

MEDIA RELEASE

11 November 2022

Amokura Kawharu
Tumu Whakarae | President

LAW COMMISSION PUBLISHES STUDY PAPER ON THE LEGAL FRAMEWORK FOR EMERGENCIES

This may be the best time to review Aotearoa New Zealand's legal framework for emergencies, concludes a Study Paper written for Te Aka Matua o te Ture | Law Commission by Auckland University public law professor Janet McLean KC and published on the [Commission's website today](#).

The Commission engaged Professor McLean to write the paper in April 2021. As Commission President, Amokura Kawharu said:

“At the time, we had witnessed the unprecedented impacts of the COVID-19 pandemic across Aotearoa New Zealand society, including the impacts of measures introduced to prevent and mitigate the risks of infection.”

“Given the pandemic and the associated measures, we saw an opportunity for the Commission to revisit its 1991 *Final Report on Emergencies* and reflect on the changing nature of threats that may require an emergency response and the country's legal readiness for future emergencies.”

The Study Paper provides a wide-ranging review of the legal framework for emergencies. It is written in three parts addressing changes to Aotearoa New Zealand's background constitutional norms since the 1991 report, the general principles that should apply to emergency legislation identified by the Regulations Review Committee, and the existing standing legal regime for emergencies.

Professor McLean said:

“There may be some regulatory fatigue regarding COVID-19, but there is much we can learn from recent experience and, to the extent we can, we should act on that experience while it is still fresh.”

“For example, there are important opportunities to take account of the recent experience as part of the planned reviews of civil defence and electoral laws.”

Key recommendations include:

- Māori should have greater input into emergency legislation, emergency preparation and the recovery phase of emergencies.

- Orders made by the executive under delegated powers in emergency legislation should be subject to additional measures for control and supervision, calibrated according to factors such as the extent of public and parliamentary input.
- Some of the modifications to statutes required in response to past emergencies should be considered for inclusion in standing rules to be triggered by a declaration of emergency.
- The relationship between the Civil Defence Emergency Management Act 2002 and other statutes is varied and complicated and would benefit from clarification to ensure that emergency measures are time-limited.
- Powers to make orders over parts or the whole of the population under the Health Act should be conferred on officials who hold political responsibility for their exercise rather than public servants.
- The COVID-19 Public Health Response Act 2020 improves on the Health Act, for instance, in the way powers are expressed, but additional controls should also be considered.
- Consideration is needed regarding whether the Defence Act 1990 should be amended to authorise assistance by the defence forces when an epidemic notice has been given.
- Further consideration is also needed regarding the conduct of elections disrupted by an emergency.

ENDS

Background:

Te Aka Matua o te Ture | Law Commission is an independent, publicly funded, advisory body established by statute to undertake and promote the systematic review, reform and development of the law of Aotearoa New Zealand. Its purpose is to help achieve law that is just, principled, and accessible. The Commission provides law reform advice to Government in respect of projects included within a work programme agreed with the Minister of Justice. It also publishes occasional study papers that provide Government, the judiciary, researchers and others with detailed analyses of issues considered to be materially relevant to the ongoing development of the law.

For further information and comment, contact:

- Professor Janet McLean, 09 9239720 or j.mclean@auckland.ac.nz
- Amokura Kawharu, 04 914 4809 or a.kawharu@lawcom.govt.nz

This media release and the Study Paper are available on our website at:

<https://www.lawcom.govt.nz/our-projects/emergency-powers-pandemics-and-other-threats>

