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Chair  
Local Government and Environment Committee  
Parliament Buildings  
P O Box 18 041  
Wellington 6160

**Canterbury Earthquake Recovery Bill**

1. This submission is made by the Legislation Advisory Committee (LAC).
2. The LAC was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. The LAC has produced and updates the Legislation Advisory Committee Guidelines: Guidelines on the Process and Content of Legislation (LAC Guidelines) as appropriate benchmarks for legislation. The LAC Guidelines have been adopted by Cabinet.
3. The terms of reference of the LAC include:
  - (a) to scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues:
  - (b) to help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.

## *Issues*

### *Clause 4*

4. It would be helpful if the definition of “CERA” in clause 4 expressly referred to the Authority as a Public Service department.

### *Clause 11*

5. The Recovery Strategy is the predominant instrument under the Bill. Subclause 11(3) states that it is “an overarching, long-term strategy for the reconstruction, rebuilding, and recovery of Greater Christchurch”. Therefore, it seems to be of sufficient importance to justify being made by the Governor-General by Order in Council.

### *Clause 15*

6. Subclause 15(1) provides that an RMA document or instrument cannot be interpreted or applied in a way that is inconsistent with a Recovery Strategy. Subclause 15(2) states that the strategy prevails if there is an inconsistency. We question the need for this additional provision.
7. The same point applies in respect of *clause 26(2) and (3)*.

### *Clause 29*

8. Clause 29(3) provides that nothing in this clause requiring information to be given overrides legal professional privilege. We suggest that the clause should not override other evidentiary privileges, such as the privilege against self-incrimination.

### *Clauses 31 and 32*

9. We question whether these clauses are necessary as the chief executive of a department of the Crown inherently has these powers.

### *Clause 37*

10. Disputes under clause 37 are to be heard in accordance with clause 68(1) to (4) and (6) and treated as an appeal (clause 37(2)). The only subclause of clause 38 that does not apply to disputes under clause 37 is 68(5). Presumably subclause 68(5) has not been applied to disputes under clause 37 in order to exclude the 10 working day time limit for appeals to be brought. However, subclause 68(5) also provides that appeals must be brought in accordance with the rules of court. Therefore, it appears that the application of the rules of court have been excluded from disputes under clause 37.

### *Clause 38*

11. Under clause 38(4) an owner must give notice to the chief executive of his or her intention to carry out the works required by the chief executive within 5 days after the chief executive’s notice to the owner. We are concerned that 5 days is insufficient to enable an owner to provide this notice because of the potential complexities of arranging for the work to be carried out, for instance, the calling for tenders. Furthermore, non-compliance by the owner is an offence under clause 42.

*Clause 40*

12. The relationship between subclauses 40(2) and (3) seems unclear. Subclause (3) provides that the Crown is liable to pay compensation if the chief executive demolishes a non-dangerous building “and subsection (2) does not apply”. It is unclear which aspect of subclause (2) this refers to. It does not seem logical that the Crown is liable under subclause (3) if the chief executive does not agree to compensate the owner. It seems more likely that subclause (3) is to apply where the owner is either not insured or is insured but chooses not to assign his or her interest to the Crown. It should be made clear in which circumstances subclause (3) applies.

*Clause 42*

13. It should be made clear that a no fault defence applies to the offences under clause 42.

*Clause 47*

14. The offence under clause 47 should be punishable on summary conviction.

*Clause 54*

15. A proclamation under clause 54 taking land vests the land in the Crown free from all “mortgages, charges, claims, estates, or interests of whatever kind”. The position of a mortgagee or interest holder is not clear.

*Relationship between Recovery Strategy and Recovery Plans, and chief executive’s powers*

16. The concern has been raised with us that the Bill does not make clear the relationship between Part 2, subparts 2 and 3, which address the development of a Recovery Strategy and Recovery Plans, and Part 2, subpart 4 relating to the chief executive’s powers. Part 2, subparts 2 and 3 provide for a Recovery Strategy and Recovery Plans, which override existing planning documents, to be developed to set the framework for the recovery and reconstruction. It is not clear whether a chief executive can exercise the wide powers under Part 2, subpart 4 to take such actions as enter premises, demolish buildings, carry out works and subdivide land before a Recovery Strategy and Recovery Plans are in place. There are no apparent constraints on the exercise of the chief executive’s powers relating to the Recovery Strategy and Recovery Plans.

*Clause 63*

17. Clause 63(2) provides that compensation for the compulsory acquisition of land is to be determined as at the date of the compulsory acquisition, whereas compensation for the demolition of a building is to be paid at a date determined by the Minister. It is not clear why there is a defined date for compensation for compulsory acquisitions but a discretion for compensation for demolition of buildings.

*Clause 70*

18. Clause 70 provides for the Governor-General by Order in Council to make any provision that is “reasonably necessary or expedient”. In light of clause 10, which requires that the Minister and chief executive to act in accordance with the purpose of the Act and to exercise powers, rights or privileges where he or

she reasonably considers it necessary, we question the ground of expediency in clause 70.

*Clause 72*

19. We question whether there should be a requirement in clause 72 for at least one of the Canterbury Earthquake Recovery Panel to be legally qualified.

*Clause 73*

20. Before making a recommendation under clause 73 for an Order in Council, the Minister has to take into account the purposes of the Act and the recommendations of the Canterbury Earthquake Recovery Review Panel. However, even if the Minister fails to take these into account, the recommendations will remain valid because of the provision in subclause 73(2) that recommendations of the Minister may not be reviewed in any court.

*Clause 74*

21. Clause 74(5) means that Orders in Council have the same force as a statute. While it may not be intended, this may well have the effect of precluding challenge to the validity of regulations by way of judicial review.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Tanner', written in a cursive style.

George Tanner QC  
Acting Chair  
Legislation Advisory Committee