

The Treasury

Material Provided to the Public Inquiry into EQC Information Release

August 2021

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Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [31] 9(2)(f)(ii) - to maintain the current constitutional conventions protecting collective and individual ministerial responsibility
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment;
- [36] 9(2)(h) - to maintain legal professional privilege
- [37] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [38] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [23] appearing where information has been withheld in a release document refers to section 9(2)(a).

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Treasury Report: Direction for Emergency Work

Date:	18 March 2011	Report No:	T2011/476
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Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Bill English)	Note the contents of the report.	Wednesday 23 March 2011
Minister for Canterbury Earthquake Recovery (Hon Gerry Brownlee)	Sign the attached letter consulting with Michael Wintringham, Chair of the EQC, on the proposed draft direction; and Sign the attached letter and direction to Michael Wintringham, Chair of the EQC	Wednesday 23 March 2011

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Andrew Blazey	Manager, Sector Monitoring	[39]	[23] ✓
Peter Mellor	Senior Advisor, Sector Monitoring	[39]	

Minister for Canterbury Earthquake Recovery's Office Actions (if required)

Once signed, send the letter and draft (unsigned) direction to Michael Wintringham. Given the urgency, we suggest it is couriered to the EQC's head office and also emailed to Michael Wintringham [23] and [23]

On receipt of confirmation from EQC on the content of the draft direction, send finalised signed direction (attached) to Michael Wintringham. Given urgency, please also email to Michael Wintringham and [23]

Send a copy of the direction to the Treasury so that we can arrange publication in the Gazette.

Arrange for the Minister to table the direction in the House "as soon as practicable".

Enclosure: Yes (attached)

Treasury Report: Direction for Emergency Work

Purpose of Report

1. To direct the Earthquake Commission (EQC) to carry out inspections and emergency repairs on residential buildings that are not covered by the responsibilities under the EQC Act and to consult with EQC on the draft direction as required under the Crown Entities Act 2004.

Background

2. We understand that following a briefing by the EQC on the need to undertake emergency repairs on premises deemed to be dangerous or not secure following the 22 February 2011 earthquake you have provided an in-principle agreement.
3. We further understand that on 4 March 2011 (announced 11 March 2011) the Minister of Finance and Minister for Canterbury Earthquake Recovery provided a verbal agreement for EQC to undertake a rapid assessment programme that will require it to individually inspect all (approximately) 180,000 damaged premises over the next two months.
4. We further note that while the majority of residential premises are covered by EQC insurance, there are a small number of properties (a conservative approximate from EQC suggests 5% of premises may be uninsured) that will not have appropriate insurance cover. There are also some emergency works that have been undertaken that are not covered by the EQC Act, such as damaged fences. It was deemed prudent to undertake these emergency works to ensure the safe and secure environment for the immediate recovery process. We are comfortable with the decision by EQC to undertake this work.
5. As such, the EQC requires a written direction to undertake any work on these uninsured premises, such as property inspections and emergency work, as it is outside the EQC's roles and responsibilities.
6. For the purposes of the direction (relating to emergency work), dangerous or not secure premises are defined as residential premises that:
 - are likely to cause injury or death (whether by collapse or otherwise);
 - are likely to be injurious to health because they are in a state of disrepair;
 - are likely to cause damage to other property (whether by collapse or otherwise);
 - have insufficient or defective provision against moisture penetration so as to give rise to the risk of water ingress into the premises or into any adjoining premises;
 - or
 - are not secured against unauthorised entry.
7. Through issuing the direction, the Crown is effectively committing to funding the work on the uninsured houses and therefore this will result in a fiscal impact for the Crown and authorisation under s25 of the Public Finance Act 1989 was sought.

8. Key points to note from issuing the direction:
 - The direction expires on 30 April 2011. At this time it is anticipated that the rapid assessment programme and emergency repairs programme will be completed.
 - Within that time period approximately at least 2250 emergency repairs on individual premises and assessment of all the approximately 180,000 damaged premises will be completed.
 - EQC estimates that for the cost per premises is:
 - approximately \$1000-\$4000 for emergency work; and
 - approximately \$50 for property assessment.
 - The majority of premises will be covered by current EQC insurance policies. However, there are a small number (5%) without appropriate insurance and so through issuing the direction, the Crown is effectively underwriting that work. Initial estimates indicated that the cost to the Crown of EQC undertaking emergency work on uninsured properties would be \$5 million and assessing uninsured properties would be \$0.5 million, (which is 5% of the total estimated costs of inspecting all 180,000 premises).
 - The Secretary to the Treasury will issue the appropriate order under s25 of the Public Finance Act 1989 to provide authority for this spending.
9. Should you agree to issuing the direction, we consider that the attached draft direction accurately reflects this.
10. There is some urgency to progress and finalise the direction, so the EQC can direct Fletchers to undertake all emergency work and progress the rapid assessment programme.

Legislative Process for Giving a Direction

11. Under section 112 of the Crown Entities Act 2004 (CE Act), you will need to issue a direction to the EQC to enable it to carry out the extra emergency works, as this work is currently outside the EQC's functions under the EQC Act 1993 (EQC Act).
12. Accordingly, the EQC has prepared a draft direction for your consideration, in consultation with the Treasury, which extends its responsibilities and enables it to give effect to your verbal instruction.
13. The CE Act requires that you must consult with the EQC, if practicable, before giving a direction. Given the urgency around finalising the directions and the fact that the EQC has drafted the direction, we do not consider a lengthy consultation to be necessary. The EQC Chair and Chief Executive are satisfied with the content of the draft direction. Therefore, we think that for completeness, a concurrent process where the consultation and finalisation stages occur in parallel would be prudent.
14. Also, under the CE Act, it is required that you publish the direction in the Gazette and present a copy of it to the House of Representatives, as soon as practicable after giving it.

Recommended Action

We recommend that you:

- a **note** the EQC has drafted the attached direction, in consultation with the Treasury;
- b **note** the EQC have assured us that the Chair and the Chief Executive of the EQC have been consulted and are satisfied with the draft direction;
- c **sign** the attached letter to Michael Wintringham, Chair of the EQC, consulting him on the proposed changes to the Ministerial direction on the extension of the EQC's role; and
- d **sign** the finalised letter and direction to Michael Wintringham, Chair of the EQC, which will be sent only once the consultation response confirming the content of the draft direction is received from the EQC.

Andrew Blazey
**Manager, Sector Monitoring
for Secretary to the Treasury**

Hon Bill English
Minister of Finance

Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

Mr Michael Wintringham
Chair
The Earthquake Commission
PO Box 790
WELLINGTON 6140

Dear Mr Wintringham

DRAFT MINISTERIAL DIRECTION FOR CONSULTATION

Following the 22 February 2011 earthquake, EQC and Fletchers intend to undertake emergency works on premises requiring repairs following the 22 February 2011 earthquake. EQC also intends to undertake an assessment of all damaged premises over an eight week period. To enable the EQC to undertake emergency work and assessments on all properties, including work not covered by the EQC Act or those not insured, I will need to issue a direction under section 112 of the Crown Entities Act 2004 (CE Act) so that the EQC can carry out these additional responsibilities.

Attached is the draft Ministerial direction to the EQC to implement these changes. Under the CE Act, I am required to consult with the EQC before giving the direction, if practicable.

I confirm that the EQC has consulted with the Treasury in drafting this direction. I agree with the intention of this direction to expand the scope of the EQC's responsibilities to allow EQC to undertake emergency works on uninsured premises to repair damage to dangerous or insecure residential premises arising from the Canterbury earthquake event on 22 February 2011 and aftershocks or subsequent earthquakes.

Given that I gave verbal instructions that EQC would undertake emergency works from the date of the earthquake and undertake a rapid assessment programme, please provide me with any comments on the draft direction. This would allow for me to finalise the direction to the EQC.

I expect EQC to maintain effective recording, reporting and audit systems to identify the cost of assessments and emergency works and to ensure such works and costs can be identified separately from works and costs undertaken as part of EQC's usual activities.

The direction comes into effect on signing, and could be amended, revoked or replaced in the same way that it is given.

Yours sincerely

Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

Draft Direction to the Earthquake Commission pursuant to section 12 of the Earthquake Commission Act 1993

1. This direction comes into effect immediately upon signing, and applies from 12.51pm on 22 February 2011 up to and including 30 April 2011.
2. The Earthquake Commission (*the Commission*) shall perform the following additional function:
 - a. to carry out, so far as is reasonably practicable and to the extent not already covered by the Commission's existing functions under the Earthquake Commission Act 1993 (*the Act*):
 - i. inspections of residential premises; and
 - ii. emergency works to repair damage to dangerous or insecure residential premises;
arising from the Canterbury earthquake event on 22 February 2011 and aftershocks or subsequent earthquakes.
3. For these purposes:
 - a. "residential premises" means residential premises (whether or not the residential premises have EQC cover under the Act);
 - b. "dangerous or insecure residential premises" means residential premises which, in the opinion of the Commission:
 - i. are likely to cause injury or death (whether by collapse or otherwise);
 - ii. are likely to be seriously injurious to health because they are in a state of disrepair;
 - iii. are likely to cause damage to other property (whether by collapse or otherwise);
 - iv. have insufficient or defective provision against moisture penetration so as to give rise to the risk of water ingress into the premises or into any adjoining premises;
or
 - v. are not secured against unauthorised entry.

Hon Gerard Anthony Brownlee
Minister for Canterbury Earthquake Recovery

[] 2011

Mr Michael Wintringham
Chair
The Earthquake Commission
PO Box 790
WELLINGTON 6140

Dear Mr Wintringham

Pursuant to section 12 of the Earthquake Commission Act 1993, as Responsible Minister for the Earthquake Commission (with the authority of the Prime Minister), I now issue a Ministerial direction to the Earthquake Commission. This direction comes into effect immediately and shall continue until amended, revoked or replaced in the same way that it is given. I intend to publish the direction in the *Gazette* and present a copy of it to the House of Representatives as soon as practicable.

Yours sincerely

Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

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Hon Gerard Anthony Brownlee
Minister for Canterbury Earthquake Recovery

[] 2011