

29 September 2011

Sir John Hansen
Convenor
Canterbury Earthquake Recovery Review Panel
c/- Canterbury Earthquake Recovery Authority
Private Bag 4999
Christchurch 8140

Dear Sir John

Canterbury Earthquake (Tax Administration Act) Order 2011

Proposal

The Canterbury Earthquake Recovery Review Panel is asked to consider a proposal to extend the current Canterbury Earthquake (Tax Administration Act) order 2011 (the Order). The Order allows information sharing from Inland Revenue to other government agencies to enable those agencies to provide assistance to, or fulfil any obligation to earthquake affected communities, for another 12 months.

Background

Inland Revenue's specific secrecy rules are contained in section 81 of the Tax Administration Act 1994. Subsection (4) contains a number of exceptions to the general secrecy rule, as do a number of other subsections. One of the themes of these exceptions is to better allow a "whole of government" approach in areas such as the payments of benefits and ACC compensation. However in this context the exceptions are still reasonably restrictive in respect of the information that Inland Revenue may provide, and time involved in utilising the appropriate information provision mechanisms.

Given the extraordinary situation created by the Canterbury earthquake, more flexibility was required to allow Inland Revenue to share data with other government departments and agencies to enable delivery of services and for other government departments and agencies to respond to the needs of those in Canterbury in a timely manner.

To enable this sharing of information the Order was enacted. The Order authorises Inland Revenue to disclose information to government agencies to the extent that it is necessary to enable the government agency to provide assistance to, or fulfil any obligation in relation to people or businesses as a result of the Canterbury earthquake on 4 September 2010 and its aftershocks.

The situation in Christchurch remains fluid, as the medium and long term focus shifts from initial disaster relief to rebuilding the area's infrastructure and services. As a result of the earthquakes affected people and businesses, many who are not used to dealing with government agencies, continue to require a far greater level of government support than they would otherwise have expected. This includes a substantial proportion who would not normally interact with government agencies as a matter of course, but due to the emotional upheaval from the earthquakes require assistance. Also, there are a number of people for whom the earthquake has meant that their circumstances have changed and they require rapid response from government agencies providing assistance.

The situation in Christchurch is unlikely to be alleviated within the next 12 months. Consequently, the current means to provide government services to the greater Christchurch community are required to continue for at least a further year. Therefore, the information being provided by Inland Revenue to those government agencies pursuant to the Order will also continue to be required.

Enabling Act

The Order was enacted pursuant to the Canterbury Earthquake Response and Recovery Act 2010 (CERRA 2010). This Order came into effect on 24 February 2010 and will expire on 31 October 2011. CERRA 2010 has since been repealed and replaced by the Canterbury Earthquake Recovery Act 2011 (CERA 2011). The purposes of CERA 2011 include the restoration of the social, economic, cultural, and environmental well being of greater Christchurch communities. The continued provision of information from Inland Revenue for the provision of social and business assistance fits comfortably within the parameters of those purposes.

Given that the enabling Act has been replaced, a minor amendment will be required to the Order to show that it has now been enacted pursuant to CERA 2011. Other minor amendments will include a change to the definition of "Canterbury earthquake" to reflect the definition contained in CERA 2011 and that the date of effect will be from the expiry of the current Order.

Policy Objective

The extension of the Order for a period of 12 months will enable the continued provision of certain government responses, services, and assistance to those in Canterbury. The government agency responses and services currently being provided in Christchurch for which Inland Revenue has been providing information includes the provision of social assistance (e.g. welfare payments) and business subsidies, grant applications or record reconstruction. More specifically, this might include details on a person's contact details and family, financial, employment status. This information is only shared with other government agencies if doing so meets the purposes outlined in the CERA 2011 (section 3).

Preferred Option

The extension of the existing Order for a period of 12 months will enable the continued provision of certain government responses, services, and assistance to those in Canterbury.

Contents of the draft Canterbury earthquake (Tax administration Act) Order (No 2) 2011

- 1 Title
 - This order is the Canterbury Earthquake (Tax Administration Act) Order (No 2) 2011.
- 2 Commencement
 - This order comes into force on 24 February 2011.
- 3 Expiry
 - This order expires on the close of 31 October 2012.
- 4 Interpretation
 - (1) In this order, unless the context otherwise requires,—
 - Act means the Tax Administration Act 1994
 - Canterbury earthquakes** means any earthquake in Canterbury on or after 4 September 2010 in Canterbury, and includes any aftershock
 - Commissioner has the same meaning as in section 3(1) of the Act
 - government agency means—
 - (a) a government department named in Schedule 1 of the State Sector Act 1988;
 - (b) the New Zealand Police;
 - (c) the Accident Compensation Corporation;
 - (d) the Housing New Zealand Corporation.
 - (2) The modifications or extensions of the Act made by this order do not affect the text of the Act, but require it to be read as if it had been amended in the manner indicated in this order.
- 5 Exception to obligation to maintain secrecy
 - Nothing in section 81(1) or (3) of the Act prohibits the Commissioner from communicating to an officer, employee, or agent of a government agency any information about a person that the Commissioner considers—
 - (a) is necessary to enable the government agency to provide assistance to, or fulfil any obligation in relation to, that person as a result of the Canterbury earthquakes; and
 - (b) is not undesirable to disclose.
- 6 Secrecy obligation on government agencies
 - A government agency, and an officer, employee, or agent of a government agency, with access to information that is communicated in accordance with clause 5—
 - (a) must maintain and aid in maintaining the secrecy of that information; and
 - (b) must not communicate that information to any person, except for any purpose for which, and to the extent to which, the Commissioner authorises that disclosure.
- 7 Clauses 5 and 6 apply despite anything to contrary
 - Clauses 5 and 6 apply despite anything to the contrary in the Act or in any other Act.
- 8 Revocation
 - The Canterbury Earthquake (Tax Administration Act) Order 2011 (SR2011/27) is revoked.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This Order in Council, which is made under the Canterbury Earthquake Recovery Act 2011, revokes and replaces the Canterbury Earthquake (Tax Administration Act) Order 2011 (the **first order**), which was made under the Canterbury Earthquake Response and Recovery Act 2010. The first order was deemed to have come into force on 24 February 2011 and expires on the close of 31 October 2011. This order, which comes into force on 1 November 2011 and expires on the close of 31 October 2012, has essentially the same effect as the first order.

The order authorises the Commissioner of Inland Revenue to disclose information held by the Inland Revenue Department about a person to certain government agencies to the extent that this is necessary to enable the government agency to provide assistance to, or fulfil any obligation in relation to, that person as a result of any earthquake in Canterbury on or after 4 September 2010, including any aftershocks.

Section 81 of the Tax Administration Act 1994 (the **Act**) imposes an obligation of secrecy on every officer of the Inland Revenue Department. A number of exceptions to this obligation are set out in section 81(4) of the Act. In effect, this order creates a further exception to the obligation. This is necessary because the obligation of secrecy cannot be waived by the Commissioner or a taxpayer. Accordingly, without this order the Commissioner would be unable to disclose information to other government agencies, even if requested to do so by a taxpayer.

The order contains 2 safeguards. First, the Commissioner retains a discretion to refuse to disclose information if the Commissioner considers that it is undesirable to disclose that information. Secondly, the order requires a government agency, and officers, employees, and agents of the government agency, with access to information that is communicated under this order to maintain the secrecy of that information and to not communicate that information to any person except as authorised by the Commissioner.

Profile of the draft Order and proposed publicity

Following Cabinet approval details of the extended Order will be published in the *New Zealand Gazette*. In addition, details contained in Cabinet Committee Paper will be published on the Inland Revenue Policy Advice Division website.

Conclusion

We look forward to receiving your recommendations so that regard can be had to them before the relevant Ministers make a recommendation on the draft Order.

The key contact for this item of work is Chris Gillion Acting Policy Manager, Inland Revenue

Yours sincerely



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