

14th January 2022

National Emergency Management Agency
147 Lambton Quay
PO Box 5010
Wellington 6140
(submitted via email: trifecta@nema.govt.nz)

To whom it may concern,

Submission on the Critical Infrastructure proposals for new Emergency Management Bill

The Electricity Networks Association (ENA) appreciates the opportunity to make this short submission to the National Emergency Management Agency (NEMA) on the Critical Infrastructure proposals for new Emergency Management Bill. The ENA represents the 27 electricity distribution businesses (EDBs) in New Zealand (see Appendix B) which provide local and regional electricity networks. EDBs take their responsibilities under the Civil Defence Emergency Management Act (CDEMA) extremely seriously and are constantly looking for ways to enhance the resilience and recovery of their networks and businesses to extreme events.

With regard to the specific proposals contained in this consultation, we have found it difficult to assess the impact these would have on EDBs, given how little detail is provided in the consultation material. In particular the questions related to Planning Emergency Levels of Service (PELOS) are challenging to judge without some sort of example of what a PELOS might look like in practice, and how these obligations would be translated into the legislation. We have therefore made our own assessment of what complying with these requirements would mean for EDBs and what the impact of this would be.

We strongly encourage NEMA to engage with the electricity sector and other affected parties to provide greater detail around what PELOS should look like to achieve your policy intent, prior to drafting the proposed legislation. This would give NEMA and the affected sectors the opportunity to tailor the scope and content of PELOS to incur the least burden possible, whilst still delivering the outcomes that are being sought. If the sector has confidence that development and delivery of PELOS will be a relatively straightforward exercise that will aid stakeholders prior to and during an emergency event, by providing a high-level view of what can be expected over time, then it would reconsider its position on this proposal.

We have completed the consultation questions using the provided form and this is included in this letter as appendix A. Please don't hesitate to get in touch with ENA if you'd like to discuss our submission. If you require anything further from ENA or its members, please contact Richard Le Gros (richard@electricity.org.nz, 04 555 0075) in the first instance.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'GP', written in a cursive style.

Graeme Peters
Chief Executive
Electricity Networks Association



Critical Infrastructure proposals for new Emergency Management Bill

The National Emergency Management Agency (NEMA) requests your organisation's feedback on two final proposals in relation to Critical Infrastructure (Lifeline Utilities) for a new Emergency Management Bill.

This document incorporates two proposals as well as space for you to provide your organisation's feedback on each proposal.

Background to these proposals

In July 2021, NEMA consulted with the Lifeline Utility sectors and relevant agencies on nine proposed amendments to the Civil Defence Emergency Management Act 2002.

Six of the proposals received strong support and were further updated based on the feedback and have now progressed to cabinet for consideration as part of the National Emergency Management's Regulatory Framework Review Programme (also known as the "[Trifecta Programme](#)"). The proposals that have been progressed are:

1. Replace terminology 'Lifeline Utilities' with 'Critical Infrastructure.
2. Creating a definition for Critical Infrastructure in the Civil Defence Emergency Management Act
3. Maintaining an up-to-date list of Critical Infrastructure sectors and entities via a Gazette Notice.
4. Creating Criteria for categorising an infrastructure sector or entity as a critical infrastructure entity.
5. Information sharing requirements before, during and after emergencies.
6. Requirements for the development of sector-specific response and recovery plans, similar to the existing National Fuel Plan.

The previous proposal on Lead Agency responsibilities is being further developed as part of the Trifecta Programme and is not in the scope of Critical Infrastructure workstream.

Transition period

NEMA is committed to ensuring Critical Infrastructure entities and relevant agencies are supported during the transition to the new regulatory approach. A number of the proposed changes will require a transition period to help sectors and entities adapt to the changes.

NEMA will work with the sector and relevant agencies to develop implementation programmes to ensure the proposed changes are well understood. Support will be available to implement these changes.

For some of the changes further guidance and resources will need to be developed to support the implementation program.

Consultation

Further targeted consultation is being undertaken on two remaining policy proposals. These proposals have been reworked, taking into consideration sector and agency feedback from our initial consultation.

We are seeking your organisation's feedback as part of a targeted stakeholder consultation.

Through this consultation we are seeking to:

- a. understand your level of support for the proposals in principle
- b. understand the challenges of compliance to these proposals and how these can be mitigated
- c. understand the mechanisms that will help support the implementation of these proposals
- d. identify any issues that have not been considered during the development of proposals
- e. identify potential practical and financial implications of the proposed changes.

Your feedback will help inform the development of policy proposals, which, pending Ministerial and Cabinet decisions and subsequent select committee process, is likely to be implemented in early 2023.

Submitter details

We ask that you provide feedback as an organisation using a single copy of this form.

Please ensure you fill in the box below to indicate who the feedback form is from.

Contact details	
Name (first and last)	Richard Le Gros
Organisation	Electricity Networks Association NOTE: We are responding on behalf of our member companies, which are the NZ electricity distribution businesses (EDBs).
Position	Manager, Policy and Innovation
Email address	richard@electricity.org.nz
Phone number	04 555 0075

Please complete this form and email it to trifecta@nema.govt.nz by **17 December 2021**. If your organisation has no comments to make, please return with 'no comments' in the body of the email.

If you would like to discuss the proposals in person (or virtually) with a member of the Programme team, please email us and we will endeavour to arrange a meeting.

1. Planning Emergency Levels of Service (PELOS) during and after emergency

Under the current CDEM Act, Lifeline Utilities need to 'be operational to the fullest possible extent, even if it is at a reduced level during and after emergencies.

This requirement is necessary to ensure that our communities are well functioning, however no mechanisms are set out in the Act for sectors to establish emergency levels of service during and after emergencies to help:

- communities prepare based on the realistic expectations;
- inform the development of effective readiness and response planning;
- other critical infrastructure entities plan based on interdependencies and expected emergency service levels; and
- develop innovative solutions where services are severely compromised due the severity of the event scenario.

If we are to ensure that our communities are well-functioning, infrastructure systems must be able to respond to adverse conditions and quickly recover to acceptable levels of service. The process of establishing PELOS would enable service providers to better understand their vulnerabilities and interdependencies, as well as build resilience into their plans for response and recovery.

Note that 'the relevant sector responsible agency' referenced below (in most sectors the relevant regulator) is to ensure that proposed PELOS are considered alongside other sector-relevant factors such as pricing, quality, quantity, environment etc.

Proposal for planning emergency levels of service:

Ensure that Critical Infrastructure entities are able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency. Critical Infrastructure providers must state their Planning Emergency Level of Service every three years, noting that they must be:

- measurable and timebound;
- meaningful to end-users;
- publicly available;
- stated against a known hazard, as nominated in conjunction with the respective CDEM Group;
- developed in conjunction with the relevant sector responsible agency and CDEM;
- shown in conjunction with a description of whether the level of service is projected to be achievable, for relevant geographical regions (i.e. region, town, city or suburb).

Such statements:

- can acknowledge that the service may not be delivered by the business-as-usual mechanism;
- are not statements of what will be achieved, rather statements of what the utility is planning to achieve, matched against hazard scenarios;
- acknowledge that there are times when a zero level of service may be achievable by the utility;
- may state that (in consultation with the relevant stakeholders and communities) the emergency management sector, NGOs and the impacted stakeholders and communities themselves may be providing, or contributing to, the delivery of the stated level of service;
- May take account of interdependencies with other critical infrastructure;
- Must be updated at three-year intervals

Feedback on proposal 1: Planning Emergency Levels of Service

Do you support this proposal (*please select*)

Yes

No

Please describe what, if any, challenges in compliance your organisation would face if this proposal were implemented, and how these can be mitigated.

This consultation document provides very little detail as to what PELOS should contain. It is also unclear how these requirements would be translated into the legislation itself. In the absence of such detail, it is difficult to gauge what challenges might be associated with electricity distribution businesses (EDBs) providing PELOS. However, we might expect:

- significant senior staff and management time to develop PELOS, particularly for the first version
- concerns (potentially legal liabilities) that may need to be resolved regarding the extent to which EDBs will be expected to achieve PELOS – even noting the statements about non-delivery on the previous page
- time and resources required to map interdependencies of EDB networks and businesses with other critical infrastructure, especially the transmission network, transport networks (i.e. roads), logistic chains, and telecommunications.
- logistical and coordination challenges associated with developing individual PELOS with the relevant sector responsible agency (MBIE in EDBs' case) and CDEM, when 27 EDBs endeavour to complete this at similar times.
- A further challenge could also be ensuring network security if specific/sensitive critical infrastructure information relating to service levels (e.g., restoration times for particular parts of the network) were to be placed in the public domain. This is because if this information gets into the wrong hands, it could be used to create a blueprint of high impact areas of the electricity or gas network that would require long restoration times. This information is popular with hackers and anyone wanting to cause harm or fear to the community. Such sensitive information could be shared with other Critical Infrastructure Entities and the sector responsible agency as needed without being shared in the public domain.

Please describe the mechanisms that would help support the implementation of this proposal.

Greater guidance around what would make up PELOS for the EDB sector, perhaps drawing on the existing sector document, the EEA Resilience Guide (published October 2020). An example of PELOS could be helpful, as well as flexibility in what the scope of PELOS should be to reflect sectorial differences. We support the provision of a template and/or guidance which can meet these requirements.

Before implementing, NEMA could develop a trial PELOS to help it understand the trade-offs between scope and level of detail required in the PELOS, and the benefits. Having done this, the requirements for PELOS could be better defined and scoped to ensure a minimum compliance burden on the sector while still realising the intent of this proposal.

If the sector can have confidence that the development and delivery of PELOS will be a relatively straightforward exercise that will aid stakeholders in an emergency event then it would be more likely to support this proposal.

It would also help to have an acknowledgment from the Commerce Commission that non-exempt EDBs may recoup from consumers the costs associated with resourcing and delivering PELOS.

What, if any, additional issues have you identified with this proposal?

We have nothing to add to the above comments.

Please describe any practical and financial implications of the proposal for your organisation or the sector.

The requirement on EDBs to establish and update PELOS on a triennial basis will impose a non-trivial burden on the sector. EDBs that are non-exempt from Commerce Commission price-quality regulation will not have the costs associated with this work factored into their regulated revenue for the DPP period 2020-25.

ENA would also point out that while the 'the relevant sector responsible agency' (in EDBs' case, MBIE) must consider PELOS alongside other sector-relevant factors such as pricing and quality, it is the Commerce Commission, not MBIE, that determines these factors for the non-exempt EDBs.

Do you have any other feedback on this proposal?

ENA understands the desire to provide greater certainty to stakeholders regarding the expected levels of service critical infrastructure entities will provide during and post a significant event. However, as we have little detail as to what NEMA intends PELOS to look like, and how this requirement would be translated to legislation, we have to consider what developing a reasonably detailed PELOS would entail. We therefore think that the proposed approach, with the limited detail available to us, will be overly burdensome on electricity distribution businesses, inflexible and possibly even unreliable, which may provide stakeholders with a misleading or unrealistic expectation of likely service levels.

We think more modest and incremental changes to the existing obligations to '...be operational to the fullest possible extent, even if it is at a reduced level during and after emergencies' would still

give rise to similar outcomes to those sought here, but with a lesser burden on Critical Infrastructure entities.

2. Reporting, Monitoring and Evaluation

There is currently no requirement in the Civil Defence Emergency Management Act 2002 or the National Civil Defence Emergency Management Plan Order 2015 for Lifeline Utilities sectors to provide assurance of their ability to meet the obligations set out in the CDEM Act and/or the Plan. This has implications for Government's, and the broader community's ability to plan for emergencies.

To remedy this, we propose the introduction of a new obligation for entity's to annually report on their compliance with the CDEM Act, recognising the need for such statements:

- to be based on the entity's internal assessment of its capability and capacity to respond to a specific event; and
- to avoid, to the extent possible, duplicating existing reporting requirements on matters such as finances, operational compliance, and health and safety performance.

Specifically, we propose the following arrangements for reporting, monitoring and evaluation of Critical Infrastructure entities:

Critical Infrastructure entities must provide an annual statement to the responsible agency affirming that the organisation has the capability and capacity to meet obligations under the new Act signed by the entity Chief Executive or equivalent authority.

The responsible agency may review the CI entity's systems and processes to ensure that the entity has developed adequate capability and capacity to meet duties and responsibilities under this Act. This includes their ability to deliver upon their Planned Emergency Levels of Service. The responsible agency may also review an entity's systems and processes post an emergency if deemed necessary.

The responsible agency must confirm the respective sector's ability to meet their duties and responsibilities under this Act to NEMA annually and make relevant information available to CDEM Groups and/or NEMA on request.

Feedback on proposal 2: Reporting, Monitoring and Evaluation

Do you support this proposal (*please select*)

Yes

No

Please describe what, if any, challenges in compliance your organisation would face if this proposal were implemented, and how these can be mitigated.

It may be difficult for Chief Executives (or equivalent authorities) to assure themselves of the entity's capability and capacity to meet obligations under the new Act, such that they are comfortable making a further assurance to the responsible agency. This is not to say that the capability and capacity does not exist in the entity, but it can be difficult to assess and therefore assert prior to an event occurring, with the myriad possible causes, permutations, and severities of such an event, that obligations under the new Act will always be met.

We do consider that making such an assurance to the responsible agency will have any actual bearing on whether or not the entity has capability and capacity to respond to a specific event. We note that there are already significant expectations and obligations placed on EDBs in regard to their response to events, such as:

- Consumer expectations (who in many cases are also the owners of the EDB)
- Consumer Trust expectations
- Board expectations
- Customer and community expectations
- Existing obligations under the CDEMA

Please describe the mechanisms that would help support the implementation of this proposal.

No comment.

What, if any, additional issues have you identified with this proposal?

Even within a single sector, each critical infrastructure entity has a different – and often specialised – role to play. It is not clear to us how the Responsible Sector Agency would have the capability or capacity (including expertise or specialist understanding of different critical infrastructure entities) to undertake reviews of critical infrastructure entities' systems and processes which would determine their readiness to meet their duties and responsibilities under the Act – and their ability to deliver upon their PELOS. Whilst we consider the proposal for the MBIE to become the lead agency for the energy sector to be reasonable, public policy capability does not necessarily translate into a strong understanding of the requirements for operational resilience for sector specific critical infrastructure entities – particularly given the churn of officials in different industry liaison roles.

As well as being concerned for the capability of lead agencies to effectively review critical infrastructure entities' systems and processes, we are also concerned for their capacity to do so given the number of existing critical policy workstreams which already impact the current and future resilience of the energy sector – including our climate change response (including adaption), as well as our ongoing pandemic response.

There may also be some legal liability concerns related to providing an annual statement to the responsible agency affirming that the organisation has the capability and capacity to meet obligations under the new Act, when in practice achieving this level of assurance against all possible scenarios may be difficult.

Please describe any practical and financial implications of the proposal for your organisation or the sector.

No comment.

Do you have any other feedback on this proposal?

Given that the requirement for Lifeline Utilities to comply with their obligations in the CDEMA already exists, we are unsure what additional value providing a written statement to this effect will generate.

Any other feedback

Any other feedback?

Do you have any other comments you would like to provide in relation to updating the arrangements for Critical Infrastructure/Lifeline Utilities?

No comment.

Appendix B – ENA Members

The Electricity Networks Association makes this submission along with the support of its members, listed below.

Alpine Energy
Aurora Energy
Buller Electricity
Centralines
Counties Energy
Eastland Network
Electra
EA Networks
Horizon Energy Distribution
MainPower NZ
Marlborough Lines
Nelson Electricity
Network Tasman
Network Waitaki
Northpower
Orion New Zealand
Powerco
PowerNet
Scanpower
The Lines Company
Top Energy
Unison Networks
Vector
Waipa Networks
WEL Networks
Wellington Electricity Lines
Westpower