To ensure
that Group Controllers are empowered to take decisions on an urgent basis, staff
recommend that all powers conferred on the CDEM Group under section 85 CDEMA are
delegated to Group Controllers.

18. Group Controllers will continue to provide elected members with situation reports on a daily
basis and will formally report back to the CDEM Group on decisions made under delegated
authority and financial expenditure on a monthly basis.

19. To ensure that the actions that the Group Controller has already taken since the declaration
of a national emergency are legally valid, staff also recommend that decisions taken by the
Group Controller since the declaration of national emergency exercising powers under
section 85 of CDEMA are ratified.

**Tauākī whakaaweawe āhuarangi
Climate impact statement**

20. The delegation of statutory powers by the CDEM Group to Group Controllers is a procedural
matter. The decision is unlikely to result in any identifiable changes to greenhouse gas
emissions.

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² CDEMA, s 9(2)(b).
³ See for example: Northland Civil Defence Emergency Management Plan, section 8.25; Wellington Region
Civil Defence Emergency Plan, p105; Waikato Region Civil Defence Emergency Plan, section 6.8.2;
Taranaki CDEM Group Plan, p 38; Canterbury CDEM Group Plan, section 2.5.2.
Ngā whakaaweawe me ngā tirohanga a te rōpū Kaunihera
Council group impacts and views
21. The CDEM Group and the role of Group Controller are both statutory roles under the Civil Defence Emergency Management Act 2002. There are no impacts for the Council group arising from the delegation of powers from the CDEM Group to Group Controllers.

Ngā whakaaweawe ā-rohe me ngā tirohanga a te poari ā-rohe
Local impacts and local board views
22. The CDEM Group and the role of Group Controller are both statutory roles under the Civil Defence Emergency Management Act 2002. There are no local impacts arising from the delegation of powers from the CDEM Group to Group Controllers.

Tauākī whakaaweawe Māori
Māori impact statement
23. Group Controllers are committed to Auckland Council’s Māori Responsiveness Framework. Since the declaration of a national emergency, a new Māori specific function, Pouwhakarae, has been set up under Auckland Emergency Management. Pouwhakarae is distributing health-related information provided by the National Health Response Coordination Centre (run by the Ministry of Health) to Māori communities, responding to enquiries and requests from iwi, hapū, whānau and marae and collating offers of support from iwi, hapū, whānau and marae.

Ngā ritenga ā-pūtea
Financial implications
24. There are no financial implications arising from this report.

Ngā raru tūpono me ngā whakamaurutanga
Risks and mitigations
25. Section 85 of the Civil Defence Emergency Management Act 2002 confers various powers on the CDEM Group. In Auckland, Group Controllers have the relevant expertise and ability to exercise these powers and are best placed to do so.

26. The exercise of these powers is often required on an urgent basis and it is essential that the Group Controller is able to respond without delay to directions from the Minister or the Director.

27. Group Controllers will report back to the CDEM Group on decisions made under delegated authority.

28. Ratifying the decisions taken by Group Controllers since the declaration of a state of national emergency will ensure the legal validity of decisions already taken under urgency.

Ngā koringa ā-muri
Next steps
29. Group Controllers will continue to provide elected members with situation reports on a daily basis and will formally report back to the CDEM Group on decisions made under delegated authority and financial expenditure on a monthly basis.
Ngā tāpirihanga
Attachments

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Ngā kaihaina
Signatories

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<th>Author</th>
<th>Meredith Webb – Manager Public Law</th>
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<tr>
<td>Authorisers</td>
<td>Dani Gardiner - General Counsel</td>
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<td>Phil Wilson - Governance Director</td>
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EMERGENCY POWERS DURING A STATE OF NATIONAL EMERGENCY

Background

1. In a pandemic response, Government and designated officers may use available legislative powers as appropriate to the situation. These include:
   a. powers provided for in the Health Act 1956 (the Health Act)
   b. additional powers available under the Epidemic Preparedness Act 2006 (EPA) to facilitate the management of serious epidemics of specified diseases
   c. additional powers under the Civil Defence Emergency Management Act 2002 (CDEMA) (in a state of emergency declared under that Act).

2. In terms of the activation of these powers:
   a. On Tuesday 24 March 2020 the Epidemic Preparedness Notice (COVID-19) 2020 was gazetted.\(^1\) It was tabled in Parliament on Wednesday 25 March and came into force on the same day. Among other things, it had the following relevant impacts:
      i. It activated the special and requisition powers of medical officers of health under sections 70 and 71 of the Health Act.
      ii. It paved the way for the making of prospective or immediate modification orders under sections 11, 12, 14 and 15 of the Epidemic Preparedness Act 2006, which may modify requirements or restrictions in legislation, either for the purpose of enabling the effective management of an outbreak or dealing with requirements or restrictions that are or may well be impossible or impracticable to comply with.
   b. On Wednesday 25 March, the Government declared a state of national emergency under CDEMA and this was subsequently extended on Tuesday 31 March for a further seven days.\(^2\) This declaration activated a number of powers of the national Director of Civil Defence Emergency Management (presently Sarah Stuart-Black) (the Director), the National Controller, Civil Defence Emergency Management Groups and Group Controllers.

3. We also note that on Wednesday 25 March, the COVID-19 Response (Urgent Management Measures) Legislation Bill was debated by Parliament, passed and received the royal assent. The COVID-19 Response (Urgent Management Measures) Legislation Act 2020, which came into force on 26 March, (among other things) temporarily amends the Local Government Act 2002 to allow for attendance at meetings by electronic link without affecting the quorum of the meeting, and the Local Government Official Information and Meetings Act 1987 in relation to what ‘open to the public’ means (in relation to council meetings), as well as regarding the availability of agenda and minutes.

4. We set out below more detail about roles and responsibilities of the various actors involved in responding to a pandemic.

\(^1\) [https://gazette.govt.nz/notice/id/2020-go1368](https://gazette.govt.nz/notice/id/2020-go1368)
Powers, roles and responsibilities in responding to COVID-19 emergency

Health

Ministry of Health and the Director-General

5. The lead agency with the primary mandate to manage the response to COVID-19 is the Ministry of Health. Overall stewardship of the Ministry of Health is the responsibility of the Director-General of Health who acts as the Ministry’s Chief Executive, in an operational position that sits alongside the Minister of Health (David Clark). The current Director-General of Health is Dr Ashley Bloomfield. He acts as the face of the Ministry of Health in daily press briefings, holding responsibility for the overall public health response to COVID-19. He is also able to act as the Medical Officer of Health for all districts of New Zealand.

Medical Officers of Health

6. Medical Officers of Health are medical practitioners with particular expertise in public health. They are appointed by the Director-General of Health under the Health Act on the basis of that expertise. They are generally DHB employees and operate within a defined health district. In normal (non-epidemic) times, their role is to focus on public health in their designated district.

7. On 25 March 2020, certain Health Act powers became available to Medical Officers of Health. This was done via the issuing of the “Epidemic Preparedness (COVID-19) Notice 2020”, which is the statutory mechanism for activating these powers in an epidemic situation.

8. Under ss 70 and 71 of the Health Act, Medical Officers of Health now have “special powers” and “requisitioning powers” to do certain things for the purpose of preventing the spread of COVID-19. They are well-placed to determine whether it is appropriate to do so, given their public health expertise, first-hand knowledge of the local DHB setting, and accountability to the Director-General of Health through the terms of their appointment. That is why the Health Act allocates them this role.

9. Their special powers include, for example, requiring people to report for testing or examination, requiring buildings or things to be disinfected, requiring premises to be immediately closed, and forbidding people to congregate outside. We note that the basis for the current lockdown is an order made by the Director-General of Health (acting as Medical Officer of Health for all districts of New Zealand) under s 70(1)(m) of the Health Act, which requires a closure of all premises within all districts of New Zealand subject to certain exceptions as set out in the Appendix to the Order.

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3 The key functions of chief executives are set out in the State Sector Act 1988.
4 Health Act 1956, s 22.
5 Health Act 1956, s 7A(1).
6 Health Act 1956, s 7A(3). We note the Director-General may also authorise a Medical Officer of Health to exercise powers outside of their designated health district in certain circumstances (s 70(4)).
7 The key powers for these purposes are contained in ss 70 – 71 of the Health Act.
8 Under the Health Act, there are also other ways of activating these powers, but the Government has decided in this instance to use the Epidemic Preparedness Notice mechanism.
9 Health Act, s 70(1)(e) and 70(1)(ea).
10 Health Act, s 70(1)(f).
11 Health Act, s 70(1)(a)(i). We note this does not apply to private homes, parliamentary precincts, courts, or prisons.
12 Health Act, s 70(1)(m)(ii). We note there must first be an order published in a newspaper or on the radio or on TV requiring this.
13 Section 70(1)(m) Health Act Order, signed 25 March 2020 by Dr Ashley Bloomfield Director-General of Health.
10. The requisitioning powers of Medical Officers of Health include taking possession and occupation of land or buildings required for patient treatment and accommodation, taking possession of vehicles for transporting patients, medicine, medical equipment or relevant personnel, and requiring delivery of drugs or food necessary for patient treatment.

11. The Health Act also provides for police enforcement of these requirements. The Health Act provides that a constable may do anything reasonably necessary (including the use of force) to help a Medical Officer of Health perform these powers, to prevent people from obstructing them in doing so, or to ensure compliance with requirements made by them in exercising these powers.

State of national emergency

The Minister of Civil Defence

12. Under section 86 of CDEM, the Minister of Civil Defence has the power to declare that a state of national emergency exists for the whole of New Zealand. The Minister may declare a state of national emergency if it appears that an emergency has or may occur and it is likely to be of such an extent, magnitude or severity that the civil defence emergency management necessary or desirable in respect of it is likely to be, beyond the resources of the Civil Defence Emergency Management Groups whose areas may be affected by the emergency. The Minister must advise the House of Representatives as soon as practicable where a state of national emergency has been declared.

13. On Wednesday 25 March at 12.21pm, the Government (through the Minister of Civil Defence, Hon Peeni Henare) declared a state of national emergency in order to manage the spread of the COVID-19 epidemic in New Zealand. This state of national emergency was extended for a further seven days on Tuesday 31 March.

14. The Minister has a power of direction under section 84 of CDEM where a state of emergency is in force. The Minister may use this power to direct any person or Group under CDEM to perform or exercise any of the functions, duties, or powers conferred on that person or Group or direct any person or Group to cease the performance or exercise of any of those functions, duties or powers. The Minister may also direct that the function, duty, or power of the person or Group be exercised under the control and satisfaction of the Director CDEM.

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14 Health Act, s 71(1)a.
15 Health Act, s 71(1)b.
16 Health Act, s 71(1)c.
17 Health Act, s 71A(a).
18 Health Act, s 71A(c).
19 Health Act, s 71A(e) and 71(1)f.
20 This is the Minister of the Crown who, with authority of the Prime Minister, is for the time being responsible for the administration of CDEM and this is currently the Minister of Civil Defence.
21 CDEM, s 66.
Director of Civil Defence Emergency Management and National Controller

15. The CDEMA also gives powers to various people at both the national and local level. The fact that a state of national emergency has been declared, however, means that the response will be largely driven by the Director of Civil Defence Emergency Management (the Director). This is because during a state of national emergency, the Director has the following functions and powers under the Act:

a. to direct and control for the purposes of CDEMA, the resources available for civil defence emergency management.22

b. to control the performance of the functions and duties, and the exercise of powers of Civil Defence Emergency Management Groups (CDEM Group) and Group Controllers.23

16. The current Director of Civil Defence Emergency Management is Sarah Stuart-Black. This is a role appointed under CDEMA on the basis of relevant expertise and experience.24 In her Director role, she has broad statutory functions regarding civil defence emergency planning and management, both in a day-to-day and emergency context,25 including monitoring local Civil Defence Emergency Management Groups’ performance.26

17. For the purposes of the response to COVID-19, Ms Stuart-Black is also the “National Controller” under the CDEMA.27 The National Controller has special emergency powers in a national emergency, including evacuating premises,28 entering premises,29 closing roads and public places,30 and requisitioning property.31

Civil Defence Emergency Management Group

18. The functions and powers of the CDEM Group currently sit with the Emergency Committee set up by the Governing Body at its meeting on Tuesday 24 March – see resolution GB/2020/32.

19. As outlined above, during a national emergency, the performance and exercise of the functions and powers of the CDEM Group will be controlled by the Director, Sarah Stuart-Black. CDEMA also requires that in exercising any of its powers or functions, the CDEM Group must not act inconsistently with any directions given by the Minister or the Director.32 The National Civil Defence Emergency Plan Order 2015 (the CDEM Plan Order), made under CDEMA, further provides that CDEM Groups must give effect to the National Controller’s directions during a state of national emergency.33 The National Controller may also request or direct a CDEM Group to “activate its CDEM arrangements to the appropriate level”.34

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22 CDEMA, s 8(2)(h).
23 CDEMA, s 9(2)(b).
24 CDEMA, s 8(1).
25 CDEMA, s 8(2).
26 CDEMA, s 8(2)(f).
27 The Director can delegate her national emergency management role under ss 8(2)(h) and 9(2)(a) of CDEMA to someone else (CDEMA, s 10(1)). That person would then become the “National Controller” (CDEMA, s 10(3)). If she doesn’t make such a delegation, she will act as both the Director and National Controller (CDEMA, s 10(4)).
28 CDEMA, s 86.
29 CDEMA, s 87.
30 CDEMA, s 88.
31 CDEMA, s 90.
32 CDEMA, s 9(2)(b).
33 Section 85(2) CDEMA.
34 CDEM Plan Order, cl 20(5)(a).
35 CDEM Plan Order, cl 20(4).
20. The CDEM Group has both general functions and powers (sections 17 and 18 of the
CDEMA) and powers that are specific to states of emergency (section 85).\textsuperscript{36}

21. Some of the functions set out in section 17 of CDEMA will be more relevant in a state of
emergency than others. The key functions relevant in an emergency are to:

- provide or arrange the provision of suitably trained and competent personnel
  (including volunteers) and an organisational structure for CDEM Group in its area
- provide or arrange the provision of, or making available materials, services,
  information and any other resources necessary to support the health-led response
- respond to and manage the adverse effects of emergencies in the Group’s area
- plan and carry out recovery activities
- when requested, assist other Groups in the implementation of civil defence
  emergency management in their areas.

22. The specific powers of the CDEM Group that apply when a state of emergency is in force
are set out in s 85 of CDEMA. This provision is enabling and the CDEM Group is not
required to exercise any of these powers. Under s 85 the CDEM Group has powers (in this
case to be exercised under the control of the Director) to:

- carry out, or require to be carried out, works and clearing roads and other public
  places
- provide for the rescue of endangered persons and their removal to areas of safety
- set up first aid posts, and provide for first aid to be given to casualties
- provide for the relief of distress, including emergency food, clothing, and shelter
- provide for the conservation and supply of food, fuel, and other essential supplies
- prohibit or regulate land, air, and water traffic
- undertake emergency measures for the disposal of dead persons or animals
- disseminate information and advice to the public
- enter into arrangements, including employment arrangements, with any person for
  the purpose of carrying out civil defence emergency management
- provide equipment, accommodation, and facilities for the exercise of any of the
  above powers.

23. In practice, the section 85 powers of CDEM Groups are generally delegated to the Group
Controller to enable their efficient and effective use during emergencies. This delegation is
usually included in the Civil Defence Emergency Management Group Plans that CDEM
Groups must adopt under section 48 of CDEMA or made by CDEM Groups during an
event.\textsuperscript{37}

Group Controllers

24. Auckland Council has a list of Auckland Council staff that have been appointed as Group
Controllers by the CDEM Group under the CDEMA.\textsuperscript{38} These staff work on a rostered on-
call basis. There is also one ‘primary’ Group Controller who has control of a response at
any one time.

25. Similarly to CDEM Groups, during a national emergency, no Group Controller may exercise
any power conferred on Controllers by CDEMA in any manner contrary to any priorities for
the use of resources and services that have been determined by the Director or National
Controller.\textsuperscript{39}

\textsuperscript{36} Note that if the CDEM Group fails to carry out one of these functions within a reasonable time as determined by the
Director, then the Director may step in and carry out that function at the cost of the CDEM Group. Section 75, CDEMA.

\textsuperscript{37} See for example: Northland Civil Defence Emergency Management Plan, section 8.25; Wellington Region Civil
Defence Emergency Plan, p105; Waikato Region Civil Defence Emergency Plan, section 6.8.2; Taranaki CDEM Group
Plan, p 39; Canterbury CDEM Group Plan, section 2.5.2.

\textsuperscript{38} CDEMA, s 20.

\textsuperscript{39} CDEMA, s 9(2)(b).
26. The key function of a Group Controller in a state of national emergency is to perform any functions or duties conferred directly on the Group Controller by the CDEMA or delegated to the Group Controller by the CDEM Group.\textsuperscript{40}

27. During a state of emergency (local or national), the Group Controller has powers that are directly conferred by CDEMA. These powers can also be exercised by Police Constables, or any other person authorised by a Group Controller or Constable.\textsuperscript{41} The powers are set out in sections 86 to 92 of the CDEMA, and include powers to:
  
  - evacuate premises or places
  - enter premises
  - close or restrict access to roads and public places
  - remove aircraft, vessels and vehicles
  - requisition equipment, materials, facilities and assistance
  - give certain directions, including most relevantly directions to stop activities or to take action to prevent or limit the extent of the emergency
  - carry out inspections and to mark, seize, sample, secure, disinfect or destroy any property, animal or other thing.

\textsuperscript{40} CDEMA, s 28(2).
\textsuperscript{41} CDEMA, ss 86-92.
Appendix A: Overview of key statutory powers relevant in a pandemic

Health Act 1956

1. The Health Act gives the Medical Officer of Health broad powers to protect public health in the event of an infectious disease outbreak such as COVID-19 (see in particular ss 70, 71, 71A, 72 and 80). These powers may be exercised even in the absence of CDEMA emergency or epidemic notice, provided the Minister of Health has authorized the Medical Officer of Health to do so.

2. **Specific powers:** For example, under s 70(1)(m), the Medical Officer of Health may, with Ministerial authorisation, require premises in a given area to close or forbid the public from congregating outside. The relevant requirements must be published in a newspaper or on a television channel received by most households.

3. Similarly, under section 71, “In the event of the outbreak of any infectious disease” the Medical Officer of Health may, with Ministerial authorisation, requisition land, buildings, vehicles, medical equipment and clothing for certain purposes.

4. **Enforcement:** The Health Act also provides for police enforcement of these requirements: under s 71A(1)(a) and (f), constables may “do any thing reasonably necessary (including the use of force)” to:
   a. compel, enforce, or ensure compliance with a requirement made by a medical officer of health or any person authorised by a medical officer of health in the exercise or performance of powers or functions under section 70 or 71; or
   b. prevent, or reduce the extent or effect of, the doing of a thing that a medical officer of health or any person authorised by a medical officer of health has forbidden or prohibited in the exercise or performance of powers or functions under section 70 or 71.

5. **Quarantining and contact tracing:** The Health Act also grants powers in respect of mandatory quarantining and contact tracing (see Part 3 (Infectious and notifiable diseases), Part 3A (Management of infectious diseases) and Part 4 (Quarantine)).

Epidemic Preparedness Act 2006

6. The purpose of the EPA is to ensure there is adequate statutory power for government agencies to respond during an epidemic. The Act ensures activities undertaken by agencies can continue and enables the relaxation of statutory requirements that might not be capable of being complied with during an epidemic.

7. The EPA provides for:
   a. the Prime Minister to issue an epidemic notice and epidemic management notices, and for statutory changes to then be made through “modification orders”; and
   b. epidemic modification orders to be made (prospectively or immediately) and passed by Order in Council.

8. **Issue of epidemic notice:** To issue an epidemic notice the Prime Minister must be satisfied that the effects of an outbreak are likely to disrupt essentially governmental/business activity in NZ significantly (s 5).

9. **Activation of other measures:** An epidemic notice has the effect of activating powers in other Acts. For example the notice is one way in which some powers under the Health Act may be activated (s 8)
10. **Prospective modification orders**: While an epidemic notice is in force the Governor-General, on the recommendation of the Minister responsible for the administration of an enactment, can modify (with prospective effect) any requirement or restriction imposed by that enactment (s12). The Minister must be satisfied (and must have received advice from the CE of the relevant department of State) that: the requirement/restriction would be impossible/impracticable to comply with; and that the modification goes no further than is likely to be reasonably necessary. Such modifications begin to apply on the commencement of an ‘epidemic management notice’ (where the notice states that it activates the modification) and cease at the expiry/revocation of the notice (ss 8, 13).

11. **Immediate modification orders**: While an epidemic notice is in force, the Governor-General also has powers to make *immediate modification* of statutory requirements and restrictions to enable compliance, by Order in Council (s15). Immediate modification orders are subject to Parliamentary scrutiny and may be disallowed by the House of Representatives (ss 18).

**Civil Defence Emergency Management Act 2002**

12. **Declaration of emergency**: Additional powers under the CDEMA become available where an epidemic constitutes an emergency. The Minister may declare a state of national emergency if it appears to the Minister that an emergency has or may occur and it is likely to be of such an extent, magnitude or severity that the civil defence emergency management necessary or desirable in respect of it is likely to be, beyond the resources of the Civil Defence Emergency Management Groups whose areas may be affected by the emergency (s 66). The Minister must advise the House of Representatives as soon as practicable where a state of national emergency has been declared.

13. **Expiry**: A state of national emergency expires 7 days after the time and date on which the state of emergency comes into effect. However, the state of emergency can be extended (s 71) or terminated (s 72).

14. **Powers of Civil Defence Emergency Management Group (CDEM Group) during an emergency** (s 85): The Group has powers to do the following -
   a. carry out, or require to be carried out, works and clearing roads and other public places;
   b. provide for the rescue of endangered persons and their removal to areas of safety;
   a. set up first aid posts, and provide for first aid to be given to casualties;
   b. provide for the relief of distress, including emergency food, clothing, and shelter;
   c. provide for the conservation and supply of food, fuel, and other essential supplies;
   d. prohibit or regulate land, air, and water traffic;
   e. undertake emergency measures for the disposal of dead persons or animals;
   f. disseminate information and advice to the public
   g. enter into arrangements, including employment arrangements, with any person for the purpose of carrying out civil defence emergency management
   h. provide equipment, accommodation, and facilities for the exercise of any of the above powers.

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43 This is the Minister of the Crown who, with authority of the Prime Minister, is for the time being responsible for the administration of CDEMA (Hon Penny Heneke is the current Civil Defence Minister)
15. **Emergency powers of the Controller**44 (ss 86-90): The Controller or constable (or a person acting under their authority) has powers to:
   a. evacuate premises or places
   b. enter into premises
   c. close or restrict access to roads and public places
   d. remove aircraft, vessels and vehicles
   e. requisition equipment, materials, facilities and assistance.

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44 "Controller is defined in CDEMA as the National Controller in accordance with section 10, or a Group Controller appointed under section 26."