

# The Treasury

## Earthquake Commission (EQC) Act Review Submissions Information Release

### Release Document

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In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

11 September 2015

Steve Cantwell, Principal Advisor  
The Treasury  
PO Box 3724  
Wellington 6140  
New Zealand

Dear Steve

## **TREASURY REVIEW OF THE EARTHQUAKE COMMISSION ACT**

The Human Rights Commission (the Commission) welcomes the opportunity to provide comment on the Treasury review of the Earthquake Commission Act.

The Commission's view is that the most useful way to respond to the Review is by letter rather than by using the standard submission template. Many of the questions in the standard form do not relate to human rights and there is a risk that in focusing on these the wider human rights issues may be missed.

The Commission would like to highlight the following points:

- The importance of ensuring speedy resolution of earthquake related claims. Failure to promptly resolve claims has proved to be a significant source of psychosocial stress for affected members of the Canterbury community.
- The importance of Government agencies working as a system rather than in silos and taking a customer-centric approach to their activities.
- The importance of this review taking into account the Sendai Framework and the United Nations Guiding Principles on Business and Human Rights.

### ***Discussion***

The Commission continues to monitor human rights issues arising in the recovery following the Canterbury earthquakes. In March 2012 the Commission raised concerns with the Chief Executive of the Department of Prime Minister and Cabinet about the right to health, adequate housing and participation in decision making for people affected by the earthquakes. The Commission noted that: "The human rights aspects of the recovery will be subject to international scrutiny and we would hope New Zealand's human rights record was enhanced by actions taken in the recovery."

The key human rights concern raised by the Commission in March 2012 was the same as that expressed by Sir Peter Gluckman, the Prime Minister's Chief Science Advisor, about the psychosocial harm caused by the impacts of secondary stressors in the recovery.

The Commission has raised its concerns since with various agencies.

The Office of the Auditor-General, the Office of the Ombudsman and the Privacy Commissioner have been closely involved in the issues that the Earthquake Commission (EQC) has faced following the earthquakes. For this reason, so as to not have another accountability agency engaging EQC staff and Board on EQC matters, the Commission has generally elected to remain in the background. It has however, engaged directly with the EQC when it felt circumstances required.

The human rights approach that the Commission advocates for in Canterbury aims to prevent human rights abuse, rather than reactively reporting on human rights abuse later.

The Commission acknowledges that it is easier to see some of the learning from the earthquakes in hindsight. Some of the human rights standards that are now in place for disaster risk reduction and recovery were not in place in 2010 and 2011. That said, the concerns raised in a number of reports on the EQC about the importance of being clear about expectations of EQC including role clarity and capability to scale up in a disaster which predate the earthquakes are even more critical to consider now in terms of the future roles expected of the EQC.<sup>1</sup> In addition any change in the legislation or policy relating to EQC must have regard to the need for cross agency governance so that silo thinking does not preclude good outcomes from the system for affected people. There must be flexibility to take a whole of government approach rather than an agency only approach.

The Government in its recent responses to UN reviews of New Zealand's human rights record has acknowledged the human rights issues, both the psychosocial issues and secondary stressors, including insurance, that are causing harm in Canterbury.

The Government has likewise accepted that disasters can have a negative impact on people's mental wellbeing and has accepted the WHO benchmark for what is considered normal in disaster recovery. It has acknowledged that secondary stressors continue to have a moderate or major negative impact on the daily lives of some residents. The Government is receiving regular reports on the continued impact of the recovery on mental health. One of the three most prevalent matters impacting on the right to health is EQC/insurance issues in relation to personal property.

Health research in Canterbury continues to demonstrate significant differences in the wellbeing of Christchurch residents depending on whether or not the resident has had their insurance claim settled.<sup>2</sup> The mental health statistics of Canterbury have been described by health professionals as "alarming."<sup>3</sup>

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<sup>1</sup> See in particular the EQC annual reports (2009-2012); Briefings to the Incoming Minister (2008-2010); the 2009 *Review of EQC's Catastrophic Response Capability*; the comments of the departing EQC CEO, David Middleton, in December 2009; the 2014 Marsh UK report "*Comparing Claims from Catastrophic Earthquakes*" and the November 2014 *EQC Customer Interaction Review*.

<sup>2</sup> See: [http://www.allright.org.nz/media/uploads/AllRightResearchSummary\\_2\\_2.pdf](http://www.allright.org.nz/media/uploads/AllRightResearchSummary_2_2.pdf)

<sup>3</sup> See: Drs Alistair Humphrey (Medical Officer of Health for Canterbury) and Peri Renison (Psychiatrist) write on behalf of the Christchurch Hospital Medical Staff Association (CHMSA), May 25, 2015: <http://www.stuff.co.nz/the-press/opinion/68769392/Earthquake-stress-triggers-mental-health-issues>

Overall, the difference in demand between Canterbury and the next worst affected metropolitan DHB is equivalent to nearly 8000 more people in Canterbury accessing mental health services.<sup>4</sup> Prior to the earthquakes, Canterbury's mental health was on a par or better than most other health districts.<sup>5</sup>

From the Commission's perspective one of the central challenges faced by the EQC is that it has seen itself as required to take an often narrow interpretation of the meaning of its legislation. The statute positions the EQC to operate in isolation without regard to the overall cost to people's health of the failure to settle housing claims within a reasonable timeframe. Some of the consequences of taking this view are evident in the results of the various EQC reviews and reports noted above.

It is of the utmost importance that statutory entities such as the EQC are empowered to act in a more customer-centric way in the future. Recently the Commission has observed some positive changes in regard to the streamlining of the EQC complaints resolution operations and the scoping of a more customer-centric engagement model. The Commission hopes that the principles informing these changes are embedded in any new legislation.

It is equally important that the Government can work as a system rather than as a set of silos in response to a disaster. For example, a significant issue arose while damaged homes were being repaired.

EQC initially prevented homeowners from installing insulation in their homes even if this was done at their own cost on the basis that installing insulation at EQC's cost is outside the terms of EQC's cover, and not claimable from reinsurers. This affected approximately 31,000 properties that had already been repaired before the issue was resolved.<sup>6</sup>

The Commission would stress the importance of the Treasury contacting the Office of the Ombudsman and other agencies for examples of similar issues.

### ***International human rights instruments and guidelines***

New Zealand is state party to a number of international human rights instruments, including the:

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic, Social and Cultural Rights
3. International Convention on the Elimination of All Forms of Racial Discrimination
4. Convention on the Elimination of All Forms of Discrimination against Women
5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
6. Convention on the Rights of the Child
7. Convention on the Rights of Persons with Disabilities

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<sup>4</sup> As above.

<sup>5</sup> As above.

<sup>6</sup> *Monitoring human rights in the Canterbury Earthquake Recovery*, Human Rights Commission, December 2013, p.89

New Zealand's international human rights obligations are set out in the Covenants and Conventions above. No nation is required to commit itself to these obligations but if it does commit itself, a State is expected to meet its obligations.

These obligations require that the State respect, protect and fulfil the human rights of individuals within New Zealand. These obligations are explained in the Commission's 2013 report: [Monitoring Human Rights in the Canterbury Earthquake Recovery](#).

It is pleasing to note that compliance with human rights obligations are now also found in the [Sendai Declaration](#), which commits States to strengthening disaster risk reduction in the global development agenda.

The Sendai Framework for Disaster Risk Reduction 2015-2030 was adopted at the Third UN World Conference in Sendai, Japan, on March 18, 2015. Article 19 of the Sendai Framework introduced a set of Guiding Principles to guide implementation of the framework. The Guiding Principles are strongly in line with the approach recommended by the Commission in its advocacy with the Government. The following Guiding Principles reflect a human rights approach:

19 (c) Managing the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development;

19 (d) Disaster risk reduction requires an all-of-society engagement and partnership. It also requires empowerment and inclusive, accessible and non discriminatory participation, paying special attention to people disproportionately affected by disasters, especially the poorest. A gender, age, disability and cultural perspective should be integrated in all policies and practices, and women and youth leadership should be promoted. In this context, special attention should be paid to the improvement of organized voluntary work of citizens;

19 (e) Disaster risk reduction and management depends on coordination mechanisms within and across sectors and with relevant stakeholders at all levels, and it requires the full engagement of all State institutions of an executive and legislative nature at national and local levels and a clear articulation of responsibilities across public and private stakeholders, including business and academia, to ensure mutual outreach, partnership, complementarity in roles and accountability and follow-up;

19 (f) While the enabling, guiding and coordinating role of national and federal State Governments remain essential, it is necessary to empower local authorities and local communities to reduce disaster risk, including through resources, incentives and decision-making responsibilities, as appropriate;

19 (g) Disaster risk reduction requires a multi-hazard approach and inclusive risk-informed decision-making based on the open exchange and dissemination of disaggregated data, including by sex, age and disability, as well as on easily accessible, up-to-date, comprehensible, science-based, non-sensitive risk information, complemented by traditional knowledge.

The role of stakeholders is set out in Article 36 and the framework includes all the groups that a human rights approach would expect to be included in reducing disaster risk including women, children and youth, disabled people, indigenous people and migrants.

Any review of EQC should have full regard to the Sendai Framework and the responsibilities of the State and other stakeholders set out therein.

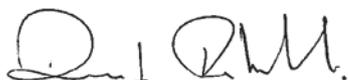
We also draw your attention to the United Nations Guiding Principles on Business and Human Rights (UNGPs) [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

The UNGPs make clear that enterprises owned by the State, like EQC, must meet the State's obligations to do no harm in the enterprise's business activities.

We would particularly draw your attention to Principle 4. In addition to the steps the State is to take itself, the State is to take additional steps to protect against human rights abuses by business enterprises that are owned by the State. The principles relating to businesses also apply to EQC. This includes, where appropriate, requiring human rights due diligence to be undertaken. Human rights due diligence and human rights impact assessment is now undertaken by leading businesses around the world and should be required of EQC in any legislation governing its activities. The UNGPs also capture the State owned enterprises supply chain.

The Guiding Principles on Business and Human Rights provide clear guidance for Governments and businesses on the standards of conduct expected. The State duty to protect is a standard of conduct. As regards to businesses operating in the State's jurisdiction or contracted by the State, the State is not per se responsible for human rights abuse by business. However, States may be in breach of international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and provide means of redress in relation to the conduct of private business.

Yours sincerely



David Rutherford  
Chief Commissioner | Te Amokapua