

**EARTHQUAKE LEGISLATION 2011**

March 2011

**Canterbury Earthquake (Accident Compensation Act 2001) 2011**

This Order is deemed to have come into effect on 22 February 2011 and expires on 31 March 2012. It provides for the Accident Compensation Corporation to pay the first week's compensation for loss of earnings to those who suffered injury as a direct result of the earthquake of 22 February 2011. The first week's compensation would usually be payable by the employer.

**Canterbury Earthquake (Building Act) Amendment Order 2010**

The Canterbury Earthquake (Building Act) Order 2010 modified Schedule 1 of the Building Act 2004 by extending and modifying building work that may be undertaken without a building consent.

Most of the changes contained within that Order have now been permanently made to the Schedule by the Building (Exempt Building Work) Order 2010, which took effect on 23 December 2010.

The Canterbury Earthquake (Building Act) Amendment Order 2010, therefore, revokes the part of the original Order which made those changes to Schedule 1. However, the modification and extension relating to water heaters remains in the original Order as it was not included in the Building (Exempt Building Work) Order 2010.

**Canterbury Earthquake (Building Act) Order 2010**

The Canterbury Earthquake (Building Act) Order 2010 was made on 16 September 2010 and expires on 16 September 2011. It modifies the Building Act 2004 in the districts of Christchurch, Waimakariri and Selwyn. The amendments made by the Order include:

Dealing with dangerous buildings:

1. The definition of dangerous building under the Act is extended to include the following:
  - a. There is a risk that the building could collapse or cause injury or death as a result of an earthquake;
  - b. There is a risk that other property could collapse or cause injury or death to a person in the building;
  - c. The local authority has not been able to inspect the building and it is required to exercise powers in relation to the building.
2. "Red card" and "yellow card" are defined. Red card is a notice not to approach the building, and yellow card restricts entry to a building for a particular purpose or to particular people. These notices are issued for a maximum of 60 days but may be renewed.
3. The local authority can also issue a notice requiring work to be carried out on a building to reduce or remove danger or to prevent the building from remaining in an insanitary state. This may include the demolition of all or part of a building. The local authority may require that work to be done within a certain timeframe (of more than 5 days).

4. The notice must state whether a building consent must be obtained to do the work. If a building consent is not required, the notice must state any conditions to be met when doing the work and that the work must be carried out in accordance with any guidelines for meeting the building code.
5. If the work is not carried out by the building owner within the required timeframe, the local authority may carry out the works. The local authority does not need to apply to the District Court to do those works, as it would normally be required to.
6. The owner will be liable for the cost of those works unless they apply to the District Court, within 5 days of the work being carried out, for relief from the obligation to pay those costs, and they are successful in that application.
7. If the owner is liable for those costs (because they failed to apply to the District Court or they were unsuccessful in an application to the District Court), the amount becomes a charge against the land on which the work was done.
8. If the local authority has erected a hoarding or fence or has attached a red card, no one may use or occupy the building, or allow someone else to. To do so is an offence liable to a fine up to \$200,000 plus \$20,000 per day for continuing offences.
9. The local authority is not liable for the above work that it carries out in good faith.

#### Exemptions from Building Consent

10. The building works which are exempt from requiring a building consent have been extended. Changes include:
  - a. New exemptions including:
    - i. Replacement or repositioning of certain kinds of water heaters;
    - ii. Construction, installation, replacement, alteration or removal of a retaining wall in a rural zone if certain conditions are met;
    - iii. Replacement or alteration of internal wall and floor linings and finishes in a dwelling;
    - iv. Demolition of all or part of a damaged building that is stand alone and less than 3 storeys high.
  - b. Extension of measurements for certain existing exemptions including construction or alteration of:
    - i. A platform, bridge, boardwalk or the like from which it is not possible for a person to fall more than 1.5 metres (previously 1m); or
    - ii. A porch or veranda up to 20 metres square (previously 15 metres square).

Of note is the exemption to obtaining a building consent for the demolition of a stand alone building less than three storeys high. This is a practical response to the difficulties raised by the earthquake. Building owners will need to respond quickly to any notices attached to their buildings, and if the Council ultimately does that work and the building owner considers that they should not be liable for the costs of the work, they will need to make an application to the Court promptly.

#### **Canterbury Earthquake (Cadastral Survey Act) Order 2010**

This Order came into effect on 16 December 2010, and expires on 16 December 2011. The Order authorises the Surveyor-General to make rules for the conduct of cadastral surveys

for land affected by the Canterbury earthquake. The Cadastral Survey Act 2002 does not provide for the making of cadastral surveying rules for a discrete area of New Zealand subject to a sudden geological event. A rule made under this Order has the effect of a rule made under the Act, and the rule-making process is similar, although the consultation requirement specified in the Act is optional under this Order.

### **Canterbury Earthquake (Education Act) Order 2011**

This Order is deemed to have come into force on 22 February 2011 and will expire on 1 April 2012. While it is in force, this Order amends parts of the Education Act 1989; the Education (Early Childhood Services) Regulations 1998; the Education (Early Childhood Services) Regulations 2008; and the Education (Home-Based Care) Order 1992. "Specified area" includes the districts of Christchurch City Council; Selwyn District Council; and Waimakariri District Council. Its provisions include:

- students enrolled in a school zone within the specified area at the time of the earthquake on 22 February 2011 continue to be considered as living in the home zone of the school, even if they need to move as a result of the earthquake;
- special enrolment schemes may be set up within the specified area;
- the Minister may vary the meaning of "half-day" to allow for changes to school operating hours;
- interventions may be made to manage risk that may occur as a result of the earthquake to the network of schools and to the education and welfare of students, both within and beyond the specified area;
- exemptions to boards of trustees within the specified area to comply with requirements for annual reports, audit, annual financial statements;
- the meaning of "home-based education and care service" is extended within the specified area;
- exemptions from regulations may be made in some circumstances to early childhood education and care centres; early childhood services; or home-based education and care services within the specified area; and
- temporary relocation licences may be granted to early childhood centres within the specified area.

### **Canterbury Earthquake (Historic Places Act) Order 2010**

This Order also applies only within the districts of Christchurch City, Waimakariri District and Selwyn District. It came into force on 23 September 2010 and expires on 31 March 2011.

The Order modifies the requirements under the Historic Places Act 1993 (HPA), and provides for applications to be made for emergency authorities or general emergency authorities ("emergency authorities") to damage, destroy, or modify archaeological sites in the above districts.

Archaeological sites are places associated with human activity before 1900 and which provide evidence relating to New Zealand History.

The Order provides that no archaeological site may be destroyed, damaged or modified unless an authority has been granted under section 14 of the HPA or an emergency authority or general emergency authority has been granted.

Emergency authorities apply instead of section 11 authorities for a particular archaeological site. General emergency authorities apply instead of section 12 general authorities for archaeological sites in a specified area.

The requirement to obtain a general emergency authority applies even if some or all of the sites within the specified area have not previously been recorded or identified.

These emergency authorities are only available where it is necessary or desirable to respond to damage arising, directly or indirectly from the Canterbury earthquake. A more direct process than that under the HPA is provided for. Sites considered to be of Maori interest are not included.

A determination on the emergency authorities must be made by the archaeological officer within 3 working days after receiving the application, and written notice of the determination is to be given as soon as possible to the applicant, the owner (if not the applicant), the territorial authority and the chief executive of the department responsible for the HPA.

Conditions may be imposed on emergency authorities, including that archaeological investigation be carried out on the site. The Order sets out how such an investigation will fit in with the works covered by the authority.

The Order excludes the right to seek a review of conditions imposed on an emergency authority and limits appeal rights to situations where an authority has been declined.

### **Canterbury Earthquake (Local Government Act 2002) Order 2010**

This Order is deemed to have come into force on 4 September 2010, and expires on the close of 30 June 2011. It provides exemptions from some requirements of the Local Government Act 2002 (LGA) to the Canterbury Regional Council, Christchurch City Council, Selwyn District Council and Waimakariri District Council ("local authorities").

The LGA provisions from which local authorities are exempt under the Order include:

1. Complying with the decision-making obligations of section 76 (but not in relation to section 81: contribution by Maori, or section 82: application of the principles of consultation);
2. Meeting sections 77 to 80 which require identification and assessment of options, consideration of community views and identification of and addressing inconsistencies with other plans or policies, when making decisions;
3. The requirement, in section 88, to use the special consultative procedure to alter the mode by which a significant activity is undertaken on behalf of a local authority. This will enable another entity to deliver the significant activity without going through the special consultative procedure;
4. Section 97, which provides that certain decisions (e.g. altering the level of service for a significant service or constructing or replacing a strategic asset) are prevented unless they are provided for in a Long Term Council Community Plan (LTCCP). However, section 97(1)(b) as to decisions to transfer the ownership or control of a strategic asset to or from the local authority is not included in this exemption;
5. The need to consider the matters in section 101(3) in meeting the funding needs of the local authority; and
6. The requirements in section 102(2) and (6) to use the special consultative procedure to adopt a rates remission or postponement policy or to only amend such policies through the LTCCP.

In addition, the Order states that a local authority is not prevented, by sections 101(1) and (2), from doing anything inconsistent with its Annual Plan or LTCCP.

These amendments apply only to the extent necessary or desirable to further the purposes in section 3 of the Canterbury Earthquake Response and Recovery Act 2010.

Essentially, these amendments enable the local authorities to move quickly to deal with the earthquake without being constrained or delayed by following usual procedures. However, despite these exemptions, the local authorities still must adhere to the principles of consultation.

### **Canterbury Earthquake (Local Government Official Information And Meetings Act) Order 2011**

This Order is deemed to have come into force on 5 March 2011 and will expire on 31 March 2012. It applies to Christchurch City Council for this entire period; and to Selwyn District Council and Waimakariri District Council from 5 March 2011 to 5 June 2011.

This Order in Council was previously in force following the September 2010 earthquake.

In relation to Christchurch City Council, it modifies the time requirements for providing a Land Information Memorandum ("LIM") where a request has been made for a LIM and it has not been provided by 5 March 2011.

The modification is that the 10 working day period specified in LGOIMA is deemed to begin on 5 March 2011, rather than an earlier actual date.

Christchurch City Council is exempt until 31 March 2012 from the requirements of Section 44A(2) of the Local Government Official Information and Meetings Act ("LGOIMA"), which specifies the information that a Council must include in a LIM. Selwyn District Council and Waimakariri District Council are exempt from this requirement until 5 June 2011. While that exemption applies, the Councils need only include in a LIM information that is readily available to the Council. Readily available is defined as meaning "physically accessible and organised or stored in a way that makes the information accessible in a timely manner".

The local authority must make a statement in the LIM to the effect that the authority to issue an incomplete LIM is provided by this Order. The statement must also specify that the Council holds other information but it is not readily available as a direct result of the Canterbury Earthquake (for Christchurch City Council) and that as a consequence of the Canterbury Earthquake, there is new information that the Council cannot provide because the information is not readily available or in a form suitable for inclusion in a LIM (for all three Councils).

So, this Order deals with practical issues of Councils not being able to access all records to prepare LIMs. It also means that information arising out of the earthquake but which has not yet been written up, compiled or assessed properly does not need to go into LIMs at this stage. This could include information on liquefaction, demolition, and repair work. At present, LIMs must be viewed as only carrying limited information. When viewing a LIM, decisions should be made on the basis that a LIM may be incomplete.

### **Canterbury Earthquake (Rating Valuations Act) Order 2010**

The Canterbury Earthquake (Rating Valuations Act) Order 2010 was made on 15 November 2010 and expires on 1 December 2011.

Under s 9(1) of the Rating Valuations Act 1998, the Christchurch City Council is required to revise its district valuation roll at least every 3 years by revaluing every rating unit within its district. This Order extends the time for doing this out to 1 December 2011. As a result, valuations in Christchurch City may be delayed. The Order does not currently apply to districts beyond Christchurch City.

### **Canterbury Earthquake (Resource Management Act) Order 2011**

This order aims to streamline the consent process for land remediation work following the 22 February 2011 Canterbury earthquake. It applies to resource consent applications made to

the Christchurch City Council, Selwyn District Council, Waimakariri District Council, Canterbury Regional Council or other specified bodies to undertake land remediation work or to change or cancel conditions of resource consents granted under the order. "Land Remediation" is defined in the Order and includes remediation and stabilisation of land, repair or reconstruction of infrastructure and flood protection works.

The above applications must proceed non-notified. A consent authority may grant consent for these activities even if they are non-complying activities and do not meet the section 104D threshold test. The consent authority is required to consult any person likely to be adversely affected by the activity but must have regard to the need for land remediation to proceed expeditiously. They must, at least, invite written comments from the person and give them 10 working days in which to respond. Those consulted persons have no right of appeal or objection to the decision made. Only the relevant local authority may bring enforcement proceedings in respect of land remediation work under this Order.

This Order also exempts the consent authority from the discount regulations under the RMA.

### **Canterbury Earthquake (Resource Management Act) Amendment Order 2011**

The Canterbury Earthquake (Resource Management Act) Order 2010 was made on 16 September 2010. It applies to Christchurch City Council, Selwyn District Council, Waimakariri District Council and Canterbury Regional Council (local authorities) from 4 September 2010 until 31 March 2012. It changes some of the requirements of the Resource Management Act 1991 (RMA) for these local authorities.

This Amendment Order amends the Canterbury Earthquake (Resource Management Act) Order 2010. Amendments are made to dates in which the Order applies to include the earthquake of 22 February 2011 and its aftermath.

The matters included in this Order are aimed at relaxing requirements on local authorities so that they can focus on earthquake recovery.

The amendments are:

1. When local authorities hold consents which expire, or there are steps to be taken under resource consents granted to them, between 22 February 2011 and 31 March 2012, a 60 day extension is given to that expiry or step.
2. If an applicant requests, the local authority processing a resource consent application may grant an extension of up to 6 months for requirements or processes relating to that application. Written notice of this is required.

The Canterbury Earthquake (Resource Management Act) Amendment Order 2010 was made to clarify that this power to extend the time periods in (1) and (2) above are additional to, and not in substitution for, existing powers to extend time.

3. The local authority can also extend the time (by up to 6 months) for taking any steps in relation to a policy or plan change request.
4. Between 2 July 2011 and 31 March 2012, these local authorities will not be required to discount resource consent processing charges as a result of any failure to process resource consent applications within the timeframes required by the RMA.
5. Obligations on local authorities to keep records and to enforce their district and regional plans have also been relaxed between 22 February 2011 and 31 March 2012. The Amendment Order now includes enforcement of resource consents.
6. If emergency works are undertaken under the RMA by or on behalf of the local authority, timeframes are extended for giving advice of action (to 20 working days) and for lodging a resource consent application (to 60 working days) for those works.

The procedure for entering a place for the purpose of emergency work is set out in clause 11, rather than section 330(3) of the RMA.

7. If the local authority takes steps, using powers under the Building Act 2004, to fix unsanitary conditions or remove danger to safety in relation to a building, a resource consent is not required.
8. The local authority may permit the Chief Executive to delegate powers and functions. Normally only the Council (being the councillors) can delegate functions and powers.
9. Local authorities are not liable for prosecution if they allow a contravention of certain sections of the RMA, provided that the omission is reasonably necessary for the response to the earthquake.
10. The Kate Valley landfill, although in the Hurunui District, is provided for in this Order. Exemptions are made to allow for the landfill to be used in the recovery from the 22 February 2012 earthquake.

The exemptions to the RMA contained within this Order are fairly practical to enable local authorities to focus their efforts on the response to, and recovery from, the Canterbury earthquake.

### **Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011**

This Order has temporary effect. It is deemed to have come into force on 22 February 2011, and expires on 31 March 2012. It provides for temporary accommodation and temporary depots and storage facilities to be deemed permitted activities under the Resource Management Act 1991 (RMA), for the duration of the Order.

While an activity is a permitted activity under this Order, it is treated as if it is a permitted activity under the plan that would otherwise apply to the activity. No existing use rights or qualification for a certificate of compliance under the RMA exists for these activities. Only the relevant consent authority may bring enforcement proceedings in relation to these activities.

“Temporary Accommodation” is defined in the order. It includes accommodation for people displaced from their normal home or business due to:

- a. Damage to land or structures caused by the earthquake.
- b. Repair or construction of structures or essential services.
- c. Land remediation works.
- d. Risk of damage to land or structures or of injury to people.

These activities are only permitted activities if the prescribed public notice process is followed by the responsible Council and the Council’s requirements are met.

“Temporary depots and storage facilities” are also defined in the Order. They include depots or storage facilities for transport purposes, for use by tradespersons, service providers or contractors incidental to construction work associated with the earthquake. The uses of land and structures used for this purpose are wide and include those involving vehicles, machinery, food, emergency supplies and the provision of services.

These activities are also treated as permitted activities provided the public notice process is followed and the Council’s requirements are met.

### **Canterbury Earthquake (Social Security Act) Order (No 2) 2010**

This Order came into effect on 24 December 2010, and remains in effect until 31 March 2012. It relates to accommodation supplements, and extends them to people who would otherwise be eligible for the supplement, but who are unable to remain in their home due to the Canterbury earthquake. The Order extends the definition of "premises" to include this situation, whereas normally the definition would only apply to those occupying the premises under s 61E of the Act.

### **Canterbury Earthquake (Social Security Act) Order (No 3) 2010**

This Order came into effect on 24 December 2010, and remains in force until 31 March 2012. The Order modifies the definition of cash assets in s 51E(1) of the Act to exclude money paid to any person by the Earthquake commission or by any insurance company in respect of damage to property or costs of alternative accommodation in light of the Canterbury earthquake.

### **Canterbury Earthquake (Social Security Act) Order 2011**

The Canterbury Earthquake (Social Security Act) Order 2011 is deemed to have come into force on 1 March 2011 and expires on 30 November 2011. It is to the same effect as the Canterbury Earthquake (Social Security Act) Order 2010. Those living in the districts of Ashburton, Christchurch, Hurunui, Selwyn or Waimakariri are exempt from the provisions which provide for the expiry of the unemployment benefit and require application for a further grant of that benefit. These requirements are set out in sections 99AA and 99AB of the Social Security Act 1964.

### **Canterbury Earthquake (Tax Administration Act) Order 2011**

This Order is deemed to have come into force on 24 February 2011, and will expire on 31 October 2011. It creates an exception to the Tax Administration Act 1994, allowing the Commissioner of Inland Revenue to disclose information about a person to certain government agencies where it is necessary to enable the government agency to provide assistance to or fulfil any obligation to that person as a result of the Canterbury earthquake of 4 September 2010 or its aftershocks.

The Commissioner has the discretion to refuse to disclose information if they consider it undesirable to disclose this. The Order also requires the government agency with access to the information to maintain the secrecy of the information.

### **Canterbury Earthquake (Transport Legislation) Order 2011**

This order is in force from 22 February 2011 to 31 October 2011. It is similar to the Canterbury Earthquake (Transport Legislation) Order 2010, and relates to the Land Transport Act 1998; the Heavy Motor Vehicle Regulations 1974; the Land Transport Rule: Vehicle Dimensions and Mass 2002 as well as the Road User Charges Act 1977.

It provides exceptions to overloading provisions in the Land Transport Act 1998, weight limitations in the Heavy Motor Vehicle Regulations 1974 and stated requirements for specific types of vehicle and overweight permits under the Land Transport Rule: Vehicle Dimensions and Mass 2002.

To qualify for an exemption for the period 22 February 2011 to 8 March 2011, a person must be granted written authorisation in respect of one or more motor vehicles by the chief executive (or a person authorised by the chief executive) of the Christchurch City Council. They must be satisfied in granting the authorisation that the specified heavy motor vehicle was operated as part of the Christchurch City Council's response to the Canterbury earthquake.

During the period from 9 March 2011 to 31 October 2011, written authorisation must be applied for in the same way to qualify for an exemption. It must also be carried in the specified heavy motor vehicle, and produced on request. The chief executive (or other person authorised by the chief executive) must take into account safety of the public and road users, the effect on transport infrastructure, the Christchurch City Council's response to the Canterbury earthquake and advice from the New Zealand Transport Authority. This includes the effects on, and safety of, the infrastructure the heavy motor vehicle will be travelling on.

The authorisation only applies when the specified heavy motor vehicle is operated as part of the relevant authority's response to the Canterbury earthquake, and at a weight that does not exceed the gross vehicle mass of the specified heavy motor vehicle. Conditions such as where and when it may be operated may be specified on the authorisation.

The Order also provides that a person is exempt from provisions in the Road User Charges Act relating to the operation of a vehicle in excess of its maximum gross weight if they are:

- operating in accordance with the Transport Legislation Order cl 5(2); and
- operating in accordance with the Transport Legislation Order cl 5(1); and
- have taken all reasonable steps to obtain a proper licence covering the weight; or reasonably believed they were within the weight limit specified in the vehicle's licence.

Exemptions are also set out in relation to inquiries under section 18A of the Road User Charges Act.

Please contact our Resource Management and Local Government Team if you would like further information or advice on Resource Management, Building Act, Local Government, or Historic Places Act related issues.

#### **CONTACT DETAILS:**

##### **Margo Perpick**

Partner

Mobile: 027 227 2026

margo.perpick@wynnwilliams.co.nz

##### **Amanda Douglas**

Partner

Mobile: 021 885585

amanda.douglas@wynnwilliams.co.nz

---

PO Box 4341, Christchurch, New Zealand  
 Telephone: 64 3 379 7622 Facsimile: 64 3 379 2467  
 Email: email@wynnwilliams.co.nz Website: www.wynnwilliams.co.nz

**Disclaimer:** The information in this newsletter is general information only, is provided free of charge and does not constitute legal or other professional advice. We try to keep the information up to date. However, to the fullest extent permitted by law, we disclaim all warranties, express or implied, in relation to this newsletter - including (without limitation) warranties as to accuracy, completeness and fitness for any particular purpose. Please seek independent advice before acting on any information in this newsletter.