

# New Zealand Law Society

## Canterbury Earthquake Recovery Bill

- The New Zealand Law Society acknowledges that the extraordinary events in Canterbury need an extraordinary legislative response. The Canterbury earthquakes and their aftermath justify some form of emergency legislation to facilitate the speedy restoration of the region. That response however still requires transparency and accountability. The Bill largely meets these objects.
- It would be desirable to limit this legislation to those matters that need to be passed urgently, and to set aside less urgent matters – in particular, issues relating to compensation – for closer consideration in Parliament’s next session in early May.
- The select committee will appreciate that the Society has had mere hours to consider the Bill and prepare comments on it. Given the shortness of time, this is not a formal submission but the comments below may be of assistance to the select committee. The comments are necessarily provisional and brief.
- Specific points the select committee is invited to consider are as follows.

### **Compensation for compulsory acquisition/demolition of property (Clauses 40-41, 59-66)**

- As mentioned above, the Society would favour the provisions relating to compensation being set aside for separate enactment. The Act is intended to promote the redevelopment of Christchurch – which must include supporting its people and businesses. The Society accepts that it is not feasible to return people and businesses to their pre-earthquake position, but care needs to be taken to ensure that the provisions relating to property rights and compensation do not have a detrimental impact on people and businesses.

The issues here are:

- The Explanatory Note (p6) refers to “persons who have had their land compulsorily acquired or their building demolished will be *entitled* to compensation” [emphasis added]. This may give rise to an unrealistic expectation of full compensation, including for damage caused by the earthquakes themselves. In fact, the Bill provides for compensation only in relation to the consequences of acts of compulsory acquisition or demolition. Moreover, as discussed below, the compensation is highly constrained. The result is that decisions made by the Minister for the greater good will largely be borne by affected business owners and tenants.
- The Bill requires the Minister to have regard to “current market value” (cl 63(3)). This must be assumed to mean current value at the time of the acquisition/demolition, not the pre-earthquake value. There is a need to ensure the public understands this.
- There is also an issue as to what will be the appropriate valuation principles for determining “current market value” post-earthquake.
- Clause 60(b) sets out a series of exclusions from compensation. Subparagraphs (i)-(iii) are insurance issues which are justifiably excluded. However, subparagraphs (iv)-(x) need more consideration. Many of these matters – in particular the cancellation of an existing resource consent or existing use right (subparagraphs (v) and (vi)) – are by their nature uninsurable and could cause significant loss to Cantabrians. Where undamaged property is compulsorily acquired, the losses stem directly from the actions of the Canterbury Earthquake Recovery Authority (CERA), leaving the individual business owner to bear the loss. The central principle should be that where private individuals suffer a loss caused by the actions of CERA rather than the earthquake, that loss should be compensated.
- In particular, the discretions built into clauses 40 and 63 appear to give the Minister the discretion not to pay compensation. All parties who suffer loss as a result of CERA’s actions should be covered.
- There seems to be a lack of clarity in the terminology used in the Bill. The terms “business owners”, “tenants” and “businesses” have been used inconsistently.

- There is a lack of clarity about the position of tenants and/or business owners who do not have a “registered interest” in land. Most leases are not registered. It is not clear how the Minister’s powers will affect unregistered interests, such as leases and licences.
- Clause 61 refers to “a” person who suffers loss. This presumably includes all persons who suffer loss, including licensees, tenants etc. This would be made clear if the term used was “any” person.
- It should be made clear that at acquisition/demolition, the Minister steps into the shoes of the landowner, for instance with respect to liability for rates.

If the Bill is to proceed under urgency with the current compensation provisions, it is recommended that the relevant clauses be amended to clarify the points made.

### **Clauses 40(2)(ii) and 54(7), Insurance**

- Under these clauses, essentially the Crown will receive an assignment or assume the right of the owner’s insurance policy. In practical terms, that may not work from the insurance industry’s perspective. At present insurers will not accept an assignment of a residential policy from vendor to purchaser, and the same may apply to commercial insurance policies. It is unclear whether the Crown can force insurers in these circumstances.

### **Clause 10, Exercise of powers**

- The wording of clauses 10(1) and (2) may have an unintended effect. They refer to where the Minister and Chief Executive may “claim” powers, rights or privileges under the Act. This could be capable of misinterpretation. A better wording might be:

“10 Powers to be exercised for purposes of this Act

- (1) The Minister and the chief executive must ensure that when they each exercise ~~or claim~~ their powers ~~or~~ rights or claim privileges **conferred on them by this Act** and they do so in accordance with the purposes of the Act.
- (2) The Minister and the chief executive may each exercise ~~or claim~~ a power ~~or~~ right or **claim a** privilege **conferred** under this Act, where he or she reasonably considers it necessary.

### **Clauses 29 and 30, Information-gathering and dissemination**

- The powers given in clauses 29 and 30 in relation to the gathering and dissemination of information are very broad. Before exercising the power to disseminate information and advice on matters relating to work and activities under the Act, the Chief Executive must “consider” the privacy principles under the Privacy Act 1993 and the value of protecting confidential and commercially sensitive information (clause 30(2)). There is however no requirement for the Chief Executive to *protect* those interests.

### **Subpart 7, Delegated legislation – Orders-in-Council (Clause 70)**

- In general “Henry VIII” clauses, such as clause 70, giving very wide powers for Orders-in-Council to override enactments are contrary to the rule of law and good legislation principles and are therefore undesirable. Subpart 7 may be seen as a pragmatic solution but it is questionable whether it can be justified. The Act will be operative when there is no longer an emergency situation. It is appreciated that the Review Panel reporting on proposed Orders-in-Council provides an additional safeguard, but this does not diminish the fact that the Minister will be empowered to override legislation made by Parliament. Where there is a need for legislative amendments or suspensions in order to facilitate the recovery programme, a better alternative would be for Parliament to dedicate House time for those matters to be dealt with by legislation, as they arise.

### **Clause 83, The validation of actions taken already**

- Clause 83(1) provides for actions taken or decisions made during the state of national emergency to be validated. This includes actions and decisions already taken. It would be preferable for the

validity of these actions and decisions to be determined by the Civil Defence Emergency Management Act 2002, pursuant to which they were carried out. They should not be retrospectively validated.

#### **Clauses 24 and 27, Suspension of plans**

- Any amendment of a recovery plan by the Minister under clause 24(5) should be subject to a time limit so that landowners do not face uncertainty for an unlimited period.
- Clause 27 gives the Minister the power to revoke an RMA document. This could cause considerable loss to any person who has obtained the benefit of any RMA document, such as the right to urbanise land. The clause expressly denies any compensation for any loss suffered, which could include considerable costs and loss of the value of the land. It is difficult to see why such a person should not be compensated.
- Clause 27(5) appears to be contradictory. It appears that the performance of a consent condition can be required by the chief executive, despite the cancellation of the resource consent.

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