



6 October 2023



Ref: OIA-2023/24-0111

Dear 

Official Information Act request relating to Canterbury Earthquake Recovery Authority Compensation Panel and John Hardie

Thank you for your Official Information Act 1982 (the Act) request received on 11 August 2023. You requested:

I would like to make a fresh OIA request with respect to John Hardie. Thank you.

1. Canterbury Earthquake Recovery Authority Compensation Panel.

- request for any declarations regarding conflicts of interest, pecuniary interests*
- briefing papers to the relevant minister(s) regarding the candidates*
- briefing papers to the appointor(s) including any High Court judges regarding the candidates.*

The time frame for responding to your request was extended under section 15A of the Act by 21 working days because a search through a large quantity of information, and consultations were needed before a decision could be made on the request. Following this extension, I am now in a position to respond.

Please note, our extension letter included a typographical error; where we advised a response will be with you no later than 13 October 2023, that should have been 9 October 2023.

Upon the disestablishment of the Canterbury Earthquake Recovery Authority (CERA) in April 2016, various functions were transferred to the Department of the Prime Minister and Cabinet, including information that was held by CERA relevant to the functions. This response relates to information held by the department relevant to those CERA functions.

Information being released

A search was undertaken, and a number of documents were identified as in scope of your request. I have decided to release the relevant parts of the following documentation, subject to information being withheld as noted.

Item	Date	Document Description
1.	13 May 2014	Cabinet Appointment and Honours Committee paper: Canterbury Earthquake Recovery Compensation Panel: Appointments
2.	26 May 2014	Cabinet paper: Canterbury Earthquake Recovery Compensation Panel: Appointments
3.	3 April 2014	Briefing: Compensation process and appointment of compensation panel members
4.	5 May 2014	Briefing: Appointment of compensation panel members
5.	10 June 2014	Briefing: Confirmation of appointment of Canterbury earthquake compensation panel members

The relevant grounds under which information has been withheld are:

1. section 9(2)(a), to protect the privacy of individuals
2. section 9(2)(h), to maintain legal professional privilege

Additionally, some information is considered out of scope and has been marked as such.

In making my decision, I have considered the public interest considerations in section 9(1) of the Act. No public interest has been identified that would be sufficient to override the reasons for withholding that information.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response will be published on the Department of the Prime Minister and Cabinet's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



Clare Ward
Executive Director
Strategy, Governance and Engagement



Cabinet Appointments and Honours Committee

APH Min (14) 9/2

Copy No: 20

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Canterbury Earthquake Recovery Compensation Panel: Appointments

Portfolio: Canterbury Earthquake Recovery

On 13 May 2014, the Cabinet Appointments and Honours Committee referred the paper under APH (14) 98 to Cabinet for further consideration at its meeting on 26 May 2014.

Suzanne Howard
Committee Secretary

Reference: APH (14) 98

Present:

Hon Tony Ryall (Chair)
Hon Hekia Parata (part of item)
Hon Christopher Finlayson
Hon Craig Foss
Hon Nicky Wagner
Hon Tariana Turia
Hon Peter Dunne

Officials present from:

Office of the Prime Minister

Distribution:

- 1 Cabinet Appointments and Honours Committee
- 2 2 Chief Executive, CERA
- 2 3 Chief Executive, Ministry of Women's Affairs



Cabinet Appointments and Honours Committee

APH (14) 98

Copy No: 20

Summary of Paper

9 May 2014

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Canterbury Earthquake Recovery Compensation Panel: Appointments

Portfolio Canterbury Earthquake Recovery

Purpose This paper notes that the Minister for Canterbury Earthquake Recovery (the Minister) intends to make three appointments to the Canterbury Earthquake Recovery Compensation Panel (the Panel), and seeks approval for exceptional fees.

Previous Consideration None.

Summary The Panel is established under the Canterbury Earthquake Recovery Act 2011 to advise the Minister and make recommendations on compensation claims where land is taken by Proclamation, or where property is damaged as a result of demolition work undertaken by the Canterbury Earthquake Recovery Authority (CERA).

CERA has developed a position description for members (**Attachment A**), and draft terms of reference for the Panel (**Attachment B**).

The Minister intends to appoint:

- Out of scope



- **John Hardie** as a member of the Panel. Mr Hardie is a barrister and mediator and is experienced at combining mediation and legal work. He has a working knowledge of contract, tort, commercial, estate and environmental law. He is a mediator for the Ministry of Business, Innovation and Employment on leaky home cases in the Weathertight Homes Tribunal;

- Out of scope



Conflict of Interest	A potential conflict of interest has been identified by Mr Hardie as he is a member of the Christchurch community and may have had previous involvement in property or insurance matters in Christchurch. Any conflicts of interest will be managed by members stepping aside from deliberations in relation to any claims for the land in question.
Fees/Conditions	The fees are set under the Cabinet Fees Framework (Framework). The applicable Framework daily fee ranges are \$360 - \$818 for the Chair and \$270 - \$518 for the members. The Minister proposes to pay the Chair \$1,400 per day and the members \$1,000 per day. Support for the exception to the Framework has been sought from the Minister of State Services.
Timing Issues	The terms of appointment will commence on 20 May 2014, and end on 18 April 2016.
Announcement	The Minister will announce the appointments.
Consultation	<p>Paper prepared by CERA. The SSC was consulted. The Treasury and DPMC were informed.</p> <p>The Minister for Canterbury Earthquake Recovery indicates that the Minister of State Services has been consulted. The Minister also indicates that discussion is not required with the government caucus or with other parties represented in Parliament.</p>

The Minister for Canterbury Earthquake Recovery recommends that the Committee:

- 1 note that the Canterbury Earthquake Recovery Act 2011 (the Act) provides for the Minister for Canterbury Earthquake Recovery (the Minister), to determine where land is taken by Proclamation and where property damage is caused by demolition work undertaken by the Canterbury Earthquake Recovery Authority;
- 2 note that the Minister intends to establish a panel of experts (Panel) to advise him and make recommendations on compensation claims under the Act;
- 3 note the terms of reference for the Panel attached to the submission under APH (14) 98;
- 4 note that the Minister intends to **appoint** the following Panel of three experts for terms commencing on 20 May 2014 and ending on 18 April 2016:
 - 4.1 Out of scope
 - 4.2 John Graham **HARDIE** [page 16];
 - 4.3 Out of scope
- 5 note that the Minister has sought the support of the Minister of State Services to pay daily fees of \$1,000 for Panel members and \$1,400 for the Chair;
- 6 agree that the daily fees for the appointees in paragraph 4 above be \$1,000 for the Panel members and \$1,400 for the Chair, for the duration of the terms of their appointments to the Panel;

- 7 note that the Minister intends to announce the appointments once the process has been completed;
- 8 note that the Minister indicates that discussion is not required with the government caucus.

Suzanne Howard
Committee Secretary

Distribution:

- Cabinet Appointments and Honours Committee
- 23 Chief Executive, CERA

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Chair
Cabinet Appointments and Honours Committee

APPOINTMENT OF A COMPENSATION PANEL

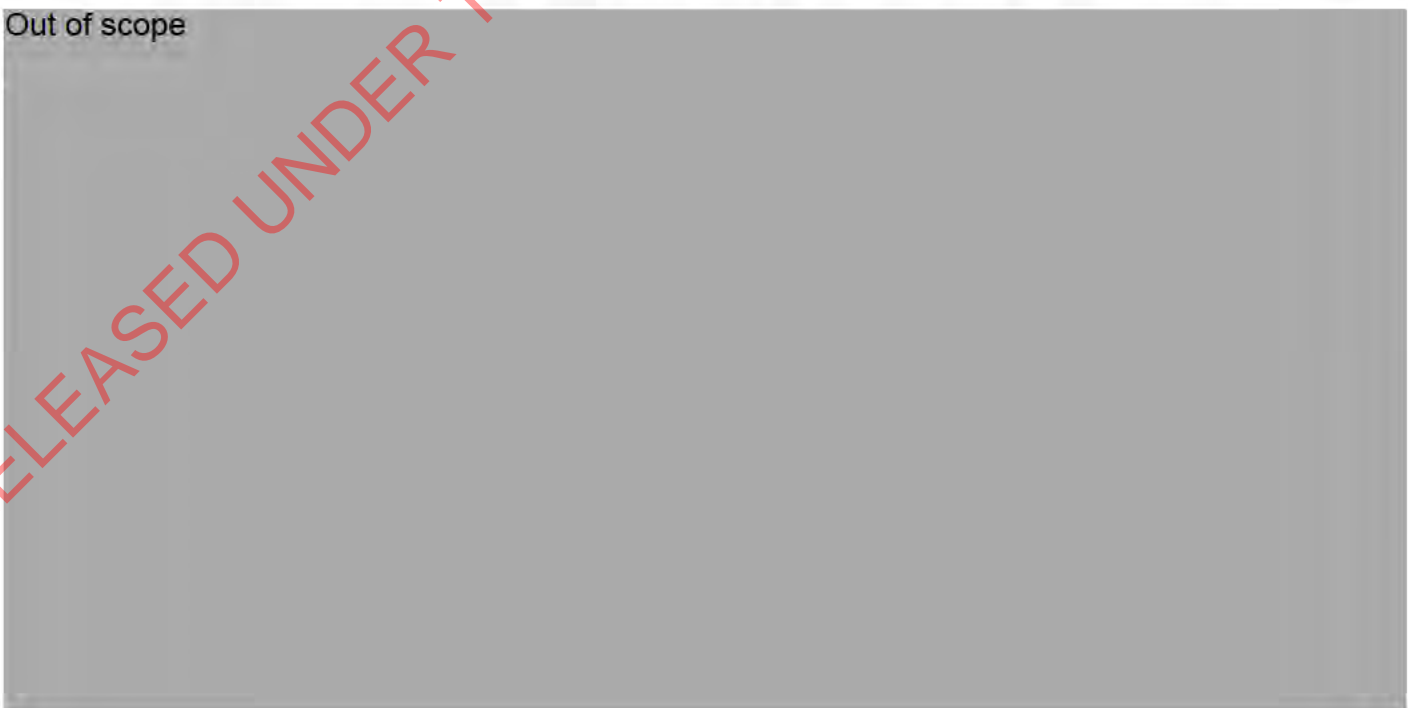
Proposal

1. This paper:
 - 1.1. informs Cabinet of my intention as Minister for Canterbury Earthquake Recovery to establish a panel of experts (Panel) who will advise me and make recommendations on compensation claims made under the Canterbury Earthquake Recovery Act 2011 (the Act);
 - 1.2. advises Cabinet of the candidates I am proposing to appoint to the Panel; and
 - 1.3. seeks Cabinet's approval of the proposed daily fee for Panel members.

Background

2. The Act provides for me as Minister for Canterbury Earthquake Recovery to determine compensation where land is taken by Proclamation (compulsory acquisition) or where property is damaged as a result of demolition work undertaken by the Canterbury Earthquake Recovery Authority (CERA).
3. I have identified three candidates with suitable expertise to appoint to the Panel: Out of scope
Out of scope, John Hardie (lawyer) and Out of scope
4. I have sought the support of the Minister of State Services to pay fees in excess of those provided in the Standard Cabinet Fees Framework on the basis that those fees are necessary to secure Panel members with the required skills and expertise.

Out of scope



Out of scope

Role, function and accountabilities of the Panel

12. The Panel will comprise of two lawyers and a valuation expert, with one member appointed as chairperson. The candidates are discussed further below.
13. The role of the Panel will be to:
 - 13.1. consider all written documentation relating to the claim;
 - 13.2. attend the meetings between me (or my delegate) and claimants to hear claimant representations; and
 - 13.3. provide me with advice and a written recommendation on the claim.
14. CERA has developed a Position Description for the members of the Panel (**Attachment A**) and a draft Terms of Reference for the Panel (**Attachment B**).
15. The Panel work-load is unknown at this time. However, it is expected to be reasonably significant. The Panel is to be established until 18 April 2016.
16. The members of the Panel will be accountable to me.

Appointment process

17. I can confirm that an appropriate process has been followed in selecting the proposed candidates in terms of the State Services Commission appointment guidelines.
18. Officials have sought advice from nominating agencies (those listed in the State Services Board Appointment and Induction Guidelines), the Valuer-General, the local branch of the Valuers Institute, the Crown Law Office and the Insurance Council about possible candidates.
19. As a result of the nominations, the most appropriate candidates have been selected for consideration.

Proposed candidates

20. The proposed candidates are outlined in Table 1 below. All candidates have been consulted with by CERA and have consented to their appointment.

Name	Experience
Out of scope	
John Hardie (<i>Mediator and Barrister</i>) Barrister Sole	Highly experienced in combining mediation work with legal areas. A thorough working knowledge of contract, tort, commercial, estate and environmental law. Has undertaken mediation work for the Government dealing with weathertight home issues since the inception of the Weathertight Homes Tribunal and Mediation Service in 2002. Currently a mediator and barrister in Christchurch.
Out of scope	

21. The Curricula Vitae of the proposed candidates are attached to this Paper.

Commencement and expiry dates

22. I wish to confirm appointment of the members to the Panel by 20 May 2014. Members will be available from that time to review any claims for compensation that are referred to them.
23. The Panel will remain in operation until 18 April 2016.

Representation on Panel

24. Full consideration has been given to the need to achieve an appropriate balance of representation on the Panel.
25. I am satisfied that the nominees will bring together an appropriate mix of skills and experience to the Panel. The nominees have been selected for their professional standing as nationally acknowledged experts in their field.

Remuneration

26. In consultation with State Services Commission officials, the Panel is classified under the Cabinet Fees Framework as a Group Four, Level Two body. This would entitle Panel members to a daily fee in the range of \$270 to \$518, with a daily fee for the chairperson in the range of \$360 to \$818.

27. Due to the responsibility of the role and the nature of the work that will be carried out by the Panel, the fees required to secure the services of members with the necessary skills and expertise need to be greater than those provided in the standard Cabinet Fees Framework.
28. Cabinet has previously approved fees of \$1,000 per day for members and \$1,400 per day for chairpersons of earthquake recovery panels with similar responsibilities and which face high levels of public scrutiny.
29. I propose that the same fees be made available for the Panel to ensure its timely establishment with competent and credible members. The market rate for a highly experienced valuer is \$300 per hour or \$350 per hour if they are involved in arbitration proceedings. An experienced barrister charges similar or higher rates.
30. I have sought the support from the Minister of State Services for an exceptional daily rate of all members, for the duration of their appointments to the Panel.


Conflicts of Interest

31. I can confirm that appropriate enquiries concerning conflicts of interest have been carried out, in accordance with the State Services Commission appointment guidelines, to identify any conflicts of interest that could reasonably be identified.
32. The following potential conflicts of interest have been identified:
 - 32.1. One member of the Panel is a member of the Christchurch community. It is possible he may be asked to review cases that concern family members or close friends. To mitigate this conflict, should this situation arise, the member affected will stand down from consideration of the claim.
 - 32.2. Some of the Panel members have been involved, to a greater or lesser extent, in property and insurance matters in Christchurch. As such it is possible that properties that Panel members have previously been involved in may arise as part of compensation claims. In these circumstances, the member affected will stand down from consideration of the claim. Likewise, the member's companies will not undertake any work for claimants.

Consultation

33. The State Services Commission has been consulted and the Treasury and the Department of the Prime Minister and Cabinet have been informed.

Out of scope



Legislative Implications

36. This paper has no legislative implications.

Regulatory Impact Analysis

37. The overall approach to the Christchurch Central Recovery Plan was covered in the Regulatory Impact Statement prepared for the approval of the Plan in July 2012 [CER(12)16 refers].

Gender, Disability and Human Rights Implications

38. There are no gender, disability and human rights implications associated with proposals in this paper.

Timing and publicity

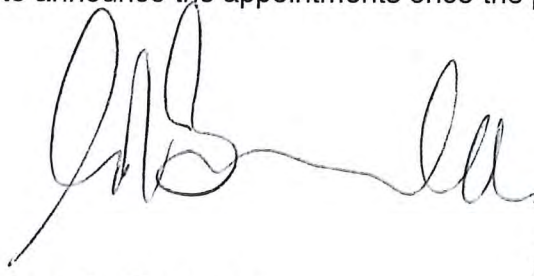
39. I intend to make an announcement once the appointment process has been completed and the Panel members have been notified.

Recommendations

40. I recommend that the Committee:

1. **note** that the Canterbury Earthquake Recovery Act 2011 provides for me, as Minister for Canterbury Earthquake Recovery, to determine compensation where land is taken by Proclamation and where property damage is caused by demolition work undertaken by CERA;
2. **note** that I intend to appoint a Panel of three experts to advise me and make recommendations on compensation claims;
3. **note** that I intend to appoint the following individuals to the Panel for a term commencing on 20 May 2014 and ending on 18 April 2016:
 - 3.1. Out of scope
 - 3.2. Mr John Hardie;
 - 3.3. Out of scope
4. **note** that I have sought the support of the Minister of State Services to pay daily fees of \$1,000 for Panel members and \$1,400 for the Chairperson;
5. **agree** that the daily fees will be \$1,000 for Panel members and \$1,400 for a Chairperson and that these fees will continue for the duration of the term of their appointments to the Panel; and

6. **note** that I intend to announce the appointments once the process has been completed.



Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

6, 5, 2014

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Attachment A – Position Description for Compensation Panel Members

Purpose

The Compensation Panel (the Panel) is being established to advise and make recommendations to the Minister for Canterbury Earthquake Recovery (Minister) on compensation claims made under the Canterbury Earthquake Recovery Act 2011 (CER Act).

Background to role

The CER Act provides for compensation to be paid for:

- (a) The compulsory acquisition of land (section 60(a));
- (b) Loss resulting from the demolition by CERA of a non-dangerous building (section 40);
- (c) Negligent physical loss or damage caused to other property as a result of a CERA demolition (section 41).

When a claim for compensation is made under the CER Act, the Minister for Canterbury Earthquake Recovery (Minister) is required to determine whether compensation is payable and the amount of compensation to be paid (section 64(1) CER Act). The Minister is required to determine compensation within a reasonable period (section 65 CER Act).

Compensation for compulsory acquisition (section 60(a))

Any person who suffers loss resulting from the compulsory acquisition of land (including interests in land) is entitled to claim compensation from the Crown (section 62 CER Act).

The Minister must determine compensation having regard to the land's current market value as determined by a valuation carried out by a registered valuer and, so far as practicable, in accordance with the relevant provisions of Part 5 of the Public Works Act 1981 (section 64(3) CER Act).

Before the Minister makes a final determination on compensation he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Compensation for damage to property caused by a CERA demolition (sections 40 and 41)

Compensation may be payable for the demolition by CERA of a non-dangerous building (section 40 CER Act) or for physical loss or damage caused to other property by a CERA demolition (section 41 CER Act). Compensation is for actual loss (section 61(a) CER Act).

Before the Minister makes a final determination on compensation, he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Role definition and functions

The role of the Panel is to review all claims for compensation referred to it and to make a recommendation to the Minister on whether compensation is payable and, if so, the level of compensation to be paid. The Panel members will also attend the meetings between the claimants and the Minister (or the Minister's delegate) to hear the claimants' representations and ask the claimants any questions as is necessary.

The Minister will determine the claims for compensation.

Once a decision on compensation has been made it is open to the claimant to appeal any determination of whether compensation is payable and the amount to the High Court, Court of Appeal and Supreme Court, although the usual time periods are somewhat truncated (sections 68 to 70 CER Act).

The process of how the decision was made cannot be appealed, although it could be the subject of an application for judicial review.

Accountabilities

The Panel will have no statutory function under the CER Act. However, Panel members will be accountable to the Minister.

Key relationships

The Panel will be supported by CERA officials in Christchurch in regards to scheduling hearings, administrative issues and preparing written reports and recommendations for the payment of compensation to the Minister for Canterbury Earthquake Recovery. The Panel members will not have any other significant relationships. From time to time, the Panel may need to respond to questions raised by the Minister.

Required skills and essential qualifications

The members of the Panel must have professional standing as nationally acknowledged experts in their field. Experience working in a review or group situation will be of benefit.

Likely work-load

The Panel work-load is undetermined at this time. However, it is expected to be reasonably significant. The Panel is to be established until 18 April 2016.

Interests

An interest arises where a person has a financial, familial or other personal interest in a matter that could give rise to bias or the appearance of bias in the work of an agency. Considering the nature of the work of the Panel, Panel members will be asked to certify that neither they, nor their family are affected by the compensation claim in question, and that their companies have not been involved in any matters relating to the claim in question. Should a conflict of interest arise, Panel members will step aside from deliberations in relation to the claim in question.

Approach

Members of the Panel will be expected to undertake this work with impartiality, basing advice and recommendations on the materials and representations provided to them and the requirements of the CER Act (and the compensation requirements of the Public Works Act 1981). The Panel will be expected to come to a joint decision on recommendations, which will be documented. Full terms of reference have been developed for the Panel.

Remuneration

Members of the Panel will be paid a daily fee.

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Attachment B – Terms of Reference for the Compensation Panel

Purpose

The purpose of the Compensation Panel (the Panel) is to advise and make recommendations to the Minister for Canterbury Earthquake Recovery (Minister) on compensation claims made under the Canterbury Earthquake Recovery Act 2011 (CER Act).

Background to role

The CER Act provides for compensation to be paid for:

- (a) The compulsory acquisition of land (section 60(a));
- (b) Loss resulting from the demolition by CERA of a non-dangerous building (section 40);
- (c) Negligent physical loss or damage caused to other property as a result of a CERA demolition (section 41).

When a claim for compensation is made under the CER Act, the Minister for Canterbury Earthquake Recovery (Minister) is required to determine whether compensation is payable and the amount of compensation to be paid (section 64(1) CER Act). The Minister is required to determine compensation within a reasonable period (section 65 CER Act).

Compensation for compulsory acquisition (section 60(a))

Any person who suffers loss resulting from the compulsory acquisition of land (including interests in land) is entitled to claim compensation from the Crown (section 62 CER Act).

The Minister must determine compensation having regard to the land's current market value as determined by a valuation carried out by a registered valuer and, so far as practicable, in accordance with the relevant provisions of Part 5 of the Public Works Act 1981 (section 64(3) CER Act).

Before the Minister makes a final determination on compensation he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Compensation for damage to property caused by a CERA demolition (sections 40 and 41)

Compensation may be payable for the demolition by CERA of a non-dangerous building (section 40 CER Act) or for physical loss or damage caused to other property by a CERA demolition (section 41 CER Act). Compensation is for actual loss (section 61(a) CER Act).

Before the Minister makes a final determination on compensation, he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Functions of the Panel

The role of the Panel is to review all claims for compensation referred to it and to provide advice and make a recommendation to the Minister on whether compensation is payable and, if so, the level of compensation to be paid. The Panel members will also attend the meetings between the claimants and the Minister (or the Minister's delegate) to hear the claimants' representations and ask the claimants any questions as is necessary.

The Minister will determine the claims for compensation.

The specific functions of the Panel will be to:

- Review and consider all written documentation and evidence provided to it.
- Consider representations from claimants and their representatives.
- Consider what is eligible for compensation in terms of section 61.
- Reach a joint decision to recommend to the Minister whether or not compensation is considered to be payable and the amount that should be paid.
- Prepare a draft written recommendation to be provided to the claimant for comment.
- Finalise the recommendation and provide it to the Minister.
- Answer any questions the Minister may have.

The quorum for the Panel is two, but it is expected that the Panel will normally be three members.

Members of the Panel are expected to:

- Contribute their experience, skills and knowledge to the discussions.
- Work collaboratively and by consensus.
- Declare any conflict of interest, or potential conflicts of interest, that may arise.
- Offer advice that is objective and unbiased.
- Adhere to the highest ethical standards.

The Chair of the Panel is expected to, in addition to the above:

- Chair meetings.
- Organise the agenda with the assistance of a CERA secretariat.
- Ensure Panel recommendations are communicated in writing to the Minister.

Accountabilities

The Panel has no statutory function under the CER Act. However, Panel members are accountable to the Minister.

Replacement of Panel members

Panel members may be replaced if:

- a. They are no longer able to assist due to other commitments,
- b. the Minister considers in his sole discretion that there is a conflict of interest (perceived, potential or actual) which cannot be managed, or
- c. the Minister considers in his sole discretion that a member is not performing the role for which they were appointed to a satisfactory standard.

In the case of an unmanageable conflict of interest or non-performance, CERA will discuss resignation with the Panel member and act to identify a replacement Panel member.

Key relationships

The Panel will be supported by the CERA offices in Christchurch in regards to scheduling hearings, administrative issues and preparing written advice and recommendations for the payment of compensation to the Minister. They will not have any other significant relationships.

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Current Membership Form Cabinet Appointments and Honours Committee

All sections must be completed.
This form is available at www.dpnc.govt.nz/cabinet/

Organisation

Canterbury Earthquake Recovery Authority Compensation Panel

Current Membership

List members, including those being replaced or reappointed, but excluding the proposed new appointee(s).

Name	Age	City/Town	Date of original appointment	Expiry date of present term
N/A				

Brief Outline of the Functions and Responsibilities of the Organisation

The role of the Compensation Panel will be to assist the Minister for Canterbury Earthquake Recovery with claims for compensation made under the Canterbury Earthquake Recovery Act 2011.

The Compensation Panel will review the claims and attend meetings between the claimants and the Minister (or the Minister's delegate) to hear claimants' representations. The Compensation Panel will provide advice to the Minister, including written recommendations on whether compensation is payable and, if so, the level of compensation recommended to be paid.

The Minister will make the final decision on all claims for compensation.

Use further pages, if required, to provide the information requested.

Date: / /

Out of scope

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Curriculum Vitae Form

CAB 50/01

All sections must be completed.
This form should be completed in consultation with the candidate where possible.
This form is available at www.dpnc.govt.nz/cabinet.

Name (family name in upper case; include title if appropriate)	John Graham HARDIE
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The Position

Organisation	Canterbury Earthquake Recovery Authority Compensation Panel
Position (Chair/member etc)	Member
Term	April 2014 until 17 April 2016
Payment (per day and/or per year)	A daily fee of \$1,000

How the Candidate Meets the Needs of the Position

Skills and attributes the candidate will bring to the position (eg: business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	<p>John Hardie possesses demonstrated skills, knowledge and experience, in organisational governances and public sector leadership.</p> <p>John assists the Government with leaky home mediations, and in the environmental field and has been brought in to mediate some large scale projects in an attempt to settle or refine issues for the Court.</p>
Possible conflicts of interest	Mr Hardie is a member of the Christchurch community. He may also have had some previous involvement in property or insurance matters in Christchurch.
Proposals for conflict management (if applicable)	Panel members will be asked to certify that neither they, nor their family are affected by compulsory acquisition of the land in question, or if applicable, their companies have not been involved in any matters relating to the land in question. Should a conflict of interest arrive, Panel members will step aside from deliberations in relation to any claims for the land in question.

Continue on next page if require

The Candidate

Name (family name in upper case; include title if appropriate)	John Graham HARDIE
Address	s 9(2)(a)
Citizenship (if not New Zealand)	New Zealand Citizen
Age	s 9(2)(a)
Current or most recent employment (specify position and employer, include years)	Barrister, Sole, 15 years
Government board appointments held (current and previous, include years)	No board appointments. However, currently working as a mediator for Ministry of Business, Innovation and Employment on leaky home cases in the Weathertight Homes Tribunal.
Private and/or voluntary sector board appointments held (current and previous, include years)	2 Years, Arbitrators' and Mediators Institute of New Zealand 18 years, Association of Dispute Resolvers New Zealand – LEADR NZ
Qualifications and experience (include significant work history and community involvement)	LLB, 1976, University of Otago Post Grad Diploma in Law, 1981, University of Otago Head of Litigation, Harmas, 1985-1998 Advanced Panel member Leader 1998 to present Court appointed referee, RMA Commissioner

Use further pages, if required, to provide the information requested.

Date: 17/04/2014

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Cabinet

CAB Min (14) 18/15

Copy No: 6

Minute of Decision

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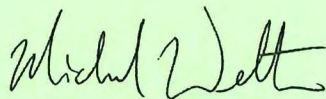
Canterbury Earthquake Recovery Compensation Panel: Appointments

Portfolio: Canterbury Earthquake Recovery

On 26 May 2014, following reference from the Cabinet Appointments and Honours Committee, Cabinet:

- 1 **noted** that the Canterbury Earthquake Recovery Act 2011 (the Act) provides for the Minister for Canterbury Earthquake Recovery (the Minister) to determine compensation where land is taken by Proclamation and where property damage is caused by demolition work undertaken by the Canterbury Earthquake Recovery Authority;
- 2 **noted** that the Minister intends to establish a panel of experts (the Compensation Panel) to advise him and to make recommendations on compensation claims under the Act;
- 3 **noted** the terms of reference for the Compensation Panel, which are attached to the paper under CAB (14) 273;
- 4 **noted** that the Minister intends to **appoint** the following individuals to the Compensation Panel for terms commencing on the date of appointment and ending on 18 April 2016:
 - 4.1 Out of scope
 - 4.2 John Graham **HARDIE** as a member;
 - 4.3 Out of scope
- 5
 - 5.1 **noted** that the Minister has sought the support of the Minister of State Services to pay daily fees of \$1,000 for Compensation Panel members and \$1,400 for the Chair;
 - 5.2 **agreed** that the daily fees for the appointees in paragraph 4 above be \$1,000 for the Compensation Panel members and \$1,400 for the Chair, for the duration of the terms of their appointments to the Panel;

- 6 **noted** that the Minister intends to announce the Compensation Panel appointments once the process has been completed;
- 7 **noted** that the Minister indicates that discussion is not required with the government caucus.



Secretary of the Cabinet

Reference: CAB (14) 273

Distribution:

Prime Minister
Chief Executive, DPMC
Director PAG, DPMC
Deputy Prime Minister
Minister for Canterbury Earthquake Recovery
Chief Executive, CERA
Minister of State Services
State Services Commissioner
Minister of Women's Affairs
Chief Executive, Ministry of Women's Affairs
Secretary, APH

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Cabinet

CAB (14) 273

Copy No: 1

Summary of Paper

23 May 2014

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Canterbury Earthquake Recovery Compensation Panel: Appointments

Portfolio Canterbury Earthquake Recovery

On 13 May 2014, the Cabinet Appointments and Honours Committee (APH) referred a paper noting the intention of the Minister for Canterbury Earthquake Recovery to appoint the three members of the Compensation Panel (which will make recommendations on compensation claims made under the Canterbury Earthquake Recovery Act 2011) to Cabinet for further consideration at its meeting on 26 May 2014 [APH Min (14) 9/2].

A copy of the paper referred by APH is attached immediately below this coversheet.

The Minister for Canterbury Earthquake Recovery recommends that Cabinet:

- 1 note that the Canterbury Earthquake Recovery Act 2011 (the Act) provides for the Minister for Canterbury Earthquake Recovery (the Minister) to determine compensation where land is taken by Proclamation and where property damage is caused by demolition work undertaken by the Canterbury Earthquake Recovery Authority;
- 2 note that the Minister intends to establish a panel of experts (the Compensation Panel) to advise him and to make recommendations on compensation claims under the Act;
- 3 note the terms of reference for the Compensation Panel, which are attached to the paper under CAB (14) 273;
- 4 note that the Minister intends to **appoint** the following individuals to the Compensation Panel for terms commencing on the date of appointment and ending on 18 April 2016:
 - 4.1 Out of scope
 - 4.2 John Graham **HARDIE** as a member [page 16];
 - 4.3 Out of scope
- 5
 - 5.1 note that the Minister has sought the support of the Minister of State Services to pay daily fees of \$1,000 for Compensation Panel members and \$1,400 for the Chair;
 - 5.2 agree that the daily fees for the appointees in paragraph 4 above be \$1,000 for the Compensation Panel members and \$1,400 for the Chair, for the duration of the terms of their appointments to the Panel;

- 6 note that the Minister intends to announce the Compensation Panel appointments once the process has been completed;
- 7 note that the Minister indicates that discussion is not required with the government caucus.

Saphron Powell
for Secretary of the Cabinet

Distribution:
The Cabinet

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Chair
Cabinet Appointments and Honours Committee

APPOINTMENT OF A COMPENSATION PANEL


Proposal

1. This paper:
 - 1.1. informs Cabinet of my intention as Minister for Canterbury Earthquake Recovery to establish a panel of experts (Panel) who will advise me and make recommendations on compensation claims made under the Canterbury Earthquake Recovery Act 2011 (the Act);
 - 1.2. advises Cabinet of the candidates I am proposing to appoint to the Panel; and
 - 1.3. seeks Cabinet's approval of the proposed daily fee for Panel members.

Background

2. The Act provides for me as Minister for Canterbury Earthquake Recovery to determine compensation where land is taken by Proclamation (compulsory acquisition) or where property is damaged as a result of demolition work undertaken by the Canterbury Earthquake Recovery Authority (CERA).
3. I have identified three candidates with suitable expertise to appoint to the Panel: Malcolm Parker (lawyer), John Hardie (lawyer) and William Bunt (valuer).
4. I have sought the support of the Minister of State Services to pay fees in excess of those provided in the Standard Cabinet Fees Framework on the basis that those fees are necessary to secure Panel members with the required skills and expertise.

Out of scope



Out of scope

Role, function and accountabilities of the Panel

12. The Panel will comprise of two lawyers and a valuation expert, with one member appointed as chairperson. The candidates are discussed further below.
13. The role of the Panel will be to:
 - 13.1. consider all written documentation relating to the claim;
 - 13.2. attend the meetings between me (or my delegate) and claimants to hear claimant representations; and
 - 13.3. provide me with advice and a written recommendation on the claim.
14. CERA has developed a Position Description for the members of the Panel (**Attachment A**) and a draft Terms of Reference for the Panel (**Attachment B**).
15. The Panel work-load is unknown at this time. However, it is expected to be reasonably significant. The Panel is to be established until 18 April 2016.
16. The members of the Panel will be accountable to me.

Appointment process

17. I can confirm that an appropriate process has been followed in selecting the proposed candidates in terms of the State Services Commission appointment guidelines.
18. Officials have sought advice from nominating agencies (those listed in the State Services Board Appointment and Induction Guidelines), the Valuer-General, the local branch of the Valuers Institute, the Crown Law Office and the Insurance Council about possible candidates.
19. As a result of the nominations, the most appropriate candidates have been selected for consideration.

Proposed candidates

20. The proposed candidates are outlined in Table 1 below. All candidates have been consulted with by CERA and have consented to their appointment.

Name	Experience
Out of scope	
John Hardie (<i>Mediator and Barrister</i>) Barrister Sole	Highly experienced in combining mediation work with legal areas. A thorough working knowledge of contract, tort, commercial, estate and environmental law. Has undertaken mediation work for the Government dealing with weathertight home issues since the inception of the Weathertight Homes Tribunal and Mediation Service in 2002. Currently a mediator and barrister in Christchurch.
Out of scope	

21. The Curricula Vitae of the proposed candidates are attached to this Paper.

Commencement and expiry dates

22. I wish to confirm appointment of the members to the Panel by 20 May 2014. Members will be available from that time to review any claims for compensation that are referred to them.
23. The Panel will remain in operation until 18 April 2016.

Representation on Panel

24. Full consideration has been given to the need to achieve an appropriate balance of representation on the Panel.
25. I am satisfied that the nominees will bring together an appropriate mix of skills and experience to the Panel. The nominees have been selected for their professional standing as nationally acknowledged experts in their field.

Remuneration

26. In consultation with State Services Commission officials, the Panel is classified under the Cabinet Fees Framework as a Group Four, Level Two body. This would entitle Panel members to a daily fee in the range of \$270 to \$518, with a daily fee for the chairperson in the range of \$360 to \$818.

27. Due to the responsibility of the role and the nature of the work that will be carried out by the Panel, the fees required to secure the services of members with the necessary skills and expertise need to be greater than those provided in the standard Cabinet Fees Framework.
28. Cabinet has previously approved fees of \$1,000 per day for members and \$1,400 per day for chairpersons of earthquake recovery panels with similar responsibilities and which face high levels of public scrutiny.
29. I propose that the same fees be made available for the Panel to ensure its timely establishment with competent and credible members. The market rate for a highly experienced valuer is \$300 per hour or \$350 per hour if they are involved in arbitration proceedings. An experienced barrister charges similar or higher rates.
30. I have sought the support from the Minister of State Services for an exceptional daily rate of all members, for the duration of their appointments to the Panel.


Conflicts of Interest

31. I can confirm that appropriate enquiries concerning conflicts of interest have been carried out, in accordance with the State Services Commission appointment guidelines, to identify any conflicts of interest that could reasonably be identified.
32. The following potential conflicts of interest have been identified:
 - 32.1. One member of the Panel is a member of the Christchurch community. It is possible he may be asked to review cases that concern family members or close friends. To mitigate this conflict, should this situation arise, the member affected will stand down from consideration of the claim.
 - 32.2. Some of the Panel members have been involved, to a greater or lesser extent, in property and insurance matters in Christchurch. As such it is possible that properties that Panel members have previously been involved in may arise as part of compensation claims. In these circumstances, the member affected will stand down from consideration of the claim. Likewise, the member's companies will not undertake any work for claimants.

Consultation

33. The State Services Commission has been consulted and the Treasury and the Department of the Prime Minister and Cabinet have been informed.

Out of scope



Legislative Implications

36. This paper has no legislative implications.

Regulatory Impact Analysis

37. The overall approach to the Christchurch Central Recovery Plan was covered in the Regulatory Impact Statement prepared for the approval of the Plan in July 2012 [CER(12)16 refers].

Gender, Disability and Human Rights Implications

38. There are no gender, disability and human rights implications associated with proposals in this paper.

Timing and publicity

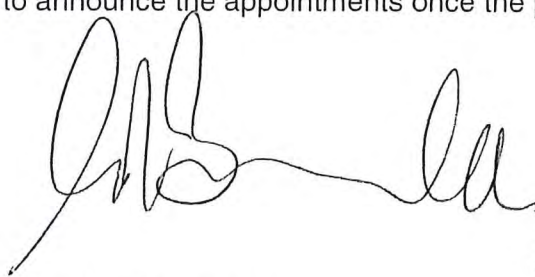
39. I intend to make an announcement once the appointment process has been completed and the Panel members have been notified.

Recommendations

40. I recommend that the Committee:

1. **note** that the Canterbury Earthquake Recovery Act 2011 provides for me, as Minister for Canterbury Earthquake Recovery, to determine compensation where land is taken by Proclamation and where property damage is caused by demolition work undertaken by CERA;
2. **note** that I intend to appoint a Panel of three experts to advise me and make recommendations on compensation claims;
3. **note** that I intend to appoint the following individuals to the Panel for a term commencing on 20 May 2014 and ending on 18 April 2016:
 - 3.1. Out of scope
 - 3.2. Mr John Hardie;
 - 3.3. Out of scope
4. **note** that I have sought the support of the Minister of State Services to pay daily fees of \$1,000 for Panel members and \$1,400 for the Chairperson;
5. **agree** that the daily fees will be \$1,000 for Panel members and \$1,400 for a Chairperson and that these fees will continue for the duration of the term of their appointments to the Panel; and

6. **note** that I intend to announce the appointments once the process has been completed.



Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

6, 5, 2014

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Attachment A – Position Description for Compensation Panel Members

Purpose

The Compensation Panel (the Panel) is being established to advise and make recommendations to the Minister for Canterbury Earthquake Recovery (Minister) on compensation claims made under the Canterbury Earthquake Recovery Act 2011 (CER Act).

Background to role

The CER Act provides for compensation to be paid for:

- (a) The compulsory acquisition of land (section 60(a));
- (b) Loss resulting from the demolition by CERA of a non-dangerous building (section 40);
- (c) Negligent physical loss or damage caused to other property as a result of a CERA demolition (section 41).

When a claim for compensation is made under the CER Act, the Minister for Canterbury Earthquake Recovery (Minister) is required to determine whether compensation is payable and the amount of compensation to be paid (section 64(1) CER Act). The Minister is required to determine compensation within a reasonable period (section 65 CER Act).

Compensation for compulsory acquisition (section 60(a))

Any person who suffers loss resulting from the compulsory acquisition of land (including interests in land) is entitled to claim compensation from the Crown (section 62 CER Act).

The Minister must determine compensation having regard to the land's current market value as determined by a valuation carried out by a registered valuer and, so far as practicable, in accordance with the relevant provisions of Part 5 of the Public Works Act 1981 (section 64(3) CER Act).

Before the Minister makes a final determination on compensation he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Compensation for damage to property caused by a CERA demolition (sections 40 and 41)

Compensation may be payable for the demolition by CERA of a non-dangerous building (section 40 CER Act) or for physical loss or damage caused to other property by a CERA demolition (section 41 CER Act). Compensation is for actual loss (section 61(a) CER Act).

Before the Minister makes a final determination on compensation, he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Role definition and functions

The role of the Panel is to review all claims for compensation referred to it and to make a recommendation to the Minister on whether compensation is payable and, if so, the level of compensation to be paid. The Panel members will also attend the meetings between the claimants and the Minister (or the Minister's delegate) to hear the claimants' representations and ask the claimants any questions as is necessary.

The Minister will determine the claims for compensation.

Once a decision on compensation has been made it is open to the claimant to appeal any determination of whether compensation is payable and the amount to the High Court, Court of Appeal and Supreme Court, although the usual time periods are somewhat truncated (sections 68 to 70 CER Act).

The process of how the decision was made cannot be appealed, although it could be the subject of an application for judicial review.

Accountabilities

The Panel will have no statutory function under the CER Act. However, Panel members will be accountable to the Minister.

Key relationships

The Panel will be supported by CERA officials in Christchurch in regards to scheduling hearings, administrative issues and preparing written reports and recommendations for the payment of compensation to the Minister for Canterbury Earthquake Recovery. The Panel members will not have any other significant relationships. From time to time, the Panel may need to respond to questions raised by the Minister.

Required skills and essential qualifications

The members of the Panel must have professional standing as nationally acknowledged experts in their field. Experience working in a review or group situation will be of benefit.

Likely work-load

The Panel work-load is undetermined at this time. However, it is expected to be reasonably significant. The Panel is to be established until 18 April 2016.

Interests

An interest arises where a person has a financial, familial or other personal interest in a matter that could give rise to bias or the appearance of bias in the work of an agency. Considering the nature of the work of the Panel, Panel members will be asked to certify that neither they, nor their family are affected by the compensation claim in question, and that their companies have not been involved in any matters relating to the claim in question. Should a conflict of interest arise, Panel members will step aside from deliberations in relation to the claim in question.

Approach

Members of the Panel will be expected to undertake this work with impartiality, basing advice and recommendations on the materials and representations provided to them and the requirements of the CER Act (and the compensation requirements of the Public Works Act 1981). The Panel will be expected to come to a joint decision on recommendations, which will be documented. Full terms of reference have been developed for the Panel.

Remuneration

Members of the Panel will be paid a daily fee.

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Attachment B – Terms of Reference for the Compensation Panel

Purpose

The purpose of the Compensation Panel (the Panel) is to advise and make recommendations to the Minister for Canterbury Earthquake Recovery (Minister) on compensation claims made under the Canterbury Earthquake Recovery Act 2011 (CER Act).

Background to role

The CER Act provides for compensation to be paid for:

- (a) The compulsory acquisition of land (section 60(a));
- (b) Loss resulting from the demolition by CERA of a non-dangerous building (section 40);
- (c) Negligent physical loss or damage caused to other property as a result of a CERA demolition (section 41).

When a claim for compensation is made under the CER Act, the Minister for Canterbury Earthquake Recovery (Minister) is required to determine whether compensation is payable and the amount of compensation to be paid (section 64(1) CER Act). The Minister is required to determine compensation within a reasonable period (section 65 CER Act).

Compensation for compulsory acquisition (section 60(a))

Any person who suffers loss resulting from the compulsory acquisition of land (including interests in land) is entitled to claim compensation from the Crown (section 62 CER Act).

The Minister must determine compensation having regard to the land's current market value as determined by a valuation carried out by a registered valuer and, so far as practicable, in accordance with the relevant provisions of Part 5 of the Public Works Act 1981 (section 64(3) CER Act).

Before the Minister makes a final determination on compensation he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Compensation for damage to property caused by a CERA demolition (sections 40 and 41)

Compensation may be payable for the demolition by CERA of a non-dangerous building (section 40 CER Act) or for physical loss or damage caused to other property by a CERA demolition (section 41 CER Act). Compensation is for actual loss (section 61(a) CER Act).

Before the Minister makes a final determination on compensation, he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Functions of the Panel

The role of the Panel is to review all claims for compensation referred to it and to provide advice and make a recommendation to the Minister on whether compensation is payable and, if so, the level of compensation to be paid. The Panel members will also attend the meetings between the claimants and the Minister (or the Minister's delegate) to hear the claimants' representations and ask the claimants any questions as is necessary.

The Minister will determine the claims for compensation.

The specific functions of the Panel will be to:

- Review and consider all written documentation and evidence provided to it.
- Consider representations from claimants and their representatives.
- Consider what is eligible for compensation in terms of section 61.
- Reach a joint decision to recommend to the Minister whether or not compensation is considered to be payable and the amount that should be paid.
- Prepare a draft written recommendation to be provided to the claimant for comment.
- Finalise the recommendation and provide it to the Minister.
- Answer any questions the Minister may have.

The quorum for the Panel is two, but it is expected that the Panel will normally be three members.

Members of the Panel are expected to:

- Contribute their experience, skills and knowledge to the discussions.
- Work collaboratively and by consensus.
- Declare any conflict of interest, or potential conflicts of interest, that may arise.
- Offer advice that is objective and unbiased.
- Adhere to the highest ethical standards.

The Chair of the Panel is expected to, in addition to the above:

- Chair meetings.
- Organise the agenda with the assistance of a CERA secretariat.
- Ensure Panel recommendations are communicated in writing to the Minister.

Accountabilities

The Panel has no statutory function under the CER Act. However, Panel members are accountable to the Minister.

Replacement of Panel members

Panel members may be replaced if:

- a. They are no longer able to assist due to other commitments,
- b. the Minister considers in his sole discretion that there is a conflict of interest (perceived, potential or actual) which cannot be managed, or
- c. the Minister considers in his sole discretion that a member is not performing the role for which they were appointed to a satisfactory standard.

In the case of an unmanageable conflict of interest or non-performance, CERA will discuss resignation with the Panel member and act to identify a replacement Panel member.

Key relationships

The Panel will be supported by the CERA offices in Christchurch in regards to scheduling hearings, administrative issues and preparing written advice and recommendations for the payment of compensation to the Minister. They will not have any other significant relationships.

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Current Membership Form Cabinet Appointments and Honours Committee

All sections must be completed.
This form is available at www.dpmc.govt.nz/cabinet/

Organisation

Canterbury Earthquake Recovery Authority Compensation Panel

Current Membership

List members, including those being replaced or reappointed, but excluding the proposed new appointee(s).

Name	Age	City/Town	Date of original appointment	Expiry date of present term
N/A				

Brief Outline of the Functions and Responsibilities of the Organisation

The role of the Compensation Panel will be to assist the Minister for Canterbury Earthquake Recovery with claims for compensation made under the Canterbury Earthquake Recovery Act 2011.

The Compensation Panel will review the claims and attend meetings between the claimants and the Minister (or the Minister's delegate) to hear claimants' representations. The Compensation Panel will provide advice to the Minister, including written recommendations on whether compensation is payable and, if so, the level of compensation recommended to be paid.

The Minister will make the final decision on all claims for compensation.

Use further pages, if required, to provide the information requested.

Date: / /

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Curriculum Vitae Form

CAB 50/01

All sections must be completed.
 This form should be completed in consultation with the candidate where possible.
 This form is available at www.dpme.govt.nz/cabinet.

Name (family name in upper case; include title if appropriate)	John Graham HARDIE
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The Position

Organisation	Canterbury Earthquake Recovery Authority Compensation Panel
Position (Chair/member etc)	Member
Term	April 2014 until 17 April 2016
Payment (per day and/or per year)	A daily fee of \$1,000

How the Candidate Meets the Needs of the Position

Skills and attributes the candidate will bring to the position (eg: business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	<p>John Hardie possesses demonstrated skills, knowledge and experience, in organisational governances and public sector leadership.</p> <p>John assists the Government with leaky home mediations, and in the environmental field and has been brought in to mediate some large scale projects in an attempt to settle or refine issues for the Court.</p>
Possible conflicts of interest	No conflicts of interest have been identified
Proposals for conflict management (if applicable)	Panel members will be asked to certify that neither they, nor their family are affected by compulsory acquisition of the land in question, or if applicable, their companies have not been involved in any matters relating to the land in question. Should a conflict of interest arrive, Panel members will step aside from deliberations in relation to any claims for the land in question.

Continue on next page if required

The Candidate

Name (family name in upper case: include title if appropriate)	John Graham HARDIE
Address	s 9(2)(a)
Citizenship (if not New Zealand)	New Zealand Citizen
Age	s 9(2)(a)
Current or most recent employment (specify position and employer. include years)	Barrister, Sole, 15 years
Government board appointments held (current and previous, include years)	No board appointments. However, currently working as a mediator for Ministry of Business, Innovation and Employment on leaky home cases in the Weathertight Homes Tribunal.
Private and/or voluntary sector board appointments held (current and previous, include years)	2 Years, Arbitrators' and Mediators Institute of New Zealand 18 years, Association of Dispute Resolvers New Zealand – LEADR NZ
Qualifications and experience (include significant work history and community involvement)	LLB, 1976, University of Otago Post Grad Diploma in Law, 1981, University of Otago Head of Litigation, Harmas, 1985-1998 Advanced Panel member Leader 1998 to present Court appointed referee, RMA Commissioner

Use further pages, if required, to provide the information requested.

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To: Minister for Canterbury Earthquake
 Recovery

IN CONFIDENCE AND SUBJECT TO LEGAL PRIVILEGE

**COMPENSATION PROCESS AND APPOINTMENT OF
 COMPENSATION PANEL MEMBERS**

Date	3 April 2014	Priority	High
Report No	M/13-14-483	File Reference	

Action Sought	Deadline
Hon Gerry Brownlee <i>Minister for Canterbury Earthquake Recovery</i>	10 April 2014
Agree to establish a panel of experts (the Panel) to assist you with compensation claims.	
Approve the following candidates referred to in this briefing paper for appointment to the Panel: <small>Out of scope</small> John Hardie and <small>Out of scope</small>	10 April 2014

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Bronwyn Arthur	Chief Legal Advisor	s 9(2)(a)	
Nicola Thomas	Manager, Land Acquisitions		<input checked="" type="checkbox"/>

Minister's office comments

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

Comments

COMPENSATION PROCESS AND APPOINTMENT OF COMPENSATION PANEL MEMBERS

Purpose

- 1 The purpose of this paper is to:
 - 1.1 Advise you of the proposed process for determining claims for compensation made under the Canterbury Earthquake Recovery Act 2011 (the Act);
 - 1.2 Seek your approval to establish a panel of experts (the Panel) to advise you and make recommendations on claims for compensation; and
 - 1.3 Seek your approval of the proposed candidates for appointment to the Panel.

Executive summary

- 2 A process for determining compensation claims has been formulated with input from Crown Law (**Attachment A**). This process reflects principles of natural justice and will support robust decision-making. Following the process should lessen the risk of successful judicial review of your decisions, although claimants still have a right of appeal.
- 3 Part of the compensation process involves hearing claimants' representations. This is a statutory function which you originally intended to delegate to the Panel. You no longer wish to delegate this function and will instead hear claimant representations in person.
- 4 It is still recommended that the Panel be established to provide you with advice and make recommendations to you on the claims. The Panel would sit with you when you meet with claimants to hear their representations.
- 5 The recommended Panel members for your consideration are:
 - 5.1 Out of scope
 - 5.2 John Hardie, barrister;
 - 5.3 Out of scope
- 6 The curricula vitae of the proposed candidates are attached (**Attachment B**).

Consultation

- 7 If you approve of the proposed candidates for the Panel, consultation will be required with:
 - 7.1 The State Services Commission whose agreement is required on the proposed fees for Panel members;
 - 7.2 The Department of Prime Minister and Cabinet regarding the candidates for appointment to the Panel; and
 - 7.3 The Appointment and Honours Cabinet Committee whose agreement is required on the candidates for appointment to the Panel.

Recommendations

8 It is recommended that you:

- 1 Note the proposed process for determining claims for compensation under section 64 of the Canterbury Earthquake Recovery Act 2011 as set out in Attachment A;
- 2 Agree to establish a panel of experts (the Panel) to assist you with compensation claims; and
- 3 Agree that CERA officials will prepare a draft Appointments and Honours Committee paper seeking agreement to the appointment of the following candidates to the Panel:

Out of scope

John Hardie

Out of scope

YES/NO

YES/NO

NOTES / APPROVED / NOT APPROVED

Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

Date: 7/9 / 2014

Bronwyn Arthur
Chief Legal Advisor


Attachment A: Proposed process for determining claims for compensation under the Canterbury Earthquake Recovery Act 2011

Attachment B: Curricula Vitae for proposed members to be appointed to the Panel

Background

- 9 The Act provides for compensation to be paid for:
- 9.1 The compulsory acquisition of land (section 60(a));¹
 - 9.2 Loss resulting from the demolition by CERA of a non-dangerous building (section 40); and
 - 9.3 Negligent physical loss or damage caused to other property as a result of a CERA demolition (section 41).
- 10 It is your function under the Act to determine whether compensation is payable and the amount of compensation to be paid (section 64(1)). Before you make a final decision, you must give claimants a reasonable opportunity to appear before you or your delegate to make representations as to the nature of their claim and the amount of compensation payable (section 64(4)). You must determine claims for compensation within a reasonable period (section 65). What is a reasonable period will depend on the circumstances of each case, in particular the complexity of the claim.
- 11 On 30 November 2012 you (M/12-13/172):
- 11.1 Agreed to appoint a panel of up to three independent experts as your delegate to hear claimants' representations; and
 - 11.2 Directed officials to proceed with identifying possible candidates and report back to you on an appropriate appointment process.
- 12 You have subsequently decided against delegation of your function to hear claimant representations. The appointment of the Panel is still recommended in order to ensure you receive the necessary expert advice on compensation claims.
- 13 CERA has received two related claims for compensation for compulsory acquisition (received 4 November 2013 and 30 December 2013). The claims were submitted incomplete and the claimants have been asked to provide the necessary supporting information before the claims can be progressed.² More claims for compensation for compulsory acquisition are expected shortly. It is desirable to have the Panel established as soon as possible to provide assistance with existing and future claims.
- 14 A small number of claims arising under sections 40 and 41 of the Act have either been received or are likely to be received in the near future. The value of these claims is generally expected to be low.
- 15 Crown Law has provided advice on the process for dealing with claims for compensation.

Out of scope



¹ This includes all land compulsorily acquired under the Act, not just land within the CBD.

² One claimant submitted most of its supporting documentation on 31 March 2014.

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Establishing the Panel

- 24 Although you have decided against delegation, it is recommended that the Panel still be established so you can receive expert advice and recommendations on the claims. Officials consider that Panel advice is necessary and desirable, in particular for claims of a technical and complex nature. It is also preferable for you to receive advice on the claims from external expert advisors rather than from CERA officials in order to remove any perception of bias. It is proposed that Panel members would sit with you on an as required basis.
- 25 It is recommended that the Panel comprise of three expert members: two lawyers and one valuer. The quorum for the Panel would be two members. While officials initially considered it would be desirable to have an insurance expert sitting on the Panel, it has become evident that the number of claims with an insurance element is likely to be far fewer than previously anticipated. It is therefore proposed that insurance advice be sought from external advisors on an as required basis, rather than appointing an insurance expert to the Panel.
- 26 While you will chair the claimant meetings, it is proposed that one Panel member be appointed as chairperson of the Panel. The Panel chairperson would be responsible for ensuring the Panel discharges its responsibilities to you.

Panel member candidates

- 27 Officials have sought advice to identify possible candidates for the Panel from:
- Nominating agencies; Ministry of Women's Affairs, Te Puni Kokiri, Ministry of Pacific Island Affairs, Office of Ethnic Affairs, Ministry of Consumer Affairs and Office of Disability Issues;
 - The Valuer-General;
 - The local branch of the Valuers Institute;
 - Crown Law; and
 - Insurance Council of New Zealand.
- 28 The following individuals have been identified as potential candidates for appointment to the Panel:
- Out of scope
 - John Hardie – barrister; and
 - Out of scope
- 29 The curricula vitae and details of each recommended candidate are attached to this paper for your review (**Attachment B**). Brief descriptions of the relevant experience of each individual are contained in the table below.

Name	Experience
Out of scope	
John Hardie (<i>Mediator and Barrister</i>) Barrister Sole	Highly experienced in combining mediation work with legal areas. A thorough working knowledge of contract, tort, commercial, estate and environmental law. Has undertaken mediation work for the Government dealing with weathertight home issues since the inception of the Weathertight Homes Tribunal and Mediation Service in 2002. Currently a mediator and barrister in Christchurch.
Out of scope	

- 30 CERA officials consider the appointment of the above candidates would bring a good mix of skills and experience to the Panel in order to provide you with the technical and specialised advice required.
- 31 The fees required to secure services of members suitable for the proposed Panel are likely to be in excess of those provided in the standard Cabinet Fees Framework for a body of this nature. You will therefore be required to seek support from the Minister of State Services should you wish to pay fees outside the current framework. A draft letter to the Minister of State Services will be provided to you once you have confirmed your approval, or otherwise, of the proposed candidates.
- 32 Cabinet has previously approved fees in excess of those provided in the standard Cabinet Fees Framework for earthquake recovery panels with similar responsibilities and which face high levels of public scrutiny. Those fees were \$1,000 per day for members and \$1,400 per day for chairpersons. CERA officials propose that the same fees be made available to Panel members to ensure its establishment with competent and credible members.
- 33 Any appointments will need to be considered by the Appointment and Honours Committee. A draft paper to the Committee will be provided to you once you have confirmed your approval, or otherwise, of the proposed candidates.

Next Steps

- 34 If you approve of the proposed candidates, we will provide you with a draft letter to the Minister of State Services and a draft Cabinet paper to the Appointment and Honours Committee for your consideration.

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CURRICULUM VITAE

JOHN HARDIE

s 9(2)(a)



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To: **Minister for Canterbury Earthquake
 Recovery**

IN CONFIDENCE AND SUBJECT TO LEGAL PRIVILEGE

APPOINTMENT OF COMPENSATION PANEL MEMBERS

Date	5 May 2014	Priority	High
Report No	M/13-14/550	File Reference	

Action Sought	Deadline
Hon Gerry Brownlee <i>Minister for Canterbury Earthquake Recovery</i>	10 am Thursday 8 May 2014
Sign the letter to the Minister of State Services seeking his support for a fees exemption under the Cabinet Fees Framework for the compensation panel (Attachment A)	
Sign the draft Cabinet paper notifying the Cabinet Appointments and Honours Committee of your intention to establish the compensation panel and seeking approval for a fees exemption (Attachment B).	

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Bronwyn Arthur	Chief Legal Advisor	s 9(2)(a)	<input checked="" type="checkbox"/>
Nicola Thomas	Manager, Land Acquisitions		

Minister's office comments

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> Approved <input type="checkbox"/> Needs change <input type="checkbox"/> Withdrawn <input type="checkbox"/> Not seen by Minister <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Referred to	<p>Comments</p>
--	------------------------

APPOINTMENT OF COMPENSATION PANEL MEMBERS

Purpose

- 1 The purpose of this paper is to provide you with the following draft documents relevant to the proposed compensation panel (Panel) for your consideration and approval:
 - 1.1 letter to the Minister of State Services seeking his support to pay Panel members fees in excess of the fees provided for in the Cabinet Fees Framework; and
 - 1.2 Cabinet paper for the Cabinet Appointment and Honours Committee's consideration on Tuesday 13 May 2014.

Background

- 2 On 7 April 2014 you agreed (M/13-14-483 refers):
 - 2.1 to establish the Panel to assist you with compensation claims; and
 - 2.2 that CERA officials would prepare a draft Appointments and Honours Committee paper seeking agreement to the appointment of the following candidates to the Panel:
 - Out of scope
 - John Hardie
 - Out of scope
- 3 This paper addresses the proposed fees to be paid to Panel members and the requirement to inform the Cabinet Appointments and Honours Committee of the proposed appointments.

Comment / Discussion

Panel fees

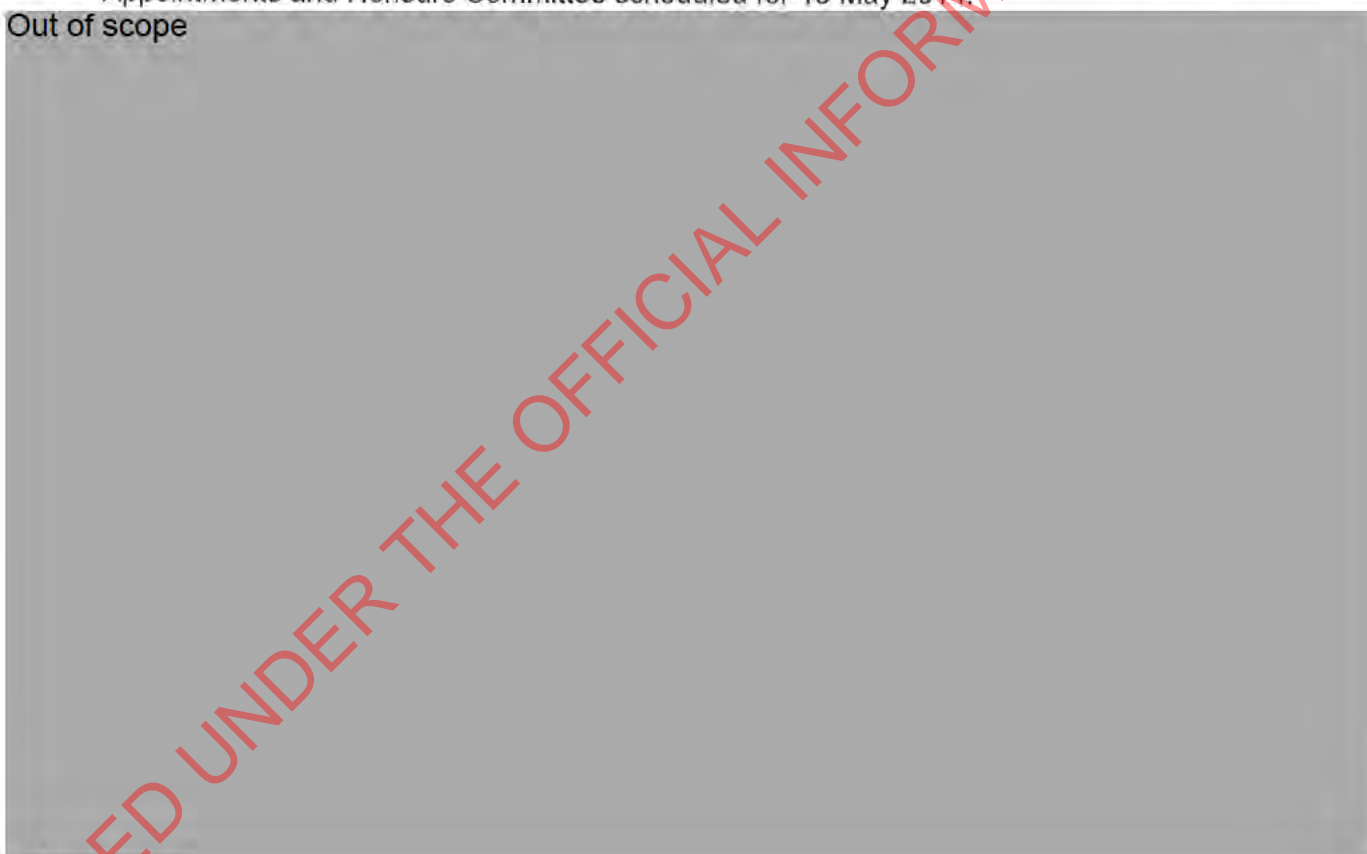
- 4 The payment of fees to Panel members is governed by the Cabinet Fees Framework (Cabinet Office Circular CO (12) 6). In consultation with State Services Commission officials, the Panel is classified under the Cabinet Fees Framework as a Group Four, Level Two body. This would entitle Panel members to a daily fee in the range of \$270 to \$518, with a daily fee for a chairperson in the range of \$360 to \$818.
- 5 The fees required to secure services of members suitable for the proposed Panel are likely to be in excess of those provided in the standard Cabinet Fees Framework for a body of this nature.
- 6 Cabinet has previously approved fees in excess of those provided in the Cabinet Fees Framework for earthquake recovery panels with similar responsibilities and which face high levels of public scrutiny. Those fees were \$1,000 per day for members and \$1,400 per day for chairpersons. CERA officials propose that the same fees be made available to Panel members to ensure its establishment with competent and credible members.

- 7 You are required to seek support from the Minister of State Services should you wish to pay fees outside the current framework. A draft letter to the Minister of State Services seeking his support of the proposed fees has been prepared for your consideration (**Attachment A**).

Cabinet Appointment and Honours Committee

- 8 Appointments of this nature need to be considered by the Cabinet Appointments and Honours Committee. A draft Cabinet paper to the Committee has been prepared for your consideration (**Attachment B**). The purpose of the draft paper is to:
 - 8.1 inform Cabinet of your intention to establish the Panel for a term commencing on 20 May 2014 and expiring on 18 April 2016;
 - 8.2 advise Cabinet of the candidates you are proposing to appoint to the Panel; and
 - 8.3 seek Cabinet's approval of the proposed daily fee for Panel members.
- 9 It is proposed that the draft Cabinet paper be submitted in time for the meeting of the Cabinet Appointments and Honours Committee scheduled for 13 May 2014.

Out of scope



Next steps

- 12 Once the appointment process has been completed, and the Panel members have been notified, details of the Panel members and the process for determining claims for compensation will be publically announced. A media and communications plan is being developed for these announcements and any resulting media enquiries.

Consultation

- 13 The State Services Commission has been consulted and the Treasury and the Department of the Prime Minister and Cabinet have been informed. The Officials Committee for Canterbury Earthquake Recovery has also reviewed and commented on the draft Cabinet paper.

Recommendations

14 It is recommended that you:

- 1 **Note** that officials are proposing that compensation panel members be paid fees which are outside the current Cabinet Fees Framework
- 2 **Sign** the letter to the Minister of State Services seeking his support for a fees exemption under the Cabinet Fees Framework for the compensation panel (**Attachment A**) YES / NO
- 3 **Sign** the draft Cabinet paper notifying the Cabinet Appointments and Honours Committee of your intention to establish the compensation panel and seeking approval for the fees exemption (**Attachment B**). YES / NO



Bronwyn Arthur
Chief Legal Advisor

NOTED / APPROVED / NOT APPROVED
Hon Gerry Brownlee Minister for Canterbury Earthquake Recovery
Date: / / 2014

Attachment A: Draft letter to the Minister of State Services

Attachment B: Draft Cabinet paper to the Cabinet Appointments and Honours Committee

Attachment A

Draft letter to the Minister of State Services

Hon Dr Jonathan Coleman
Minister of State Services
Parliament Buildings
WELLINGTON

Dear Minister

I wish to seek your support for a fees exemption under the Cabinet Fees Framework for a panel of experts I am proposing to establish for the purpose of advising me on compensation claims made under the Canterbury Earthquake Recovery Act 2011 (the Act).

The Act provides for the payment of compensation in certain circumstances, including for the compulsory acquisition of land and where damage to property is caused as a result of a CERA demolition.

Due to the technical and complex aspects of the compensation claims, in particular compulsory acquisition claims, it is necessary that I obtain expert advice on my obligation to determine whether compensation is payable and the amount of compensation to be paid. However, the expertise I require is not available from within the organisation.

The function of the panel will be to review all claims referred to it, attend claimant meetings with me (or my delegate) and provide me with recommendations. I will make the final decision on what compensation, if any, is to be paid.

The panel will comprise of two lawyers and a valuer, with one appointed as chairperson. The volume of work each member will be required to undertake is currently unknown.

Applying the Cabinet Fees Framework, the panel is classified as a Group Four, Level Two body. I am proposing to pay panel members fees in excess of the fees that would normally be available under the Framework.

Cabinet has previously approved fees of \$1,000 per day for members and \$1,400 per day for chairpersons of earthquake recovery panels with similar responsibilities and which face high levels of public scrutiny. I believe that the same level of fees for this panel is appropriate given the skills and expertise required of panel members. The nominees possess the appropriate skills and expertise to undertake panel duties and they will have an important role to play in advising me on compensation claims.

Yours sincerely

Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

Attachment B

Draft Cabinet paper to the Appointments and Honours Committee

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Chair
Cabinet Appointments and Honours Committee

APPOINTMENT OF A COMPENSATION PANEL

Proposal

1. This paper:
 - 1.1. informs Cabinet of my intention as Minister for Canterbury Earthquake Recovery to establish a panel of experts (Panel) who will advise me and make recommendations on compensation claims made under the Canterbury Earthquake Recovery Act 2011 (the Act);
 - 1.2. advises Cabinet of the candidates I am proposing to appoint to the Panel; and
 - 1.3. seeks Cabinet's approval of the proposed daily fee for Panel members.

Background

2. The Act provides for me as Minister for Canterbury Earthquake Recovery to determine compensation where land is taken by Proclamation (compulsory acquisition) or where property is damaged as a result of demolition work undertaken by the Canterbury Earthquake Recovery Authority (CERA).
3. I have identified three candidates with suitable expertise to appoint to the Panel: Out of scope, John Hardie (lawyer) and Out of scope
4. I have sought the support of the Minister of State Services to pay fees in excess of those provided in the Standard Cabinet Fees Framework on the basis that those fees are necessary to secure Panel members with the required skills and expertise.

Compensation under the Act

5. The Act provides for the acquisition of land by agreement and by compulsion. While the preference remains to acquire land by agreement wherever possible, it is recognised that in some cases the Crown may not be able to reach agreement on terms that are acceptable to both parties. In such cases it may be necessary for the Crown to compulsorily acquire land through my powers under section 55 of the Act. To date, I have exercised my power to compulsorily acquire 46 interests in land.
6. Any person who suffers loss resulting from the compulsory acquisition of land is entitled to compensation from the Crown. To date, approximately one third of potential compensation claims for the 46 compulsory acquisitions have been settled by agreement.
7. Compensation is also available to property owners if CERA demolishes a non-dangerous building (section 40 of the Act) or negligently causes damage to other property during a demolition (section 41 of the Act). Although demolitions have been occurring under the Act since its inception, there have been less than five claims to date. It is anticipated that the Panel's involvement with compensation claims under sections 40 and 41 will be minimal.

8. Before I make a final decision on compensation, I must give claimants a reasonable opportunity to make representations to me (or my delegate) as to the nature of the claim and the amount of compensation payable.
9. Once I have made my decision, the claimant has a right of appeal to the High Court, and then subsequently to the Court of Appeal and Supreme Court (sections 68 to 70 of the Act). In addition, my decision-making process on compensation could be subject to judicial review, for example if the process was alleged to be unfair or unreasonable.
10. To minimise the likelihood of my decisions on compensation being successfully challenged and/or appealed, CERA has carefully considered and developed the process for determining compensation under the Act. However, given the contentious nature of compensation claims, it is likely that some of my decisions will be challenged, most likely by appeal.
11. Given the technical issues likely to arise in compensation claims (in particular for compulsory acquisition) I consider it necessary to seek expert advice on those technical matters to assist me in determining compensation.

Role, function and accountabilities of the Panel

12. The Panel will comprise of two lawyers and a valuation expert, with one member appointed as chairperson. The candidates are discussed further below.
13. The role of the Panel will be to:
 - 13.1. consider all written documentation relating to the claim;
 - 13.2. attend the meetings between me (or my delegate) and claimants to hear claimant representations; and
 - 13.3. provide me with advice and a written recommendation on the claim.
14. CERA has developed a Position Description for the members of the Panel (**Attachment A**) and a draft Terms of Reference for the Panel (**Attachment B**).
15. The Panel work-load is unknown at this time. However, it is expected to be reasonably significant. The Panel is to be established until 18 April 2016.
16. The members of the Panel will be accountable to me.

Appointment process

17. I can confirm that an appropriate process has been followed in selecting the proposed candidates in terms of the State Services Commission appointment guidelines.
18. Officials have sought advice from nominating agencies (those listed in the State Services Board Appointment and Induction Guidelines), the Valuer-General, the local branch of the Valuers Institute, the Crown Law Office and the Insurance Council about possible candidates.
19. As a result of the nominations, the most appropriate candidates have been selected for consideration.

Proposed candidates

20. The proposed candidates are outlined in Table 1 below. All candidates have been consulted with by CERA and have consented to their appointment.

Name	Experience
Out of scope	
John Hardie (<i>Mediator and Barrister</i>) Barrister Sole	Highly experienced in combining mediation work with legal areas. A thorough working knowledge of contract, tort, commercial, estate and environmental law. Has undertaken mediation work for the Government dealing with weathertight home issues since the inception of the Weatherlight Homes Tribunal and Mediation Service in 2002. Currently a mediator and barrister in Christchurch.
Out of scope	

21. The Curricula Vitae of the proposed candidates are attached to this Paper.

Commencement and expiry dates

22. I wish to confirm appointment of the members to the Panel by 20 May 2014. Members will be available from that time to review any claims for compensation that are referred to them.
23. The Panel will remain in operation until 18 April 2016.

Representation on Panel

24. Full consideration has been given to the need to achieve an appropriate balance of representation on the Panel.
25. I am satisfied that the nominees will bring together an appropriate mix of skills and experience to the Panel. The nominees have been selected for their professional standing as nationally acknowledged experts in their field.

Remuneration

26. In consultation with State Services Commission officials, the Panel is classified under the Cabinet Fees Framework as a Group Four, Level Two body. This would entitle Panel members to a daily fee in the range of \$270 to \$518, with a daily fee for the chairperson in the range of \$360 to \$818.

27. Due to the responsibility of the role and the nature of the work that will be carried out by the Panel, the fees required to secure the services of members with the necessary skills and expertise need to be greater than those provided in the standard Cabinet Fees Framework.
28. Cabinet has previously approved fees of \$1,000 per day for members and \$1,400 per day for chairpersons of earthquake recovery panels with similar responsibilities and which face high levels of public scrutiny.
29. I propose that the same fees be made available for the Panel to ensure its timely establishment with competent and credible members. The market rate for a highly experienced valuer is \$300 per hour or \$350 per hour if they are involved in arbitration proceedings. An experienced barrister charges similar or higher rates.
30. I have sought the support from the Minister of State Services for an exceptional daily rate of all members, for the duration of their appointments to the Panel.

Conflicts of Interest

31. I can confirm that appropriate enquiries concerning conflicts of interest have been carried out, in accordance with the State Services Commission appointment guidelines, to identify any conflicts of interest that could reasonably be identified.
32. The following potential conflicts of interest have been identified:
 - 32.1. One member of the Panel is a member of the Christchurch community. It is possible he may be asked to review cases that concern family members or close friends. To mitigate this conflict, should this situation arise, the member affected will stand down from consideration of the claim.
 - 32.2. Some of the Panel members have been involved, to a greater or lesser extent, in property and insurance matters in Christchurch. As such it is possible that properties that Panel members have previously been involved in may arise as part of compensation claims. In these circumstances, the member affected will stand down from consideration of the claim. Likewise, the member's companies will not undertake any work for claimants.

Consultation

33. The State Services Commission has been consulted and the Treasury and the Department of the Prime Minister and Cabinet have been informed.

Financial Implications

34. Panel costs incurred with assessing compensation arising from the acquisition of land for anchor projects and the resulting compensation payments will be met from within the Anchor Project Land Acquisition Non-Departmental Capital Expenditure appropriation.
35. Where the Panel is asked to assist with claims for compensation made under sections 40 or 41 of the Act (i.e. not for the compulsory acquisition of land), the Panel's costs will be funded through the Managing the Recovery Departmental Output Expense appropriation. Any compensation payment arising from a claim under sections 40 or 41 will be met from the relevant appropriation. Should any substantial claims be received under sections 40 or 41, an appropriation will be sought at the time a recommendation is made to the Minister that the compensation sought is payable.

Legislative Implications

36. This paper has no legislative implications.

Regulatory Impact Analysis

37. The overall approach to the Christchurch Central Recovery Plan was covered in the Regulatory Impact Statement prepared for the approval of the Plan in July 2012 [CER(12)16 refers].

Gender, Disability and Human Rights Implications

38. There are no gender, disability and human rights implications associated with proposals in this paper.

Timing and publicity

39. I intend to make an announcement once the appointment process has been completed and the Panel members have been notified.

Recommendations

40. I recommend that the Committee:

1. **note** that the Canterbury Earthquake Recovery Act 2011 provides for me, as Minister for Canterbury Earthquake Recovery, to determine compensation where land is taken by Proclamation and where property damage is caused by demolition work undertaken by CERA;
2. **note** that I intend to appoint a Panel of three experts to advise me and make recommendations on compensation claims;
3. **note** that I intend to appoint the following individuals to the Panel for a term commencing on 20 May 2014 and ending on 18 April 2016:
 - 3.1. Out of scope
 - 3.2. Mr John Hardie;
 - 3.3. Out of scope
4. **note** that I have sought the support of the Minister of State Services to pay daily fees of \$1,000 for Panel members and \$1,400 for the Chairperson;
5. **agree** that the daily fees will be \$1,000 for Panel members and \$1,400 for a Chairperson and that these fees will continue for the duration of the term of their appointments to the Panel; and
6. **note** that I intend to announce the appointments once the process has been completed.

Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

_____ / _____ / _____

Attachment A – Position Description for Compensation Panel Members

Purpose

The Compensation Panel (the Panel) is being established to advise and make recommendations to the Minister for Canterbury Earthquake Recovery (Minister) on compensation claims made under the Canterbury Earthquake Recovery Act 2011 (CER Act).

Background to role

The CER Act provides for compensation to be paid for:

- (a) The compulsory acquisition of land (section 60(a));
- (b) Loss resulting from the demolition by CERA of a non-dangerous building (section 40);
- (c) Negligent physical loss or damage caused to other property as a result of a CERA demolition (section 41).

When a claim for compensation is made under the CER Act, the Minister for Canterbury Earthquake Recovery (Minister) is required to determine whether compensation is payable and the amount of compensation to be paid (section 64(1) CER Act). The Minister is required to determine compensation within a reasonable period (section 65 CER Act).

Compensation for compulsory acquisition (section 60(a))

Any person who suffers loss resulting from the compulsory acquisition of land (including interests in land) is entitled to claim compensation from the Crown (section 62 CER Act).

The Minister must determine compensation having regard to the land's current market value as determined by a valuation carried out by a registered valuer and, so far as practicable, in accordance with the relevant provisions of Part 5 of the Public Works Act 1981 (section 64(3) CER Act).

Before the Minister makes a final determination on compensation he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Compensation for damage to property caused by a CERA demolition (sections 40 and 41)

Compensation may be payable for the demolition by CERA of a non-dangerous building (section 40 CER Act) or for physical loss or damage caused to other property by a CERA demolition (section 41 CER Act). Compensation is for actual loss (section 61(a) CER Act).

Before the Minister makes a final determination on compensation, he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Role definition and functions

The role of the Panel is to review all claims for compensation referred to it and to make a recommendation to the Minister on whether compensation is payable and, if so, the level of compensation to be paid. The Panel members will also attend the meetings between the claimants and the Minister (or the Minister's delegate) to hear the claimants' representations and ask the claimants any questions as is necessary.

The Minister will determine the claims for compensation.

Once a decision on compensation has been made it is open to the claimant to appeal any determination of whether compensation is payable and the amount to the High Court, Court of Appeal and Supreme Court, although the usual time periods are somewhat truncated (sections 68 to 70 CER Act).

The process of how the decision was made cannot be appealed, although it could be the subject of an application for judicial review.

Accountabilities

The Panel will have no statutory function under the CER Act. However, Panel members will be accountable to the Minister.

Key relationships

The Panel will be supported by CERA officials in Christchurch in regards to scheduling hearings, administrative issues and preparing written reports and recommendations for the payment of compensation to the Minister for Canterbury Earthquake Recovery. The Panel members will not have any other significant relationships. From time to time, the Panel may need to respond to questions raised by the Minister.

Required skills and essential qualifications

The members of the Panel must have professional standing as nationally acknowledged experts in their field. Experience working in a review or group situation will be of benefit.

Likely work-load

The Panel work-load is undetermined at this time. However, it is expected to be reasonably significant. The Panel is to be established until 18 April 2016.

Interests

An interest arises where a person has a financial, familial or other personal interest in a matter that could give rise to bias or the appearance of bias in the work of an agency. Considering the nature of the work of the Panel, Panel members will be asked to certify that neither they, nor their family are affected by the compensation claim in question, and that their companies have not been involved in any matters relating to the claim in question. Should a conflict of interest arise, Panel members will step aside from deliberations in relation to the claim in question.

Approach

Members of the Panel will be expected to undertake this work with impartiality, basing advice and recommendations on the materials and representations provided to them and the requirements of the CER Act (and the compensation requirements of the Public Works Act 1981). The Panel will be expected to come to a joint decision on recommendations, which will be documented. Full terms of reference have been developed for the Panel.

Remuneration

Members of the Panel will be paid a daily fee.

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Attachment B – Terms of Reference for the Compensation Panel

Purpose

The purpose of the Compensation Panel (the Panel) is to advise and make recommendations to the Minister for Canterbury Earthquake Recovery (Minister) on compensation claims made under the Canterbury Earthquake Recovery Act 2011 (CER Act).

Background to role

The CER Act provides for compensation to be paid for:

- (a) The compulsory acquisition of land (section 60(a));
- (b) Loss resulting from the demolition by CERA of a non-dangerous building (section 40);
- (c) Negligent physical loss or damage caused to other property as a result of a CERA demolition (section 41).

When a claim for compensation is made under the CER Act, the Minister for Canterbury Earthquake Recovery (Minister) is required to determine whether compensation is payable and the amount of compensation to be paid (section 64(1) CER Act). The Minister is required to determine compensation within a reasonable period (section 65 CER Act).

Compensation for compulsory acquisition (section 60(a))

Any person who suffers loss resulting from the compulsory acquisition of land (including interests in land) is entitled to claim compensation from the Crown (section 62 CER Act).

The Minister must determine compensation having regard to the land's current market value as determined by a valuation carried out by a registered valuer and, so far as practicable, in accordance with the relevant provisions of Part 5 of the Public Works Act 1981 (section 64(3) CER Act).

Before the Minister makes a final determination on compensation he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Compensation for damage to property caused by a CERA demolition (sections 40 and 41)

Compensation may be payable for the demolition by CERA of a non-dangerous building (section 40 CER Act) or for physical loss or damage caused to other property by a CERA demolition (section 41 CER Act). Compensation is for actual loss (section 61(a) CER Act).

Before the Minister makes a final determination on compensation, he must give the claimant or their representative (lawyer, accountant or other expert) "a reasonable opportunity to appear before the Minister or the Minister's delegate to make representations as to the nature of the claim and the amount of compensation payable" (section 64(4) CER Act).

Functions of the Panel

The role of the Panel is to review all claims for compensation referred to it and to provide advice and make a recommendation to the Minister on whether compensation is payable and, if so, the level of compensation to be paid. The Panel members will also attend the meetings between the claimants and the Minister (or the Minister's delegate) to hear the claimants' representations and ask the claimants any questions as is necessary.

The Minister will determine the claims for compensation.

The specific functions of the Panel will be to:

- Review and consider all written documentation and evidence provided to it.
- Consider representations from claimants and their representatives.
- Consider what is eligible for compensation in terms of section 61.
- Reach a joint decision to recommend to the Minister whether or not compensation is considered to be payable and the amount that should be paid.
- Prepare a draft written recommendation to be provided to the claimant for comment.
- Finalise the recommendation and provide it to the Minister.
- Answer any questions the Minister may have.

The quorum for the Panel is two, but it is expected that the Panel will normally be three members.

Members of the Panel are expected to:

- Contribute their experience, skills and knowledge to the discussions.
- Work collaboratively and by consensus.
- Declare any conflict of interest, or potential conflicts of interest, that may arise.
- Offer advice that is objective and unbiased.
- Adhere to the highest ethical standards.

The Chair of the Panel is expected to, in addition to the above:

- Chair meetings.
- Organise the agenda with the assistance of a CERA secretariat.
- Ensure Panel recommendations are communicated in writing to the Minister.

Accountabilities

The Panel has no statutory function under the CER Act. However, Panel members are accountable to the Minister.

Replacement of Panel members

Panel members may be replaced if:

- a. They are no longer able to assist due to other commitments,
- b. the Minister considers in his sole discretion that there is a conflict of interest (perceived, potential or actual) which cannot be managed, or
- c. the Minister considers in his sole discretion that a member is not performing the role for which they were appointed to a satisfactory standard.

In the case of an unmanageable conflict of interest or non-performance, CERA will discuss resignation with the Panel member and act to identify a replacement Panel member.

Key relationships

The Panel will be supported by the CERA offices in Christchurch in regards to scheduling hearings, administrative issues and preparing written advice and recommendations for the payment of compensation to the Minister. They will not have any other significant relationships.

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Curriculum Vitae Form

CAB 50/01

All sections must be completed.
This form should be completed in consultation with the candidate where possible.
This form is available at www.dpnc.govt.nz/cabinet.

Name (family name in upper case; include title if appropriate)	John Graham HARDIE
---	--------------------

The Position

Organisation	Canterbury Earthquake Recovery Authority Compensation Panel
Position (Chair/member etc)	Member
Term	April 2014 until 17 April 2016
Payment (per day and/or per year)	A daily fee of \$1,000

How the Candidate Meets the Needs of the Position

Skills and attributes the candidate will bring to the position (eg: business skills, community involvement, cultural awareness, regional perspective – as relevant to the needs of the position)	<p>John Hardie possesses demonstrated skills, knowledge and experience, in organisational governances and public sector leadership.</p> <p>John assists the Government with leaky home mediations, and in the environmental field and has been brought in to mediate some large scale projects in an attempt to settle or refine issues for the Court.</p>
Possible conflicts of interest	No conflicts of interest have been identified
Proposals for conflict management (if applicable)	Panel members will be asked to certify that neither they, nor their family are affected by compulsory acquisition of the land in question, or if applicable, their companies have not been involved in any matters relating to the land in question. Should a conflict of interest arrive, Panel members will step aside from deliberations in relation to any claims for the land in question.

Continue on next page if required

The Candidate

Name (family name in upper case; include title if appropriate)	John Graham HARDIE
Address	s 9(2)(a)
Citizenship (if not New Zealand)	New Zealand Citizen
Age	s 9(2)(a)
Current or most recent employment (specify position and employer, include years)	Barrister, Sole, 15 years
Government board appointments held (current and previous, include years)	No board appointments. However, currently working as a mediator for Ministry of Business, Innovation and Employment on leaky home cases in the Weathertight Homes Tribunal.
Private and/or voluntary sector board appointments held (current and previous, include years)	2 Years, Arbitrators' and Mediators Institute of New Zealand 18 years, Association of Dispute Resolvers New Zealand – LEADR NZ
Qualifications and experience (include significant work history and community involvement)	LLB, 1976, University of Otago Post Grad Diploma in Law, 1981, University of Otago Head of Litigation, Harmas, 1985-1998 Advanced Panel member Leader 1998 to present Court appointed referee, RMA Commissioner

Use further pages, if required, to provide the information requested.

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To: Minister for Canterbury Earthquake
 Recovery

In Confidence

**CONFIRMATION OF APPOINTMENT OF CANTERBURY
 EARTHQUAKE COMPENSATION PANEL MEMBERS**

Date	10 June 2014	Priority	High
Report No	M13-14/652	File Reference	

Action Sought	Deadline
Hon Gerry Brownlee <i>Minister for Canterbury Earthquake Recovery</i>	20 June 2014
Confirm the appointment of a panel of experts to assist you with compensation claims Sign the letters to the panel members notifying them of their appointment (Attachment A)	

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Warwick Isaacs	Director CCDU	s 9(2)(a)	
Bronwyn Arthur	Chief Legal Advisor		<input checked="" type="checkbox"/>
Nicola Thomas	Manager, Land Acquisitions		<input checked="" type="checkbox"/>

Minister's office comments

Noted
 Seen
 Approved
 Needs change
 Withdrawn
 Not seen by Minister
 Overtaken by events
 Referred to

Comments

CONFIRMATION OF APPOINTMENT OF COMPENSATION PANEL MEMBERS

Purpose

- 1 This paper seeks your agreement to:
 - 1.1 confirm your appointment of Malcolm Parker (Chairperson), John Hardie and William Bunt to the Canterbury Earthquake Compensation Panel (the Panel); and
 - 1.2 sign, subject to any changes you require, the attached letters to the Panel notifying them of their appointments.

Background

- 2 The Canterbury Earthquake Recovery Act 2011 provides for compensation to be paid in certain circumstances.
- 3 It is your function under the Canterbury Earthquake Recovery Act 2011 to determine whether compensation is payable and the amount of compensation to be paid. Before you make a final decision, you must give claimants a reasonable opportunity to appear before you to make representations as to the nature of their claim and the amount of compensation payable.
- 4 On 7 April 2014 you agreed to establish a panel of experts (the Panel) to assist you with compensation claims. You also confirmed the process to be followed for determining compensation claims [M/13-14-483 refers].
- 5 On 26 May 2014 Cabinet noted that you intended to appoint a panel of three experts comprised of the following individuals to advise you and make recommendations on compensation claims [CAB Min (14) 18/15 refers]:
 - 5.1 Out of scope
 - 5.2 John Hardie; and
 - 5.3 Out of scope

Comment/Discussion

- 6 The Panel members will need to be notified of their appointments and enter into contracts recording their terms of engagement with CERA. We have prepared draft letters of appointment for your signature, subject to any changes you require (Attachment A). The letters enclose:
 - 6.1 a contract for services;
 - 6.2 position description for Panel members;
 - 6.3 terms of reference for the Panel; and
 - 6.4 a summary of the process for determining claims for compensation under the Canterbury Earthquake Recovery Act 2011.

Next Steps

- 7 Once you confirm the appointment of the Panel members, and they have been notified, details of the Panel members and the process for determining claims for compensation will be publically announced. A media and communications plan is being developed by CERA for these announcements and any resulting media enquiries.

Recommendations

8 It is recommended that you:

- 1 **Confirm** the appointment of the following candidates to a panel of experts to assist you with compensation claims under the Canterbury Earthquake Recovery Act 2011:

Out of scope

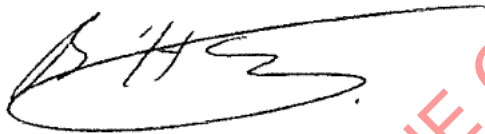
John Hardie; and

YES / NO

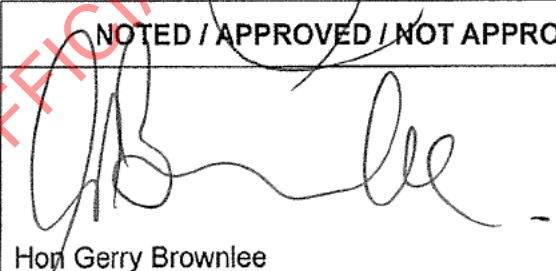
Out of scope

- 2 **Sign**, subject to any changes you require, the letters to the candidates confirming their appointment and detailing the terms of their appointment (Attachment A).

YES / NO



Bronwyn Arthur
Chief Legal Advisor

NOTED / APPROVED / NOT APPROVED

Hon Gerry Brownlee Minister for Canterbury Earthquake Recovery
Date: 10/16/2014

Attachment A: Letters to Compensation Panel Members notifying them of appointment

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982



Office of Hon Gerry Brownlee

MP for Ilam

Leader of the House

Minister of Transport

Minister for Canterbury Earthquake Recovery

Minister Responsible for the Earthquake Commission

John Hardie
44 Creyke Road
Ilam
CHRISTCHURCH 8041

Ref: CERGB13-14/743

Dear Mr Hardie

Canterbury Earthquake Recovery Compensation Panel

I am pleased to confirm your appointment as a member of the Canterbury Earthquake Compensation Panel (Compensation Panel) effective immediately to 18 April 2016.

Out of scope [REDACTED] have also been appointed to the Compensation Panel, with [REDACTED] acting as Chairperson.

Panel purpose

As you know, the Compensation Panel is expected to play a vital role in advising me and making recommendations to me on compensation claims made under the Canterbury Earthquake Recovery Act 2011. Specifically, the functions of the Compensation Panel are to:

- review and consider all written documentation and evidence provided to it;
- consider representations from claimants and their representatives;
- consider what is eligible for compensation in terms of section 61 of the Canterbury Earthquake Recovery Act 2011;
- reach a joint decision to recommend to me whether or not compensation is considered to be payable and the amount that should be paid;
- prepare a draft written recommendation to be provided to the claimant for comment;
- finalise the recommendation and provide it to me; and
- answer any questions that I may have.

You will be provided with administrative support by the Canterbury Earthquake Recovery Authority in undertaking your role.

Duration of appointment

Your appointment as a member of the Compensation Panel expires upon your resignation, your removal by me by way of written notice, when the Compensation Panel is disestablished or on a date no later than 18 April 2016.

If you decide to resign from your position as a member of the Compensation Panel, you will need to give me four weeks' notice before your resignation becomes effective.

Remuneration and Terms

Your daily fee for the role will be \$1,000 (excluding GST). You are also eligible for reimbursement for any allowances and expenses in accordance with the State Services Commission Fees Framework.

Please find **enclosed**:

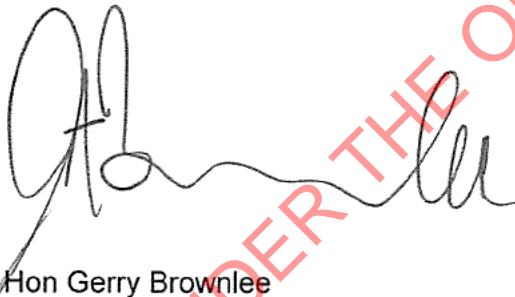
- 1 two copies of a contract for services (for signing);
- 2 position description for Compensation Panel members;
- 3 terms of reference for the Compensation Panel; and
- 4 the process for determining claims for compensation under the Canterbury Earthquake Recovery Act 2011.

If you are satisfied with the contract and the terms of this letter, please sign both copies of the contract and return both originals to Nicola Thomas (Land Acquisitions Manager) at CCDU (CERA), Private Bag 4999, Christchurch 8140. Nicola will arrange for the contract (in duplicate) to be countersigned by CERA with one completed copy returned to you.

If you have any queries regarding your appointment or role on the Compensation Panel, please contact s 9(2)(a) in the first instance.

Please accept my best wishes for your appointment.

Yours sincerely



Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

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