

Canterbury Earthquake Response and Recovery Bill

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to ensure that the Government has adequate statutory power to assist with the response to the Canterbury earthquake.

The Bill creates an Order in Council mechanism that—

- enables the relaxation or suspension of some statutory requirements that may divert resources away from the effort to efficiently respond to the damage caused by the Canterbury earthquake and to minimise further damage, or that may not be capable of being complied with, or complied with fully, owing to the circumstances resulting from the Canterbury earthquake; and
- facilitates the gathering of information about any structure or any infrastructure affected by the Canterbury earthquake that is relevant to understanding how to minimise the damage caused by earthquakes.

The Bill establishes the Canterbury Earthquake Recovery Commission to advise Ministers with respect to any Orders in Council that may be required, and how resources might be prioritised and funding allocated, for the response to the Canterbury earthquake.

The Bill also provides protection from liability for certain acts or omissions and provides that the Bill does not create a right to compensation.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement.

Part 1

Preliminary provisions

Clause 3 states the purpose of the Bill.

Clause 4 relates to interpretation.

Clause 5 provides that the Bill binds the Crown.

Part 2

Response and recovery provisions

Clause 6 provides that the Governor-General may make Orders in Council reasonably necessary or expedient for the purpose of this Bill. An Order in Council made under this provision may grant an exemption from, or modify, or extend any provision of any enactment (other than an Act specified in *clause 6(6)(c)*) for the purpose of this Bill.

Clause 7 provides that no Order in Council made under *clause 6* may be held invalid on certain grounds. It also provides that an Order in Council made under *clause 6* may not apply before 4 September 2010 or remain in force beyond 1 April 2012.

Clause 8 provides that the Regulations (Disallowance) Act 1989 applies.

Clause 9 establishes the Canterbury Earthquake Recovery Commission (**recovery commission**), which is to consist of 7 commissioners (3 mayors and 4 appointees).

Clause 10 sets out the functions of the recovery commission.

Clause 11 provides for the appointment of commissioners.

Clause 12 concerns the provision of terms of reference for the commissioners.

Clause 13 provides for the subsequent appointment of commissioners.

Clause 14 provides for the appointment of the chairperson and deputy chairperson of the recovery commission.

Clause 15 specifies the term of office of appointed commissioners.

Clause 16 concerns the remuneration and expenses of appointed commissioners.

Clause 17 specifies when *clauses 6 to 16* cease to apply.

Clause 18 provides for the exclusion of liability for commissioners.

Clause 19 provides for the protection from liability for certain acts or omissions.

Clause 20 provides that the Bill does not create a right to compensation.

Clause 21 specifies when the Bill expires.

Hon Gerry Brownlee

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Canterbury Earthquake Response and Recovery Act **2010**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5

**Part 1
Preliminary provisions**

- 3 Purpose**
The purpose of this Act is to— 10
- (a) facilitate the response to the Canterbury earthquake:
 - (b) provide adequate statutory power to assist with the response to the Canterbury earthquake:
 - (c) enable the relaxation or suspension of provisions in enactments that— 15
 - (i) may divert resources away from the effort to—
 - (A) efficiently respond to the damage caused by the Canterbury earthquake:
 - (B) minimise further damage; or
 - (ii) may not be reasonably capable of being complied with, or complied with fully, owing to the circumstances resulting from the Canterbury earthquake: 20
 - (d) facilitate the gathering of information about any structure or any infrastructure affected by the Canterbury earthquake that is relevant to understanding how to minimise the damage caused by future earthquakes: 25
 - (e) provide protection from liability for certain acts or omissions.

4 Interpretation

(1) In this Act, unless the context otherwise requires,—

appointed commissioner means a commissioner appointed under **section 9(d) or 13**

Canterbury earthquake means the earthquake that occurred on 4 September 2010 in Canterbury, and includes all of its aftershocks 5

enactment has the same meaning as in section 29 of the Interpretation Act 1999; but, for the purpose of this Act, includes any bylaw or rule made by a territorial authority or regional council 10

Environment Canterbury commissioner means a person who is appointed under section 10 or 15 of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 15

Minister means the Minister for Canterbury Earthquake Recovery

modify, in relation to a provision or liability, includes displaying or suspending the provision or liability

recovery commission means the Canterbury Earthquake Recovery Commission established under **section 9** 20

regional council has the same meaning as in section 5(1) of the Local Government Act 2002

relevant Minister,—

(a) in relation to an enactment other than this Act, means the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the enactment: 25

(b) in relation to a bylaw or rule made by a territorial authority or regional council, the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the Local Government Act 2002 30

responsible Ministers means—

(a) the Minister for the Environment; and 35

(b) the Minister of Finance; and

(c) the Minister for Canterbury Earthquake Recovery

territorial authority has the same meaning as in section 5(1) of the Local Government Act 2002.

- (2) For the purposes of this Act, the Minister responsible for the administration of an enactment that is or forms part of subordinate legislation is the Minister responsible for the administration of the enactment under whose authority the legislation was made. 5

5 Act binds the Crown

This Act binds the Crown.

Part 2

10

Response and recovery provisions

6 Governor-General may make Orders in Council for purpose of Act

- (1) The Governor-General may from time to time, by Order in Council made on the recommendation of the relevant Minister, make any provision reasonably necessary or expedient for the purpose of this Act. 15
- (2) In making a recommendation under **subsection (1)**, the relevant Minister must—
- (a) take into account the purpose of this Act; and 20
 - (b) consult the recovery commission (if any) if practicable; and
 - (c) have regard to the recommendations of the recovery commission (if any).
- (3) The recommendation of the relevant Minister may not be challenged, reviewed, quashed, or called into question in any court. 25
- (4) An Order in Council made under **subsection (1)** may grant an exemption from, or modify, or extend any provision of any enactment, including (but not limited to)—
- (a) the Building Act 2004: 30
 - (b) the Cadastral Survey Act 2002:
 - (c) the Commerce Act 1986:
 - (d) the Earthquake Commission Act 1993:
 - (e) the Health Act 1956:
 - (f) the Health and Disability Services (Safety) Act 2001: 35
 - (g) the Historic Places Act 1993:

- (h) the Land Transport Act 1998:
- (i) the Land Transport Management Act 2003:
- (j) the Local Government Act 1974:
- (k) the Local Government Act 2002:
- (l) the Local Government Official Information and Meet- 5
ings Act 1987:
- (m) the Local Government (Rating) Act 2002:
- (n) the Public Works Act 1981:
- (o) the Rating Valuations Act 1998:
- (p) the Reserves Act 1977: 10
- (q) the Resource Management Act 1991:
- (r) the Road User Charges Act 1977:
- (s) the Social Security Act 1964:
- (t) the Soil Conservation and Rivers Control Act 1941:
- (u) the Transport Act 1962: 15
- (v) the Waste Minimisation Act 2008.
- (5) An exemption from, or modification of, or extension of a pro-
vision—
 - (a) may be absolute or subject to conditions; and
 - (b) may be made— 20
 - (i) by stating alternative means of complying with
the provision; or
 - (ii) by substituting a discretionary power for the pro-
vision.
- (6) Despite **subsections (1) and (4)**, an Order in Council made 25
under this section may not make or authorise—
 - (a) an exemption from or a modification of a requirement
to—
 - (i) release a person from custody or detention; or
 - (ii) have any person’s detention reviewed by a court, 30
Judge, or Registrar; or
 - (b) an exemption from or a modification of a restriction on
keeping a person in custody or detention; or
 - (c) an exemption from or a modification of a requirement
or restriction imposed by the Bill of Rights 1688, the 35
Constitution Act 1986, the Electoral Act 1993, the Ju-
dicature Amendment Act 1972, or the New Zealand Bill
of Rights Act 1990; or
 - (d) an amendment to this section, or **section 7, 17, or 21**.

(7) **Subsections (4) and (5)** do not limit **subsection (1)**.

7 Further provisions about Orders in Council

- (1) While it remains in force, every Order in Council made under **section 6** has the force of law as if it were enacted as a provision of this Act. 5
- (2) An Order in Council made under **section 6** must provide that it comes into force on a date specified in the Order in Council and that date may be before or on or after the date on which it is made, but not earlier than 4 September 2010.
- (3) An Order in Council made under **section 6** expires on a date appointed in the Order in Council, being a date not later than 1 April 2012, and different dates may be appointed for the expiry of different provisions. 10
- (4) An Order in Council made under **section 6** may be retrospective only to the extent provided for in **subsection (2)**. 15
- (5) No Order in Council made under **section 6** may be held invalid because—
- (a) it is, or authorises any act or omission that is, repugnant to or inconsistent with any other Act; or
 - (b) it confers any discretion on, or allows any matter to be determined or approved by, any person. 20
- (6) **Subsection (5)** is subject to **section 6(6)**.

8 Regulations (Disallowance) Act 1989 applies

Despite **section 7(1)**, the Regulations (Disallowance) Act 1989 applies to an Order in Council made under **section 6**. 25

9 Establishment of recovery commission

A recovery commission to be called the Canterbury Earthquake Recovery Commission is established, and consists of the following 7 commissioners: 30

- (a) the mayor of the Christchurch City Council; and
- (b) the mayor of the Selwyn District Council; and
- (c) the mayor of the Waimakariri District Council; and
- (d) 4 appointed persons with the relevant expertise or appropriate skills, 1 of whom must be an Environment 35

Canterbury commissioner or, if there is no such commissioner, the chairperson of the Canterbury Regional Council.

10 Functions of recovery commission

- The functions of the recovery commission are to— 5
- (a) provide advice, on request or on its own initiative, to—
 - (i) the relevant Minister in relation to Orders in Council that may be required for the purpose of this Act; and
 - (ii) the responsible Ministers in relation to how resources may be prioritised and funding allocated for the response to the Canterbury earthquake; and 10
 - (b) provide a central contact point between central and local government in the management of the response to the Canterbury earthquake. 15

11 Appointment of commissioners

- (1) The responsible Ministers must, by giving written notice of appointment, appoint the persons referred to in **section 9(d)**.
- (2) The written notice of appointment must— 20
 - (a) state the date on which the appointment takes effect; and
 - (b) state the term of the appointment.
- (3) The first appointment of a person as a commissioner takes effect on the date specified in the written notice of appointment given to that person. 25
- (4) As soon as practicable, the Minister must notify the appointment in the *Gazette*.

Compare: 2010 No 12 ss 10–12

12 Terms of reference for commissioners

- (1) The responsible Ministers must provide the commissioners with written terms of reference, which must— 30
 - (a) specify the secretariat services to be provided; and
 - (b) be consistent with the purpose of this Act.
- (2) The responsible Ministers—

- (a) may at any time amend the terms of reference for the commissioners; and
- (b) must, as soon as practicable after the amendment, notify the commissioners of the amended terms of reference.
- (3) The Minister must publish the terms of reference and any amended terms of reference in the *Gazette*. 5
Compare: 2010 No 12 s 13
- 13 Subsequent appointments**
- (1) The responsible Ministers may appoint a commissioner to replace an appointed commissioner who vacates office. 10
- (2) **Section 11** applies to the appointment of a commissioner to fill a vacancy.
Compare: 2010 No 12 s 15
- 14 Appointment of chairperson and deputy chairperson**
- (1) The responsible Ministers must appoint one of the appointed commissioners (other than the Environment Canterbury commissioner or the chairperson of the Canterbury Regional Council, as the case may be) to be the chairperson of the recovery commission. 15
- (2) The responsible Ministers must appoint one of the appointed commissioners to be the deputy chairperson of the recovery commission. 20
- (3) The responsible Ministers must make each appointment by giving the person appointed a written notice of appointment.
- (4) As soon as practicable, the Minister must notify the appointment in the *Gazette*. 25
- (5) The responsible Ministers may terminate the appointment of a commissioner as chairperson or deputy chairperson by written notice to that person. 30
Compare: 2010 No 12 s 16
- 15 Term of office of appointed commissioners**
- (1) The term of office of an appointed commissioner ends when the commissioner vacates office or on a date no later than 1 April 2012, whichever occurs first.
- (2) An appointed commissioner vacates office if he or she— 35

- (a) is removed by written notice given by the responsible Ministers; or
 - (b) resigns by written notice given to the responsible Ministers.
- (3) The responsible Ministers may in their complete discretion remove an appointed commissioner by written notice at any time. 5
- (4) As soon as practicable, the Minister must notify the removal or resignation of an appointed commissioner in the *Gazette*.
Compare: 2010 No 12 s 17 10

16 Appointed commissioners' remuneration and expenses

- (1) An appointed commissioner is entitled to be paid—
- (a) remuneration by way of salary, fees, and allowances at a rate determined by the responsible Ministers; and
 - (b) travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951. 15
- (2) However, a person appointed under **section 9(d) or 13** is not entitled to any remuneration for services as a member of the recovery commission in addition to his or her remuneration in respect of his or her service as— 20
- (a) an Environment Canterbury commissioner or the chairperson of the Canterbury Regional Council (as the case may be); or
 - (b) a chief executive or employee of a department listed in Schedule 1 of the State Sector Act 1988. 25
- Compare: 2010 No 12 s 18

17 When sections 6 to 16 cease to apply

- Sections 6 to 16** cease to apply on the earlier of the following:
- (a) a date specified by the Governor-General by Order in Council made on the recommendation of the responsible Ministers; or 30
 - (b) the close of 1 April 2012.

18 Exclusion of commissioners' liability

A commissioner is not liable for any act done or omitted to be done by him or her in good faith in the performance or intended performance of his or her functions, responsibilities, or duties as a commissioner, or in the exercise or intended exercise of his or her powers as a commissioner. 5

19 Protection from liability

(1) This section applies to any person—

- (a) who does or omits to do anything, if the act or omission is authorised by, or is made lawful by virtue of, an Order in Council made under **section 6**; or 10
- (b) whose functions, responsibilities, duties, or powers are authorised, exempted, modified, or extended by, or are made lawful by virtue of, an Order in Council made under **section 6**. 15

(2) In respect of the period beginning 4 September 2010 and ending with the expiry of this Act, a person to whom this section applies is not liable for any act done or omitted to be done by that person in good faith—

- (a) in doing or omitting to do anything that is authorised or lawful by virtue of an Order in Council made under **section 6**; or 20
- (b) in the performance or intended performance of his or her functions, responsibilities, or duties, or in the exercise or intended exercise of his or her powers in relation to— 25
 - (i) any function, responsibility, duty, or power conferred or imposed by an Order in Council made under **section 6**; or
 - (ii) any enactment affected by an Order in Council made under **section 6**. 30

20 Act does not create right to compensation

Nothing in this Act confers any right to compensation or is to be relied on in any proceedings as a basis for any claim to compensation.

21 Expiry and revocation

This Act expires, and any Order in Council made under **section 6** is revoked, on the date that **sections 6 to 16** cease to apply.
