

# The Treasury

## Treasury Advice Related to Modernising the EQC Act Information Release

May 2022

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## Treasury Report: Modernising the Earthquake Commission Act: Ministerial Responsibilities on Financial Matters

<b>Date:</b>	18 November 2021	<b>Report No:</b>	T2021/2913
		<b>File Number:</b>	TY-2-1-17-2-1

### Action sought

	Action sought	Deadline
Hon Grant Robertson <b>Minister of Finance</b>  Hon Dr David Clark <b>Minister Responsible for the Earthquake Commission</b>	<b>Agree</b> that the future EQC Act require the Minister responsible for EQC to make certain significant financial decisions either in consultation with, or jointly with, the Minister of Finance.	26 November 2021

### Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Steve Cantwell	Principal Advisor, Earthquake Commission Policy Team	[39]	[35]
Siobhan Duncan	Team Leader, EQC Policy, Earthquake Commission Policy Team		✓

### Minister's Office actions (if required)

**Return** the signed report to Treasury.

Note any feedback on the quality of the report

**Enclosure:** No

# Treasury Report: Modernising the Earthquake Commission Act: and Ministerial Responsibilities on Financial Matters

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## Purpose of Report

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1. This report seeks decisions on the division of responsibilities on significant financial matters between the Minister Responsible for the Earthquake Commission, and the Minister of Finance.

## Role of the Minister of Finance in the new Earthquake Commission Act

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2. The Earthquake Commission (EQC) portfolio requires the responsible Minister to make decisions on some matters that, to be well-informed, require a whole-of-Crown perspective regarding the Crown's financial risk tolerance. This includes decisions regarding EQC's funding, investment and reinsurance strategies that may affect the future risks that the Crown may cover under the Crown guarantee, which is currently provided under section 16 of the EQC Act and will be retained in the new Act.
3. The current EQC Act states the Minister responsible for EQC is the Minister of Finance.<sup>1</sup> This was always the case prior to the Canterbury seismic sequence and has seldom been the case since.
4. This change in practice, with the Minister of Finance no longer routinely holding the EQC portfolio, raises the question – should the future EQC Act should specify any role for the Minister of Finance in decisions which he or she has a strong portfolio interest?
5. There are four legislative options available. The future EQC Act could:
  - a be silent regarding the role of the Minister of Finance. Any involvement of the Minister of Finance would then be determined by non-legislative processes, e.g. consultation requirements and expectations established by Cabinet;
  - b require the responsible Minister to consult the Minister of Finance on decisions that require a whole-of-Crown perspective, or are significant financial matters; that is EQC's funding, investment and reinsurance strategies;
  - c make the responsible Minister and Minister of Finance jointly responsible for Ministerial decisions EQC's funding, investment and reinsurance strategies; or
  - d split the portfolio responsibilities between the responsible Minister and Minister of Finance, with the Minister of Finance being responsible for material financial issues that benefit from require a whole-of-Crown perspective.
6. Under all 4 options we anticipate that the responsible Minister(s) would continue to take material matters to Cabinet, per usual Ministerial practice, as occurs now.
7. Officials recommend Ministers choose either option (b) or (c). Officials consider the merits of these two options fairly finely balanced so have not recommended one over the other. Option (b) imposes a consultation requirement while retaining the merits of unitary Ministerial ownership and accountability, while option (c) more strongly secures the perspective of the Minister of Finance in relevant portfolio decisions.

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<sup>1</sup> See Section 2, definitions, "Minister means the Minister of Finance".

8. Officials do not support options (a) and (d). Option (a) would provide no statutory acknowledgement of the particular interests of the Minister of Finance, while option (d) would likely prove administratively unwieldy and inflexible.
9. We note that other Acts involving the Minister of Finance are involved in similar material financial decisions. For instance, under Section 275(3) of the Accident Compensation Act 2004, the Minister responsible for ACC must consult the Minister of Finance before making a policy direction relating to ACC investments. The Government guarantee of the EQC scheme further strengthens the case for involving the Minister of Finance in EQC financial reviews, as any EQC cost or crystallised risk not met by EQC must be met by the Crown.
10. A key future document whose approval process would be affected by your decision on this matter is the 5-yearly funding and risk statement. As part of the modernisation of the EQC Act, Cabinet has agreed that key financial settings including the EQC insurance cap and levy should be reviewed at least every five years (DEV-21-MIN-0062 refers).
11. Following this 5-yearly review, the Minister Responsible for EQC would release a funding and risk management statement that discloses any financial shortfall, the share of risk between the Crown and the EQC, and the Crown's financial strategy for managing this risk. Your decision regarding the role of the Minister of Finance will be reflected in the process for generating this document.
12. More generally, decisions that may contribute materially to Crown risk include:
  - decisions changing the EQC levy rate;
  - decisions changing the monetary cap on EQC building cover;
  - any direction or guidance relating to the investment of the Natural Disaster Fund or EQC's reinsurance strategy;
  - approval and release of the EQC funding and risk management statement; and
  - any decision on whether payments to EQC made under the Crown guarantee in the event of a shortfall in the Natural Disaster Fund are repayable, that is, are by way of an advance or a grant.

## Consultation

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13. EQC was consulted on this report and agree with its recommendations.

## Next Steps

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14. The Minister Responsible for the Earthquake Commission has the power to act to make decisions, in consultation with relevant portfolio Ministers as necessary, to make decisions on the EQC Bill consistent with the guidance provided by previous Cabinet decisions (CAB-21-MIN-0177 refers). In this case the Minister of Finance is the relevant portfolio Minister.
15. We will issue drafting instructions to Parliamentary Counsel Office (PCO) so that the EQC Bill reflects your decisions on the recommendations in this report.

## Recommended Action

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We recommend that you:

- a **note** that, per current legislative drafting practices, the future EQC Act will no longer identify the Minister of Finance as the Minister responsible for the Earthquake Commission,
- b **note** that the EQC portfolio requires the responsible Minister to make decisions that include guidance on EQC's funding, investment and reinsurance strategies, which, to be well-informed, require a whole-of-Crown perspective regarding the Crown's financial risk tolerance;
- c **agree** that the future EQC Act:

EITHER

- i. require the Minister Responsible for the Earthquake Commission to consult the Minister of Finance on certain decisions regarding EQC that have significant financial implications,

OR

- ii. make the Minister Responsible for the Earthquake Commission and the Minister of Finance jointly responsible for certain decisions regarding EQC that have significant financial implications,

- ✓ iii. be silent regarding the role of the Minister of Finance. Any involvement of the Minister of Finance would then be determined by non-legislative processes, e.g. consultation requirements and expectations established by Cabinet



Hon Grant Robertson  
**Minister of Finance**



Hon Dr David Clark  
**Minister Responsible for  
the Earthquake Commission**

If you agree with either option under recommendation (c):

- d **agree** that the significant financial decisions referred to in recommendation (c) include:
  - i. decisions changing the EQC levy rate;
  - ii. decisions changing the monetary cap on EQC building cover;
  - iii. any direction or guidance relating to the investment of the Natural Disaster Fund or EQC's reinsurance strategy;
  - iv. approval and release of the EQC funding and risk management statement; and

- v. any decision on whether payments to EQC made under the Crown guarantee in the event of a shortfall in the Natural Disaster Fund are repayable, that is, are by way of an advance or a grant.

Hon Grant Robertson  
**Minister of Finance**

Hon Dr David Clark  
**Minister Responsible for  
the Earthquake Commission**

Siobhan Duncan  
**Team Leader, EQC Policy**

Hon Dr David Clark  
**Minister Responsible for  
the Earthquake Commission**

Hon Grant Robertson  
**Minister of Finance**