

# EARTHQUAKE COMMISSION AMENDMENT BILL

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## EXPLANATORY NOTE

### *General Policy Statement*

As part of its role in minimising the financial impact of natural disasters, the functions of the Earthquake Commission (EQC) include the investment of its funds and the reinsurance of the cover it provides. The Minister of Finance is responsible for the EQC, and has an interest in the financial management of the EQC's resources. The EQC is a Crown entity for the purposes of the Public Finance Act 1989.

The Minister of Finance also has a wider responsibility for the financial management of the Crown. The Minister of Finance, accordingly, has an interest in ensuring that Crown agencies act in a manner that contributes to the management of the Crown's financial position. In this context, the Crown's financial position includes its interests in Crown entities, State enterprises, Offices of Parliament, and the Reserve Bank.

This Bill clarifies the scope of the Minister of Finance's power to give directions to the EQC about its investment and reinsurance policies. The Bill enables the Minister of Finance to limit or exclude the EQC's discretion in relation to its investment and reinsurance functions. Under the Bill, the Minister of Finance can give binding directions to the EQC that contain prohibitions or detailed directions about investment and reinsurance. The purpose of clarifying the powers of the Minister of Finance in relation to the EQC is to ensure that the EQC's exercise of its investment and reinsurance functions is consistent with the management of the Crown's financial position.

### *Clause by Clause Analysis*

*Clause 1* relates to the Short Title and commencement of the Bill. The Bill comes into force on the day on which it receives the Royal assent.

*Clause 2* amends section 12 of the principal Act which authorises the Minister of Finance to give the Commission written directions as to the policy to be followed by the Commission in the exercise of its functions and powers. This clause inserts 4 new subsections into section 12.

New *subsection (1A)* permits the Minister, in giving a written direction to the Commission, to take account of 1 or more of 3 matters in addition to the objects and policy of the principal Act.

The additional matters can be taken into account only in relation to 2 of the Commission's functions, ie to administer and protect the value of the Natural Disaster Fund, and to obtain reinsurance.

The additional matters are—

- (a) The Crown's current and possible future overall financial position, having regard to the requirement in section 16 of the principal Act to grant or advance public money to meet any deficiency in the Commission's assets to meet its liabilities;
- (b) The Crown's current and possible future overall financial position, taking into account the interests of the Crown in the bodies referred to in section 27 (3) (a) to (d) of the Public Finance Act 1989;
- (c) The Commission's current and possible future overall financial position.

New *subsection (1B)* permits the Minister to include in a written direction to the Commission detailed requirements or prohibitions. The Commission must give effect to such requirements or prohibitions in relation to the 2 functions mentioned above.

New *subsection (2A)* provides that an action done or omitted in giving effect to a direction under section 12 (1) of the principal Act is valid. But the new *subsection (2B)* provides that the new *subsection (2A)* does not apply to the extent that a direction permits the Commission to exercise a discretion, and the Commission does not exercise the discretion or does not exercise it validly.

*Clause 3* provides that every direction given or deemed to be given under section 12 of the principal Act before the commencement of the Bill, and every action done or omitted by the Commission to give effect to such a direction, is and has always been valid.

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*Rt Hon W F Birch*

## EARTHQUAKE COMMISSION AMENDMENT

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### ANALYSIS

Title	2. Directions by Minister
1. Short Title and commencement	3. Previous directions declared valid

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### A BILL INTITULED

#### **An Act to amend the Earthquake Commission Act 1993**

BE IT ENACTED by the Parliament of New Zealand as follows:

5     **1. Short Title and commencement**—(1) This Act may be cited as the Earthquake Commission Amendment Act 1997, and is part of the Earthquake Commission Act 1993\* (“the principal Act”).

(2) This Act comes into force on the day on which it receives the Royal assent.

10     **2. Directions by Minister**—(1) Section 12 of the principal Act is amended by inserting, after subsection (1), the following subsections:

15     “(1A) The Minister may, in giving any written directions under subsection (1) in relation to the exercise of the Commission’s functions under section 5 (1) (c) or section 5 (1) (d), or both, take account not only of the objects and policy of this Act, but also of 1 or more of the following matters:

20     “(a) The Crown’s current and possible future overall financial position, having regard to the requirement in section 16 to grant or advance public money to meet any deficiency in the Commission’s assets to meet its liabilities:

   “(b) The Crown’s current and possible future overall financial position, taking into account the interests of the

\*1993, No. 84

Crown in the bodies referred to in section 27 (3) (a) to (d) of the Public Finance Act 1989:

“(c) The Commission’s current and possible future overall financial position.

“(1B) Without limiting subsections (1) and (1A), written directions under subsection (1) may specify detailed requirements or prohibitions, or both, to which the Commission must give effect in exercising its functions under section 5 (1) (c) and section 5 (1) (d).” 5

(2) Section 12 of the principal Act is amended by inserting, after subsection (2), the following subsections: 10

“(2A) An action done or omitted by the Commission in giving effect to a direction under subsection (1) is valid.

“(2B) **Subsection (2A)** does not apply to the extent that a direction under subsection (1) permits the Commission to exercise a discretion, and the Commission does not exercise the discretion or does not exercise the discretion validly.” 15

**3. Previous directions declared valid**—Every direction given, or deemed to be given, under section 12 of the principal Act before the commencement of this Act, and every action done or omitted by the Commission to give effect to such a direction, is and has always been valid. 20