

The Treasury

Material Provided to the Public Inquiry into EQC Information Release

August 2021

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- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
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- [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

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Treasury Report: Apportioned But Unclaimed Damage: Revised Ministerial Direction

Date:	8 November 2013	Report No:	T2013/2851
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Action Sought

	Action Sought	Deadline
Minister Responsible for the Earthquake Commission (Hon Gerry Brownlee)	<p>Agree to amend the December 2012 Ministerial Direction to the Earthquake Commission (EQC) under section 115(3) of the Crown Entities Act 2004 to enable EQC to make payments for, or to replace or reinstate, apportioned unclaimed damage to residential buildings without an excess</p> <p>Sign the attached letter to Sir Maarten Wevers, Chair of the EQC board, consulting with him on the proposed changes to the Direction</p> <p>Sign the finalised letter to Sir Maarten Wevers, Chair of the EQC board, and the amendment to the Direction, which will be sent once the consultation response confirming the content of the proposed amendment to the Direction is received from EQC</p> <p>Publish both the December 2012 Direction and the amendment to the Direction in the <i>Gazette</i> and present them to the House of Representatives, which will be done once the amendment to the Direction has been sent to EQC</p> <p>Refer a copy of the amended direction to the Minister of Finance</p>	15 November 2013

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Ben Wells	Analyst, Commercial Transactions	[39]	[23]	
John Park	Head of Public Private Partnerships	[39]	[23]	✓

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

Return the signed report to Treasury
Send signed letters to the EQC Board Chair
Refer a copy of the amended Direction to the Minister of Finance as required

Enclosure: Yes (attached)

Treasury Report: Apportioned But Unclaimed Damage: Revised Ministerial Direction

Recommended Action

We recommend that you:

- a **agree** to amend the December 2012 Ministerial Direction to the Earthquake Commission (EQC) under section 115(3) of the Crown Entities Act 2004 to enable EQC to make payments for, or to replace or reinstate, apportioned unclaimed damage to residential buildings without an excess

Agree/disagree.

Minister Responsible for the Earthquake Commission

- b **sign** the finalised letter to Sir Maarten Wevers, Chair of the EQC board, consulting with him on the proposed changes to the Direction

Agree/disagree.

Minister Responsible for the Earthquake Commission

- c **sign** the finalised letter to Sir Maarten Wevers, Chair of the EQC board, and the amendment to the Direction, which will be sent once the consultation response confirming the content of the proposed amendment to the Direction is received from EQC

Agree/disagree.

Minister Responsible for the Earthquake Commission

- d **publish** both the December 2012 Direction and the amendment to the Direction in the *Gazette* and present them to the House of Representatives, which will be done once the amendment to the Direction has been sent to EQC

Agree/disagree.

Minister Responsible for the Earthquake Commission

- e **refer** a copy of the amended Direction to the Minister of Finance

Refer/not referred.

Minister Responsible for the Earthquake Commission

John Park
Head of Public Private Partnerships

Hon Gerry Brownlee
Minister Responsible for the Earthquake Commission

Treasury Report: Apportioned but unclaimed damage: Revised Ministerial Direction

Purpose of Report

1. This report seeks your agreement to amend the Ministerial Direction given under section 112 of the Crown Entities Act 2004 which you sent to the Earthquake Commission (EQC) in December 2012. The purpose of the amendment is to enable EQC to make payments for apportioned unclaimed damage to residential buildings without an excess.
2. The report also sets out the arrangements to consult with EQC on the amendment to the Direction, as required by the Crown Entities Act 2004.

Background

3. EQC is required to attribute insured property damage to individual Canterbury earthquake events. The 'apportionment' process used by EQC does not exclude events for which no claim has been received. Therefore, in December 2012, Joint Ministers with Power to Act considered a paper entitled '*Residential building damage apportionment and earthquake events without a claim*' (Treasury report T2012/3264 refers). Among other things, Joint Ministers agreed (in summary) that:
 - it would be unfair and inappropriate to require an EQC claimant to pay for damage that EQC had apportioned to an event for which that person had not made a valid claim, given the unique Canterbury circumstances, consequent inequities, and other possible adverse impacts on recovery objectives;
 - a Direction could be issued by relevant Ministers to EQC to pay, or complete repairs/reinstatements, for damage to a residential building which has been apportioned to an event for which no claim has been lodged; and
 - to the extent that EQC is unable to get reinsurers to meet the cost of apportioned but unclaimed for events, the Crown will directly fund EQC to meet such costs, at a best estimate cost of \$16.6 million, and an upper limit cost estimate of \$30 million.
4. The \$16.6 million appropriation to cover the cost of payments for apportioned unclaimed damage was included in Budget 2013 (Vote Finance: Non-departmental Other Expenses - EQC Apportioned and Unclaimed Damage Expense) and is therefore in the public domain.
5. On 20 December 2012 you wrote to the EQC Chair advising of your decision to issue a Ministerial Direction under section 112 of the Crown Entities Act 2004 requiring EQC to perform an additional function, namely to:

"pay the amount of damage to, or replace or reinstate (at the Commission's option) any residential building or any part of it that suffered natural disaster damage:

- i. *of which no notice has been given by the insured person in accordance with clause 7(1) of Schedule 3 of the Earthquake Commission Act 1993 (the EQC Act), and*
- ii. *which has been apportioned by the Commission to one of the Canterbury earthquakes (the first mentioned Canterbury earthquake) following notification by the insured person of natural disaster damage to that residential building or part of it caused by another Canterbury earthquake."*

6. The required publication of the Direction in the *Gazette* and presentation of the Direction to the House of Representatives (under section 115(2) of the Crown Entities Act 2004) was delayed pending advice from officials on the impact of such actions on EQC's negotiations with reinsurers. That advice was sent to you by EQC in July 2013 (EQC BN 13-14 002 refers).

Analysis

Excess deductions from EQC payments for apportioned unclaimed damage

7. The December 2012 Direction to EQC did not take into account issues relating to excess deductions from EQC payments for apportioned unclaimed damage to residential buildings. Such excesses would effectively result in claimants having to pay for a proportion of the damage.
8. The wording of the current Direction means that there must be an excess for any cash payment, or EQC must recover the excess from the insured person whose residential building is replaced or reinstated as a consequence of apportioned, unclaimed damage.
9. On balance Treasury agrees with the EQC view that it is not appropriate to deal with excesses for apportioned unclaimed damage in the same way as if a claim was made in accordance with the EQC Act. This is because:
 - of potential reputational risk due to some claimants concluding, incorrectly, that EQC is deliberately using apportionment as a means of gathering additional excesses (creating undue public concern and further complicating an already difficult communication challenge);
 - the associated risk that the overall approach to apportionment could unreasonably be called into disrepute and be subject to undue questioning about its reliability; and
 - the total amount of the excess that would otherwise apply is a small amount (ie, less than 1.5 per cent of the total estimated cost of replacing or reinstating the damaged property).
10. Accordingly it is proposed that you amend the Direction under section 115(3) of the Crown Entities Act 2004 to provide that EQC can make payments for, or reinstate or replace, apportioned unclaimed damage to residential buildings without an excess.
11. EQC has suggested that the proposed amendment come into effect from September 2010 (like the existing Direction).

Risks

12. No significant risks have been identified in relation to the proposal to amend the Ministerial Direction. The amendment is actually proposed to manage potential reputational risk to EQC.

Next Steps

13. Next steps are:
- a sign the finalised letter to Sir Maarten Wevers, Chair of the EQC board, consulting with him on the proposed changes to the Direction,
 - b sign the finalised letter to Sir Maarten Wevers, Chair of the EQC board, and the amendment to the Direction, which will be sent only once the consultation response confirming the content of the draft amendment to the direction is received from EQC, and
 - c publish both the December 2012 Direction and the amendment to the Direction in the *Gazette* and present them to the House of Representatives.

Attachments

14. **Attached** to this paper are:
- a draft of the amendment to the Direction (Attachment 1);
 - b for ease of reference only, a consolidated version of the December 2012 Direction (with the proposed amended text highlighted) (Attachment 2);
 - c text for letter to Sir Maarten Wevers, Chair of the EQC board, consulting with him on the proposed changes to the Direction (Attachment 3);
 - d text for cover letter to Sir Maarten Wevers, Chair of the EQC board, to accompany the signed amended Direction (Attachment 4). This letter will be sent only after the consultation response confirming the content of the draft direction is received from EQC.

Amendment to Direction to the Earthquake Commission pursuant to section 115(3) of the Crown Entities Act 2004

1. This amendment to direction comes into effect immediately upon signing and applies from September 2010.
2. Clause 3 of the direction dated December 2012 is amended by deleting that clause and replacing it with the following:

The Commission's obligation to pay the amount of the damage, or to replace or reinstate (at the Commission's option), under paragraph 2 shall not exceed the extent of the requirement to pay the amount of the damage, or to replace or reinstate, that would otherwise apply should:

- a *the insured person have given notice in accordance with clause 7(1) Schedule 3 of the EQC Act, and*
 - b *subject to paragraph 3c, the Commission (in accordance with the EQC Act) have paid the amount of the damage to, or as the case may be, opted to replace or reinstate, the residential building or part of it that suffered the natural disaster damage which was apportioned by the Commission to the first mentioned Canterbury earthquake, but*
 - c *no excess under clause 1 of Schedule 3 of the EQC Act have applied in respect of the Commission's obligation to pay the amount of the damage, or to replace or reinstate under paragraph 3b.*
3. All other parts of the direction dated December 2012 are unchanged and remain in effect.

Hon Gerard Anthony Brownlee
Minister Responsible for the Earthquake Commission

[] October 2013

Consolidated version of Direction showing proposed changes (as underlined and highlighted)

Direction to the Earthquake Commission pursuant to section 112 of the Crown Entities Act 2004

1. This direction comes into effect immediately upon signing and applies from September 2010.
2. The Earthquake Commission (*the Commission*) shall perform the following additional function:
 - Subject to paragraph 3, pay the amount of the damage to, or replace or reinstate (at the Commission's option), any residential building or any part of it that suffered natural disaster damage:
 - i of which no notice has been given by the insured person in accordance with clause 7(1) of Schedule 3 of the Earthquake Commission Act 1993 (*the EQC Act*), and
 - ii which has been apportioned by the Commission to one of the Canterbury earthquakes (*the first mentioned Canterbury earthquake*) following notification by the insured person of natural disaster damage to that residential building or part of it caused by another Canterbury earthquake.
3. The Commission's obligation to pay the amount of the damage, or to replace or reinstate (at the Commission's option), under paragraph 2 shall not exceed the extent of the requirement to pay the amount of the damage, or to replace or reinstate, that would otherwise apply should:
 - a the insured person have given notice in accordance with clause 7(1) Schedule 3 of the EQC Act, and
 - b subject to paragraph 3c, the Commission (in accordance with the EQC Act) have paid the amount of the damage to, or as the case may be, opted to replace or reinstate, the residential building or part of it that suffered the natural disaster damage which was apportioned by the Commission to the first mentioned Canterbury earthquake. but
 - c no excess under clause 1 of Schedule 3 of the EQC Act have applied in respect of the Commission's obligation to pay the amount of the damage, or to replace or reinstate under paragraph 3b.
4. For these purposes:
 - a "residential building", "natural disaster damage" and "insured person" have the meanings given those terms in the EQC Act, and
 - b "Canterbury earthquakes" has the meaning given that term in the Canterbury Earthquake Recovery Act 2011.

Hon Gerard Anthony Brownlee
Minister Responsible for the Earthquake Commission

[] December 2012

Text of letter to Sir Maarten Wevers, Chair of the EQC board, consulting with him on the proposed changes to the Direction

*Sir Marteen Wevers
Chair
Earthquake Commission
PO Box 790
WELLINGTON 6140*

Dear Sir Marteen

DRAFT AMENDMENT TO MINISTERIAL DIRECTION FOR CONSULTATION

As you are aware, on 20 December 2012, I wrote to the EQC Chair advising of my decision to issue a Ministerial Direction under section 112 of the Crown Entities Act 2004 requiring EQC to perform an additional function.

To enable this, I issued a Direction to the EQC under section 112 of the Crown Entities Act, so that the EQC can carry out the additional responsibilities, namely, in summary, pay the amount of damage to, or replace or reinstate (at EQC's option), any residential building that suffered natural disaster damage:

- i. of which no notice has been given by the insured person under the relevant provision of the Earthquake Commission Act 1993 (the EQC Act), and*
- ii. which has been apportioned by EQC to one of the Canterbury earthquakes following notification by the insured person of natural disaster damage to that residential building caused by another Canterbury earthquake.*

The December 2012 Direction to EQC did not take into account issues relating to excesses for EQC payments for apportioned unclaimed damage to residential buildings. Such excesses would effectively result in claimants having to pay for a proportion of the damage.

The wording of the December 2012 Direction means that there must be an excess for any cash payment, or EQC must recover the excess from the insured person whose property is replaced or reinstated as a consequence of apportioned, unclaimed damage.

It is not appropriate to deal with excesses for apportioned unclaimed damage in the same way as if a claim was made in accordance with the EQC Act. Accordingly, I propose to amend the December 2012 Direction under section 115(3) of the Crown Entities Act 2004 to provide that EQC can make payments for, or repair or replace, apportioned unclaimed damage to residential buildings without an excess.

Attached is the draft amendment to the December 2012 Direction to the EQC to implement this change. Under the Crown Entities Act, I am required to consult with the EQC before making the amendment to the Direction, if practicable. Could you please provide me with any comments on the draft amendment to the Direction at the earliest?

I confirm that I have consulted with the Treasury in the drafting this amendment to the December 2012 Direction.

Yours sincerely

Hon Gerard Anthony Brownlee
Minister Responsible for the Earthquake Commission

Text of letter to Sir Maarten Wevers, Chair of the EQC board, to accompany the signed amendment to the Direction

*Sir Marteen Wevers
Chair
Earthquake Commission
PO Box 790
WELLINGTON 6140*

Dear Sir Marteen

Pursuant to section 115(3) of the Crown Entities Act 2004, I now issue an amendment to the Ministerial Direction to the Earthquake Commission dated December 2012.

This amendment comes into effect immediately, applies from September 2010, and shall continue until amended, replaced or revoked. I intend to publish the December 2012 Direction and this amendment to the Direction in the Gazette and present copies of them to the House of Representatives as soon as practicable.

Yours sincerely

*Hon Gerard Anthony Brownlee
Minister Responsible for the Earthquake Commission*