

Reference: 20190043



3 April 2019

s9(2)(a)

Dear s9(2)(a)

Thank you for your Official Information Act request, received on 4 February 2019. You requested:

“a copy of the EQC Inquiry Draft Terms of Reference as follows:

- *As attached as an appendix to Treasury report T2017/2979 dated 20 December 2017*
- *As attached as an appendix to Treasury report T2018/267 dated 13 February 2018”*

Information Being Released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	20/12/17	Treasury Report: Inquiry into EQC Draft Terms of Reference (T2017/2979)	Release in part.
2.	11/2/18	Establishing an Inquiry into the Earthquake Commission (T2018/267)	Release in part.

I have decided to release the documents listed above, subject to information being withheld under the following section of the Official Information Act, as applicable:

- personal contact details of officials, under section 9(2)(a) – to protect the privacy of natural persons, including that of deceased natural persons,

Information Publicly Available

The following information is also covered by your request and is publicly available on the Department of Prime Minister and Cabinet website:

Item	Date	Document Description	Website Address
3.	11/12/17	Treasury Report: Earthquake Commission: Inquiry Options (T2107/2708)	https://dpmc.govt.nz/publications/eqc-inquiry-proactive-release

Accordingly, I have refused your request for the documents listed in the above table under section 18(d) of the Official Information Act:

- the information requested is or will soon be publicly available.

Information to be Withheld

There are no additional documents covered by your request that I have decided to withhold in full under the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Shelley Hollingsworth
Manager, Commercial Performance

20190043

Information for Release

1.	[REDACTED VERSION] T2017 2979	1
2.	[REDACTED VERSION] T2018 267	9
3.	[REDACTED VERSION] T2017 2708	23

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Treasury Report: Inquiry into EQC: Draft Terms of Reference

Date:	20 December 2017	Report No:	T2017/2979
		File Number:	CM-1-3-15

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	none	N/A
Minister Responsible for the Earthquake Commission (Hon Dr Megan Woods)	note the draft Terms of Reference for an Inquiry into EQC confirm the draft Terms of Reference in this report or provide feedback to officials on the draft Terms of Reference	Wednesday, 17 January 2018

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Lars Piepke	Senior Analyst, Commercial Operations – Strategy and Policy	s9(2)(a)	✓
Shelley Hollingsworth	Senior Analyst, Commercial Operations – Strategy and Policy		
Craig Weise	Manager, Commercial Operations – Strategy and Policy		

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Note any
feedback on
the quality of
the report

Enclosure: Yes (attached)

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Treasury Report: Inquiry into EQC: Draft Terms of Reference

Purpose of Report

1. At the meeting between the Minister and the Treasury on 19 December 2017, the Minister confirmed the broad outline for the Terms of Reference for an Inquiry into EQC as included in our previous advice [paragraph 33, T2017/2708].
2. The Minister then discussed the purpose and scope of the proposed Inquiry into EQC in further detail and requested the Treasury to provide an initial draft Terms of Reference for an Inquiry into EQC.
3. The Minister indicated that this draft Terms of Reference would then be either confirmed by her or she would provide feedback on the terms to enable them to be confirmed by her.

The Draft Terms of Reference for an Inquiry into EQC

4. Based on the discussions with the Minister at the meeting on 19 December 2017, the Treasury has provided a draft Terms of Reference for an Inquiry into EQC (refer to Appendix 1) for the Minister's consideration. We note that use of brackets in that document relate to the form of choice of Inquiry.
5. At the meeting the Minister also asked whether phasing the Inquiry process into two distinct parts could materially shorten the Inquiry's timetable. After analysing the proposed purpose and scope of the draft Terms of Reference, the Treasury does not consider that such an approach will materially shorten the Inquiry's timetable due to the interrelated nature of the findings and the recommendations of the Inquiry.

Next Steps

6. Once the Minister has confirmed the draft Terms of Reference, the terms will be circulated to other relevant agencies for wider consultation. The relevant agencies include the Department of Internal Affairs (DIA), the Department of the Prime Minister and Cabinet (DPMC), the Ministry for Business, Innovation and Employment (MBIE), Crown Law and the Parliamentary Counsel Office (PCO).
7. The wider consultation process is targeted to be completed before the end of January 2018 and will result in a formal Establishment Instrument and Terms of Reference for the Inquiry into EQC.

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Recommended Action

We recommend that you:

- a **note** the draft Terms of Reference for an Inquiry into EQC

Noted

Minister Responsible for the Earthquake Commission

- b **confirm** the draft Terms of Reference for an Inquiry into EQC

Confirmed / not confirmed

Minister Responsible for the Earthquake Commission

or

- c **provide** feedback to officials on the draft Terms of Reference for an Inquiry into EQC

Provided / not provided

Minister Responsible for the Earthquake Commission

Craig Weise

Manager, Commercial Operations – Strategy and Policy

Hon Dr Megan Woods

Minister Responsible for the Earthquake Commission

Establishment of the Government Inquiry [Public Inquiry] into the Earthquake Commission

Pursuant to section 6(3) of the Inquiries Act 2013, I, The Honourable Doctor Megan Woods, Minister Responsible for the Earthquake Commission, hereby establish the Government Inquiry into the Earthquake Commission ("Inquiry").

[Pursuant to section 6(2) of the Inquiries Act 2013, I, The Right Honourable Dame Patsy Reddy, Governor-General, hereby establish, by Order in Council, the Public Inquiry into the Earthquake Commission ("Inquiry").]

Membership

The following persons are appointed to be members of the Inquiry:

- The Honourable Justice (chairperson);
- (member); and
- (member).

Terms of Reference

Background and Matter of Public Importance

During 2010 and 2011, New Zealand experienced its most significant earthquake event sequence in modern times in the Canterbury region. The Earthquake Commission (EQC) received approximately 168,000 claims for damage to property from this event sequence. Six years after these events, EQC still has approximately 2,500 unresolved property claims that mainly relate to complex claims or remedial repair claims (i.e. repair claims that have been re-opened due to poor workmanship, incomplete repair scope or missed earthquake damage). In addition, there have been many complaints from EQC claimants relating to the process that EQC followed to resolve claims as well as the outcome from these processes.

In November 2016, New Zealand experienced another significant earthquake sequence event in the Kaikoura region. In order to more efficiently respond to claims from this event, EQC and New Zealand's major private insurers signed a Memorandum of Understanding whereby the insurers would act as EQC's agents in settling most building and contents claims from this event. EQC retained responsibility for managing any land claims from this event as well as unresolved claims in the region that related to the Canterbury earthquakes. The intention of this simplified pilot approach was to reduce the double handling of claims and to speed up settlements for earthquake-affected customers. This arrangement currently only applies to the Kaikoura event, and EQC and the private insurers will assess the efficacy of the approach as the programme progresses. EQC and the private insurers have to date resolved around 60% of the approximately 37,000 claims received for damage from the Kaikoura event.

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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 insurance market. Accordingly, the public needs to be confident that EQC has the capability to meet these key responsibilities, and it is a matter of public importance that EQC and the Government learns from the Canterbury earthquake sequence to ensure improved claims management experiences in the future.

Order of Reference

This Inquiry will inquire into and report upon the following:

Inquire into EQC's approach to the claims management process and the related outcomes for the Canterbury earthquake events.

The aim of the inquiry is to achieve an outcome that ensures that the Government learns from these past experiences and EQC has the appropriate policies and operating structure in place to ensure improved claims management experiences in the future.

The scope of the Inquiry will include:

Canterbury claims management experiences

1. the EQC processes and practices for the management of claims (before and after the Canterbury earthquake events, including the ability of EQC to scale up for this significant event);
2. the EQC customer claims experiences and claims outcomes (including with respect to defective repairs);
3. the interplay between EQC and the private insurers with regard to the claims management process (including, as relevant, private insurers claims experiences and outcomes);

Comparative experiences

4. the benefits and shortcomings of the managed home repair (and rebuild) programme versus the cash settlement approach;
5. the key process differences between the Canterbury claims management approach and the Kaikoura pilot approach with private insurers;

Future strategies

6. practices and strategies that have now been put in place by EQC to help ensure improved claims experiences and outcomes; and
7. any further improvements that can be made in any future response to events of this nature (including the use of declaratory judgements).

Matters Upon or for Which Recommendations are Required

The Inquiry will report on and make any recommendations it considers fit on:

1. The adequacy of the management of the claims handling process, the implementation of claims handling standards, contingency planning, preparedness and the responses of EQC (and, as relevant, other insurers);
2. any changes or additions to operational practices for monitoring, testing, reporting on 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
3. any other matter which the Inquiry believes may promote better claims handling experiences for EQC claimants and/or prevent the recurrence of any inadequate claims handling findings.

Exclusions From Inquiry and Scope of Recommendations

The Inquiry is not to inquire into, determine, or report in an interim or final way, or otherwise prejudice any of the following matters:

1. Subject to sections 11(1) and 11(2) of the Inquiries Act 2013, questions of civil, criminal, or disciplinary liability;
2. the structural arrangements for central or local government;
3. the funding structure of EQC (including levies);
4. the resolution of unresolved claims (that may be subject to dispute, mediation, litigation or arbitration proceedings);
5. the re-opening of settled claims;
6. the resolution of insurance claims relating to properties that have been on sold and are over the EQC building repair cap of \$115,000 (inclusive of GST);
7. legal precedents (with regard to insurance claims) that have been established by the Courts; or
8. issues relating to insurance contract law, private insurers and reinsurers that are unrelated to the claims management process and outcomes.

Other Investigations May be Considered by the Inquiry

The Inquiry may take account of the outcome of any other investigations into these matters undertaken by local or central government agencies, but is not bound in any way by the conclusions or recommendations of any such investigation.

APPENDIX 1

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Definitions

Operational 'practice/s' or 'arrangements' include, without limitation, each of the following:

- decision-making;
- capability and capacity;
- procedures;
- processes;
- services; and
- systems.

Reporting Sequence

The Inquiry is to report findings and opinions, together with recommendations, required and otherwise, that it considers fit to make in respect of them, to the Minister Responsible for the Earthquake Commission [Governor-General] in writing no later than [31 December 2018].

Consideration of Evidence

The Inquiry may begin considering evidence on and from 30 March 2018.

Dated at Wellington this 12th day of March 2018.

Hon Dr Megan Wood, Minister Responsible for the Earthquake Commission

[Rt Hon Dame Patsy Reddy, Governor-General]

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Treasury Report: Establishing an Inquiry into the Earthquake Commission

Date:	13 February 2018	Report No:	T2018/267
		File Number:	CM-1-3-15

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	Note the contents of this report	N/A
Minister Responsible for the Earthquake Commission (Hon Dr Megan Woods)	Sign the Cabinet paper and Cabinet submission form Or provide feedback to officials	Wednesday, 14 February 2018

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Lars Piepke	Senior Analyst, Commercial Operations – Strategy and Policy	s9(2)(a)	✓
Shelley Hollingsworth	Acting Manager, Commercial Operations – Strategy and Policy		

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.
Lodge the Cabinet paper with the Cabinet office before 10am on Thursday 15 February 2018

Note any feedback on the quality of the report

Enclosure: Yes (attached)
[Cabinet Paper - Establishing an Inquiry into EQC \(Treasury:3919611v2\)](#)
[Cabinet paper - Draft Terms of Reference for Inquiry into EQC \(Treasury:3914755v4\)](#)

Treasury Report: Establishing an Inquiry into the Earthquake Commission

Purpose of Report

1. The purpose of this report is to provide you with a draft Cabinet Paper that seeks agreement in principle to establish an inquiry into the Earthquake Commission (EQC).

Draft Cabinet Paper – Establishing an Inquiry into EQC

2. The draft Cabinet paper you requested is attached as Appendix 1.
3. When drafting the Cabinet paper, we have assumed that you have not yet decided on the form of statutory inquiry (Public or Government) that you propose to establish under the Inquiries Act 2013. In addition, we have assumed that either the Department of Internal Affairs (DIA) or the Ministry of Business, Innovation and Employment (MBIE) will be proposed as the administrative agency.
4. We have also assumed that you will present the Cabinet paper to the Cabinet Economic Development Committee at 11am on Wednesday 21 February 2018.
5. A second Cabinet paper in late March 2018 will seek decisions on the form of the inquiry, final Terms of Reference, appointment of inquiry Chair and members, their fees, and the necessary inquiry budget and appropriations.
6. We note that the timely nomination of an administrative agency is required to mitigate risk to the proposed timeframe. The DIA has indicated that, if nominated, it will need at least six weeks to prepare the second Cabinet paper that is required before the end of March 2018 to formally establish the inquiry.
7. You may want to amend this draft Cabinet paper before lodging the paper with the Cabinet Office.

Consultation

8. DIA, MBIE and the Department of the Prime Minister and Cabinet have been consulted on the draft Cabinet paper.

Next Steps

9. Lodge the Cabinet paper with the Cabinet Office before 10am on Thursday 15 February 2018.

Recommended Action

We recommend that you:

- a **sign** the Cabinet paper and Cabinet submission form

Sign / not signed

Minister Responsible for the Earthquake Commission

or

- b **provide** feedback to officials

Provided / not provided

Minister Responsible for the Earthquake Commission

Shelley Hollingsworth

Acting Manager, Commercial Operations – Strategy and Policy

Hon Dr Megan Woods

Minister Responsible for the Earthquake Commission

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Office of the Minister Responsible for the Earthquake Commission

The 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 March 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, their fees, and the necessary budget and appropriations.

Executive Summary

3. More than six years after the 2010 and 2011 Canterbury earthquake events, there are still claims that have not yet been resolved. EQC has (as at 31 December 2017) approximately 3,300 unresolved residential property claims that mainly relate to land claims and remedial repair claims. This presents ongoing challenges for EQC and comes with significant personal cost to affected Canterbury residents.
4. The inquiry will inquire into EQC's approach to the land and residential claims management process and the related outcomes for the Canterbury earthquake events.
5. 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.

Background

6. 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.

7. Multiple issues have arisen in relation to resolving the Canterbury earthquake claims, including with respect to the claims handling process, many of which have been addressed. However, the fact remains that more than six years after these events, there are still claims that have not yet been resolved.
8. EQC has (as at 31 December 2017) approximately 3,300 unresolved residential property claims that 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 comes with significant personal cost to affected Canterbury residents.
9. In November 2016, New Zealand experienced another significant earthquake sequence event in the Kaikoura region, although this was not of the same economic impact as the Canterbury earthquake sequence. In order to more efficiently respond to claims from this event, EQC and a number of private insurers signed a Memorandum of Understanding whereby the insurers would act as EQC's agents in settling most building and contents claims from this event. EQC and the private insurers will assess the efficacy of the approach as the programme progresses.
10. Insurance, both public and private, makes a significant economic contribution to 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.
11. Accordingly, I believe the public needs to be confident that EQC has the capability to meet these key responsibilities, and it is a matter of public importance that EQC and the Government learn from the Canterbury earthquake sequence to ensure improved claims management experiences in the future.

Purpose, Objectives and Scope of the Inquiry

12. The inquiry will examine EQC's approach to the land and residential claims management process and the related outcomes for the Canterbury earthquake events.
13. 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.
14. 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.
15. 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.
16. As an independent inquiry, the Chair and members will decide how to conduct the inquiry within the Terms of Reference set by the Government. To guide their approach, I have included a draft Terms of Reference in Appendix A.
17. The proposed Chair will be provided with the opportunity to review the draft Terms of Reference prior to final Cabinet approval.

18. The inquiry will be expected to report by 31 January 2019, an effective inquiry period of approximately nine months once established.

Timing and Resourcing for the Inquiry and Subsequent Government Response

19. Based on commencement in April 2018, I propose that this inquiry reports by 31 December 2018. This timeframe would allow the Government response to the inquiry recommendations to feed into the Government's other insurance related reviews (such as the review of the EQC Act and the proposed review into insurance contract law).
20. Conducting an inquiry such as this in a relatively short period of time will require considerable resource. The Department of Internal Affairs has some cost data from recent inquiries that will be considered in developing a proposed budget for the inquiry. Recent inquiries including Royal Commissions have ranged in cost between \$1.6m and \$10.1m, with the most recent Government Inquiry into Mental Health and Addiction expected to cost \$6.5m. From past inquiry experience, costs can be difficult to forecast accurately until the inquiry panel has developed its work programme. Historically, almost all inquiries have sought further funding to complete the work of the inquiry.
21. I expect a number of Government agencies to be involved in responding to the inquiry's report and ultimately implementing the Government's decisions.

Arrangements for the Inquiry

Type of Inquiry

22. 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.
23. A statutory inquiry under the Inquiries Act is independent, impartial and fair. It has statutory powers to require the production of evidence, to compel witnesses and importantly provides protection to witnesses giving them the same immunities and protections they would have before the courts. Inquiry members are also protected. As a number of staff 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.
24. I am still reviewing advice on whether the statutory inquiry should be in the form of a Public or Government Inquiry.

Administering Agency

25. Under the Inquiries Act 2013, the Department of Internal Affairs is the default department for the administration of inquiries (known under the Inquiries Act as the responsible department). However, another department may be appointed as the responsible department if it is better placed to provide technical or subject matter expertise. Accordingly, I have had discussions with the Ministry of Business, Innovation and Employment to determine whether this department is better placed to be the responsible department. I seek Cabinet's agreement for either the Department of Internal Affairs or the Ministry of Business, Innovation and Employment to be responsible for the administration of the inquiry, supporting its establishment and operation.
26. Subject to Cabinet's agreement, either the Minister of Internal Affairs or the Minister Responsible for the Ministry of Business, Innovation and Employment, as the Minister of the administering agency, will be the 'appropriate' Minister for the inquiry and will be responsible for the funding to support the inquiry, which will be sought through a second Cabinet paper in March 2018. The Department of Internal Affairs and the Ministry of Business, Innovation and Employment do not have baseline funding to support inquiries and cannot absorb inquiry-related costs.

Chair and Membership

27. The Chair and membership of the inquiry panel will be proposed in the second Cabinet paper that formally establishes the inquiry.

Next Steps

28. Subject to Cabinet's approval, I intend to invite the Chair designate to lead this inquiry, and consult with them on the draft Terms of Reference and potential inquiry members.
29. I will present the final Terms of Reference for Cabinet approval in March 2018. This next paper will also seek decisions on the form of the statutory inquiry (Public or Government), the appointment and fees of inquiry members and, jointly with either the Minister of Internal Affairs or the Minister Responsible for the Ministry of Business, Innovation and Employment (depending on which government agency is appointed as the administering agency), the budget, appropriations and the formal establishment of the inquiry.

Consultation

30. The Treasury has prepared this paper in consultation with the Department of Internal Affairs, the Ministry of Business, Innovation and Employment and the Department of the Prime Minister and Cabinet.

31. 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 of Internal Affairs and the Minister Responsible for the Ministry of Business, Innovation and Employment on the proposed establishment of the inquiry.

Financial Implications

32. The proposals in this paper have no financial implications. However, the subsequent Cabinet paper will seek new funding appropriations for the inquiry.
33. It is likely that the Government's response to the inquiry will have financial implications.

Risks

34. 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.

Human Rights

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

Legislative Implications

36. 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

37. 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

38. 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

39. 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

40. The Minister Responsible for the Earthquake Commission recommends that the Committee:
- a. **Agree** in principle 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. **Agree** that the inquiry will report back on these matters by 31 January 2019
 - d. **Agree** that the administering agency for the inquiry will be either the Department of Internal Affairs or the Ministry for Business, Innovation and Employment
 - e. **Note** that either the Minister of Internal Affairs or the Minister Responsible for the Ministry of Business, Innovation and Employment will be the 'appropriate' Minister for the inquiry, responsible for the funding to support the inquiry
 - f. **Note** the Department of Internal Affairs and the Ministry of Business, Innovation and Employment have no standing baseline funding to support statutory inquiries, and that in the absence of new funding for the inquiry, would therefore face fiscal pressures and risks to delivery of services
 - g. **Note** the costs of the inquiry are driven by the independent Chair of the inquiry, and the Department of Internal Affairs or the Ministry of Business, Innovation and Employment will have no direct control over the inquiry's expenditure
 - h. **Invite** the Minister Responsible for the Earthquake Commission and either the Minister of Internal Affairs or the Minister Responsible for the Ministry of Business, Innovation and Employment to report to Cabinet in March 2018 on the form of the statutory inquiry (Public or

Government Inquiry), final Terms of Reference, inquiry membership, members' fees, inquiry budget and appropriations, and any other matters that may be required

- i. **Note** that the second Cabinet paper will seek agreement for expenses incurred to meet the costs of the inquiry to be a charge against the between Budget contingency, established as part of Budget 2017
- j. **Note** that subject to Cabinet confirmation of the designated Chair, I will consult the designated Chair on the draft Terms of Reference prior to lodging the second Cabinet paper
- k. **Note** that I will keep relevant Ministers informed about the inquiry's progress.

Authorised for lodgement

Hon Dr Megan Woods

Minister Responsible for the Earthquake Commission

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Inquiry into the Earthquake Commission – Draft Terms of Reference

Terms of Reference

Background and Matter of Public Importance

During 2010 and 2011, New Zealand experienced its most significant earthquake event sequence in modern times in the Canterbury region. The Earthquake Commission (EQC) received over 583,000 claims for damage to approximately 168,000 residential dwellings from this event sequence. Multiple issues have arisen in relation to the Canterbury earthquake claims handling process, many of which have been addressed. However, the fact remains that more than six years after these events, there are still claims that have not yet been resolved. EQC still has (as at 31 December 2017) approximately 3,300 unresolved residential property claims that mainly relate to land claims or remedial repair claims (i.e. repair claims that have been re-opened due to poor workmanship, incomplete repair scope or missed earthquake damage). This comes with significant personal cost to affected Canterbury residents. If poorly managed, it also comes at a potential cost to New Zealand, given the need for the global insurance market to have continued confidence that New Zealand can respond quickly and comprehensively to future natural disaster events.

In November 2016, New Zealand experienced another significant earthquake sequence event in the Kaikoura region, although this was not of the same economic impact as the Canterbury earthquake sequence. In order to more efficiently respond to claims from this event, EQC and a number of private insurers signed a Memorandum of Understanding whereby the insurers would act as EQC's agents in settling most building and contents claims from this event. EQC and the private insurers will assess the efficacy of the approach as the programme progresses.

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. Insurance, both public and private, makes a significant economic contribution to recovery from a natural disaster. Accordingly, the public needs to be confident that EQC has the capability to meet these key responsibilities, and it is a matter of public importance that EQC and the Government learn from the Canterbury earthquake sequence to ensure improved claims management experiences in the future.

Order of Reference

This Inquiry will inquire into and report upon the following:

Inquire into EQC's approach to the land and residential dwellings claims management process and the related outcomes for the Canterbury earthquake events.

The purpose of the inquiry is to achieve an outcome that ensures that lessons are learnt from these past Canterbury earthquake experiences and EQC has the

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appropriate policies and operating structure in place to ensure improved claims management experiences in the future.

The scope of the Inquiry will include inquiry into the following:

Canterbury claims management experiences

1. 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;
2. EQC customer claims experiences and claims outcomes¹;
3. 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);

Comparative experiences

4. the benefits and shortcomings of the EQC managed home repair (and rebuild) programme versus the cash settlement approach;
5. the key process differences between the Canterbury claims management approach and the Kaikoura pilot approach with private insurers, taking into account the different economic impact of the events;

Future strategies

6. operational practices that have now been put in place by EQC to help ensure improved claims experiences and outcomes; and
7. any further improvements that can be made in any future response to events of a similar nature.

Matters Upon or for Which Recommendations are Required

The Inquiry will report on and make any recommendations it considers fit on:

1. The adequacy of the management of the claims handling process, the implementation of claims handling standards, contingency planning, preparedness and the responses of EQC (and, as relevant to the performance of EQC, other insurers);
2. 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
3. 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.

¹Including, but not limited to, cash settlement, managed repairs, the damage assessment process, the scoping of repairs, communication with owners, timeliness of repairs, the over-cap experience, defective repairs and the process to investigate and resolve such repairs.

Exclusions From Inquiry and Scope of Recommendations

The Inquiry is not to inquire into, determine, or report in an interim or final way, or otherwise prejudice any of the following matters:

1. Subject to sections 11(1) and 11(2) of the Inquiries Act 2013, questions of civil, criminal, or disciplinary liability;
2. the structural arrangements for central or local government;
3. the funding structure of EQC (including levies);
4. the resolution of actual claims that remain unresolved;
5. any matters that are subject to mediation, litigation or arbitration proceedings;
6. the re-opening of settled claims;
7. legal precedents (with regard to actual insurance claims) that have been established by the Courts; or
8. issues relating to insurance contract law, the Limitation Act, the Earthquake Commission Act, other insurers and reinsurers that are unrelated to the EQC claims management operational practices and claims outcomes.

Other Investigations May be Considered by the Inquiry

The Inquiry may take account of the outcome of any other investigations into these matters, but is not bound in any way by the conclusions or recommendations of any such investigation.

Definitions

'Operational practices' include, without limitation, each of the following:

- decision-making;
- capability and capacity;
- procedures;
- processes;
- services; and
- systems.

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ORIGINAL
Hon Dr Megan Woods



THE TREASURY
Kaitohutohu Kaupapa Rawa

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)	note the inquiry options that are available	Wednesday, 20 December 2017
Minister Responsible for the Earthquake Commission (Hon Dr Megan Woods)	note the inquiry options that are available agree to propose a Public Inquiry into EQC or meet with officials to discuss alternative inquiry solutions and confirm the broad outline of the Terms of Reference contained in this report or meet 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	s9(2)(a)	✓
Shelley Hollingsworth	Senior Analyst, Commercial Operations – Strategy and Policy		
Craig Weise	Manager, Commercial Operations – Strategy and Policy		

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Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Note any
feedback on
the quality of
the report

Enclosure: No

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Treasury Report: Earthquake Commission: Inquiry Options

Executive Summary

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.

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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

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.

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Craig Weise
Manager, Commercial Operations - Strategy and Policy



Hon Grant Robertson
Minister of Finance

Hon Dr Megan Woods
Minister Responsible for the Earthquake Commission

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Treasury Report: Earthquake Commission: Inquiry Options

Purpose of Report

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

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

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.

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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

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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

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

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.

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Establishing a Statutory Inquiry

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:
- establishing facts or developing policy;
 - learning from events;
 - providing an opportunity for reconciliation and resolution; or
 - 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."

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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.

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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 ¹
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.

¹ 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

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Non-Statutory Ministerial Inquiries

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

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

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.

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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.

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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.

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Next steps

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.

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