

Departmental Disclosure Statement

Christ Church Cathedral Reinstatement Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of the Prime Minister and Cabinet.

The Department of the Prime Minister and Cabinet certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below. Some changes are expected to be made to the policy proposals and to the Bill between now and its introduction to the House.

4 December 2017

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Part One: General Policy Statement

The Christ Church Cathedral Reinstatement Bill (the Bill) will facilitate the reinstatement of the Christ Church Cathedral (the Cathedral). Almost 7 years after the earthquake of 22 February 2011, the Category One Heritage New Zealand site remains significantly damaged and barricaded.

Cathedral demolition works were enabled under Canterbury Earthquake Recovery Act 2011 emergency legislation through a section 38 notice issued in 2011; that is, they were intended to be enabled in the response and recovery phase. Protracted litigation has delayed decision-making, with further litigation threatened if the property owner (the Church Property Trustees) proceeds with any action that is not full restoration. The effects of the litigation deadlock and uncertainty have extended beyond the building itself, with an impact on the recovery and regeneration of greater Christchurch, due to its uniquely central location and rich cultural value.

This Bill is part of an offer accepted by the Synod of the Anglican Diocese of Christchurch to provide certainty and confidence to the public, businesses and investors about the future of the Cathedral.

Purpose

The general purpose of the Bill is to facilitate the reinstatement of Christ Church Cathedral. It will provide an appropriate regulatory framework to allow for reinstatement by reducing impediments and risks, and providing flexibility where needed to the delivery process. This is important to help maintain recovery and regeneration momentum by providing certainty and confidence that the reinstatement will not be further delayed, unlocking development of Cathedral Square and the surrounding area. It will also protect the Crown's considerable investment in nearby anchor projects and in the recovery and regeneration of the central city as a whole.

Delegated legislation

The Bill creates an Order in Council mechanism (with appropriate checks and balances) that permits the Governor-General to make Orders in Council on the recommendation of the Minister who is responsible for the administration of the legislation. These Orders in Council can grant exemptions from, modify, or extend an enactment, or any provisions of certain enactments.

This process facilitates reinstatement without needing to anticipate every power or statutory provision that may need to be amended to achieve the Bill's purpose.

The nature of the Order in Council mechanism is such that it will be able to address a range of issues affecting the likely pace and trajectory of the reinstatement project.

The Bill has similar controls to the Hurunui/Kaikōura Earthquakes Recovery Act 2016, with appropriate changes, such as more time for review and public comment, and no retrospectivity allowed.

The Bill proposes to impose a time restriction on the right to judicial review. It provides that any application for review under the Judicial Review Procedure Act 2016 that relates to an order or a related recommendation or decision of the Minister must be made to the

High Court within 28 days after the making of the order, recommendation, or decision (or such longer time as that court allows).

There are a number of controls in the Bill to provide checks and balances on the process. These checks and balances are as follows:

- the limitation of the geographic scope of the Bill to Cathedral Square:
- the order must be necessary or desirable for the proposed purpose, and the extent of the order must not be broader than is required:
- there is a list of Acts that an order can relate to, and some Acts are specifically excluded (for example, the New Zealand Bill of Rights Act 1990 and the Electoral Act 1993):
- a Review Panel, whose members' experience could include legal and other relevant expertise, will review draft orders and provide advice to the relevant Minister:
- the Minister will be required to publish his or her reasons for recommending an Order in Council, to increase transparency:
- providing draft orders to the Regulations Review Committee, or to leaders of political parties if the House is adjourned:
- providing for sunset clauses for both the legislation and any orders.

There is provision to add additional Acts, including regulations and legislative instruments made under them.

Timing

This Bill, including every order made under it, is repealed 15 years after the date of the commencement, to allow for the completion of the Cathedral reinstatement project (at least 10 years).

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Report on Facilitated Discussions with Engineers for Church Property Trustees and the Great Christchurch Buildings Trust on Engineering Options for Repair, Restoration or Replacement of Christ Church Cathedral, November 2015</p> <p>http://cathedralconversations.co.nz/wp-content/uploads/2013/03/Cathedral-Miriam-Dean-Report-2015-11.pdf</p> <p>Cathedral Working Group Recommendation Report, November 2016</p> <p>https://www.dpmc.govt.nz/sites/default/files/2017-06/Cathedral-working-group-report-28-nov-2016.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Impact Statement: Christ Church Cathedral Reinstatement (Department of the Prime Minister and Cabinet, 4 December 2017)</p> <p>It is accessible from DPMC and the Treasury's website.</p> <p>https://dpmc.govt.nz/publications/regulatory-impact-statement-christ-church-cathedral-reinstatement-bill</p> <p>[live from 4 December 2017]</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Regulatory Quality Team at the Treasury has reviewed the Regulatory Impact Statement "Christ Church Cathedral Reinstatement" by the Department of the Prime Minister and Cabinet and considers that it meets the Quality Assurance criteria. The RIS shows clearly that alternative options have been carefully considered, implementation risks identified and mitigated, and stakeholders fully involved in the process</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Bill is to facilitate the reinstatement of the Cathedral and has a limited geographic scope. No relevant international obligations have been identified in the policy development process.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No separate formal steps have been taken to determine whether the Policy to be given effect by this Bill are consistent with the principles of the Treaty of Waitangi. Māori interests in the Cathedral site have been identified as the site has cultural significance for Māori, and human remains (Kōiwi tangata) were previously found during works on site in 1995. These are not considered to have Treaty of Waitangi implications, and where appropriate have been considered through the Bill. For example, the Bill provides for engagement with persons the Minister considers appropriate this could include iwi or hapu) and for expertise and skillsets to be considered in appointing the Review Panel including mātauranga Māori (traditional knowledge) and tikanga Māori (protocol and culture).
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice has been provided to the Attorney-General by the Ministry of Justice.
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
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The Bill imposes time constraints on applications being made to the High Court (28 days).

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
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The Ministry of Justice was consulted on the Cabinet paper, the Regulatory Impact Statement and the draft Bill. Advice has been provided to the Attorney-General by the Ministry of Justice.
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Cathedral Working Group was established in 2016 to provide options for the reinstatement of the Cathedral. Representatives of Church Property Trustees (the owners of the Cathedral) and Great Christchurch Buildings Trust were present in the Working Group and contributed to the recommendations that informed the development of policy.</p> <p>The Treasury, Ministry of Justice, the Parliamentary Counsel Office, Ministry for Culture and Heritage, Land Information New Zealand, Ministry for the Environment, Ministry of Business, Innovation and Employment and Cabinet Office have been consulted on the Cabinet paper, Regulatory Impact Statement, and the draft Bill.</p> <p>Agencies have raised a number of issues and views, including:</p> <ul style="list-style-type: none">a) Technical issues and options that could be considered as part of the proposed approach – such as a potential role for other portfolio Ministers in considering impacts of draft orders where relevant to other legislation. Officials will continue to work with agencies to flesh out these matters where relevant; andb) Some overall comments on the proposed approach, including concerns about the proposed use of the Order in Council mechanism and the restrictions on appeal rights. <p>Consultation with the Church Property Trustees has also been undertaken. Consultation with Te Rūnanga o Ngāi Tahu, Christchurch City Council, the Canterbury Regional Council, and Heritage New Zealand Pouhere Taonga is intended.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill proposes to grant an Order in Council making power to the Governor-General on the recommendation of the Minister. This may impact on some people's appeal rights in the relevant resource consenting processes.</p> <p>The Bill proposes to impose some restrictions on the right to judicial review. It provides that any application for review under the Judicial Review Procedure Act 2016 that relates to an order or a related recommendation or decision of the Minister must be made to the High Court within 28 days after the making of the order, recommendation, or decision.</p> <p>There are a range of safeguards to ensure the powers are constrained and used appropriately. The purpose test requires the Minister to be satisfied the order is necessary or desirable. It ensures that the Regulations Review Committee or Leaders of parties represented in the House have the opportunity to review draft Orders. It ensures that the Minister has regard to or consider recommendations from expert panel, and the environmental effects of any controls in the order.</p>	

The Bill ensures that the Regulations Review Committee has the opportunity to review a draft order within 20 working days.

Engagement requirements ensure certain persons have the opportunity to comment on the proposal, including the general public when considered appropriate, within 20 working days.

Reasons for the Order must be published together with the Order to enhance transparency and accountability.

Further requirements on Orders provide further constraints on the scope of Orders that can be made. Orders cannot grant exemptions prohibited under the Bill relating to core human rights and constitutional principles (for example, dealing with custody or detention, Bill of Rights and the Electoral Act).

For other Orders (i.e. Orders that specify additional enactments to be listed), the Minister is required to consult each leader of the parties represented in the House, and to be satisfied that there is near unanimous support for the order from those leaders. Additionally, the Bill specifies that any Order made under the Bill is a disallowable instrument.

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill provides that the Governor-General may, by Order in Council made on the recommendation of the Minister, grant exemptions from, modify, or extend an enactment, or any provisions of an enactment, referred to in Schedule 2.</p> <p>See response for 4.6 for safeguards.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill provides that the Governor-General may, by Order in Council made on the recommendation of the Minister, specify additional Acts for the purposes of Schedule 2.</p> <p>See response for 4.6 for safeguards</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment	NO
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