

# **Department of the Prime Minister and Cabinet**

## **Inquiry into the Earthquake Commission Proactive Release January 2019**

The document below is released by the Department of the Prime Minister and Cabinet relating to the inquiry into the Earthquake Commission.

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- [1] 9(2)(a) – to protect the privacy of natural persons, including deceased people
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ORIGINAL  
Hon Dr Megan Woods

## Treasury Report: Earthquake Commission: Inquiry Options

Date:	11 December 2017	Report No:	T2017/2708
		File Number:	CM-1-3-15

### Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	<b>note</b> the inquiry options that are available	Wednesday, 20 December 2017
Minister Responsible for the Earthquake Commission (Hon Dr Megan Woods)	<b>note</b> the inquiry options that are available <b>agree</b> to propose a Public Inquiry into EQC or <b>meet</b> with officials to discuss alternative inquiry solutions and <b>confirm</b> the broad outline of the Terms of Reference contained in this report or <b>meet</b> with officials to clarify the broad outline for the Terms of Reference	Wednesday, 20 December 2017

### Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Lars Piepke	Senior Analyst, Commercial Operations – Strategy and Policy	[1]	✓
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**Actions for the Minister's Office Staff (if required)**

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**Return** the signed report to Treasury.

Note any  
feedback on  
the quality of  
the report

**Enclosure:**      No

### Executive Summary

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This report describes the options that are available to the Minister with regard to establishing an inquiry into the Earthquake Commission (EQC). Statutory inquiries, non-statutory ministerial inquiries, and standing statutory bodies with powers of inquiry have different powers and privileges. Due to the purpose and scope of the proposed inquiry, Treasury officials consider that a statutory inquiry best meets the objectives of the Government. The Inquiries Act of 2013 (Inquiries Act) provides for three types of statutory inquiry: Royal Commissions, Public Inquiries and Government Inquiries. All three types of statutory inquiry have identical powers, however they differ in status, method of appointment and the way they report. This may impact on their perceived credibility in the eyes of the public.

A Royal Commission has the most status as it is reserved for the most serious matters of public importance where there is a question of serious wrongdoing. This form of inquiry has high credibility as it is established by the Office of the Governor-General, reports to the Governor-General and must be tabled in Parliament. A Public Inquiry (that is not in the form of a Royal Commission) is also attributed a high status as it is established to inquire into matters of significant public importance. This form of inquiry will also have high credibility as it is established by the Governor-General, reports to the Governor-General and must be tabled in Parliament. A Government Inquiry has lesser status as it is intended to deal with matters of public importance that are of a smaller scale or more immediate issues where a quick and authoritative answer is required. This form of inquiry may have lower credibility, involving some risk of perceived bias, as it is established by one or more Ministers, reports to the appointing Minister (or Ministers) and does not have to be tabled in Parliament.

Generally, the wider the purpose and scope of the statutory inquiry, the longer the time taken to complete the statutory inquiry and as a result the higher the cost of the statutory inquiry. If the primary purpose is for a fast resolution of facts then the Government would need to consider a narrower scope in order to reduce the time taken to achieve this purpose. There are potential reasons why a short timeframe may be desirable with regard to an inquiry into EQC, however these are mitigated by other factors.

We are not aware of any clear time pressure that would require the Minister to significantly narrow the broad outline of the Terms of Reference in order to establish the inquiry in the form of a Government Inquiry. Furthermore, given the wide-reaching impact of the inquiry and its level of public importance, it is difficult to envisage a scope that fits within the bounds of a Government Inquiry. Accordingly, a Public Inquiry (which may be in the form of a Royal Commission) may be the most appropriate form of inquiry to achieve the Government's objectives and priorities.

As a Royal Commission is reserved for the most serious matters of public importance, typically where there is a question of wrongdoing, it may result in higher expectations of blame and could even result in expectations that previously settled claims could be re-opened which may negatively impact on the stability of the overall insurance industry. Our advice is that it is important to position the inquiry as a "lessons learned" exercise. Accordingly, it is the Treasury's view that a Public Inquiry, not in the form of a Royal Commission, is the most appropriate form of inquiry to achieve the Government's objectives and priorities. In addition, as the Government is considering a number of important inquiries, it may want to prioritise which of all these inquiries should be in the form of a Royal Commission and carry the associated status.

The report also seeks confirmation from the Minister of the outline of the Terms of Reference which has implications for the recommended form of inquiry. Subsequent advice will then contain the formal draft Terms of Reference for wider consultation.

## Recommended Action

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We recommend that you:

- a. **note** the inquiry options that are available

*Noted*

Minister of Finance

*Noted*

Minister Responsible for the Earthquake Commission

- b. **agree** to propose a Public Inquiry into EQC (not in the form of a Royal Commission)

*Agree / disagree*

Minister Responsible for the Earthquake Commission

or

- c. **require** a meeting with Treasury officials to discuss alternative inquiry solutions

*Required / not required*

Minister Responsible for the Earthquake Commission

and

- d. **confirm** the broad outline of the Terms of Reference contained in paragraph 33 of this report

*Confirmed / not confirmed*

Minister Responsible for the Earthquake Commission

or

- e. **require** a meeting with Treasury officials to clarify the broad outline for the Terms of Reference.

*Required / not required*

Minister Responsible for the Earthquake Commission

*Further work requested on TOR. MW.*



Craig Weise  
**Manager, Commercial Operations - Strategy and Policy**



Hon Grant Robertson  
**Minister of Finance**

Hon Dr Megan Woods  
**Minister Responsible for the Earthquake Commission**

## Treasury Report: Earthquake Commission: Inquiry Options

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### Purpose of Report

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1. The purpose of this report is to describe the inquiry options that are available to the Minister with regard to establishing an inquiry into the Earthquake Commission (EQC) and to consider the options that best meet the Government's objectives, taking purpose, scope, timing and cost considerations into account.
2. The report also seeks confirmation from the Minister on the broad outline of the Terms of Reference (refer to paragraph 33 of this report) which has implications for the recommended form of inquiry. Subsequent advice will then contain formal draft Terms of Reference for wider consultation.

### Different Types of Inquiry

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3. Statutory inquiries, non-statutory ministerial inquiries, and standing statutory bodies with powers of inquiry have different powers and privileges, which should be considered when deciding on the most appropriate form of inquiry.
4. All inquiries must act independently of government. Those conducting an inquiry may nonetheless consult with officials on technical matters and on the practical implications of any draft proposals.
5. All inquiries must follow the principles of natural justice (the rule against bias and the rule of the right to a fair hearing).

### Statutory Inquiries

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6. The Inquiries Act of 2013 (Inquiries Act) provides for three types of statutory inquiry:
  - a. Royal Commissions;
  - b. Public Inquiries; and
  - c. Government Inquiries.
7. These three types of statutory inquiry have identical powers, and differ only in status, method of appointment, and the way they report which may impact on their perceived credibility in the eyes of the public. The options allow a flexibility of approach in establishing the statutory inquiry and provide for less formal procedural options for inquirers where appropriate.

## Royal Commissions

8. A Royal Commission has the most status and is reserved for the most serious matters of public importance, typically where there is a question of serious wrongdoing (for example the last two Royal Commissions investigated events that resulted in the death of citizens). This form of inquiry has high credibility as it is established by the Letters Patent Constituting the Office of the Governor-General, reports to the Governor-General and the final report must be tabled in Parliament. Furthermore, the public is familiar with this form of inquiry.
9. The Royal Commission into Building Failures Caused by Canterbury Earthquakes (reported December 2012) and the Royal Commission into the Pike River Coal Mine Tragedy (reported October 2012) both inquired into events that resulted in the death of citizens.
10. The Inquiries Act applies to Royal Commissions as if they were Public Inquiries.

## Public Inquiries

11. Public Inquiries may be established under the Inquiries Act for the purpose of inquiring into, and reporting on, any matter of public importance. A matter may require a Public Inquiry when it pertains to a particularly significant or wide-reaching issue that causes a high level of concern to the public and to Ministers.
12. A Public Inquiry is established by the Governor-General by Order in Council. The final report of a Public Inquiry is presented to the Governor-General, and must be presented by the appropriate Minister to the House of Representatives as soon as practicable thereafter. As such, a Public Inquiry is no different from a Royal Commission with regard to its protection against perceived bias.
13. In effect, the only differences between a Royal Commission and a Public Inquiry relate to the status that is associated with a Royal Commission and the seriousness of the matter of public importance that forms the subject of the inquiry. We note no Public Inquiries have yet been established under the Inquiries Act, the Government when establishing the first Public Inquiry may need to highlight its status and credibility to the public.

## Government Inquiries

14. Government Inquiries may be established under the Inquiries Act for the purpose of inquiring into, and reporting on, any matter of public importance. When the Inquiries Bill was introduced, the explanatory note recorded the Law Commission's intention that "Public Inquiries are designed for big and meaty issues that are of high level concern to the public and Ministers – the occurrence of an accidental disaster or the devising of a comprehensive new policy framework for a particular topic. Government Inquiries, on the other hand, would be simpler and quicker to establish, and are intended to deal with smaller and more immediate issues where a quick and authoritative answer is required from an independent inquirer." Thus Government Inquiries tend to have a narrower scope and may be utilised when the time to complete the inquiry is a high Government priority.
15. A Government Inquiry has lesser status as it is intended to deal with matters of public importance that are on a smaller scale or more immediate issues where a quick and authoritative answer is required



16. A Government Inquiry is established by one or more Ministers by notice in the New Zealand Gazette and reports directly to the appointing Minister or Ministers. There is no requirement that the report of a Government Inquiry be tabled in Parliament. As such, this form of inquiry may have lower perceived credibility. An issue to consider is that if the purpose and scope of the inquiry is a sensitive issue involving the wider population, the Minister (or Ministers) may find themselves at risk of perceptions of bias.

## Duties, Powers, Immunities, and Privileges of Statutory Inquiries

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17. All statutory inquiries must act independently, impartially, and fairly.
18. All Public Inquiries and Government Inquiries have statutory powers to require the production of evidence, to compel witnesses, and to take evidence on oath. Where powers of search and seizure are considered necessary, investigation by a specialist agency with these powers is more appropriate.
19. Witnesses and counsel are protected by the same immunities and privileges that they would have before the courts. The Inquiries Act also confers immunity on the members and officers of the statutory inquiry (in the absence of bad faith).
20. Statutory inquiries may refer questions of law for determination by a court.
21. A statutory inquiry has no power to determine the civil, criminal, or disciplinary liability of any person.
22. Statutory inquiries usually hold open hearings with public and media access, but may restrict access as the need arises. A statutory inquiry's Terms of Reference may also limit public access. A statutory inquiry may make orders to forbid the publication of certain information, including evidence and submissions, or to restrict public access to any part or aspect of the statutory inquiry. Before doing so the statutory inquiry must take into account certain specified criteria, such as privacy and the benefits of open justice.
23. A statutory inquiry is subject to the Official Information Act 1982 once it has presented a final report. However, information that is the subject of an order imposing restrictions on access and certain documents that relate to the internal deliberations of the inquiry are not official information for the purposes of the Official Information Act.

## Administrative Support for Statutory Inquiries

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24. The Inquiries Act is administered by the Department of Internal Affairs (DIA).
25. The DIA is the default department for providing administrative support to statutory inquiries (known under the Inquiries Act as the responsible department). However, another department may be appointed the responsible department if it is better placed to provide technical or subject matter expertise.
26. The DIA is currently establishing two inquiries (an Inquiry into Mental Health and Addiction and an Inquiry into the Abuse of Children in State Care). In addition, the DIA is expecting another three inquiries (including the inquiry into EQC) to be proposed within the next few weeks. As a Royal Commission is reserved for only the most serious matters of public importance, the Government may want to prioritise which of all these inquiries should be in the form of a Royal Commission and carry the associated status.

## Establishing a Statutory Inquiry

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27. A Minister must consult the Prime Minister and Attorney-General when assessing whether to establish the statutory inquiry, prior to submitting any proposal to Cabinet. More than one Cabinet paper may be required during the establishment of the statutory inquiry. The Cabinet paper or papers should address the following matters.

### Subject of Inquiry

28. A statutory inquiry may be established to inquire into any matter of public importance.
29. The matter of public importance will need to be clearly specified before consulting with the Prime Minister and the Attorney-General and it will be incorporated into the statutory inquiry's Establishment Instrument.
30. Although statutory inquiries are not prevented from making findings of fault or making recommendations that further steps be taken to determine liability, a statutory inquiry has no power to determine the civil, criminal, or disciplinary liability of any person.

### Purpose of Inquiry

31. The purpose of the statutory inquiry may include:
- a. establishing facts or developing policy;
  - b. learning from events;
  - c. providing an opportunity for reconciliation and resolution; or
  - d. holding people and organisations to account.

### Terms of Reference

32. Terms of Reference can be used to give direction to or place restrictions on the statutory inquiry, and to give specific procedural directions not set out in the Inquiries Act. The Terms of Reference should be precise and yet sufficiently flexible to allow the statutory inquiry to respond to issues that come to light in the course of the statutory inquiry.
33. At the meeting between Minister Woods and Treasury on 22 November 2017, the Minister discussed a broad outline for the Terms of Reference for an inquiry into EQC, which is summarised as follows:

*"The inquiry into EQC is to investigate EQC's approach to claims management and the related outcomes for both the Canterbury and Kaikoura earthquake events.*

*Matters relevant to the scope and purpose of the inquiry include: the overall operational structure of EQC before and after the earthquake events (including the ability of EQC to scale up for these significant events), the original scoping of relevant EQC projects, the interplay between EQC and the private insurers, the management of claims and the managed home repair programme versus cash settlement.*

*The aim of the inquiry is to achieve an outcome that ensures that the Government learns from these past experiences and has the appropriate policies and operating structure in place to limit the number of poor claims experiences in the future."*

34. The Treasury is seeking confirmation of the broad outline of the Terms of Reference as described in paragraph 33. Depending on the Government's relative priorities, the Minister may want to widen or narrow the scope of the broad outline of the Terms of Reference (as described above). Of note, the purpose and scope described above is far reaching with an impact on the wider population and would therefore be more closely aligned to the parameters of a Public Inquiry. If the scope were significantly narrowed it may enable the inquiry to be established as a Government Inquiry, however, as long as the purpose remains a matter of wide-reaching public interest a Government Inquiry would not be appropriate.
35. In developing the Terms of Reference, the Treasury recommends that the Minister maintains a strong and clear emphasis on a lessons learned approach. In order to minimise any potential disruption in the overall New Zealand insurance market, absent any reason to believe the contrary, our view is that it is important that the inquiry is not framed in a way that implies that there has been serious wrongdoing on the part of EQC. EQC must be able to maintain the confidence of reinsurers, insurers and EQC levy payers.
36. It is also important to manage the expectations of the public with respect to the purpose of the inquiry, whilst a large number of Canterbury claims have already been resolved, many claimants still have grievances relating to the outcome of their claim and/or the time taken to resolve their claim. An implication of wrongdoing at the outset would likely stir up negative sentiment and result in past claimants seeking to use the inquiry as an avenue to re-open already settled claims. A focus on the "lessons learned" could be an important mechanism for avoiding this situation. In addition, a slight de-elevation of inquiry status from a Royal Commission to a Public Inquiry may help to mitigate this risk.
37. The DIA, Treasury and the Department of the Prime Minister and Cabinet (DPMC) should be consulted on the drafting of the Terms of Reference. Ideally the proposed members of the statutory inquiry, and directly interested or involved persons (such as EQC) would also be consulted.
38. The Letters Patent Constituting the Office of the Governor-General that appoints a Royal Commission, and the Order in Council establishing a Public Inquiry are both drafted by the Parliamentary Counsel Office.
39. A New Zealand Gazette notice establishing a Government Inquiry is drafted by the responsible department, in consultation with the Crown Law Office and any other relevant agencies (such as Treasury, DIA and DPMC).

#### **Appointment of Inquirer or Inquirers**

40. The Inquiries Act does not specify any requirements about the number or expertise of inquirers. Inquirers should be people whose expertise best suits the subject matter and purpose of the statutory inquiry.
41. Depending on the size, complexity, and likely length of the statutory inquiry, more than one inquirer may be appointed and they should have complementary skills and experience. The last two Royal Commissions appointed three inquirers, with the Chair being a judge and the other two members being a technical specialist and a consultant. Recent Government Inquiries have had one to three inquirers depending on the scope and subject matter.

## Budget and Timeframe

42. The budget for the statutory inquiry should allow for the statutory inquiry to have access to discrete resources and, in most cases, a secretariat established for the purpose of the statutory inquiry. Statutory inquiries are usually funded by an increase in appropriation under Vote Internal Affairs. The Treasury and DIA should be consulted on the budget.
43. Realistic timeframes should be set, acknowledging that the scope of the issues may not be clear until considerably further along in the process.
44. Statutory inquiries must be fiscally accountable. DIA or the responsible department, as appropriate, will establish the process for monitoring the budget and the reporting timeframe.
45. The table below sets out the total costs (provided by the DIA) and the time taken to complete an inquiry for the three most recent Government Inquiries and the two most recent Royal Commissions that have all been administered by the DIA.

Inquiry	Total Cost	Months to complete <sup>1</sup>
Government Inquiry into Havelock North Drinking Water (expected to report in December 2017)	\$2.7m	15
Government Inquiry into Allegations regarding Hon Judith Collins and a Former Director of the Serious Fraud Office (reported November 2014)	\$0.5m	3
Government Inquiry into Whey Protein Concentrate Contamination Incident (reported November 2014)	\$1.8m	15
Royal Commission into Building Failures Caused by Canterbury Earthquakes (reported December 2012)	\$10.1m	19
Royal Commission into Pike River Coal Mine Tragedy (reported October 2012)	\$9.4m	22

46. While the table above indicates that Government Inquiries may cost less and require less time to complete than Royal Commissions (i.e. Public Inquiries), it is important to note that each statutory inquiry is unique and once formally established the statutory inquiry determines how it will operate within the scope of its Terms of Reference and the Inquiries Act. As a Royal Commission or Public Inquiry will generally have a wide purpose and scope that requires many evidential hearings and technical discussions, they will typically result in a longer timeframe and a higher cost than a Government Inquiry that has a narrow purpose and focus.
47. A Royal Commission may potentially cost marginally more than a Public Inquiry due to its more formal structure and slightly higher status, which may require inquirers to be of more significant status (and therefore potentially more costly) in addition to their relevant skills and technical knowledge.
48. A Government Inquiry is likely to have a lower cost as the narrower scope may require fewer inquirers with a more specific skill set.
49. Historically, almost all statutory inquiries have sought additional funding above their initial budget to complete the work of the statutory inquiry.
50. We note that the costs in the table above do not include other indirect costs (such as additional relevant Government agency costs and potential EQC legal costs), and that these costs could be significant.

<sup>1</sup> Months to complete from the date of the Establishment Instrument  
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## Summary of the Characteristics of the Different Types of Statutory Inquiries

51. The table below sets out a summary of the main characteristics of the three different types of statutory inquiries.

Characteristics	Royal Commission	Public Inquiry	Government Inquiry
Duties, powers, immunities, and privileges.	<p>All statutory inquiries must act independently, impartially, and fairly.</p> <p>All statutory inquiries have the same powers to require the production of evidence, to compel witnesses, and to take evidence on oath.</p> <p>In all statutory inquiries witnesses and counsel are protected by the same immunities and privileges that they would have before the courts.</p>		
Established by	Letters Patent Constituting the Office of the Governor-General	Governor-General by Order in Council	One or more Ministers by notice in the New Zealand Gazette
Reports to	Governor-General	Governor-General	Appointing Minister or Ministers
Status	Highest	High	Medium
Perceived credibility	High	High (although as there have not yet been any Public Inquiries since the formation of the Inquiries Act, the Government may need to highlight this credibility and status to the public)	Medium (there could be a perceived bias as the inquiry reports to a Minister or Ministers and does not have to be tabled in Parliament)
Purpose and scope of the statutory inquiry	Reserved only for the most serious matters of public importance	Designed for significant ("big and meaty") issues that are of high level concern to the public and Ministers	Intended to deal with smaller and more immediate issues where a quick and authoritative answer is required
Number of Inquirers (based on previous inquiries)	Generally 3 - Judge as Chair with a technical specialist and a consultant	Generally 3 – Judge as Chair with a technical specialist and a consultant	Variable (1 to 3) depending on the scope and subject matter
Cost of the statutory inquiry – depends directly on the purpose and scope in the Terms of Reference	Highest (broad purpose and scope with potential policy developments as well as a more formal structure)	High (broad purpose and scope with potential policy developments)	Medium (narrower purpose and scope)
Time frame to complete the statutory inquiry – depends directly on the purpose and scope in the Terms of Reference	Longest time frame (marginally longer than Public Inquiry due to the more formal establishment process)	Long time frame (only marginally shorter timeframe for establishment compared to Royal Commission)	Shorter time frame

## Non-Statutory Ministerial Inquiries

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52. In some cases, it may be considered appropriate or desirable for a Minister to establish a non-statutory inquiry into an area for which they have portfolio responsibility. However, the ability to establish a Government Inquiry under the Inquiries Act means there are likely to be fewer circumstances than previously in which a non-statutory inquiry would be established.
53. Non-statutory inquiries have no coercive powers, and therefore rely solely on witnesses' cooperation. They also offer no immunities for those taking part, including inquirers, lawyers, and witnesses.
54. Due to the purpose and scope of the proposed inquiry into EQC there will potentially be many participants in the inquiry (including institutions, insurers and citizens). As a number of staff (including management) have left EQC over the last few years and there will probably also be staff turnover at other entities, it may be necessary for the inquiry to have powers to require the production of evidence, to compel witnesses, and to take evidence on oath. Accordingly, Treasury officials do not view a non-statutory inquiry as an inquiry option that will sufficiently meet the objectives of the Minister with regard to an inquiry into EQC.

## Statutory Bodies with Inquiry Powers

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55. A wide variety of statutory bodies have powers to inquire into events or issues. Examples include the State Services Commissioner, the Ombudsman, Auditor-General, the Law Commission, the Health and Disability Commissioner, and the Independent Police Conduct Authority. Some inquiries may be initiated by a statutory body, in other cases, a Minister may ask a statutory body to investigate certain issues.
56. Given the objectives of the Minister and the broad purpose and scope of the proposed inquiry into EQC, Treasury officials do not consider that any of the existing statutory bodies that have inquiry powers are appropriate or have the technical resources to conduct such an inquiry.

## Considerations Re: Impact on EQC

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57. The purpose and scope of an inquiry into EQC may have consequences regarding the ability of EQC and the private insurers to focus resources on resolving both remaining unresolved claims in Canterbury and finalising the assessment and settlement of Kaikoura claims. The Ministry of Business, Innovation and Employment (MBIE) and EQC have identified a significant shortage of technical resources (structural engineers, geotechnical consultants, etc.) in Canterbury to resolve complex claims. An inquiry could absorb further technical skills that already are in short supply both in Canterbury and nationally.
58. The nature and scope of the inquiry may also absorb significant EQC management time which may slow down EQC's organisational transformation to a more customer focused business which is key to enabling EQC to incorporate lessons learned from the Canterbury earthquake sequence and respond more effectively to future urban natural disaster events.
59. EQC may incur significant legal costs during an inquiry, effectively adding to the Crown's overall cost of the inquiry.

60. As EQC underpins an efficient insurance market in New Zealand it is important to consider whether the purpose and scope of an inquiry into EQC could materially unsettle the overall insurance industry in New Zealand. EQC's position and role is unique internationally. EQC has built strong support in international reinsurance markets, which helps to underpin EQC itself, reducing the volatility commonly associated with insurance and home lending markets in the wake of natural disasters elsewhere. Accordingly, the purpose and scope on an inquiry into EQC and any material policy changes resulting from such an inquiry should consider the impact on the stability of the overall insurance industry in New Zealand that could result from a lack of confidence in EQC. The Minister may want to seek advice from MBIE with regard to the overall insurance industry dynamics and stability risks.
61. As a result of EQC's unique role within the insurance industry in New Zealand and the commercial sensitivity of certain EQC information, particularly in relation to financial reconciliation of insurance losses between EQC and insurance companies and their respective global reinsurers, it may be necessary to restrict public access to certain parts or aspects of the inquiry. The inquiry's Terms of Reference may specify certain matters that will be restricted from public access. However, before limiting any public access, the inquiry must weigh the benefits of such privacy (insurance industry stability and commercial sensitivity) versus the benefits of open justice.

### Trade-offs and Recommendations Regarding the Form of Statutory Inquiry

62. Generally, the wider the purpose and scope of the statutory inquiry (as determined by the Terms of Reference), the longer the time taken to complete the statutory inquiry and as a result the higher the cost of the statutory inquiry.
63. Both a Public Inquiry (including in the form of a Royal Commission) and a Government Inquiry can achieve the following:
- highlight the matter is of public importance (although a Royal Commission is reserved for the most serious matters of public importance, a Public Inquiry is more appropriate for significant matters of public importance and a Government Inquiry is established for smaller and more immediate issues that require a quick and authoritative answer),
  - ensure facts can be established with regard to EQC's approach to claims management and the related outcomes for both the Canterbury and Kaikoura events,
  - enable the Government to learn from these past experiences and develop appropriate policies and operating structures to limit the number of poor claims experiences in the future (although a Royal Commission or Public Inquiry is more appropriate if the inquiry is likely to result in a comprehensive new policy framework),
  - provide a further opportunity for closure within the communities that have been most affected by these significant earthquake events and claims issues, and
  - as appropriate, provide an opportunity for EQC to defend its reputation and build trust across New Zealand that it has the capabilities to manage significant natural disaster events and that it underpins an efficient insurance market in New Zealand.

64. The Government's relative priorities with regard to the purpose and scope of the statutory inquiry (a broad scope or a narrower scope) as compared to the time taken to achieve the primary purpose of the statutory inquiry and the resulting cost will need to be considered.
65. If the primary purpose of the statutory inquiry is to achieve an outcome that ensures that the Government learns from these past experiences and has the appropriate policies and operating structure in place to limit the number of poor claims experiences in the future, the Minister may decide that the formal Terms of Reference should specify this primary purpose above other purposes (such as holding people to account or making findings of fault). This approach will make the statutory inquiry more inclusive, potentially less litigious and will reduce the risk of the inquiry impacting on the overall insurance market stability.
66. If the primary purpose is for a fast resolution of facts then the Government would need to consider a narrower scope in order to reduce the time taken to achieve this purpose. There are two potential reasons why a short timeframe may be desirable with regard to an inquiry into EQC, however both reasons are mitigated by other factors. The table below sets out the timing considerations and the mitigating factors.

Timing Consideration	Mitigating Factor
If the purpose of the inquiry was to achieve the resolution of outcomes with respect to existing outstanding Canterbury claims, there would be a public expectation of timeliness.	The aim of the inquiry is for the Government to learn lessons to improve future outcomes for all EQC levy payers. It is not a process aimed at accelerating the resolution of current unresolved claims or re-opening already settled claims.
There would be some concern around timeframes if the EQC Act Review and related reform Bill would be postponed in entirety until after the inquiry.	The Minister has indicated an intention to progress with the critical elements of the EQC Act review and to progress a reform Bill.

67. There are some risks to proceeding with an EQC reform Bill prior to the conclusion of an inquiry, as the findings may impact on areas already addressed by the Bill. However, on balance, the Treasury is supportive of this approach in order to ensure that future insurance claims may be more efficiently resolved if a significant natural disaster event occurred before the inquiry was completed.
68. Based on the above considerations, there is no clear time pressure that would require the Minister to significantly narrow the broad outline of the Terms of Reference in order to establish the inquiry in the form of a Government Inquiry. Furthermore, given the wide-reaching impact of the inquiry and its level of importance, it is difficult to envisage a scope that fits within the bounds of a Government Inquiry. Accordingly, a Public Inquiry (which may be in the form of a Royal Commission) may be the most appropriate form of inquiry to achieve the Government's objectives and priorities.
69. As a Royal Commission is reserved for the most serious matters of public importance, typically where there is a question of wrongdoing, it may result in higher expectations of blame and could even result in expectations that previously settled claims could be re-opened which may negatively impact on the stability of the overall insurance industry. Our advice is that it will be important to position the inquiry as a "lessons learned" exercise. Accordingly, it is the Treasury's view that a Public Inquiry, not in the form of a Royal Commission, is the most appropriate form of inquiry to achieve the Government's objectives and priorities. In addition, as the Government is considering a number of important inquiries, it may need to prioritise which inquiry is the most serious matter of public importance and should therefore be in the form of a Royal Commission.



## Next steps

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70. The report seeks confirmation from the Minister of the outline of the Terms of Reference (as described in paragraph 33) which has implications for the recommended form of inquiry. Subsequent advice will then contain the formal draft Terms of Reference for wider consultation.
71. The following next steps are proposed:
- i. The Minister communicates her decision on the above to Treasury officials by 20 December 2017.
  - ii. The Minister also confirms the outline of the Terms of Reference contained in this report by 20 December 2017.
  - iii. Treasury and other relevant agencies (DIA, DPMC, Crown Law and Parliamentary Counsel Office) further develop the Establishment Instrument and the Terms of Reference for the statutory inquiry during January 2018.
  - iv. The Minister consults with the Prime Minister and the Attorney-General in February 2018 before submitting the inquiry proposal to Cabinet.
  - v. Cabinet papers are prepared by Treasury in consultation with other relevant agencies (DIA and DPMC) during February 2018.
  - vi. The Minister compiles a list of potential inquirers for the inquiry, including a Chairman during February 2018.