

Department of the Prime Minister and Cabinet

Inquiry into the Earthquake Commission Proactive Release November 2018

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Office of the Minister Responsible for the Earthquake Commission

Chair, Cabinet Appointments and Honours Committee

Establishing the Public Inquiry into the Earthquake Commission

Proposal

1. This paper seeks Cabinet's agreement to recommend to the Governor-General the establishment of the Public Inquiry into the Earthquake Commission (the Inquiry) under the Inquiries Act 2013 and the appointment of Dame Silvia Cartwright as the Inquiry member.

Executive Summary

2. On 26 March 2018, Cabinet agreed in principle to establish a statutory inquiry (under the Inquiries Act 2013) to examine EQC's approach to the land and residential dwellings claims management process and the related outcomes for the Canterbury earthquake events (DEV-18-MIN-0021 and CAB-18-MIN-0103 refers).
3. Cabinet invited the Minister Responsible for the Earthquake Commission to report to Cabinet in April 2018 on the form of the statutory inquiry (Public or Government Inquiry), final Terms of Reference, inquiry membership, members' fees, and any other matters that may be required.
4. I recommend that the Inquiry is established as a Public Inquiry under section 6(2) of the Inquiries Act 2013 (the Act).
5. The terms of reference, updated from the original draft provided to Cabinet for the in-principle decision, are attached as **Appendix A**. These set out the purpose, objectives and scope of the Inquiry.
6. It is proposed that one member be appointed to the Inquiry. I intend to appoint Dame Silvia Cartwright to the position as Inquiry member.
7. Dame Silvia holds the requisite expertise and attributes to conduct the Inquiry. I can confirm that appropriate enquiries concerning conflicts of interest have been carried out in accordance with the Act, and the Cabinet Office and State Services Commission's *Board Appointment and Induction Guidelines*.
8. The Inquiry member's fee will be \$1,400 per day. The Minister of State Services has been consulted and supports these fees.
9. Cabinet agreed funding for the Inquiry of \$3.2 million in Budget 18 (CAB-18-MIN-0158.24 refers).
10. The Inquiry will commence following formal establishment through an Order in Council signed by the Governor-General in Executive Council and report back to the Governor-General by 30 June 2019.

11. A waiver of the 28-day rule will be sought to allow for the Order to come into force immediately following signing. A paper will be submitted to the Cabinet Legislative Committee for this purpose.

Previous Consideration

12. At its meeting on 26 March 2018 (DEV-18-MIN-0021 and CAB-18-MIN-0103 refers), Cabinet:

12.1. agreed in principle, subject to decisions on the matters below, to establish a statutory inquiry (under the Inquiries Act 2013) to examine EQC's approach to the land and residential dwellings claims management process and the related outcomes for the Canterbury earthquake events;

12.2. agreed 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;

12.3. noted a draft Terms of Reference for the proposed Inquiry;

12.4. agreed that the Inquiry will report back to the Governor-General on these matters by 31 March 2019;

12.5. agreed that the administering agency for the Inquiry will be the Department of the Prime Minister and Cabinet;

12.6. agreed that the Minister Responsible for the Earthquake Commission will be the 'appropriate' Minister for the Inquiry, and responsible for the funding to support the Inquiry;

12.7. noted that a late bid for \$3.2 million to fund the Inquiry had been submitted for consideration in the Budget process; and

12.8. invited the Minister Responsible for the Earthquake Commission to report to Cabinet in April 2018 on the form of the statutory inquiry (Public or Government Inquiry), final Terms of Reference, inquiry membership, members' fees, and any other matters that may be required.

13. At its meeting on 9 April, *Cabinet agreed among other things*:

13.1. approved the Budget initiatives for Vote Prime Minister and Cabinet. This included funding proposed to resource the Inquiry into EQC, Initiative No. 10597 (CAB-18-MIN-0158.24 refers).

Form of Statutory Inquiry

14. The Act provides for the establishment of both Public Inquiries¹ and Government Inquiries as statutory inquiries to inquire into matters of public importance. Cabinet satisfied itself of the public importance of this matter through its agreement in principle to establish an inquiry.

¹ Public Inquiries include Royal Commissions.

15. Both types of statutory inquiry must act independently, impartially and fairly. Both have the same legal powers to require the production of evidence and to compel witnesses (if needed), and importantly to provide protection to witnesses, giving them the same immunities and protections they would have before the courts. Inquiry members are also protected.
16. Public Inquiries are appointed by and report to the Governor-General, and the Inquiry report is presented by the appropriate Minister to the House of Representatives as soon as practicable after the inquiry has reported. Government Inquiries are appointed by and report to the appointing Minister.
17. I recommend that this inquiry be established as a Public Inquiry under the Inquiries Act 2013. While both types of statutory inquiry act independently, impartially and fairly, I am conscious to ensure that this Inquiry is seen as being as open and transparent as possible. In my view, a Public Inquiry will better meet the public's expectations in this regard.

Terms of Reference

18. Approval is sought for the updated terms of reference for the Inquiry attached in **Appendix A**.
19. The matter of public importance which the Inquiry is directed to examine is EQC's approach to the land and residential claims management process and the related outcomes for the Canterbury earthquake events.
20. 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.
21. To achieve this, the Inquiry will examine the issues in scope, namely:
 - 21.1. The application of EQC's operational practices and claims outcomes approaches, from the Canterbury earthquakes and subsequent events. It will make recommendations to improve EQC's readiness to respond to future events.
 - 21.2. EQC operational practices, looking at them both before and after the Canterbury earthquake events, including the performance of EQC in scaling up appropriate resourcing to deal with this significant event;
 - 21.3. EQC customers' experience of its operational practices and claims outcomes;
 - 21.4. the interplay between EQC and the other insurers with regard to operational practices including, as relevant to the performance of EQC the experiences of those other insurers;
 - 21.5. the benefits and shortcomings of EQC's different approaches to claims outcomes such as cash settlement versus repair and rebuild;
 - 21.6. the application by EQC of learnings from its Canterbury experience to subsequent events;
 - 21.7. the key process differences between the operational processes used in Canterbury and the Kaikoura pilot approach, taking into account the different economic impact of the events;
 - 21.8. operational practices that have now been put in place by EQC, or are being implemented, to help ensure improved experiences and outcomes; and
 - 21.9. any further improvements that can be made for any future events.
22. The Inquiry will not address questions of civil, criminal, or disciplinary liability, nor the resolution of actual claims that remain unresolved, nor re-opening settled claims. However, it can make findings of fault, or recommendations for further steps to be taken to determine liability, under section 11(2) of the Act.

23. The proposed Inquiry member has been provided with the opportunity to review the ToR. The Inquiry will be expected to report to the Governor-General by 30 June 2019, an effective inquiry period of eight months once established.

Submission of Order in Council

24. Under the Inquiries Act 2013, a Public Inquiry is established by the Governor-General by Order in Council. The Order in Council must:

- 24.1. specify the matter of public importance that is the subject of the inquiry;
- 24.2. name the person or persons appointed to be members of the inquiry;
- 24.3. name the person who is to be the chairperson of the inquiry;
- 24.4. specify the date when the inquiry may begin considering evidence; and
- 24.5. notify the terms of reference for an inquiry.

25. I will seek authorisation through the Cabinet Legislation Committee to submit an Order in Council, made under the Inquiries Act 2013, to the Executive Council including, a waiver of the 28-day rule for legislative instruments to come into force, following notification in the *New Zealand Gazette*. As the Order will establish a public inquiry and will initiate a period of public consultation, I seek a waiver on the grounds the Order will confer only benefits on the public.

Inquiry membership

26. It is proposed that the Inquiry membership be made up of one member appointed to lead the Inquiry.

27. The proposed Inquiry member has the following required skills:

- 27.1. the ability to engage at a personal level with a wide range of stakeholders;
- 27.2. high strategic awareness and government awareness;
- 27.3. strong leadership and insightfulness, with proven ability to lead complex, system-level reviews drawing on a wide range of perspectives;
- 27.4. excellent communications skills, and credibility as a spokesperson and front person for the Inquiry;
- 27.5. credibility and standing with the public and the community, and experience working in the public eye;
- 27.6. high personal integrity and no irreconcilable conflicts of interest. It is important that the inquiry is perceived as independent, impartial, and fair;
- 27.7. experience in assessing complex issues and their root causes, and providing practical recommendations for change. Evidence for this might be for example experience in similar inquiries or reviews, professional experience, governance roles; and
- 27.8. the ability to commit to the task, and to focus on delivery within a tight reporting timeframe.

Proposed Inquiry member

28. The proposed member to lead the Inquiry is:

- Dame Silvia Cartwright.

29. Dame Silvia will bring extensive judicial experience to the Inquiry and a strong knowledge of the machinery of Government. As a former Governor-General and as a previous head of a national inquiry, she also has extensive experience of working in high profile positions. She is also experienced and comfortable in dealing with difficult and complex subject matter and in conducting investigations into situations where people have experienced significant trauma.
30. An organisational form and a CV summary for the proposed Inquiry member is attached as **Appendix B**.

Expertise, skills and attributes sought

31. Given the range of expertise required in undertaking this Inquiry, it is likely that a number of experts will be appointed to support the Inquiry member with information and advice as required. It is expected that this will include experts on insurance, engineering, building, business systems and operations.
32. It is also expected that the Inquiry will engage with community representatives to ensure the 'lived experience' of the impact of the Canterbury earthquakes on the community, and specific issues relating to recovery in Canterbury, are considered.
33. Input from experts and community members will inform the Inquiry member's work but those parties will not have any decision-making functions.

Term of appointment

34. It is proposed that Inquiry members be appointed for a period commencing on the date of the establishing Order in Council, and expiring on 31 July 2019. This provides an effective inquiry period of about eight months with additional time included for wrapping up purposes.

Remuneration

35. Fees for the Inquiry are covered by the Cabinet Fees Framework (the Fees Framework [CO (12) 6 refers]). The Fees Framework does not outline fee ranges for Public Inquiries. Instead, fees for inquiries are referred to the Minister of State Services for consideration as an exception.
36. As appropriate Minister, I am proposing a fee of \$1,400 per day for the Inquiry member. This fee is in line with the fee provided to the Chairs of other inquiries established by the Government. The Minister of State Services has been consulted and supports these fees.

Consultation on appointments

37. As appropriate Minister for the Inquiry, I have consulted relevant Ministerial colleagues on proposed appointees to the Inquiry.

Conflicts of interest and probity

38. I can confirm that appropriate enquiries concerning conflicts of interest have been carried out in accordance with the Act, and the Cabinet Office and State Services Commission's *Board Appointment and Induction Guidelines*. No issues or concerns were identified.

Consultation

39. This paper was prepared by the Department of the Prime Minister and Cabinet (Greater Christchurch Group) as the administering agency for the Inquiry. The Department of Internal Affairs, the Earthquake Commission, Crown Law, the Ministry of Business, Innovation and Employment, The Treasury and the State Services Commission were consulted in the preparation of the paper, and their views incorporated. The Department of the Prime Minister and Cabinet (Policy Advisory Group) was informed.
40. I have also consulted the Minister of State Services on the recommended fees for the Inquiry.
41. The Department of Internal Affairs advised on the risk of a single member Inquiry. It noted the lack of redundancy should anything happen to the Inquiry member with the work of the Inquiry completed up to the point the member is no longer able to carry out their responsibilities, being lost. It is considered that the risk of this happening is low.
42. The Earthquake Commission noted that it may be useful to mention in the ToR that consideration should be given to international comparisons. This has not been specifically included however, comparison with overseas examples is not precluded should the Inquiry consider it necessary to inform its work.

Human rights implications

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

Gender implications

44. The 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

45. The 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.

Financial implications

46. Budget and appropriation decisions relating to this Inquiry were taken as a part of Budget 18. There are no further financial implications as a result of this paper.

Legislative implications

47. An Order in Council to establish the Inquiry is required. A separate paper including this will be provided to the Cabinet Legislative Committee in October 2018.
48. There are no other legislative implications from this paper. However, it is possible that the findings of the Inquiry may recommend legislative or regulatory changes. Its findings may also contribute to planned work to amend the Earthquake Commission Act 1993.

Regulatory Impact Analysis

49. A Regulatory Impact Statement is not required.

Timing and publicity

50. A communications approach and supporting materials are being developed. An announcement on the establishment of the Inquiry, and the Inquiry member, will be made following the Governor-General's signing of the Order in Council which will formally establishing the Inquiry. It is intended this will happen in late October 2018.

51. Once the Inquiry is established it will be responsible for ensuring the public are aware of the key stages and developments, including when and how they can make submissions. As noted above, when the Inquiry has completed its final report this will be presented to the Governor-General and tabled in Parliament.

Recommendations

52. I recommend that Cabinet:

1. **Note** that Cabinet previously agreed in principle to establish a statutory inquiry (under the Inquiries Act 2013) to examine the Earthquake Commission's approach to the land and residential dwellings claims management process and the related outcomes for the Canterbury earthquake events [CAB-18-MIN-0103 refers];
2. **Agree** to recommend to the Governor-General that the Public Inquiry into the Earthquake Commission (under the Inquiries Act 2013) be established to ensure that lessons are learnt from these past Canterbury earthquake experiences and the Earthquake Commission has the appropriate policies and operating structure in place to ensure improved claims management experiences in the future;
3. **Agree** to recommend to the Governor-General the terms of reference for the Public Inquiry into the Earthquake Commission, including that its term will conclude on 30 June 2019, attached at **Appendix A**;
4. **Agree** that the Public Inquiry into the Earthquake Commission's membership comprise of one member;
5. **Agree** to recommend to the Governor-General the appointment of Dame Silvia Cartwright as the Inquiry member of the Public Inquiry into the Earthquake Commission;
6. **Note** the attached organisation form and CV summaries for the proposed Inquiry member (attached at **Appendix B**);
7. **Note** that appropriate enquiries concerning potential conflicts of interest and probity matters for the proposed Inquiry member have been undertaken by the Department of the Prime Minister and Cabinet and no potential conflicts of interest or probity matters have been identified;

8. **Note** that funding of \$3.2 million for the Public Inquiry into the Earthquake Commission was agreed to in the Budget (CAB-18-MIN-0158.24 refers);
9. **Agree** that the fee for the Inquiry member will be \$1400 per day;
10. **Note** that the Inquiries (Public inquiry into the Earthquake Commission) Order 2018, made under the Inquiries Act 2013, will be submitted to the Cabinet Legislative Committee in October 2018.

Authorised for lodgement

Hon Dr Megan Woods
Minister Responsible for the Earthquake Commission

Inquiry into the Earthquake Commission – Terms of Reference

Terms of Reference

Background and status as a ‘matter of public importance’

The Earthquake Commission (EQC) is a Crown Entity established under the Earthquake Commission Act 1993 (the Act). Originally established in 1945 as the Earthquake and War Damages Commission following the 1942 Wairarapa Earthquake, its role has changed significantly over time.

EQC’s statutory functions are set out in section 5 of the Act. It:

- provides natural disaster insurance for residential property (contents, dwellings and some coverage of land)¹;
- administers the Natural Disaster Fund (NDF), including its investments and reinsurance; and
- funds research and education on natural disasters and ways of reducing their impact.

During 2010 and 2011, New Zealand experienced its most significant earthquake event sequence in recent times in the Canterbury region. This resulted in over 583,000 claims to EQC for damage to approximately 168,000 residential dwellings. While the majority of claims have been addressed, multiple issues have arisen in relation to EQC’s operational practices.

There are still approximately 3600 unresolved residential property claims. These mainly relate to land claims or remedial repair claims such as, repair claims that have been re-opened due to poor workmanship, incomplete repair scope, or damage not identified in initial assessments. These unresolved claims have a significant impact on affected Canterbury residents as well as on continued confidence, including of the global insurance market, in New Zealand’s ability to respond quickly and comprehensively to future natural disaster events.

Since the Canterbury events sequence EQC has had to deal with a number of other events. These include:

- the 2013 earthquakes in Seddon and the Cook Strait;
- the Eketahuna earthquake in 2014;
- Edgumbe flooding in 2017; and
- the November 2016 earthquake in the Kaikoura region.

EQC practices have evolved in response to each of these events with a significantly different approach taken in responding to the Kaikoura event. This saw a Memorandum of Understanding signed with insurers allowing them to act as EQC’s agents in settling

¹ Note the Earthquake Commission Amendment Bill, currently before the house, removes Earthquake Commission cover for personal property (contents) to ensure that EQC’s primary focus is on housing repair and recovery.

most building and contents claims. This different approach will provide a reference point for the Inquiry, with its overall effectiveness not yet fully known.

Insurance, both public and private, makes a major contribution to the economic and social recovery from a natural disaster. EQC plays a critical role in underpinning the New Zealand residential dwellings insurance market. As a result, the public needs to be confident that EQC has the capability and systems to meet its key responsibilities. It is a matter of public importance that EQC, the wider industry, and the Government, learn from the experience of dealing with claims from the Canterbury earthquake sequence to help ensure that EQC is well placed to deliver in the future.

Order of reference

This Inquiry will investigate and report on the lessons that can be learned from:

The application of EQC's operational practices and claims outcomes approaches, from the Canterbury earthquakes and subsequent events. It will make recommendations to improve EQC's readiness to respond to future events.

The purpose of the Inquiry is to ensure that lessons are learnt from these past experiences and EQC has the appropriate policies and operating structures in place for improved operational practices in the future.

The scope of the Inquiry includes the following:

Canterbury operational practice experiences

1. EQC operational practices, looking at them both before and after the Canterbury earthquake events, including the performance of EQC in scaling up appropriate resourcing to deal with this significant event;
2. EQC customers' experience of its operational practices and claims outcomes;
3. the interplay between EQC and the other insurers with regard to operational practices including, as relevant to the performance of EQC the experiences of those other insurers;

Comparative experiences

4. the benefits and shortcomings of EQC's different approaches to claims outcomes such as cash settlement versus repair and rebuild;
5. the application by EQC of learnings from its Canterbury experience to subsequent events;
6. the key process differences between the operational processes used in Canterbury and the Kaikoura pilot approach, taking into account the different economic impact of the events;

Future strategies

7. operational practices that have now been put in place by EQC, or are being implemented, to help ensure improved experiences and outcomes; and
8. any further improvements that can be made for any future events.

Inquiry matters requiring recommendations

The Inquiry will make recommendations on:

1. lessons that can be learned from Canterbury, and subsequent events, around the management of operational practices. This should include contingency planning, preparedness and EQC's responsiveness (and, as relevant to the performance of EQC, other insurers);
2. any changes or additions to operational practices as a result; and
3. any other matter which the Inquiry believes may promote improved operational practices for future events, and/or minimise the recurrence of any inadequacies in claims handling identified by the Inquiry.

Exclusions from the Inquiry

The Inquiry is not to investigate, 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. specific cases that are subject to current 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.

Consideration of other investigations by the Inquiry

The Inquiry may take account of the outcome of any other investigations into related matters. For example, the Ministry of Business, Innovation and Employment's Review of Insurance Contract Law which is considering whether there is a need for greater regulation of insurers' conduct including claims management and handling, and the Report of the Independent Ministerial Advisor to the Minister Responsible for the Earthquake Commission.

However, it is not bound in any way by the conclusions or recommendations of any such investigation.

Timing

The Inquiry is to report its findings and recommendations by 30 June 2019.

Definitions

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

- claims handling and management, including interactions with claimants, their advisers and other insurers;
- claims handling standards, including their implementation;
- planning and resourcing (including litigation);
- management structures and culture;
- decision-making;
- capability and capacity;
- procedures;
- processes;
- services; and
- systems.

'Claims outcomes' include without limitation, each of the following:

- cash settlement;
- managed repairs;
- the damage assessment process;
- the scoping of repairs;
- communication with owners;
- timeliness of repairs;
- the over-cap experience; and
- defective repairs and the process to investigate and resolve such repairs.