

Implementing New Zealand's Civil Defence Legislation

"New Zealand needs a modern and focused approach to managing emergencies.

This Act provides the basis for that approach."

Hon. George Hawkins, Minister of Civil Defence, January 2003.

Abstract

New Zealand updated its civil defence legislation in late 2002. As the five year anniversary of the new Act approaches, Fred Wilson examines how well the new statute has been implemented by central and local government, and the ramification on civil defence in New Zealand.

Introduction

Updated legislation, the Civil Defence Emergency Management Act (the CDEM Act), became effective in New Zealand in December 2002. The major consequences of the new legislation in planning terms were:

For central government:

- The completion of a national CDEM strategy by December 2003
- The completion of a national CDEM plan by December 2005
- The issue of written guidelines on the content of CDEM Group plans by December 2003

For local government

- The formation of regional CDEM groups by June 2003
- The completion of regional CDEM Group plans by June 2005 (or two years after establishment of the Group, whichever was earlier)

As we approach five years after the commencement of the new legislation, this paper takes a subjective look at the process of implementing the Act and the performance of the main players. For convenience and brevity, civil defence emergency management is contracted as CDEM except where it is quoted as a reference.

Central Government actions

National CDEM Strategy

Section 31 of the Act requires that a national strategy be developed that may include statements of:

- (a) the Crown's goals for civil defence emergency management,
- (b) the objectives to be pursued to achieve those goals, and,
- (c) the measurable targets to be met to achieve those objectives.

The strategy was duly developed and a draft issued for consultation. It was criticised widely for having targets that were not measurable. Local Government New Zealand for example said, *"Before adoption we would like to see the "achievement indicators" amended to more clearly reflect measurable targets: in particular, who, what, when, and how each of the actions objectives, and goals will be achieved and exactly how these will be measured."* (Hutchings, 2003, p1)

The Ministry did not heed the criticism and inconclusive targets remained in the document finally issued in March 2004, arguably in defiance of the legislative requirements of (c) above. Not a single target had defined criteria, or any specificity around quantity or quality. Two examples that demonstrate the unquantifiable nature of the language are:

- Goal 1, Objective C, Target 1 – *"Greater community input and participation in local government decisions regarding hazard risk management, such as land use planning."* (MCDEM, 2004, p15)
- Goal 2, Objective D, Target 1 – *"Greater co-operation and co-ordination between central government agencies regarding CDEM."* (MCDEM, 2004, p19)

While these may be appropriate and laudable targets, qualifiers such as 'greater' have no measurable preciseness and there are no time-related criteria.



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The strategy has a maximum life of ten years, but the Ministry asserted in the document that it would be “reviewed in 2006 with the intent of adding more action items and further developing measurable targets.” (MCDEM, 2004, p12). This review did not take place, but the Ministry asserts it has now commenced.

National CDEM Plan

Work commenced on developing a national plan shortly after the legislation was enacted in 2002. The Ministry established a working group comprised of practitioners from central government agencies and local government emergency managers to provide input. Detailed development of the structure of the plan followed over the next two years.

The Act requires that the national plan must state and provide for:

- (a) the hazards and risks to be managed at the national level;
- (b) the civil defence emergency management necessary at the national level to manage the hazards and risks described under paragraph (a);
- (c) the objectives of the plan and the relationship of each objective to the national civil defence emergency management strategy;
- (d) the co-ordination of civil defence emergency management during a state of national emergency;
- (e) the period for which the plan remains in force. (CDEM Act 2002, s.39 (2))

No-one had however understood the import of subsection (4) of Section 39 of the Act which said that a national plan was “a regulation for the purposes of the Acts and Regulations Publication Act 1989.” (CDEM Act, p28). When this factor was finally appreciated, just a few weeks before the new plan was to be presented to Parliament, thousands of hours of work and hundreds of pages of drafting were flushed away. The requirements of a regulation necessitate an archaic formality and severe restrictions on content, such as no diagrams, figures, tables or other graphics. A completely different document to that which had been worked on for two years was required.

In great haste the Ministry produced a new document to meet the requirements of a formal regulation and

issued it for consultation. Not surprisingly, as a result of the haste it contained a large number of inconsistencies, incorrect language and irregularities in terminology. Submissions tended to focus on these aspects with a working group member noting that “All of the Groups seem to be submitting on the same things (terminology, inconsistencies etc). (Private correspondence, 2005). One CDEM Group took a very strong approach to the Ministry’s situation and sought an amendment to the legislation to postpone the date a national plan was required. This would have been very embarrassing for the Government and the Ministry. A Ministry official noted that, in reference to the Group concerned, “that they are going to make it as hard as possible as ‘pay back’ for criticising their Plan - very adult.” (Personal correspondence, 2005). In the event, the National CDEM Plan Order 2005 was made by Order in Council on 14 November 2005 with an effective date of 1 July 2006.

As a consequence of being a regulation, the National CDEM Plan cannot be easily amended to keep it relevant and up to date. However, the Minister, the Hon. Rick Barker, has stated “The Director of MCDEM indicated that rather than wait five years for a review, a two-year review of the plan will be held.” (Barker, 2006, p6). The Director referred to was John Norton, who has since resigned and been replaced by John Hamilton, and it remains to be seen whether pragmatism will overtake that statement and this review meet the same fate as the promised review of the national strategy. The Ministry asserts that a review has commenced.

The national plan, like the strategy, also has some scant regard for the specifics of the legislation. Two examples are:

- The Act requires that the national plan must state and provide for the hazards and risks to be managed at the national level. Part 3 of the National Plan purports to address this requirement, but only goes into generalities and does not specifically state any hazards or risks at all.
- The Act, and the Ministry, professes a holistic approach to emergency management across the 4Rs – reduction, readiness, response and recovery. However the national plan addresses only the latter three, and is bereft of any mention of the national approach to reduction or mitigation of risks and hazards. This is despite the National Strategy expounding that the

“focus on risk reduction is a key difference from the old civil defence arrangements”. (MCDEM, 2004, p10). It is also pertinent that the Act requires that the National Plan must not be inconsistent with the National Strategy, and this omission is thus a glaring lack of consistency and compliance with its own statute.

Guidelines

To overcome the belated recognition by the Ministry that the format of the national plan would be compromised by the requirements of it being a formal regulation, the decision was taken to produce a Guide to the National Plan. In effect, this would be the mechanism by which material that was prevented from being in a regulation could be published with some authority by being associated with the plan. It is not a statutory document however and there is some doubt as to its real enforceability.

The Director of CDEM issued guidelines on how CDEM Groups should develop their regionally-based plans. These were throat-clearing documents that made multiple suggestions on approaches that could be considered. Consequently, they did not fulfil the purpose of being guidelines, as they provided no definitive leadership or advocacy to achieve consistency between the various Group plans.

Several other guideline documents were produced of varying quality and utility, but all generally suffered from an equivocating approach. As a defining moment in policy development, the opportunity existed with the new legislation for the Ministry to show strong leadership. There was a chance to promote consistency and constancy across the CDEM spectrum by strong advocacy for common principles and practices. This opportunity was not taken.

The Act gives the Director the power to issue guidelines, codes or technical standards. The nature of a guideline is that it can be no more than advice on best practice. No codes or standards have been produced yet. It would seem preferable for the Ministry to transition to issuing codes and standards that direct consistency, rather than vacillating guidelines that promote alternative approaches.

Local Government

CDEM Groups

Regionally focussed CDEM committees were a requirement under the old legislation. They were often moribund entities however, and because they were commanded by regional councils they were often mistrusted by city and district councils. Almost universally, local government approached the requirement for a new arrangement enthusiastically. This can be attributed largely to the new Act nominating the chairperson or Mayor of the local authorities as the member of the regional oversight committee, and the

chief executive of the local authority as the member of the supporting officials committee. The Act allowed nominees as replacement members, but generally only the more populous centres took advantage of this dispensation. This seems to reflect the self-importance of the Mayors and Chief Executives of the larger cities who are more concerned with monuments to their tenure than the mundane reality of preparing for an emergency. The observation is that the strongest CDEM Groups are those in the smaller rural-centric areas where senior management has accepted the responsibility for CDEM personally. This difference is also manifest in the commitment to business continuity for council operations. As a generalisation, it receives only lip service in large councils where the chief executive takes little or no part in CDEM activities, and even less interest.

CDEM Group Plans

Regional plans were produced by all sixteen of the newly formed Groups in accordance with the legislation. Some Groups produced their documents earlier than others, which allowed the late-beginners an element of plagiarism. That is not a criticism, and in fact should have been encouraged in the interests of national consistency.

While each region is obviously different geographically and each has to lay more emphasis on some hazards than others, that is no rationale for having different procedures, terminology and response structures to their neighbours. In a country of 4 million people, most of whom are quite mobile, being subject to different emergency management terminology and arrangements every few hundred kilometres is clearly nonsense. While there is a benefit in each region taking ownership of their particular risks and hazards, the variability of those elements between regions is essentially a question of degree, not of difference.

Had more thought gone into the process of plan development, and more leadership been shown by the Ministry, the plans could have been very similar and consistent. As it is, the published plans vary from the 69 pages of the Manawatu-Wanganui plan to those of Canterbury and Otago at 488 and 446 pages respectively. Such divergence in completing a common task cannot be easily explained away.

That said, many of the plans are compelling documents in their own right. Many unfortunately also make promises about future work that has not been delivered upon. For example, the Auckland plan (CDEM Group Plan for the Auckland Region, 2005) contains a detailed list of targets and actions. As of April 2007, 3 of the 4 high priority plans or procedures scheduled to be completed by June 2006 had not been done and the process of drafting has not even been started. No action has been taken either on any of the six medium priority plans or procedures scheduled to be completed by June 2007.

A subjective Report Card

As the opening quote shows, the new legislation was to herald a modern and focused future for civil defence in New Zealand, according to the Minister at the time. There is no doubt that improvements have been made – but is it enough to deal with ‘the big one’? Perhaps the safest answer is the one given by Chou En-Lai to the question of whether the 1789 French Revolution benefited humanity, which reportedly was, “It’s too early to tell”.

All the main players have met the legislative timetable set by the Act. All the indications are however, that there are still broad inconsistencies in the documentation developed, and aspirations are not being met. Promised reviews have not occurred, plans and procedures have not been written as forecast, and there is still an alarming lack of national uniformity. This is particularly evident in the continuing lack of a modern, nationally-integrated, information support system; and even more amazingly, the lack of a single mandatory format for something as simple as a Sitrep.

That is not to say that individuals in central and local government have been indolent. Many have worked tirelessly to make a difference. What has been lacking is some good old fashioned leadership. The power to unify and coalesce effort with a compelling vision and a realistic approach. The setting of clear, manageable and measurable targets that focus effort in a single direction. The willingness to set, promote and maintain standards that improve co-ordination, collaboration and consistency.

The Ministry was given the opportunity to comment on the draft of this article and their response has been taken into account in the final version. They noted that they *“believe we in MCDEM and the sector more generally, have turned the corner and the attitudes and problems that dogged development in the period up to 2005, are behind us”* (MCDEM comment, 2007)

The Ministry has recently had a new Director appointed, a large increase in staff numbers, and a greater budget. Perhaps the modern and focused future for CDEM in New Zealand is about to start. For the time being, the report card chillingly reads “Little improvement noted. Can do better.”

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About the author

Fred Wilson, after a career in the Royal New Zealand Navy, was the Emergency Manager for Auckland City Council for five years and was also appointed as the first Group Controller for the Auckland Region CDEM Group. He retired in 2005 and now provides consultancy services in the risk and emergency management fields.