

House of Representatives

Supplementary Order Paper

Thursday, 6 April 2023

Severe Weather Emergency Recovery Legislation Bill

Proposed amendments

Chris Penk, in Committee, to move the following amendments:

Clause 8

Replace *clause 8(1)(a)(i)* (page 8, lines 11 and 12) with:

- (i) the order is in accordance with the purposes of this Act; and

Clause 9

Replace *clause 9(2)(c)* (page 9, lines 25 and 26) with:

- (c) an explanation of why the relevant Minister considers that the order is in accordance with the purposes of this Act.

Explanatory note

This Supplementary Order Paper (SOP) amends the Severe Weather Emergency Recovery Legislation Bill to modify the Minister’s obligations when recommending and justifying orders. As introduced, the Bill requires that the Minister recommend orders only if the Minister “considers that the order is necessary or desirable for 1 or more purposes of this Act”. An obligation on the Minister to justify the requirement for an order employs the same “necessary or desirable” test. These provisions indicate that an order need not be “necessary” as long as it is (merely) “desirable”. Given the significant breadth of powers this Bill affords to the executive, a provision that appears to allow the making of orders that are not “necessary” is unwelcome. While the necessity aspect is qualified elsewhere in this legislation and case law may indicate possible interpretation, it is unhelpful for this Bill to imply needlessly broad executive power in this way. This SOP cross-refers to the Bill’s purposes but removes the “necessary” or “desirable” options. Instead it uses the language of the Regulations

Review Committee (“RRC”) grounds of review, namely whether a regulation is “in accordance with” the empowering Act. This is appropriate as the RRC has a review function under the Bill as introduced.