

Department of the Prime Minister and Cabinet

Inquiry into the Earthquake Commission Proactive Release November 2018

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Office of the Minister Responsible for the Earthquake Commission

Chair

Cabinet Economic Development Committee

Establishing an Inquiry into the Earthquake Commission

Proposal

1. This paper seeks agreement in principle to establish a statutory inquiry into the Earthquake Commission (EQC), under the Inquiries Act 2013.
2. This paper is the first of two establishment Cabinet papers. It covers the purpose, scope and timeframe for the inquiry. A draft Terms of Reference is included for your information. A second paper in April 2018 will seek decisions on the form of the statutory inquiry (Public or Government) under the Inquiries Act 2013, the final Terms of Reference, appointment of the inquiry Chair and members, and their fees. A late bid for \$3.2 million to fund the inquiry has been submitted for consideration in the Budget process.

Executive Summary

3. EQC is an integral part of New Zealand's ability to respond to and manage the economic impacts arising from natural disaster events. We need to be confident that EQC can do the job that New Zealanders expect of it when the need arises.
4. More than seven years after the 2010 and 2011 Canterbury earthquake events, there are still claims that have not yet been resolved. This presents ongoing challenges for EQC, and comes with significant personal cost to affected Canterbury residents.
5. Given the public importance of ensuring that EQC is well-placed to deliver following from any future natural disasters, I recommend establishing an inquiry into EQC's approach to the land and residential claims management process and the related outcomes for the Canterbury earthquake events.
6. The purpose of the inquiry is to ensure that lessons are learned from the experience of dealing with the Canterbury earthquake events, and that EQC has the appropriate policies and operating structures in place to ensure improved claims management in the future.

Background

7. Insurance, both public and private, makes a major contribution to the economic recovery from a natural disaster. EQC is critical to New Zealand's ability to respond to and manage claims arising from natural disaster events. EQC also plays a critical role in underpinning the overall New Zealand residential dwellings insurance market.
8. During 2010 and 2011, New Zealand experienced its most significant earthquake event sequence in modern times in the Canterbury region. EQC received over 583,000 claims for damage to approximately 168,000 residential dwellings from this event sequence.
9. The scale of the event and the sheer volume of Canterbury earthquake claims to be processed posed obvious operational challenges for EQC. Multiple issues arose in relation to resolving the claims, including with respect to the claims handling process. Many of these have been addressed. However, the fact remains that more than seven years after these events, there are still claims that have not yet been resolved.
10. EQC has (as at 31 December 2017) approximately 2600 unresolved residential property claims. These mainly relate to land claims and remedial repair claims (i.e. repair claims that have been re-opened due to poor workmanship, incomplete repair scope or missed earthquake damage). This presents ongoing challenges for EQC. And more importantly, it comes with significant ongoing personal cost for affected Canterbury residents, hampering their ability to draw a line under these events and get on with their lives.
11. Since coming to office, as a Government we have been pursuing three related lines of work to make sure EQC meets the needs and expectations of New Zealanders.
12. First, we have taken a number of steps to expedite the fast and fair settlement of the existing unresolved claims. These include:
 - Working through MBIE to bring EQC, Southern Response and the private insurers together to come up with new processes that meet my expectations for swift settlement of the remaining claims.
 - Establishing an Arbitration Tribunal to fast track the hundreds of claims-related litigation cases that would otherwise be stalled.
 - Extending the Residential Advisory Service in Christchurch, so quake affected homeowners can continue to access free and independent legal, technical and brokering assistance to progress their insurance claims.

- Appointing an Independent Ministerial Advisor to EQC, tasked with improving claims management, assessing operational, resourcing, policy and legislative constraints and assessing any constraints caused by processes with private insurers.
 - Appointing a new interim chair of EQC, whom I am confident will put the interests of people at the forefront of EQC's mission and help push for fast and fair resolution of outstanding claims for the people involved.
13. Second, looking ahead we want to make sure that EQC is effective in its role underpinning the private insurance market, and to emphasise a stronger focus on customer service in private insurers' and EQC's operations. Priorities here include:
- Progressing legislative amendments to the EQC Act resulting from the previous Government's review of EQC. These reforms aim to simplify the relationship between the EQC scheme and private insurance and help provide faster and smoother resolution of claims following a major event.
 - Progressing reforms to insurance contract law. The reforms would aim to improve the market conduct regulation of insurers. This includes issues relating to disclosure (eg plain language contracts), and to remedies for breaches of insurance contracts.
14. Finally, we need to ensure that EQC can do the job that New Zealanders expect of it when the need arises. It is clear that insurance, both public and private, makes a major contribution to the economic recovery from a natural disaster, and that EQC plays a critical role in New Zealand's ability to respond and recover from such events. As a result, the public needs to be confident that EQC has the capability and systems to meet these key responsibilities.
15. Accordingly, it is a matter of public importance that EQC, the wider industry, and the Government learn from the experience of dealing with claims from the Canterbury earthquake sequence, to ensure that EQC is well placed to deliver in any future events.
16. To that end I am proposing an inquiry into EQC.

Purpose, Objectives and Scope of the Inquiry

17. The inquiry will examine EQC's approach to the land and residential claims management process and the related outcomes for the Canterbury earthquake events.
18. The purpose of the inquiry is to achieve an outcome that ensures that lessons are learned from these past Canterbury earthquake experiences

and EQC has the appropriate policies and operating structures in place to ensure improved claims management experiences in the future.

- 19.** To achieve this, I expect the inquiry will include examination of:
- a. EQC operational practices for the management of claims (before and after the Canterbury earthquake events), including the performance of EQC in scaling up appropriate resourcing to deal with the consequences of this significant event;
 - b. EQC customer claims experiences and claims outcomes;
 - c. the interplay between EQC and the other insurers with regard to the claims management process (including, as relevant to the performance of EQC, other insurers' claims experiences);
 - d. the benefits and shortcomings of the EQC managed home repair programme versus the cash settlement approach;
 - e. the key process differences between the Canterbury claims management approach and the Kaikoura pilot approach with private insurers, taking into account the different scale and economic impact of the events;
 - f. operational practices that have now been put in place by EQC to help ensure improved claims experiences and outcomes; and
 - g. any further improvements that can be made in any future response to events of a similar nature.
- 20.** I expect the inquiry will report on and make recommendations it considers fit on:
- a. the adequacy of the management of the claims handling process, the implementation of claims handling standards, contingency planning, preparedness and responses of EQC (and, as relevant to the performance of EQC, other insurers);
 - b. any changes or additions to operational practices and management of the claims handling process, implementation of claims handling standards, contingency planning and responses by EQC, to address the lessons from these events; and
 - c. any other matter which the inquiry believes may promote better claims handling experiences for EQC claimants and/or minimise the recurrence of any inadequacies in claims handling identified by the inquiry.

21. The inquiry will not address questions of civil, criminal, or disciplinary liability, nor the resolution of actual claims that remain unresolved, nor re-opening settled claims.
22. I have included a draft Terms of Reference in Appendix A.
23. The proposed Chair will be provided with the opportunity to review the draft Terms of Reference prior to final Cabinet approval. As an independent inquiry, the Chair and members will decide how to conduct the inquiry within the Terms of Reference set by the Government.

Timing and Resourcing for the Inquiry and Subsequent Government Response

24. The inquiry will be expected to report by 31 March 2019.
25. I anticipate the work of the inquiry would start in earnest in June 2018, following the report of the Independent Ministerial Advisor to EQC into improving claims management, assessing operational, resourcing, policy and legislative constraints and assessing any constraints caused by processes with private insurers.
26. The work of the inquiry over 2018 would also complement the wider planned programme of community engagement (including the *Canterbury Earthquake Whole of Recovery Symposium* and related workshops) being planned by the Government and Christchurch City Council, aimed at taking stock of the lessons learned in the Canterbury recovery.
27. This timeframe would allow the Government response to the inquiry recommendations to feed into the Government's other insurance related reviews over 2018 and 2019 (such as the proposed changes to the EQC Act and the proposed review of insurance contract law).
28. I expect a number of Government agencies to be involved in responding to the inquiry's report and ultimately implementing the Government's decisions.
29. Conducting an inquiry such as this in a relatively short period of time will require considerable resource. I anticipate the costs of the inquiry would be of the order of \$3.2 million¹. I am aware however that the terms of reference and work programme for the inquiry are yet to be finalised, and this may impact on the costs of the inquiry. Further, the costs of the inquiry will be driven by the independent Chair of the inquiry, and the administering agency will have no direct control over the inquiry's expenditure. Historically almost all inquiries have sought further funding to complete the work of the inquiry.

¹ This is assuming a Public Inquiry, by a three to five member panel over a 12 month period, supported by a secretariat.

30. A late bid for \$3.2 million to fund the inquiry has been submitted for consideration in the Budget process.

Arrangements for the Inquiry

Type of Inquiry

31. I have considered a number of types of inquiry, including those under the Inquiries Act 2013 and non-statutory ministerial inquiries. I consider that the most appropriate form for this inquiry is a statutory inquiry established under the Inquiries Act 2013.
32. A statutory inquiry under the Inquiries Act is independent, impartial and fair. That is important to give the public confidence in the integrity of the process, and confidence that their experiences will be listened to and taken into account. Further, a statutory inquiry has statutory powers to require the production of evidence and to compel witnesses (if needed), and importantly provides protection to witnesses giving them the same immunities and protections they would have before the courts. Inquiry members are also protected.
33. I am still reviewing advice on whether the statutory inquiry should be in the form of a Public or Government Inquiry. At this stage my view is that the inquiry should be in the form of a Public Inquiry. Public Inquiries are established by the Governor-General through an Order-in-Council rather than by Cabinet; the findings and recommendations are reported to the Governor-General rather than to Ministers; and the findings are public. As such, a Public Inquiry may be perceived as more politically independent than a Government Inquiry. I will confirm this decision in the later Cabinet paper.

Administering Agency

34. I recommend that the Department of the Prime Minister and Cabinet (through its Greater Christchurch Group) be responsible for the administration of the inquiry, supporting its establishment and operation. DPMC will work closely with other agencies, particularly the Treasury (in respect of EQC monitoring and legislation) and MBIE (in respect of insurance policy matters), to support the work of the inquiry and to take forward the findings.
35. I propose that I be the 'appropriate' Minister for the inquiry (as Minister Responsible for EQC) and be responsible for the funding to support the inquiry.

Chair and Membership

36. Subject to Cabinet's approval in principle to establish this inquiry, I will consider possible Chairs to lead the inquiry, and consult with them on the

draft Terms of Reference and potential inquiry members. The later Cabinet paper will seek decisions on the appointment of the inquiry Chair and members, and their fees.

Next Steps

37. The next step for Cabinet will be to decide on the resourcing for the inquiry. This will be considered through the Budget process, with Cabinet decisions on the Budget package on 9 April
38. As noted, a subsequent paper in April 2018 will seek decisions on the form of the statutory inquiry (Public or Government) under the Inquiries Act 2013, the final Terms of Reference, appointment of the inquiry Chair and members, and their fees. These decisions will not breach the moratorium on Cabinet, Cabinet Committees or joint Ministers approving any financial recommendations after Cabinet approves the Budget package (9 April) until Budget Day (17 May).

Consultation

39. The Department of the Prime Minister and Cabinet has prepared this paper in consultation with the Department of Internal Affairs, the Ministry of Business, Innovation and Employment and The Treasury. The State Services Commission and EQC have been informed.
40. I have consulted the Prime Minister and Attorney-General on the proposals in this paper, as required when establishing a statutory inquiry. I have also consulted the Minister for State Services, and the Minister of Internal Affairs on the proposed establishment of the inquiry, and the Minister of Finance on the potential budget and appropriations implications.
41. The Treasury, DPMC, MBIE, Crown Law, EQC and the Insurance Council of New Zealand were consulted on the draft terms of reference.

Financial Implications

42. The financial implications of establishing an Inquiry into EQC are being considered through the Budget process.

Risks

43. Establishing this inquiry would not be without risk. However, these risks are manageable, and moreover, are outweighed by the public importance of the inquiry proceeding:
 - While the inquiry would not look at re-opening settled claims, Cabinet should be aware that, if it became clear that there were systemic issues around the EQC claims process which evidenced home owners

having received less than the statutory entitlement, there is a risk that claims thought to be settled may end up being re-opened.

- Confidence in EQC as an institution is important to the effective functioning of insurance (and reinsurance) markets in New Zealand. Establishing an inquiry into EQC may raise questions about the confidence that the public and insurers can have in EQC. This risk can be mitigated by emphasising that the purpose of the inquiry is to improve confidence in EQC by ensuring that lessons are learned from past experience so that it is in a position to better respond to future disasters.

Human Rights

44. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

45. There are no legislative implications from this paper. However, it is possible that the inquiry may signal changes to be considered in subsequent regulatory reviews.

Gender Implications

46. The proposed inquiry will, as part of its purpose, support the rights of all New Zealanders and aim to improve the experience of all New Zealanders in relation to EQC claims management experiences in the future.

Disability Perspective

47. The proposed inquiry will, as part of its purpose, support the rights and aim to improve the experience of people living with disabilities in relation to EQC claims management experiences in the future.

Publicity

48. Officials are working with my office on a communications approach and supporting material, including announcement of the inquiry Chair and membership once appointed through the subsequent Cabinet paper.

Recommendations

49. The Minister Responsible for the Earthquake Commission recommends that the Committee:
 - a. **Agree** in principle, subject to decisions on the matters in (g) and (h) below, to establish a statutory inquiry (under the Inquiries Act) to examine EQC's approach to the land and residential dwellings claims

management process and the related outcomes for the Canterbury earthquake events

- b. **Agree** that the purpose of this inquiry is to achieve an outcome that ensures that lessons are learned from these past Canterbury earthquake experiences and EQC has the appropriate policies and operating structure in place to ensure improved claims management experiences in the future
- c. **Note** the draft Terms of Reference for the proposed Inquiry, attached as Appendix 1
- d. **Agree** that the inquiry will report back on these matters by 31 March 2019
- e. **Agree** that the administering agency for the inquiry will be the Department of the Prime Minister and Cabinet
- f. **Agree** that the Minister Responsible for the Earthquake Commission will be the 'appropriate' Minister for the inquiry, and responsible for the funding to support the inquiry
- g. **Note** that a late bid for \$3.2 million to fund the inquiry has been submitted for consideration in the Budget process
- h. **Invite** the Minister Responsible for the Earthquake Commission to report to Cabinet in April 2018 on the form of the statutory inquiry (Public or Government Inquiry), final Terms of Reference, inquiry membership, members' fees, and any other matters that may be required

Authorised for lodgement

Hon Dr Megan Woods

Minister Responsible for the Earthquake Commission