

Department of the Prime Minister and Cabinet

Inquiry into the Earthquake Commission Proactive Release January 2019

The document below is released by the Department of the Prime Minister and Cabinet relating to the inquiry into the Earthquake Commission.

Key to Redaction Codes

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

- [1] 9(2)(a) – to protect the privacy of natural persons, including deceased people
- [2] 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [3] 9(2)(h) – to maintain legal professional privilege

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above.

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	[1]	✓
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

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

Inquiry into the Earthquake Commission – Draft Terms of Reference

[2]

APPENDIX A

[2]

APPENDIX A

[2]