

*Report No 22*

**FINAL REPORT  
ON EMERGENCIES**

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FINAL REPORT ON EMERGENCIES

December 1991

Wellington, New Zealand

The Law Commission is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its aim is to help achieve coherent and accessible laws that reflect the heritage and aspirations of New Zealand society.

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16 December 1991

Dear Minister

I am pleased to submit to you Report No 22 of the Law Commission, *Final Report on Emergencies*.

The *First Report on Emergencies: Use of the armed forces* (NZLC R12 1990) was largely implemented by the Defence Act 1990.

This Report addresses the balance of emergency powers. As its extent indicates, it covers a wide range of matters. The Commission recommends that when emergency powers are required they should be conferred in sectoral legislation, that is, legislation tailored to the needs of the particular kind of emergency. It also proposes principles which should govern the drafting of such sectoral statutes.

In accordance with that approach the Report recommends the enactment of two statutes: a War Emergencies Act and a new Civil Defence Act replacing the Act of 1983. It also recommends the repeal of the International Terrorism (Emergency Powers) Act 1987 when new general legislation relating to police powers is enacted. It identifies particular matters which should be further considered by other agencies and by the Commission.

The very wide ranging nature of the inquiry has been such that we did not call for submissions although we have consulted widely within the public sector. No doubt there will be an opportunity for public discussion of the proposals, for instance, in the course of the consideration of legislation arising from the Report or other legislation relating to the principles stated in it. The related work of the Commission on criminal procedure and police powers, the Crown, and legislation also involves wide consultation.

Yours sincerely

K J Keith

President

Hon D A M Graham MP

Minister of Justice

Parliament House

WELLINGTON

## ACKNOWLEDGEMENT

In completing the Final Report, Dr C C Aikman again acted as a consultant to the Law Commission as he did on the preparation of the First Report on Emergencies: Use of the armed forces. We thank him for the scholarship of his research, the sensitivity of his policy advice and his persistence in the long task of putting the Report into its final form.

## Introduction, Summary of Conclusions and Recommendations

### INTRODUCTION

1.1 The Law Commission has been asked to consider and report on the following questions:

(1) What executive powers are needed and justified to deal effectively with a national emergency in New Zealand, in a manner consistent with our basic constitutional system and traditions;

(2) What rights and freedoms ought not to be derogated from in any national emergency;

(3) What procedures are most appropriate for bringing emergency powers into effect;

(4) What safeguards are needed to confine the exercise of emergency powers to a national emergency;

(5) What limits and controls should be placed on the exercise of emergency powers, and what remedies should there be for the abuse of these powers;

(6) What changes are needed in the existing law to achieve these objects.

1.2 The Law Commission in its First Report on Emergencies: Use of the armed forces (NZLC R12 1990) concluded that there should not be a "national emergencies" statute that would apply in a wide range of emergency situations. Instead, the Commission adopted a sectoral approach under which

emergency powers and legislation conferring those powers would be tailored to the needs of particular emergency situations (see also Chapter IV of this Report).

1.3 In accordance with that sectoral approach the First Report then dealt with those issues falling within the terms of reference which arose during the preparation and passage of the Defence Act 1990. The Act substantially implemented the recommendations in that First Report. The recommendations concerned the powers that should be available

- to requisition property, call up members of the territorial and reserve forces, or extend the term of service of members of the regular forces in the event of an actual or imminent emergency involving the deployment beyond New Zealand of any part of the armed forces,

and the procedures that should be followed in authorising the armed forces

- to perform public services,
- to provide assistance to the police in the event of an emergency involving the possibility of death or serious injury to any person or the destruction of or serious damage to property, if the emergency cannot be dealt with by the police without the assistance of members of the armed forces, and
- to provide essential services withheld during an industrial dispute.

1.4 The First Report also concluded that, apart from the last-mentioned power, there should be no general legislation granting emergency powers for use in connection with an industrial dispute.

1.5 This Final Report completes the Law Commission's examination of the powers which should be available to deal with emergency situations. The decision to adopt a sectoral approach has meant that the Commission has been committed to reviewing, in light of our terms of reference, the executive powers available to deal with emergency situations that might arise over the whole area of State



responsibility. A detailed review of all of these powers and the preparation of a set of proposals in respect of all of them have clearly not been possible.

1.6 The range of powers is far too wide and extraordinary powers for use in an emergency are often best elaborated when normal powers are being reviewed. The Law Commission has, however, set out the issues that should be taken into account in the conferment of extraordinary powers. Besides a number of specific recommendations for amendments, the Commission is proposing new legislation in two sectors - war emergencies and civil defence - and the repeal of legislation relating to international terrorism in favour of reliance on general police powers.

1.7 As a consequence this Report contains four categories of recommendations:

- general principles including the standards that should be observed and the safeguards that should be included in the legislative grant of executive powers to deal with emergency situations;
- specific proposals for legislative and related action;
- issues that call for the attention of the Government and its advisers;
- issues that the Law Commission will take up in the course of existing projects.

The recommendations are listed at the end of this chapter (para 1.115).

1.8 The Law Commission in preparing this Report has not followed its usual practice of issuing discussion papers and seeking extensive public comment. It has, however, sought assistance, generously given, from a wide range of public authorities. The reasons for that course of action were (1) the great difficulty of consulting over the very diverse range of areas in which emergency powers are exercised, and (2) the character of the conclusions and recommendations falling within the first, third and fourth categories just listed. Those conclusions and recommendations will be further refined and tested as particular legislative proposals are developed. In respect of the specific proposals for legislative action in the second category, we recommend that there be a full opportunity for public input through the parliamentary process and in other appropriate ways.

1.9 The Law Commission has appreciated the contribution that has been made from all those from whom it has sought assistance. This has been particularly the case with Ministries, departments and other agencies involved in sectors on which we have concentrated: the Ministry of Defence; the Police; the Department of Justice; the Ministry for the Environment; the Parliamentary Commissioner for the Environment; the Ministry of Agriculture and Fisheries; the Department of Scientific and Industrial Research; the National Radiation Laboratory; the Ministry of Civil Defence; the Ministry of External Relations and Trade; the Reserve Bank; and Treasury. We have also been helped by Mr D G McGee, the Clerk of the House of Representatives, and Mr J W Rowe. This is not to say that all those who have assisted us agree with our conclusions and recommendations.



1.10 The present chapter contains a summary of conclusions and a list of principal recommendations. The remainder of the Report has been divided into two parts. Part I (Chapters II to V) includes conclusions and recommendations of general relevance to emergencies. Part II (Chapters VI to X) discusses and presents conclusions and recommendations on five specific categories of emergency.

## PART I

- Chapter II - "The Nature of Emergencies" - considers the nature of emergencies, their distinguishing characteristics and the circumstances in which unusual or extraordinary powers will be required.
- Chapter III - "Existing Emergency Legislation" - summarises relevant legislation and international treaty obligations. Appendix A is a "Table of Emergency Powers".
- Chapter IV - "Sources of Power in an Emergency" - restates the case for a sectoral approach to emergency legislation, emphasises the importance of preparing and passing emergency legislation in advance of an emergency, and considers the prerogative, necessity and martial law as other sources of authority for emergency action. Appendix B - "Exercise of Executive and Legislative Power in an Emergency" - examines problems that might arise in an emergency in relation to the exercise of the powers of the Governor-General and the Governor-General in Council and the calling together of the House of Representatives.
- Chapter V - "Powers: Standards and Safeguards" - examines the standards or principles that should be followed in the enactment of emergency legislation, with particular emphasis on the circumstances and the procedures in which emergency powers may be invoked, the nature and extent of those powers, and controls over their exercise. There is also a discussion of the safeguards that are available, independent of provisions in the legislation itself. Appendix C summarises court decisions in cases in which emergency action has been challenged.

## PART II

Chapter VI - "War and Other Armed Conflicts" - makes the case for the enactment of a War Emergencies Act that would enable the making of emergency regulations in the event of an actual or imminent war, other armed conflict (including armed insurrection or civil war), nuclear or biological incident. The chapter also considers the responsibility of Civil Defence for the protection of the civilian population in those events. A draft War Emergencies Act appears in Appendix D.

Chapter VII - "Serious Civil Disturbances" - considers the need for special powers to deal with serious civil disturbances. It proposes that the International Terrorism (Emergency Powers) Act 1987 be repealed. Appendix E sets out the guidelines agreed by the police and the media on the media coverage of terrorist incidents.

Chapter VIII - "Public Welfare Emergencies" - sets out, by way of example, the way in which the standards and safeguards in Chapter V might be applied in the draft Biosecurity Bill being prepared by the Ministry of Agriculture and Fisheries. It also discusses emergencies arising from pollution and the escape of hazardous substances.

Chapter IX - "Civil Defence" - examines particular aspects of the Civil Defence Act 1983, in particular the scope of civil defence responsibilities. There are proposals for the amendment of the 1983 Act and the conclusion is that those amendments should be embodied in a new Act to replace the 1983 Act. Appendix F - "A Background to Civil Defence in New Zealand" - traces the history of civil defence legislation in New Zealand and comments on the use of the term "civil defence".

Chapter X - "Economic Emergencies" - distinguishes economic emergencies from the economic consequences of other categories of emergency and discusses the need for further powers to deal with economic emergencies.

## SUMMARY OF CONCLUSIONS

### WHAT IS AN EMERGENCY? (Chapter II)

1.11 Our brief is to consider the executive powers that are needed and justified to deal effectively with a national emergency in New Zealand. Although our conclusion that it is inappropriate to enact a general "National Emergencies Act" makes a precise definition of "national emergency" unnecessary, we must still identify the types of emergency which fall within the scope of our review.

1.12 The word "emergency" may be used in many ways. In one sense, a house fire or a road accident is an emergency. These emergencies can be distinguished from events which involve a serious threat to public safety or welfare, or the destruction of or serious damage to property, such as a severe earthquake or an outbreak of foot and mouth disease.

1.13 These serious emergencies are likely to make great demands on the resources of the community. In the first instance, services such as the fire brigade, the police and the medical and agricultural services will respond to the emergency. But it will often be necessary to call upon other community services. There should be provision for ensuring a co-ordinated response from territorial authorities and regional councils; Civil Defence; government departments; State-owned enterprises and the private sector; the armed forces; and voluntary organisations like the Red Cross and Salvation Army.

1.14 The response to an emergency may lead to a realignment of organisations within the community. It may also require the exercise of extraordinary powers by organisations or individuals involving constraints on normal activities and other infringements of private rights or freedoms in the interests of the wider community.

1.15 While emergencies that affect the security, safety or welfare of New Zealand or the New Zealand public as a whole can be readily identified as "national emergencies", events which are limited in terms of their immediate impact may also be emergencies of national concern. National resources may need to be deployed in order to respond to a regional or territorial emergency, or there may be implications arising out of a localised event which call for the involvement of central government.

1.16 The use of the description "disaster" can convey more clearly than does "emergency" the serious nature of the event involved and the two terms are often interchangeable.

#### *The phases of an emergency*

1.17 An emergency can pass through various phases - the emergency continuum. The mitigation phase involves an attempt to prevent an emergency from arising or to reduce its effects if it does occur. Plans should be made for dealing with an emergency - the preparedness phase. The measures taken to deal with the immediate effects of the emergency itself are the response phase. And steps will have to be taken to address the problems arising from the emergency. This is the recovery phase.



1.18 The Law Commission is primarily concerned with the response phase of emergencies, because it is in this phase that extraordinary executive powers may be required. However, provision for response will often be part of a comprehensive approach to emergency planning involving also mitigation, preparedness and recovery. Legislation containing extraordinary response powers is likely to include normal powers which can be exercised in the course of the response as well as provisions that relate to other emergency phases.

#### *Executive powers in an emergency*

1.19 In a spectrum of public powers, extraordinary powers needed to respond to an emergency will be towards one end of the spectrum. It may, however, be difficult to determine at what point in the spectrum the powers required to deal with any emergency situation cease to be "extraordinary" and become "normal". The answer is likely to depend on the context in which the power is to be exercised. In some circumstances a particular power will be regarded as "extraordinary", in others as "normal". In cases where extraordinary response powers can be called upon, the ability to exercise powers which are normally available may be vital to an effective emergency response.

#### *Characteristics of emergencies*

1.20 Emergencies which justify the availability of extraordinary powers will have distinguishing characteristics. The Law Commission has identified the following:

- **Scale:** The emergency will pose a serious danger to the safety or welfare of the New Zealand public or a serious threat to the security of New Zealand as a whole, it will have a widespread impact or potential impact, and it will require substantial resources to counter the danger effectively.
- **Urgency:** Generally the emergency threat will be an immediate one, although an event which is imminent or likely to occur may justify the taking of emergency measures. A common perception, clearly accurate in the case of an emergency such as a serious earthquake, is that emergencies occur suddenly and are unexpected. But an emergency situation, such as a drought, may develop gradually over a period of time.
- **Temporary character:** Generally the emergency will be temporary, although a drought or a lengthy war both illustrate that this is not invariably the case.
- **Inadequacy of normal measures:** The emergency will be a situation that cannot be dealt with without recourse to extraordinary measures.

### *Involvement of central government*

1.21 In this country many emergencies with the above characteristics will make calls on resources that are at the command of central government. Further, given the central government's primary responsibility for the security, safety and welfare of its citizens, it will have the ultimate responsibility for responding to an emergency situation. Indeed, in New Zealand, although an immediate response will often be at the territorial or regional level, the central government is likely to be involved with all phases of the emergency cycle - mitigation, preparedness and recovery as well as response.

### SOURCES OF POWER IN AN EMERGENCY (Chapter IV)

#### *General or sectoral legislation?*

1.22 The Law Commission confirms and develops the sectoral approach to emergency legislation in this Report (see para 1.2). This conclusion has involved the rejection of a single general statute dealing with a wide range of emergencies and support for a series of separate statutes, each concerned with a particular emergency situation.

1.23 The primary difficulty with a general statute dealing with the full range of emergencies is that it would not be possible to include controls to prevent the possibility of a government invoking drastic powers by executive fiat in a situation where they could not be justified. Further, those powers would necessarily include a broad emergency regulation-making power. The Law Commission considers that such a power should be available in only selected categories of emergency.

1.24 The advantages of sectoral emergency legislation are as follows:

- The particular emergency situation can be defined with relative precision, thereby reducing the possibility that the powers conferred will be invoked in a different situation where their use is inappropriate.

- In general the powers to deal with a particular situation can be set out in the statute itself and confined to those appropriate to the emergency concerned. A broad emergency regulation-making power can be avoided except in three special cases where the government may need wide-ranging powers - war emergencies, civil defence emergencies and emergencies arising in the agriculture industry.

- Appropriate controls and safeguards can be included in the statute.
- The inclusion of powers and controls in the statute itself means that the provisions are subjected to parliamentary scrutiny.

#### *Legislation in advance*

1.25 The Law Commission considers that emergency legislation should be enacted in advance of an emergency situation arising. This view is supported by New Zealand and overseas experience and by overseas commentators.

1.26 A practical concern is that an emergency situation will often call for an immediate response. Legislation hurriedly enacted in such a time of crisis is likely to include wider powers than are necessary and to omit desirable safeguards. Consequently it will be open to abuse. Legislation enacted without pressure of time and in the absence of a crisis is more likely to be carefully considered.

1.27 Nevertheless there may be situations where it is appropriate to pass emergency legislation particular to an emergency:

- A decision may be taken during a continuing emergency to enact case specific legislation instead of relying on more general sectoral legislation under which the emergency has been declared.
- The relevant sectoral enactment may need to be amended to include an additional response power thought to be necessary.
- The government may wish to obtain parliamentary sanction for the exercise of a particular power.
- An emergency may arise in an area that is not the subject of sectoral legislation.

#### *Why is legislation necessary?*

1.28 The decision to favour sectoral emergency legislation over a general emergencies statute rests on the preliminary conclusion that statutory authority is usually the appropriate basis for emergency action requiring the exercise of extraordinary powers. In the absence of this authority, there are a number of non-statutory sources of authority:

- the prerogative;
- State necessity;

- common law necessity;
- martial law;
- action without lawful authority followed by an Act of indemnity.

1.29 The Law Commission concludes that these sources of authority should not in general be relied upon as alternative bases for emergency action:

- The first four possible sources of authority are vague and ill-defined.
- Exercises of power under these sources of authority are not in general subject to safeguards against abuse.
- It is objectionable in principle to take actions which are or may be unlawful in the expectation that Parliament will enact retrospective indemnifying legislation.

#### POWERS: STANDARDS AND SAFEGUARDS (Chapter V)

1.30 Without controls on emergency powers there is much potential for their abuse. A decision to confer emergency powers therefore requires, as does any grant of public power, a consideration of the following matters:

- the circumstances in which the emergency powers may be invoked;
- the person or body which may invoke the powers;
- the procedure to be followed when invoking powers;
- the substantive scope of the powers;
- the controls on the exercise of the powers;
- the remedies, including compensation, which are to be available to those affected by the exercise of the powers.



A balance must be struck between the needs of the State to have the powers required to handle an emergency and the rights of those who may be affected by the exercise of those powers. Further, as the International Covenant on Civil and Political Rights makes clear, some basic rights must be respected in all situations. The Bill of Rights Act 1990 affirms New Zealand's commitment to the International Covenant.

#### *The circumstances in which emergency powers may be invoked*

1.31 Two essential preconditions for a grant of emergency powers are the existence of an emergency situation and the need to deal with that situation by the exercise of extraordinary powers. This statutory statement of circumstances will generally require a belief on the part of a specified office-holder, based on certain information, that a particular state of affairs exists and that extraordinary powers are necessary to deal with it. Given this common structure, the following principles are applicable:

- The belief that the state of affairs exists should be based on reasonable grounds.
- A belief that a particular state of affairs exists should not in itself justify the declaration of a state of emergency. There should also be a belief, again on reasonable grounds, that the circumstances require the invocation of emergency powers.
- The state of affairs should be one which threatens important values and interests.
- In the interests of precision, the state of affairs should be described in concrete rather than speculative terms.

The existence of a state of emergency should be limited in time and, where appropriate, by place.

#### *Who may invoke the powers?*

1.32 The general principle is that the greater the emergency (and usually the correlative powers), the higher the level at which the decision to invoke emergency powers should be made. Generally these decisions will be taken by Ministers or officials for whose actions Ministers are responsible. But sometimes emergency powers may be conferred on statutory officers who are independent of political control but answerable to the courts. The decision which enables emergency powers to be exercised will usually be taken by officers who are senior to those who actually exercise the powers.

1.33 The power to extend the period of a state of emergency will usually be vested in the original decision-maker. In some instances Parliament may review the original declaration or any extension of it and, occasionally, may itself have the exclusive power to extend the initial period.



*What procedures should be followed?*

1.34 Some of the procedures to be followed in invoking emergency powers are a necessary corollary of the choice of the person or body who has to decide whether the state of affairs calling for the declaration of an emergency exists. For example, the Governor-General will be advised by the Executive Council.

1.35 Where special knowledge or expertise is required in order to make an informed decision there should be provision for appropriate advice to be given to the decision-maker. As a general principle, decision-makers should be required to consult those whose interests or responsibilities are affected before taking action.

1.36 Once an emergency has been declared, sufficient publicity should be given to the declaration to ensure that those who are or may be affected are aware of the existence of a state of emergency. This publicity is necessary to ensure that the emergency measures taken are effective and also that there is appropriate accountability for the decision to invoke emergency powers.

*What should the powers be? How should they be limited?*

1.37 As the situations constituting an emergency will vary, so also will the response powers which should be available. Again, general principles can be stated:

- The powers conferred should be limited to those needed to deal effectively with the emergency.
- The scope and drafting of an emergency power should be governed by
  - the nature of the public interest threatened by the emergency,
  - the need for the power in the particular circumstances,
  - the importance of the right, interest or value being abrogated or prejudiced by the exercise of the power, and
  - the extent of that abrogation or prejudice.
- In general powers should be conferred by statute rather than by delegated legislation.

If an emergency regulation-making power is thought necessary it should

- be expressed in the standard objective formula, specifying the purposes for which regulations may be made,
- include a requirement that the regulations be necessary for those purposes,
- expressly exclude matters more appropriately dealt with by Parliament in primary legislation,
- prevent regulations being made which outlast the emergency, and
- where appropriate, require that emergency regulations be made only after prior consultation with those affected.

Emergency legislation should not impinge on rights and freedoms which ought to remain protected and should conform with New Zealand's international obligations.

#### *How are safeguards to be provided?*

1.38 Some safeguards can be provided by the procedures which must be followed in declaring an emergency and exercising emergency powers. Once a declaration has been made, controls may be exercised through Parliament, the courts and other national and international processes.

1.39 Parliamentary procedures already enable controls to be exercised over the enactment of legislation conferring emergency powers and the monitoring of emergency action, including the making of emergency regulations. It will also be appropriate in the case of some grants of emergency power to make specific provisions for parliamentary control in the emergency legislation itself. In these cases, consideration should be given to the need for provisions which would ensure that the House of Representatives meets to consider emergency action and would require the government to provide parliamentary time for the consideration of that action. (See safeguards in the proposed War Emergencies Act, para 1.62)

1.40 The possibility of judicial review affords an essential protection. Provisions purporting to prevent the questioning of the legality of a declaration of an emergency should not be enacted. Existing provisions to this effect should be repealed when opportunity offers.

#### *Compensation and limits on liability*

1.41 Individuals may suffer loss as the result of an emergency. This loss may stem from the effects of the emergency itself, from the lawful exercise of powers available to deal with the emergency, or from unlawful acts during the emergency. While loss involving personal injury by accident will be compensated under the Accident Compensation Act 1982 (there may also be relevant rights under war pensions or social security legislation), there is a need to consider remedies for the infringement of property rights.

1.42 In general, the risk of disaster attaches to the owner or proprietor of property whose responsibility it is to take appropriate action, by insurance or otherwise, to mitigate prospective loss. The Earthquake and War Damage Act 1944 provides for compulsory insurance to cover war damage and damage resulting from earthquake and other natural disasters. In some instances the government, recognising a wider community responsibility, may decide to make payments from public funds to meet part of the losses resulting from the emergency itself. (This was done in the case of Cyclone Bola.)

1.43 On the other hand, property loss caused by the lawful or unlawful actions of State officials taken to protect the interests of the wider public should in general be borne by the State. Compensation may have to be limited where the damage is so great that the State is unable to meet losses in full.

1.44 Legislation providing for compensation should also provide independent procedures for resolving disputes about entitlement and its extent.

1.45 There are a great number of provisions limiting or denying the liability of bodies and individuals exercising public power conferred by legislation. This issue will be fully examined in the Law Commission's work on the Crown. However, one aspect should be addressed in the present context. There can be no justification for preventing all recourse to the courts in respect of actions claimed to be unlawful. Although it may be desirable to protect those acting in an emergency from individual suit, the possibility of action against the Crown or other responsible body should in principle be preserved.

#### WAR AND OTHER ARMED CONFLICTS (Chapter VI)

1.46 The Defence Act 1990 implemented the recommendations in the First Report on additional powers that might be required in the event of a low or medium-level contingency involving the deployment beyond New Zealand of members of the armed forces (see para 1.3). There has since been a shift in defence policy (The Defence of New Zealand 1991: A Policy Paper (GP Print, 1991)). The Law Commission is of the view that the powers now available should enable New Zealand to maintain the strategy of "Self-Reliance in Partnership" projected in the Policy Paper.

1.47 The First Report identified war emergencies as a distinct emergency sector to be dealt with in the present Report. The relevant emergency situations are



- war or high-level armed conflict, conventional or nuclear, in which New Zealand is directly involved, whether or not there is a threat of invasion,
- the threat or outbreak of major nuclear or biological war in which New Zealand is not directly involved or a major nuclear or biological event which presents a threat to New Zealand, and
- armed insurrection or civil war within New Zealand.

*War, armed hostilities or armed attack*

1.48 While the likelihood of New Zealand becoming involved in full-scale armed conflict in the foreseeable future may be thought slight, the Law Commission is obliged to address this possibility and consider what executive powers would be needed and justified in the event.

1.49 War or high-level armed conflict involving a serious threat to the sovereignty, security or territorial integrity of New Zealand would call for both the mobilisation of national resources for the actual conduct of hostilities and the taking of measures for the protection of the civilian population. The executive would require a wide authority to take emergency action - an authority which should have a statutory basis. Although the prerogative can be used to declare war or to commit the armed forces to hostilities, it would be inappropriate and impracticable to conduct a modern war under the authority of the prerogative alone.

*Nuclear war or accident*

1.50 A nuclear event, whether arising from a nuclear war or a nuclear accident, could have a similarly drastic impact on New Zealand. The possibility of such an event cannot be discounted despite the ending of the Cold War. While New Zealand is unlikely to suffer the direct effects or, indeed, the indirect physical effects of a nuclear event, its social and economic impact on New Zealand could be devastating.

1.51 A breakdown of international trade would undermine the existing business, employment and financial system. Social and economic disruption could result in increasing disorder and lawlessness. As with war, the consequent threat to the life of the community would call for the grant of wide authority to the executive.

*Armed insurrection or civil war*

1.52 The prospect of civil war in New Zealand is even more remote than invasion or involvement in full-scale armed conflict overseas. Nevertheless it is a possibility which must be addressed. Again, given the grave threat which civil war or armed insurrection would pose to the sovereignty and security of New Zealand, wide executive powers would be needed to respond to the situation.

1.53 An understandable concern is that a government might be tempted to invoke these extensive powers in a situation where their exercise is not justified. However, civil war is an extreme situation which is to be distinguished from those situations falling within s 9(4) of the Defence Act 1990 in which the armed forces can be called upon to provide aid to the civil power (para 1.3). A principal safeguard against the possibility of war emergency powers being abused is a careful definition of the circumstances in which the declaration of a war emergency would be justified. It should not then be possible to use wide war emergency powers to deal with a situation falling short of armed conflict.

#### *Protection of the civilian population*

1.54 The Civil Defence Act 1983 contains provisions under which a state of national emergency can be declared enabling civil defence measures to be taken to protect the civilian population in the event of an attack on New Zealand or a warlike act directed against New Zealand. The Law Commission takes the view that a state of emergency in these circumstances should be declared under war emergencies legislation. It is, however, recognised that the civil defence organisation will continue to be involved in providing that protection and should take an active part in the preparatory phase (para 1.102).

#### *A War Emergencies Act*

1.55 The Law Commission's conclusion is that there should be a War Emergencies Act under which emergency powers would be available in respect of the stated contingencies. A draft War Emergencies Act is set out in Appendix D.

#### *Definition of war emergency*

1.56 The situations with which the proposed War Emergencies Act is concerned are war or other armed conflict (including armed insurrection or civil war) and nuclear or biological incidents.

1.57 To justify the declaration of a war emergency there must be reasonable grounds for believing that such a situation exists or is imminent and that the situation seriously endangers the lives, health or safety of New Zealand citizens, or seriously threatens the ability of a government in New Zealand to preserve the sovereignty, security or territorial integrity of New Zealand.

1.58 The situation must also be of such proportions or nature that it cannot be dealt with effectively except by authorising the Governor-General in Council to make war emergency regulations under the Act.

## *Powers*

1.59 In light of the situations which are contemplated by the proposed War Emergencies Act, the powers which are to be available to the Government in the event of a war emergency need to be comprehensive. Accordingly, the Governor-General in Council is given the power to make such regulations as are believed, on reasonable grounds, to be necessary or expedient for dealing with the emergency.

1.60 It is possible, however, to exclude from the ambit of this power those matters which may be more appropriately left to Parliament. The Law Commission is not making firm recommendations with regard to these matters but, as an indication of what they might include, the draft War Emergencies Act provides that no war emergency regulations shall

- authorise conscription,
- override s 37 of the Defence Act 1990 (which stipulates the minimum age at which minors can be sent on active service overseas),
- override the New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987, or
- provide for the detention, imprisonment or internment of any New Zealand citizen by reason of that citizen's national origin.

## *Safeguards*

1.61 War emergency regulations can with some exceptions override all other statutes and regulations. It is therefore essential that the power to make such regulations is accompanied by adequate safeguards.

1.62 The proposed War Emergencies Act contains extensive safeguards against the possible abuse of powers conferred by the Act:

- Immediate notice of the declaration of a war emergency is to be given to the public and to the House of Representatives, or, if the House is not then sitting, it is to be given as soon as practicable.
- A declaration of a war emergency may remain in force for a maximum initial period of three months.
- A declaration of a war emergency will cease to be in force if not confirmed by the House.

reasons the Law Commission favours the alternative of enacting a War Emergencies Act now, rather than leaving it in draft.

## **Recommendations**

6.81 The Law Commission recommends that:

- the Government should give early consideration to the introduction of a Bill for a War Emergencies Act in the form set out in Appendix D to this Report;
- full opportunity should be given for public discussion of the provisions of the Bill for a War Emergencies Act before its enactment;
- contingency planning should include the drafting of emergency regulations that could be brought into force under the War Emergencies Act if the need should arise by reason of the impact on New Zealand of a war, or other major armed conflict, or a nuclear or biological incident.

P.



**APPENDIX D**  
**Draft War Emergencies Act**

**WAR EMERGENCIES ACT 19[91]**

Public Act [ ] of 19[91]

Assented to on [ ]

Comes into force on [ ]

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The Parliament of New Zealand enacts the War Emergencies Act 19[91]:

PART 1

PURPOSES AND EFFECT

**1 Purposes of the Act**

1 The purposes of this Act are

- (a) to empower the Government of New Zealand to respond to situations arising from a war, other armed conflict or comparable event which seriously endanger the safety of New Zealand citizens or the sovereignty, security or territorial integrity of New Zealand, by declaring a war emergency and making war emergency regulations, and
- (b) to protect human rights and fundamental freedoms by providing that a war emergency may be declared only if the situation cannot otherwise be dealt with effectively, that war emergency regulations may not be inconsistent with the obligations of the Government of New Zealand under the specified treaties and Acts, and that the exercise of powers under this Act is subject to the supervision of the House of Representatives.

Definitions: for "New Zealand", "war emergency" and "war emergency regulation" see s 2(1).

For the meaning of "armed conflict" see the Geneva Conventions, the First Protocol and the Second Protocol referred to in s 5.

For provisions identifying who is a New Zealand citizen, see the Citizenship Act 1977 and the Citizenship (Western Samoa) Act 1982.

## 2 Definitions

### (1) In this Act

**biological incident** means the detonation of a biological weapon or any other event which releases microbial or other biological agents, or toxins whatever their origin or method of production, of types or in quantities that have no justification for prophylactic, protective or other peaceful purposes;

**New Zealand**, when used as a territorial description, includes the self-governing state of the Cook Islands, the self-governing state of Niue, Tokelau and the Ross Dependency;

**nuclear incident** means the detonation of a nuclear explosive device or any other event which releases nuclear energy or gives rise to radioactive fallout, ionising radiation or an electromagnetic pulse;

**Proclamation** means a Proclamation made by the Governor-General in Council and, where the case requires, includes a writing signed under section 11;

**war emergency** means a war emergency declared under section 4;

**war emergency regulation** means a regulation made under section 5 and includes a provision of such a regulation, or a rule or a provision of a rule made under the authority of such a regulation, or a rule or a (2) A reference to a time for the doing of any thing under this Act means the date and the time of day for the doing of that thing; and if no time of day on that date is specified or required to be otherwise arrived at, means the beginning of the day on that date.

Origin: "New Zealand" and "Proclamation" of Interpretation Act 1991, s 19 [Definitions].

For the meaning of "biological weapon" see the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Article 1, reproduced in the Fifth Schedule to the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987. For the meaning of "nuclear explosive device" see s 2 [Interpretation] of the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987.

### **3 Functions, duties and powers under other Acts or general law not affected**

Except as otherwise provided in this Act or in a war emergency regulation, nothing in this Act or in such a regulation limits, or is in substitution for, or in any way affects the functions, duties or powers of any person under any other enactment or rule of law.

Origin: Civil Defence Act 1983, s 4.

Definitions: for "war emergency regulation" see s 2(1); for "enactment" see Interpretation Act 19[91], s 19(1) [Definitions].



## PART 2

### DECLARATION OF A WAR EMERGENCY AND WAR EMERGENCY REGULATIONS

#### 4 Declaration of a war emergency

- (1) The Governor-General in Council may, by Proclamation, declare a war emergency if the Governor-General in Council believes, on reasonable grounds,
  - (a) that, by reason of an actual or imminent war, other armed conflict, nuclear incident or biological incident, there is a situation which
    - (i) seriously endangers the lives, health or safety of New Zealand citizens, or
    - (ii) seriously threatens the ability of the Government of New Zealand, or of a self-governing state, to preserve the sovereignty, security or territorial integrity of New Zealand, or of that self-governing state, and
  - (b) that the situation is of such proportions or nature that it cannot be dealt with effectively except by authorising the Governor-General in Council to make war emergency regulations under this Act.
- (2) A declaration of a war emergency must specify the situation constituting the emergency.
- (3) A declaration of a war emergency comes into force at the time when the declaration is made or at the time specified in the declaration, whichever is the later.
- (4) In this section, **self-governing state** means the self-governing state of the Cook Islands or the self-governing state of Niue, as the case requires.

Origin: Emergencies Act 1988 (Canada), ss 3, 37, 38, 39(1); Civil Defence Act 1983 s 2, definition of "national emergency", and s 46.

Definitions: for "biological incident", "New Zealand", "nuclear incident" and "Proclamation" see s 2(1).

For "Governor-General in Council" see Interpretation Act 19[91], s 19(1) and see s 16 of that Act concerning the powers of the Administrator of the Government when the Governor-General is unable to discharge any of the functions of the office.

See s 11 of this Act for an alternative source of authority to declare a war emergency when it is not feasible for a Proclamation to be made by the Governor-General in Council.

For the meaning of "armed conflict" see the Geneva Conventions, the First Protocol and the Second Protocol referred to in s 5 of this Act.

For provisions identifying who is a New Zealand citizen see the Citizenship Act 1977 and the Citizenship (Western Samoa) Act 1982.

## 5 War emergency regulations

(1) The Governor-General may, by Order in Council, at any time while a declaration of a war emergency is in force, make such regulations as the Governor-General in Council believes, on reasonable grounds, are necessary or expedient for dealing with a war emergency.

(2) War emergency regulations may

(a) create offences in respect of the breach of a war emergency regulation, or non-compliance with any direction given by a person acting under an authority conferred by a war emergency regulation;

(b) prescribe as the penalty for an offence created by a war emergency regulation

(i) where the offence is committed by an individual, imprisonment for a term not exceeding 12 months or a fine not exceeding \$15,000 or both;

(ii) where the offence is committed by a body corporate, a fine not exceeding \$40,000.

(c) authorise any person specified in a war emergency regulation to make rules for any of the purposes for which war emergency regulations may be made.

(3) Subject to subsection (5),

(a) no war emergency regulation is invalid because it deals with any matter already provided for by or under any other Act, or because of repugnancy to or inconsistency with any other Act, and

(b) in the event of any conflict between any war emergency regulation and any other Act, regulation or bylaw, a war emergency regulation prevails.

(4) No war emergency regulation shall authorise any measure derogating from the obligations of the Government of New Zealand under

(a) articles 4, 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 of the International Covenant on Civil and Political Rights, the English text of which articles is set out in Schedule 1, or

(b) the Geneva Conventions, the First Protocol or the Second Protocol (the English texts of which, without their annexes, are set out in the Schedules to the Geneva Conventions Act 1958).

(5) No war emergency regulation shall

(a) require any person to be appointed to, or enlisted or engaged in the New Zealand armed forces, or

(b) provide for the detention, imprisonment or internment of any New Zealand citizen by reason of that citizen's national origin, or

(c) be inconsistent with any provision of

(i) this Act, or

(ii) the Geneva Conventions Act 1958 or any regulations made under that Act, or

(iii) the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987, or

(iv) section 37 [Liability of minors for active service overseas] of the Defence Act 1990.

(6) A war emergency regulation comes into force at the time at which the regulation is made, or the time specified in the regulation, whichever is the later.

(7) In this section **Order in Council**, where the case requires, includes a writing signed under section 11.

Origin:

(1): Emergencies Act 1988 (Canada), s 40(1); cf Civil Defence Act 1983, s 79(1).

(2): Civil Defence Act 1983, s 79(3); Emergencies Act 1988 (Canada), s 40(2).

(3): Civil Defence Act 1983, s 79(5) and (6).

(5)(a): Emergencies Act 1988 (Canada), s 40(1.1).

(5)(b): cf Emergencies Act 1988 (Canada), s 4(b).

(5)(c): cf Emergencies Act 1988 (Canada), s 4(a).

(6): cf Civil Defence Act 1983, s 79(7).

Definitions: for "war emergency" see s 2(1).

For "Governor-General in Council" and "Order in Council" see Interpretation Act 19[91], s 19(1), and see s 16 of that Act concerning the powers of the Administrator of the Government when the Governor-General is unable to discharge any of the functions of the office.

See s 11 of this Act for an alternative source of authority to make war emergency regulations when it is not feasible for the regulations to be made by the Governor-General in Council.

For the meaning of "New Zealand armed forces" see the Defence Act 1990, s 11(2).

For provisions identifying who is a New Zealand citizen see the Citizenship Act 1977 and the Citizenship (Western Samoa) Act 1982.

## **6 Duration of a declaration of a war emergency**

Unless it is sooner revoked or continued in force in accordance with this Act, a declaration of a war emergency ceases to be in force

(a) on the expiration of 3 months from the time at which the declaration came into force, or

(b) at the time or on the expiration of the period specified in the declaration, or if the House of Representatives has passed a resolution under section 13 confirming the declaration for such shorter or longer period as is specified in the resolution, then on the expiration of that period,

whichever is the earlier.

Origin: Emergencies Act 1988 (Canada), s 39(2); Civil Defence Act 1983 ss 47(2) and 48(1).

Definitions: for "war emergency" see s 2(1).

## **7 Duration of war emergency regulations**

A war emergency regulation made during the currency of a declaration of a war emergency ceases to be in force at

(a) the time at which the declaration ceases to be in force, or

(b) the time specified by the regulation, or

(c) the time from which the regulation is revoked by the Governor-General in Council,

whichever is the earliest, subject, however, to the operation of section 17(3).



Origin: Civil Defence Act 1983, s 79(7); Emergencies Act 1988 (Canada), s 45(1).

Definitions: for "war emergency" and "war emergency regulation" see s 2(1).

## **8 Continuation of a declaration of a war emergency**

(1) If, while a declaration of a war emergency is in force, the Governor-General in Council believes, on reasonable grounds, that the situation constituting the emergency still comes within section 4, the Governor-General in Council may, by Proclamation, continue the declaration in force for a further period, not exceeding 6 months, as is specified in the Proclamation.

(2) Before making a Proclamation continuing in force a declaration of a war emergency, the Governor-General in Council must review each war emergency regulation then in force, and determine whether there are reasonable grounds for believing that it continues to be necessary or expedient for dealing with the emergency, and, to the extent that there are not, the Governor-General in Council must revoke or amend that war emergency regulation.

(3) Where a Proclamation has been made under subsection (1), the declaration of a war emergency continues in force, unless sooner revoked, until the time at which the period specified in the Proclamation expires or, if the House of Representatives has passed a resolution under section 14 confirming the continuation in force of the declaration for such shorter or longer period as is specified in the resolution, then on the expiration of that period.

(4) A declaration of a war emergency may be continued in force more than once under this section.

Origin: Emergencies Act 1988 (Canada), s 43.

Definitions: for "Proclamation", "war emergency" and "war emergency regulation" see s 2(1).

For "Governor-General in Council" see the Interpretation Act 19[91], s 19(1) and see s 16 of that Act concerning the powers of the Administrator of the Government when the Governor-General is unable to discharge any of the functions of the office.

See s 11 of this Act for an alternative source of authority to continue a declaration of a war emergency when it is not feasible for the Proclamation to be made by the Governor-General in Council.



## 9 Revocation of a declaration of a war emergency

A declaration of a war emergency may be revoked by

- (a) the Governor-General in Council, by Proclamation, with effect from the time at which the Proclamation is made or such later time as is specified in the Proclamation, being a time not later than that at which the declaration would otherwise cease to be in force;
- (b) the House of Representatives under section 15(1);
- (c) the operation of section 13, section 14 or section 15(2).

Origin: Emergencies Act 1988 (Canada), ss 41, 42, 58(7), 59(3), and 60(6); Civil Defence Act 1983, s 47(2).

Definitions: for "Proclamation", "war emergency" and "war emergency regulation" see s 2(1).

For "Governor-General in Council" see the Interpretation Act 19[91], s 19(1) and see s 16 of that Act concerning the powers of the Administrator of the Government when the Governor-General is unable to discharge any of the functions of the office.

See s 11 of this Act for an alternative source of authority to revoke a declaration of a war emergency when it is not feasible for the declaration to be revoked by the Governor-General in Council.

## 10 Public to be informed

(1) The Prime Minister or another minister of the Crown must immediately inform the public, by any means practicable in the circumstances, that a Proclamation has been made declaring a war emergency or continuing in force or revoking a declaration of a war emergency.

(2) A Proclamation referred to in subsection (1) must be published in the Gazette as soon as practicable.

Origin: Civil Defence Act 1983, s 46(5).

Definitions: for "Proclamation" and "war emergency" see s 2(1).

## 11 Substituted authority where Governor-General in Council unable to act

(1) This section applies on any occasion when the need arises for the exercise of a power vested by this Act in the Governor-General in Council (except the power to make regulations on compensation under section 20) and it is not possible, without undue delay, for the power to be exercised by the Governor-General acting on the advice and with the consent of the Executive Council.

(2) If on an occasion when this section applies, it appears to the Governor-General that the Executive Council is dispersed or that for any other reason it is not possible to hold a meeting of the

Council, the power may be exercised by the Governor-General on the advice of the Prime Minister, by a writing signed by the Governor-General and counter-signed by the Prime Minister.

(3) If on an occasion when this section applies, it appears to three or more members of the Executive Council present at a meeting of the Council that the Governor-General is out of communication with the Executive Council, the power may be exercised by the presiding member of the Council on the advice and with the consent of the Council, by a writing signed by that presiding member.

(4) If on an occasion when this section applies, it appears to the Prime Minister that the Executive Council is dispersed or that for any other reason it is not possible to hold a meeting of the Council and that the Governor-General is out of communication with the Prime Minister, the power may be exercised by the Prime Minister by a writing signed by him or her.

(5) If on an occasion when this section applies, it appears to any other available Minister or, if more than one other Minister is available, to the most senior of them, that it is not possible for the power to be exercised under subsection (2), (3) or (4), the power may be exercised by that Minister, by a writing signed by him or her.

(6) A writing signed under this section has, for the purposes of this Act, the same effect as a Proclamation or an Order in Council, as the case requires.

(7) No question may be raised as to whether the occasion authorising any person to exercise any power in accordance with this section has arisen or has ceased.

Origin: Civil Defence Act 1983 ss 46(2)-(4) and (6), and s 47(3).

Definitions: for "Proclamation" see s 2(1).

For "Order in Council" see the Interpretation Act 19[91], s 19(1) and see s 16 of that Act concerning the powers of the Administrator of the Government when the Governor-General is unable to discharge any of the functions of the office.

## PART 3

### SUPERVISION BY THE HOUSE OF REPRESENTATIVES

#### 12 House of Representatives to be informed

(1) The Prime Minister or another Minister of the Crown must inform the House of Representatives of the making of a Proclamation declaring a war emergency or continuing in force or revoking a declaration of a war emergency, immediately, if the House of Representatives is then sitting, or, if it is not then sitting, as early as practicable on its next sitting day.

(2) In the case of a Proclamation declaring a war emergency, the Prime Minister or other Minister must explain the reasons for the declaration.

(3) In the case of a Proclamation continuing in force the declaration of a war emergency, the Prime Minister or other Minister must

(a) explain the reasons for continuing the declaration in force for the period specified in the Proclamation; and

(b) lay before the House a report on the review of war emergency regulations conducted under section 8(2), together with a list of those war emergency regulations to be continued in force.

Origin: Civil Defence Act 1983, s 49(1); cf Emergencies Act 1988 (Canada), s 58(1).

Definitions: for "war emergency" and "war emergency regulations" see s 2(1).

#### 13 Confirmation by the House of Representatives of a declaration of a war emergency

If, on the sitting day when the House of Representatives is informed, under section 12, of the making of a Proclamation declaring a war emergency, the House of Representatives does not pass a resolution confirming the declaration of a war emergency

(a) for the period specified in the Proclamation, or

(b) for such shorter or longer period (not being more than 3 months from the time at which the declaration came into force) as is specified in the resolution,

the declaration (unless it has earlier ceased to be in force) is revoked as from the expiration of that sitting day.

Origin: Emergencies Act 1988 (Canada), s 58(1).

Definitions: for "Proclamation" and "war emergency" see s 2(1).

#### **14 Confirmation by the House of Representatives of the continuation of a declaration of a war emergency**

If, on the sitting day when the House of Representatives is informed, under section 12, of the making of a Proclamation continuing in force a declaration of a war emergency, the House of Representatives does not pass a resolution confirming the continuation in force of the declaration

(a) for the period specified in the Proclamation of continuation, or

(b) for such shorter or longer period (not being more than 6 months from the time at which that Proclamation was made) as is specified in the resolution,

the declaration (unless it has sooner ceased to be in force) is revoked as from the expiration of that sitting day or the time at which the declaration would cease to be in force but for the proposed continuation, whichever is the later.

Origin: Emergencies Act 1988 (Canada), s 60.

Definitions: for "Proclamation" and "war emergency" see s 2(1).

#### **15 Revocation by the House of Representatives of a declaration of a war emergency**

(1) At any time while a declaration of a war emergency is in force, the House of Representatives may revoke the declaration by resolution with effect from the time of the resolution or any later time (but not later than the time at which the declaration would otherwise cease to be in force) specified in the resolution.

(2) If, at the expiration of the third sitting day after the day on which not less than 10 members of Parliament have given, in substantially similar terms, notice of a motion to revoke a declaration of a war emergency

(a) the notices have not been withdrawn and no motion has been moved, or



(b) a motion to revoke a declaration of a war emergency has been called on and moved but has not been withdrawn or otherwise disposed of,

the declaration is revoked as from the expiration of that sitting day or the time of revocation specified in the motion, whichever is the later.

Origin: Emergencies Act 1988 (Canada), s 59; cf Regulations (Disallowance) Act 1989 ss 5 and 6.

Definitions: for "war emergency" see s 2(1).

## **16 Early summoning of Parliament or meeting of the House of Representatives**

(1) If at the time when a Proclamation is made declaring a war emergency, or continuing in force a declaration of a war emergency, a circumstance referred to in subsection (2), (3) or (4) will delay the time at which the House of Representatives can be informed under section 12, Parliament shall be summoned, or a place and time shall be appointed for the House of Representatives to meet, in accordance with the applicable subsection.

(2) If Parliament has been prorogued until a date more than 7 days after the date of the declaration, or until a date which has not been determined, a Proclamation shall immediately be made under section 18 of the Constitution Act 1986 summoning Parliament to meet at the place and time appointed in the Proclamation, the time to be not more than 7 days after the date of the declaration.

(3) If Parliament has been dissolved or has expired and has not been summoned to meet on a date within 7 days of the date of the declaration, a Proclamation shall immediately be made under section 18 of the Constitution Act 1986 summoning Parliament to meet at the place and time appointed in the Proclamation, the time to be not more than 7 days after the date of the declaration or after the latest date appointed under the Electoral Act 1956 for the return of the writs for the election of members of Parliament, whichever is the later.

(4) If the House of Representatives has been adjourned until a date more than 7 days after the date of the declaration, or until a date which has not been determined, the Speaker of the House of Representatives shall immediately, by notice in the Gazette, appoint a place and time for the House of Representatives to meet, the time to be not more than 7 days after the date of the declaration; and the House of Representatives shall accordingly meet and sit at the place and time so specified.

Origin: Civil Defence Act 1983, s 49.

## **17 Amendment or revocation of war emergency regulations by the House of Representatives**

(1) The Prime Minister or another Minister must lay every war emergency regulation before the House of Representatives not later than the second sitting day after the day on which it is made.

(2) The House of Representatives may, by resolution, exercise any power conferred on the Governor-General in Council by section 5 to



- (a) amend any war emergency regulation, or
- (b) revoke any war emergency regulation, or
- (c) having revoked a war emergency regulation, substitute any other war emergency regulation.

(3) If the House of Representatives passes a resolution amending, revoking, or revoking and substituting any war emergency regulation, the amendment, revocation or substitution comes into force at

- (a) the time of the passing of the resolution, or
- (b) the time (if any) specified in the resolution as the time at which the amendment, revocation or substitution is to come into force,

whichever is the later.

(4) If, at the expiration of the third sitting day after the day on which not less than 10 members of Parliament have given, in substantially similar terms, notice of a motion to amend, revoke, or revoke and substitute any war emergency regulation

- (a) the notices have not been withdrawn and no motion has been moved, or
- (b) a motion to amend, or revoke and substitute the war emergency regulation has been called on and moved and has not been withdrawn or otherwise disposed of,

the amendment, revocation or substitution shall be taken as having been made and as coming into force at the expiration of that sitting day or at the time specified in the motion as the time of amendment, revocation or substitution, whichever is the later.

(5) Notice of every resolution or notice of motion effecting any amendment, revocation or substitution of a war emergency regulation under this section shall be printed and published under section 4 of the Acts and Regulations Publication Act 1989 as if it were a regulation.

(6) Nothing in the Regulations (Disallowance) Act 1989 applies to any war emergency regulation.

Origin: Emergencies Act 1988 (Canada), s 61; Civil Defence Act 1983 s 79(7A) and (8); Regulations (Disallowance) Act 1989, ss 4-7, 9 and 10.

Definitions: for "war emergency regulation" see s 2(1).

PART 4  
COMPENSATION

**18 Right to just compensation**

- (1) A person having an interest in any property
- (a) requisitioned under a war emergency regulation, or
  - (b) lost, damaged or destroyed as a result of anything done or purported to be done under a war emergency regulation,

is entitled to just compensation, out of money appropriated by Parliament, for the use of the property or any loss or damage suffered by that person and arising from that use, loss, damage or destruction, subject, however, to any regulations made under section 20.

(2) No compensation shall be paid to a person under this section unless that person, in consideration of the compensation, signs a release of any right of action which that person may have against the Crown in respect of the use of the property or any loss or damage arising from its use, loss, damage or destruction.

(3) Where a person entitled to any compensation under this section has a claim against any other person (excluding the Crown) for damages or compensation for the use, loss, damage or destruction of property in respect of which that compensation is payable, the Crown may do all or any of the following things:

- (a) deduct from the compensation payable to that person under this section any amount recovered by that person through the enforcement of that claim;
- (b) recover from any person to whom compensation has been paid under this section any amount that is in excess of the amount properly payable to that person, having regard to paragraph (a);
- (c) require, as a condition precedent to the payment of all or any of the compensation payable to that person under this section, that all reasonable steps be taken to pursue that claim or enable it to be pursued;
- (d) meet the whole or such part as the Crown thinks fit of the costs and expenses incurred in pursuing that claim.

(4) Subject to any regulations made under section 20, a court of competent jurisdiction may determine a dispute about the liability of the Crown to pay compensation under this section, or the amount of any compensation, or the entitlement of any person to all or part of the compensation payable.

Origin: Emergencies Act 1988 (Canada), s 48; cf Civil Defence Act 1983, ss 65 and 75; Defence Act 1990, s 10; Accident Compensation Act 1982, s 86.

Definitions: for "war emergency regulation" see s 2(1).

## 19 Protection from legal proceedings

(1) No action or proceeding shall be brought against any person to recover damages for any use, loss or destruction of, or damage to, any property or any loss or damage arising from that use, loss, damage or destruction on the ground that the use, loss, damage or destruction is due directly or indirectly to anything done or purported to be done, or to anything failed to be done, in the exercise or performance in good faith of that person's functions, duties or powers under this Act or any war emergency regulation.

(2) Subsection (1) does not relieve the Crown of any liability for damages which it would otherwise have under this or any other Act or any rule of law for the use, loss, damage or destruction referred to in that subsection, whether or not that liability arises from anything done or failed to be done by any person protected from legal proceedings by that subsection.

Origin: Emergencies Act 1988 (Canada), s 47; cf Civil Defence Act 1983, s 66.

Definitions: for "war emergency regulation" see s 2(1).

## 20 Regulations on compensation

The Governor-General may by Order in Council make regulations

- (a) prescribing the form of applications for compensation and the manner of making application, and the information and evidence to be submitted and the procedure to be followed in the consideration of applications for compensation;
- (b) prescribing the period within which applications for compensation must be made;
- (c) prescribing the criteria to be used in determining the eligibility of any person for compensation;
- (d) prescribing the methods and criteria to be used in assessing any use, loss, damage or destruction for which compensation is payable;
- (e) prescribing the maximum amount of compensation that may be paid to any person, either generally or with respect to any particular use, loss, damage or destruction;
- (f) prescribing the terms and conditions for the payment of compensation;
- (g) providing for the payment of compensation in a lump sum or by periodic payments;

- (h) providing for pro rata payments of compensation;
- (i) establishing priorities among persons eligible for compensation on the basis of classes of persons or classes of use, loss, damage, destruction or otherwise;
- (j) providing for the giving of notices to persons affected by applications for compensation;
- (k) authorising any person or body (whether or not established by the regulations) to hear and determine any claim for compensation or any appeal from any such determination; and
- (l) providing generally for such matters as are contemplated by or necessary for giving full effect to this Part and for its due administration.

Origin: Emergencies Act 1988 (Canada), s 49.

Definitions: for "Order in Council" see Interpretation

Act 19[91], s 19(1).

## PART 5

### AMENDMENTS

#### 21 Amendments

The enactments listed in Schedule 2 are consequentially amended as indicated.



## SCHEDULE 1

(See s 5)

### International Covenant on Civil and Political Rights

(Extracts)

#### Article 4

1 In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2 No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3 Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.



## **Article 6**

1 Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2 In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3 When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4 Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5 Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6 Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

## **Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

## **Article 8**

1 No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2 No one shall be held in servitude.

...

#### **Article 11**

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

#### **Article 15**

1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2 Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

#### **Article 16**

Everyone shall have the right to recognition everywhere as a person before the law.

### Article 18

1 Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2 No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3 Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4 The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

## SCHEDULE 2

(See s 21)

### Consequential Amendments

[See recommendations in Chapter IX for amendments to the Civil Defence Act 1983 to remove the references to "national emergencies" and make other changes to the provisions of that Act consequential on the enactment of a War Emergencies Act.

It would also be necessary to amend the Local Authorities Loans Act 1956, by omitting from s 21 the words "national emergency", and the Public Finance Act 1989, by omitting from s 13(1)(a) the words "state of national emergency or" and inserting in that section, after paragraph (a), the following paragraph

"(aa) A war emergency is declared under the War Emergencies Act 19[91]; or".]