



Giving Notice of a Local Transition Period

The Civil Defence Emergency Management Amendment Act 2016:

- provides for local transition periods to assist recovery. This enables the use of powers that are not normally available to Recovery Managers (new sections 94A to 94P)
- gives CDEM Groups responsibility for appointing people to give the notice for a local transition period (amended section 25)
- provides for a Mayor or an elected member of a territorial authority (if mayor is absent) to give notice of a local transition period
- sets up Group Recovery Managers as statutory roles with associated functions and powers during transition periods
- majority of changes come into force 180 days after Royal Assent.

New Roles and Responsibilities

CDEM Groups:

- must appoint at least one person (a representative of the Group) to give notice of local transition periods for the Group's area – this mirrors state of emergency requirements (section 25)
- must appoint a suitably qualified and experienced person to be a Group Recovery Manager
- may appoint one or more Local Recovery Managers (section 30)
- must include in their CDEM Group Plans high level arrangements for giving notice of local transition periods (new section 49(2)(fa)), within 18 months after Royal Assent.

Mayors

- A Mayor may give notice of a local transition period for the territorial district – this mirrors state of emergency requirements (section 25(5)). If the Mayor is absent, an elected member of a territorial authority may give notice of a local transition period.

Group Recovery Manager

A statutory position responsible for directing and co-ordinating the use of personnel, material, information, services and other resources during a local transition period for the purpose of carrying out recovery activities.

Note: the Act does not make this position responsible for giving notice of a local transition period.

The majority of the Civil Defence Emergency Management Amendment Act 2016 comes into force on [date to be inserted 180 days from Royal Assent].

A Group Recovery Manager:

- may exercise powers during transition periods (including during national transition periods) – the use of any power comes with legal tests (new section 94G(3))
- must report on any use of powers (new section 94P)
- may authorise another person to perform their functions BUT there are limitations and conditions (new section 30A(3)–(5)).

See fact sheet on recovery manager powers

Local Recovery Manager

- CDEM Groups may appoint Local Recovery Managers and delegate the functions, duties and powers of Group Recovery Managers to the Local Recovery Managers for the area the Local Recovery Manager is responsible (section 30(1)).
- If during a transition period a Group Recovery Manager needs to direct a Local Recovery Manager, then that direction must be followed (section 30(2)).

Recovery co-ordinators

- No specific role. The statutory position is disestablished by the Amendment Act, but existing appointments can continue (see Schedule 1AA (clause 3)).

What matters must be considered prior to a notice of a transition period? (new section 94B)

- There are legal tests to meet. A notice must be 'in the public interest' and 'necessary or desirable to ensure a timely and effective recovery'.
- The primary consideration for a notice of local transition period is whether the special powers provided by the Act during transition are required – it is not determined by whether there has been state of emergency.
- Consider the area, district or wards affected.
- If no state of emergency has been declared, approval from the Minister of Civil Defence is required to issue a notice of local transition period.
- There is the option (similar to declaring a local state of emergency) of a notice of a local transition period covering a wider area including areas not directly affected by an emergency. This may be necessary if affected districts or wards require the assistance of neighbouring districts or wards (section 94B(8)).
- Plus, there is a form for giving notice that must be completed (mirroring a state of emergency declaration).

What if the area affected spans two CDEM Groups?

- Same situation as applies now, if a state of emergency declaration spans over more than one CDEM Group:
 - affected CDEM Groups (and/or Mayors) coordinate but give their own respective transition notices
 - if a significantly large or complex area is affected a national notice may be given by the Minister.

How do you change from state of emergency to transition period?

If there is to be a transition period, generally the state of emergency will end, or be terminated, at the point when the transition period starts. The Amendment Act provides for different scenarios to enable a smooth changeover (refer section 94C). Moving to a transition period reflects that it is no longer considered necessary to have a state of emergency in place.

A local transition period comes into force at the time and date specified in the notice for transition. This could be either the expiry or is termination of the state of emergency (section 94C(1) & (1A)).

Note: if a state of emergency is declared it automatically overrides any transition period (section 94E(5)).

How long does a local transition period last?

- They last 28 days (unless extended or terminated earlier) (new section 94C).
- Extensions - a local transition period can be extended for a further 28 days by a person authorised to do so – i.e. appointed by section 25, the Mayor or Minister (new Section 94D).
- Terminating - a local transition period can be terminated by a person authorised to do so – i.e. appointed by section 25, the Mayor or Minister (new Section 94E).
- There will be prescribed forms in the Civil Defence Emergency Management Regulations 2003 for creating, extending and terminating transition periods – mirroring those for state of emergency declarations. These will be available prior to the power coming into force.
- There are also publishing requirements for giving a notice, extending (new section 94F) and terminating (section 94E(4)).

Requirements for Extensions

A local transition period can be extended more than once. However, if it is extended for a third or further time, the Minister must be notified, allowing him or her to inform the House of Representatives (section 94D(5) and (7)).

What does this mean for updating CDEM Group Plans?

- Group Plans must include arrangements for giving notice of a local transition period by [date to be inserted]. (new section 49(fa)).

- The requirement mirrors the requirement for state of emergency declarations including:
 - a person must be identified
 - the person must be a representative of the Group (an elected member of the local authority); see Act definition of “representative” (s4)
 - when more than one person is appointed, state the status of each, and any other conditions or limitations (section 25(3)).
- Amendments to include arrangements for giving notice of a local transition period will need to be made under section 52. The amendment would not meet the test for being a minor change to a Plan.
- Groups can choose (as there is no legislative requirement) whether Group Plans include:
 - principles for when community consultation would occur as part of making decisions on local transition periods
 - information on the role of the Group Recovery Manager and any Local Recovery Managers appointed.
- MCDEM will develop a Director's Guideline for giving a notice of transition
- Note: the definition of ‘area’ has been clarified in the Amendment Act and,
in relation to a Civil Defence Emergency Management Group,—
 - (a) means all the districts of the local authorities that are members of the Group; and
 - (b) extends to—
 - (i) the landward boundary of the territorial authorities in the Group; and
 - (ii) the seaward boundary of the regions of regional councils or unitary authorities in the Group.

It is assumed that the district and regional council boundaries as gazetted under the Local Government Act will apply.

What if we need a transition period prior to formal appointments being completed?

- Section 25(4) provides that if no person has been appointed by the CDEM Group, a representative of any member of the Group may give notice of a local transition period.
- The Mayor or, if absent, an elected member of a territorial authority can still give the notice.

Time frames

- The new positions and powers introduced by the Act have effect from [date to be inserted].
- CDEM Group Plans updated by [date to be inserted]



Powers of a Recovery Manager during Transition

The Civil Defence Emergency Management Amendment Act 2016 that from [insert date]:

- sets up Group Recovery Managers as statutory roles
- requires Civil Defence Emergency Management (CDEM) Groups to formally appoint a 'suitably qualified and experienced person' to be a Group Recovery Manager (s29). Groups may also appoint one or more Local Recovery Managers (section 30)
- provides for Recovery Managers and constables to use powers during transition periods. But, there are differences with the powers used during state of emergencies.

Recovery Managers are responsible for directing, co-ordinating the use of personnel, material, information, services and other resources during a local transition period (section 30A(1))

Powers during a transition period

Under the Act the Group Recovery Manager – NOT the CDEM Group - has access to the powers. But, he or she can be directed by the Minister (94J) The CDEM Group has overarching responsibility for the conduct of the Group Manager by way of their appointment and because their function includes carrying out recovery activities.

Powers can only be used if they meet three legal tests. The action must in their opinion be 'in the public interest', 'necessary or desirable to ensure a timely and effective recovery' AND proportionate in the circumstances' (new section 94G(3)).

CDEM Groups may appoint Local Recovery Managers and delegate the powers of Group Recovery Managers to the Local Recovery Managers for the area the Local Recovery Manager is responsible (section 30(1)).

If during a transition period a Group Recovery Manager needs to direct a Local Recovery Manager then that direction must be followed (section 30(2)).

Summary of powers

The list of powers reflects the activities that CDEM Groups, councils and communities may require Recovery Managers to exercise in order to aid recovery, once a state of emergency has ended.

The powers are also available to a constable as defined by the Act and s4 of the Policing Act 2008. The amendment to section 111 also provides for restricted application of the Resource Management Act 1991, mirroring what's available during a state of emergency.

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Powers during transition periods	Comment
<p>94H – general powers including ability to carry out: works, clearing of roads/public places, examining and marking, making safe structures and materials</p> <p>Plus, providing for conservation and supply of food, fuel and other essential supplies and disseminating information and advice.</p>	<p>Equivalent to section 85(1) (a) with the addition of 'examining or mark' section which avoids ambiguity over the activity of marking buildings etc. following inspections.</p> <p>Also mirrors section 85(1)(e) and (h), as the activities of providing welfare services and public information commonly continue post state of emergencies.</p>
94I – power to require information	Provides the Recovery Manager with the power to require information that the CDEM Director or CDEM Groups has under section 76 (with associated application of sections 77, 82 and 83 covering appeals and disclosure).
94K – power to direct evacuation	Mirrors existing section 86 under state of emergency
94L – entry on premises and places	Mirrors existing section 87 under state of emergency
94M – closing roads and public places	Mirrors existing section 88 under state of emergency
94N – giving direction to any person	Similar to existing section 91 under state of emergency. But text reflects that during the transition period it is the consequences of the emergency, but the actual emergency that is relevant.

The majority of the Civil Defence Emergency Management Amendment Act 2016 comes into force on [date to be inserted 180 days from Royal Assent].

Delegating functions

- A Recovery Manager may authorise another person to perform their functions BUT there are limitations and conditions (new section 30A(3)–(5)).

Reporting (new section 94P)

- Unlike state of emergencies, there are specific reporting requirements if powers are used during transition periods. The reason for the reporting is that the Act gives significant responsibility to the Recovery Manager during transition periods and for a reasonable length of time – 28 days (local) or 90 days (national).
- Reporting requirements include:
 - a written report from the Recovery Manager to the Director CDEM and a copy to the CDEM Group within seven days of the transition period ending
 - detail on the powers used, by who and the reasons for use
 - making the report public – as the CDEM Group must put it on its website.
- Because of these requirements good record keeping is recommended, including on how the tests to utilise the powers (94G(3)) were considered.

Compensation

- The actions of a Recovery Manager (including any Local Recovery Manager) are subject to the compensation provisions equivalent to those associated with the position of “Controller” (amended section 108)