A SEISMIC SHIFT: PUBLIC PARTICIPATION IN THE LEGISLATIVE RESPONSE TO THE CANTERBURY EARTHQUAKES

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I. Introduction

In 2010 and 2011 a series of earthquakes struck the region of Canterbury, New Zealand. The earthquakes caused serious disruption to the lives of Cantabrians, damaging schools, homes and businesses. Following the earthquakes, a quick return to business as usual was impossible. The extent of the damage was such that a central response was required to aid a return to normality as quickly as possible. Parliament scrambled to enact legislation that would adequately address the novel problems that arose as a result of the earthquake. Pre-existing legislation dealing with consent and building procedures in particular was expected to delay unduly a rapid recovery from the effects of the earthquakes. Consequently, the Canterbury Earthquake Response and Recovery Act 2010 (CERR Act 2010), and later the Canterbury Earthquake Recovery Act 2011 (CER Act 2011) were enacted. The primary purpose of the legislation was to minimise delay and "cut red tape".

Whilst it was clear that enabling legislation of some description was required, there was significant controversy following the enactment of CERR Act 2010 and CER Act 2011. The need for urgency meant that in both instances the legislation was hastily drafted, bypassing ordinarily important consultative processes. In both instances there was little public involvement in the parliamentary process. The lack of provision for meaningful public participation in the mechanisms of the Acts also attracted criticism.

This paper will investigate the development of the CERR Act 2010 and the CER Act 2011. It will consider the debate that surrounded the enactment of the Acts, both academic and within parliament, in light of the extraordinary context in which they were enacted. Particular consideration will be given to the curtailing of public involvement in both the legislative process and the decision-making mechanisms in the Acts. Ultimately, the circumstances following the Canterbury earthquakes were such that legislative action needed to be taken rapidly in order to empower the urgent commencement of the recovery phase. This paper seeks to explain the genesis of the CERR Act 2010 and the CER Act 2011, and give an insight into how parliament responded to these significant natural events.

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II. The First Earthquake: Canterbury Earthquake Response and Recovery Act 2010

On 4 September 2010 the Canterbury region was struck by a magnitude 7.1 earthquake. Whilst no lives were lost, extensive damage was sustained to infrastructure, buildings and land.[1] The immediate aftermath of the earthquake was governed by the Civil Defence and Emergency Management Act 2002 (CDEMA). During the subsequent state of emergency, the Civil Defence Controller coordinated the response. The mechanisms in the CDEMA were utilised to streamline existing processes where an immediate threat existed, be it to public safety or the potential risk of damage to another building[2] whilst the state of emergency remained in place. However, the wide powers contained in the CDEMA to carry out emergency works expired with the state of emergency. It was clear that when the state of emergency lapsed, the shift from the response phase to the recovery phase would be hampered by burdensome legislation. In particular, the commencement of the extensive repair works that were required would be unduly delayed by the return of "business as usual".

Despite the legislative requirement for comprehensive disaster planning, the lack of serious emergency events left New Zealand relatively ill-equipped for the transition from the state of emergency to post-disaster recovery.[3] Legislators had not predicted an emergency of this scale, and pre-existing legislation did little to accommodate it.[4] Extensive construction and demolition works were necessary, yet consenting processes were expensive and protracted.[5] The New Zealand legislative framework was not drafted to cope with the novel circumstances that arose following a disaster event[6] and consequently presented a potentially significant barrier to recovery.[7]

These factors indicated that a legislative response was necessary to manage and facilitate the recovery of the region. The legislation purported to enable the streamlining of legislation that would potentially slow down the recovery efforts. It was proposed that the Canterbury Earthquake

1 (14 September 2010) 666 NZPD 13899.
2 Charlotte Brown, Mark Milke and Erica Seville "Legislative Implications of Managing Disaster Waste in New Zealand" [2010] NZJEL 14 at 262.
3 James Olabode Rotimi, Suzanne Wilkinson, Kelvin Zuo & Dean Myburgh (2009): Legislation for effective post-disaster reconstruction, International Journal of Strategic Property Management, 13:2, 143-152 at 143.
4 Hamish Foote, Jo Appleyard "Pragmatic and necessary legislation" *The Press* (Christchurch, 20 September 2010) at 15.
5 John Hartevelt "State of emergency gives way to state of urgency" *The Dominion Post* (Wellington, 11 September 2010) at 5.
6 Jason Le Masurier, James Rotimi and Suzanne Wilkinson. "A comparison between routine construction and post-disaster constructions with case studies from New Zealand" (2006) In D,Boyd (ed) Proceedings of the 22nd Annual ARCOM Conference, 4-6 September, Birmingham, UK at 523.
7 Suzanne Wilkinson, Jason Le Masurier, Erica Seville *Barriers to post-disaster reconstruction* (Resilient Organisations Research Report, 2006/03) at.3.

Response and Recovery Bill be introduced and enacted under urgency, to ensure a smooth transition from a state of emergency to a state of urgency. [8] With appropriate legislation in place, the clean-up and recovery could begin unimpeded by existing legislative requirements.[9] The Bill itself was modelled on the emergency provisions in the Epidemic Preparedness Act 2006 and the controversial Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.[10]

On 10 September 2010 a number of government departments were provided with a copy of a draft Bill for consultation.[11] The cabinet paper on the Bill notes that during this consultation phase, the Christchurch City Council was supportive of special legislation. However, Environment Canterbury considered the emergency provisions in the Resource Management Act 1991 (RMA) to be sufficient for their purposes.[12] Canterbury councils were asked to compile a "wish list" of the legislative changes that they may require to promote a more efficient recovery.[13] The list submitted included requests for exemption from the Resource Management Act 1991, the Building Act 2004, the Local Government Act 2002 and the Land Transport Act 1998. Some local authorities also requested exemption from the emergency provisions of the RMA.

In drafting the Bill, it was considered by the government that the only practical way forward was to enact a generic empowering bill. Given the on-going earthquakes and the changing situation, it was apparent that specific amendments to certain statutes would be too difficult. A large degree of flexibility was necessary because it was unknown exactly what legislative changes might be required in the future. It was determined that the legislation should contain a mechanism that would facilitate the recovery. This would remove unnecessary bureaucracy and legislative impediments that may otherwise result in perverse outcomes.[14] It was initially proposed that legislation would be suspended using a negative resolution procedure. However, the Order in Council mechanism was ultimately favoured, partly for its subjection to scrutiny by the Regulations Review Committee[15] and partly because Orders in Council could be used to amend a broad range of legislation as the situation demanded.[16]

8 Cabinet Paper "Canterbury Earthquake Response and Recovery Bill" (13 September 2010) at [1]
9 Ibid, at [2].
10 "September 2010: Canterbury Earthquake Response and Recovery Act 2010" Highlights from the Parliamentary Counsel Office Quarterly (September 2010) <www.pco.parliament.govt.nz>
11 Above n 8 at [17].
12 Ibid, at t? [18].
13 Above n1 – Charles Chauvel.
14 Above n1.
15 Above n1.
16 Above n 8 at [10].

The Minister for Canterbury Earthquake Recovery successfully obtained leave to hear all stages of the Bill at once.[17] There was some alarm that this legislation was introduced under such extreme urgency, as it bypassed important public consultation processes.[18] A Regulatory Impact Statement was not prepared,[19] nor was compliance assessed with the Bill with New Zealand Bill of Rights Act 1990, Human Rights Act 1993, the Treaty of Waitangi, the Privacy Act 1993 or any international standards and obligations.[20] It was clear to Parliament that a mechanism to adapt legislation to the novel post-earthquake environment was needed urgently, to minimise the procedural burden on the recovery of Canterbury.[21]

Due to the largely unchecked delegation of law-making power to the executive, the government noted that "goodwill and trust" were required in order for the legislation to be effective[22], even if this necessitated a constitutional "leap of faith".[23] Such trust placed in politicians was warranted on the basis that "everyone was on the same page" and therefore there was little chance that the powers would be used inappropriately.[24] The overall sentiment that prevailed throughout the passage of the Bill was that there was no place for "pontificating about red letter law" while damage continued to occur.[25] Parliament unanimously considered that it needed to act swiftly to allow Canterbury to begin the recovery as quickly as possible.

It was not disputed in the House that there was a need for legislative enactment in order to facilitate a fast recovery. However, it was argued that there should be no departure from the constitutional principles that define the relationship between the legislature, executive and judiciary.[26] This legislation ceded extraordinary power to the executive, and it was argued that the power ceded was disproportionate to the present and future challenges that may be associated with the earthquake recovery.[27] It was contended that it was unnecessary to suspend the entire statute book, bar a few select statutes, to rebuild Christchurch.[28] The justification for such broad powers of amendment was that the formulation of a specific list would delay the passing of the legislation.[29] It was the opinion of the government that the very strong purpose clause in the Bill would constrain the use of the regulatory

17 Jonathan Orpin and Daniel Pannett "Constitutional Aftershocks" [2010] NZLJ 386.
18 Hanna Wilberg "New Zealand: executive given broad emergency powers in aftermath of major earthquake, Canterbury Earthquake Response and Recovery Act 2010 [2011] Public Law, January, at 185.
19 Above n 8 at [15].
20 Ibid, at t? [16].
21 Above n 1.
22 Above n 1.
23 Above n 1.
24 Above n 1.
25 Above n 1.
26 (14 September 2010) 666 NZPD 13934.
27 Above n 1.
28 Above n 1.
29 Above n 26.

power. The risk of further delay was minimised by excluding challenges to the decision of a Minister to recommend the creation of an Order in Council. This raised some concern that the government was exempting itself from all responsibility.[30] The ordinary 28-day-rule that applies to Orders in Council was to be waived so that Orders in Council could take immediate effect.[31] Orders in Council were to be tabled in Parliament within 6 sitting days.[32]

The amendments proposed in parliament were not received favourably. It was suggested that the list of statutes capable of amendment should be restricted to those that were most likely to be directly relevant, rather than the broad-brush approach taken. Other proposed amendments included the bringing forward the sunset clause and a qualification on the privative clause. These were all dismissed.[33] The only amendment adopted was that the Canterbury Earthquake Recovery Commission, a body created as a central point between local and central government, be an organisation for the purposes of the Official Information Act. Despite the serious constitutional concerns expressed in the House, parliament passed the Canterbury Earthquake Response and Recovery Act through all stages on 14 September 2010, just ten days after the earthquake.[34]

There was significant controversy following the enactment of CERR Act 2010. The legislation was considered by some to be an affront to the constitutionally fundamental principle of the rule of law. It was noted that in times of emergency, such as that under which parliament acted, the protection afforded by the rule of law and other constitutional principles became more important than ever.[35] The inclusion in the legislation of broad Henry VIII powers "to facilitate recovery" raised concerns[36] due to the "wholesale empowering" of the executive to modify legislation.[37] Whilst the Electoral Act 1993 was deemed worthy of protection, the Local Electoral Act 2001 was not,[38] despite the potentially serious ramifications for local democracy. One author commented that the legislation was a "remarkable example of statutory overkill", and the "antithesis of government under law".[39] The privative clause contained in the Act prevented the review of the recommendation by the Minister to create an Order in Council, but it did not prohibit the review of the Order itself.[40] In ordinary circumstances, the courts would ordinarily read down clauses that attempt to oust their jurisdiction. However, the very wide powers contained within the Act gave rise to the suggestion that they

30 Above n 1.
31 Above n 8 at [26].
32 Ibid, at [27].
33 Above n 26.
34 Above n 1.
35 Austin Forbes QC "The rule of law and New Zealand lawyers" [2011] NZLJ 42 at 2.
36 Wilberg, above n 15 at 185.
37 Orpin and Pannett, above n 14 at 1.
38 Ibid, at 3.
39 "Ad hoc legislation" [2010] NZLJ 397.
40 Orpin and Pannett, above n 14 at 4.

may struggle to retain their jurisdiction.[41] It was argued that the courts will often evade legislative attempts to oust their jurisdiction,[42] so the inclusion of the clause was ultimately pointless.

Knight argued that the constraints in the Act were few and weak in nature.[43] Such extreme emergency powers require the public to place an exceptional amount of trust in politicians,[44] rarely considered a constitutionally sound check on executive power.[45] The safeguards provided by the application of the Regulations (Disallowance) Act 1989 provided little assurance.[46] Consequently, an open letter penned by 27 academics outlined these concerns, calling for a review of the Act.[47] The criticisms were largely dismissed; they were seen as "nit-picking" and "theoretical criticisms of latte drinkers".[48]

III. The Second Earthquake: Canterbury Earthquake Recovery Act 2011

The CERR Act 2010 had been in place for little more than 4 months when the second major earthquake struck. On 22 February 2011 a smaller but more devastating earthquake struck Christchurch, causing significant loss of life and extensive damage to infrastructure, land and buildings. A state of national emergency was declared under the CDEM Act 2002, which again provided the controller with wide powers to respond to the aftermath of earthquake. It was expected that the state of emergency would remain in place for 6-8 weeks.[49] The government reiterated that the CDEM Act 2002 framework was inappropriate for facilitating the long-term recovery of Christchurch.[50] Continual extension of the state of emergency was an impractical course of action going forward. The far more widespread destruction caused by the February 22 earthquake also indicated that the legislation enacted after the September earthquake would be inadequate.[51]

The return to the status quo and subsequent application of the CERR Act 2010 would not facilitate an efficient recovery.[52] This was due to the much larger rebuilding phase now imminent. The Canterbury Earthquake

41 Wilberg, above n 15 at 185.
42 Dean Knight "Shaking on our constitutional foundations" [2010] Public Sector, December at 24.
43 Above n 42.
44 Forbes, above n 35 at 2.
45 Orpin and Pannett, above n 14 at 5.
46 Wilberg above n 15 at 185.
47 Above n 46.
48 Forbes, above n 35 at 2.
49 Regulatory Impact Statement "Canterbury Earthquake Response and Recovery Act" (March 2011) Annex 2, at [9].
50 Above, at [10].
51 Kenneth Palmer "Canterbury Earthquake Recovery Act 2011 – a legislative opportunity?" (2011) 9 BRMB 52.
52 Above n 49 at [11].

Recovery Commission lacked the mandate to manage, coordinate or direct the future recovery effort.[53] In addition to this, the participatory processes in statutes such as the Resource Management Act 1991 were not expected to operate effectively in a post-earthquake environment.[54] It was considered that these processes would unjustifiably protract the rebuild and recovery.[55]

It was concluded that stronger governance and leadership was required beyond the capability of current agencies, including the Canterbury Earthquake Recovery Commission and local government.[56] It was apparent that a new authority was required, headed by a minister who could coordinate the planning, spending and rebuilding of Christchurch.[57] This conclusion was based on a number of factors, including:

- the scale of the rebuild;
- international experience and lessons learned following the September earthquake;
- the coordination required between central and local government, citizens of Christchurch and other stakeholders;
- the need for timely and effective decision making.

It was necessary to give a legislative foundation to the powers of the new authority. A number of approaches were considered in the novel context of the post February environment.[58] The first of these was no additional legislation. This approach would only be valid until 1 April 2012 at the expiry of CERR Act 2010. Any planning documents created under the Act, such as the proposed overarching recovery strategy, would have no statutory force. Existing plans and consents would have limited the implementation of the new planning instruments.[59] There would be a significant risk of uncertainty, given the coordination and leadership required to direct the recovery.[60] This option was ultimately concluded unviable, due to the possibility that this would have the effect of creating an ambiguous and delayed recovery.[61] In order to give effect and primacy to the proposed recovery strategy and plans, separate legislation may have been required to effect this alone.

The second proposal was minimal amendment to the CERR Act 2010, which would enable the extension of the Act beyond 2012. Whilst this option could validate Orders in Council beyond 2012, the risk of increased challenge

53 Ibid.
54 Allison Arthur-Young, Kate McDonald, "When the dust finally settles, will Cantabrians have the Christchurch they really want?" (NZ Lawyer, online) 15 July 2011, at 18.
55 Ibid, at 18.
56 Above n 49 at [12]-[14].
57 Minute of Decision "Canterbury Earthquake Recovery: Proposed Governance Arrangements (Paper 1)" CAB Min(11) 13/9 at [4].
58 Above n 49 at [17].
59 Above n 49 at [33].
60 Ibid, at [19].
61 Ibid, at [20].

to powers contained in the Orders through judicial review would not be constructive for the recovery effort.[62] Another option was to significantly amend CERR Act 2010. The sunset clause would be extended to validate Orders. It would have also provided for the establishment of the recovery authority and defined its new powers. Instruments created under the Act would have statutory force. While this option would have provided some degree of clarity, there was still the potential for confusion among those operating under the Act given how different the amended legislation would look.[63] Consequently, this option was also dismissed as unviable.

The possibility of creating new local government arrangements was also considered. This option would result in the elected council being replaced with an appointed commissioner, similar to the arrangements with Environment Canterbury. However, this arrangement would have required new legislation and it was considered that the affront to local democracy and the confidence of Cantabrians rendered this option unfeasible.[64]

New legislation was considered the most certain and appropriate option in the circumstances. It would repeal the CERR Act 2010, validate existing Orders and allow new Orders to be created. Further, powers for the Canterbury Earthquake Recovery Authority (CERA) and the Minister would be contained in primary legislation, therefore they would be far less susceptible to challenge by judicial review. The proposed plans would have statutory force[65] and consequently capable of replacing existing and proposed planning documents.

The new legislation option would validate that which was already done under the repealed CERR Act 2010.[66] It would also ensure that appropriate measures were in place to assure the recovery of Canterbury from the impacts of the earthquake.[67] The legislation was to provide adequate statutory powers and functions for this to occur.[68]

Powers to be included in the Act related to information gathering, restoration of economic and social wellbeing as well as powers for other specific purposes.[69] The extensive powers of the authority were based upon those granted to the Queensland Reconstruction Authority after the Queensland Floods of 2011.[70] CERA was to be granted the power to intervene and fast-track approval processes for earthquake-affected areas, use independent planning powers, and prepare development schemes.[71] It was

62 Ibid, at [22].
63 Ibid, at [25].
64 Ibid, at [32].
65 Ibid, at [31].
66 Minute of Decision "Canterbury Earthquake Recovery: Proposed Powers (Paper 2) CAB Min (11) 13/10 at [1].
67 Ibid, at [6.1].
68 Ibid, at [6.2].
69 Ibid, at [7.1].
70 "CERA announced amid questions about local involvement" *NZPA* (New Zealand, 29 March 2011).
71 "Govt given too much 'power'" (*The Press*, Christchurch) (30 March 2011).

also to be mandated to undertake reconstruction or development works. The Bill contained provisions on allowing information gathering, powers of entry, surveys and compensation. The Minister has the power to erect temporary buildings on public and private land, roads and streets, regardless of land use restrictions.[72] The Chief Executive may restrict access to buildings and other areas as well as order demolition and reconstruction of buildings.[73] In addition to this, land acquired can be developed, entered and subdivided.

Mechanisms contained within CERR Act 2010 were to persist, with the retention of the Henry VIII clauses, despite their controversy. Subordinate legislation in the form of Orders in Council was to have effect as law and primacy over conflicting legislation.[74] This wide ambit of the legislation was to reflect the extensive damage to property and infrastructure, and the future challenges associated with returning Christchurch to a "viable and sustainable community".[75] Urgency was of paramount concern, but a balance was sought between the need for timely and coordinated recovery processes and the patent importance of community participation in important decisions.[76]

The Bill was read for the first time on the 12th of April 2011.[77] During the first reading, criticisms levelled at the Bill were redolent of those raised following the September earthquake. There was significant concern that the level of public involvement provided for in the legislation was inadequate. The government had opted for the "command and control" method, despite the international experience indicating that such an approach was the "antithesis" of what was required for recovery.[78] The Bill was criticised in the House as an affront to the basic principles of a democratic society. Whilst the stated purposes were appropriate and coherent, it was argued that the powers granted were excessive for the purpose, the extent of public involvement was unsatisfactory and basic constitutional principles were disrespected.[79] Despite this, the Bill passed its first reading with only minor opposition.[80]

The haste with which the Bill had been drawn up was evident, as the Bill was not available in the public arena until it was being debated in Parliament. It was agreed that a short select committee hearing would be held, primarily to receive feedback from interested stakeholders. Submitters were unable to access the Bill until 4pm the day before the select committee was to hear submissions.[81] The legislation was referred to the Local Government and Environment Committee on 12 April 2011 to hear evidence and report by

72 Cabinet Paper "Powers for the Minister for Canterbury Earthquake Recovery (and the Canterbury Earthquake Recovery Authority by delegation): Proposed Powers" Annex 1 (March 2011) at [2].
73 Canterbury Earthquake Recovery Act, ss38 – 45.
74 Palmer, above n 51 at 5.
75 Ibid, at 6.
76 Arthur-Young and McDonald, above n 54 at 18.
77 (12 April 2011) 671 NZPD 17898.
78 Ibid.
79 Above n 77.
80 Ibid.
81 Ibid.

9am on 14 April 2011.[82] Evidence was heard in Wellington on 12 April and Christchurch and Wellington on 12 and 13 April 2011.[83] The committee was not empowered to recommend amendments, only to hear evidence and report.

There were several procedural criticisms of the committee hearing, by those sitting on it and those appearing before it. In the Local Government and Environment Committee report, the minority position mirrored the concerns of many of the submitters. Primarily, it was submitted that the use of urgency to enact CER Act 2011 without any formal public input was to the detriment of the legislation.[84] Rather than a general invitation for public comment, submitters were selected.[85] Those who wished to make a submission had less than 24 hours to prepare before they were to be heard.[86] Key stakeholders were not provided with a copy of the Bill.[87] Neither the Legislative Advisory Committee nor the Law Commission were consulted about the development of the Bill or the Recovery Authority.[88] Those present at the Committee were frustrated when no technical advisors were present at the select committee hearing to provide assistance.[89] The process of the committee hearing was described as "hotchpotch", "last minute", "rushed and frustrated".[90]

The Supplementary Order Papers of the government were unavailable for the opening of the committee stage of the legislation. This was criticised extensively in Parliament, as members were unable to respond to the proposed amendments they had not seen.[91] Much of the debate centred on the need for genuine consultation, highlighting the position of many of the submitters that there needed to be more specific reference to consultation and engagement.[92] It was submitted that the community forum, to be constructed of 20 selected members and convened at least six times a year was meaningless,[93] as there was no real opportunity for engagement.[94] Amendments put forward focused

82 Hearing of Evidence on the Canterbury Earthquake Recovery Bill (select committee report) at 3.
83 Ibid, at 3.
84 Ibid, at 7.
85 Ibid, at 6.
86 (12 April 2011) 671 NZPD 18129.
87 Above n 82 at 6.
88 Ibid, at 34.
89 Above n 86.
90 Ibid.
91 Ibid.
92 Selwyn District Council "Canterbury Earthquake Recovery Bill" at [6]; Environment Canterbury "Canterbury Earthquake Recovery Bill: Environment Canterbury's presentation notes to the select committee 13 April 2011" at [1], Dean Knight "Canterbury Earthquake Recovery Bill 2011" at [1].
93 Above n 77.
94 Peter Wilson "Quake legislation passes first reading" *NZPA* (New Zealand, 12 April 2011).

on increased community participation and more meaningful engagement.[95] The removal of wider community involvement was justified on the basis that quick decisions were imperative, as "recovery delayed is recovery denied".[96]

Other amendments sought to soften or remove those provisions that caused constitutional grief. Professor Philip Joseph in his submission criticised the privative clause in the Bill, stating it to be inflammatory and incapable of achieving the effect intended.[97]Dean Knight expressed some concern that the Local Electoral Act was not included on the list of protected acts.[98] However the Government stated that the provisions of concern were to remain on the basis that the powers in the new legislation should be consistent with the previous Act.[99] Of all the amendments to the legislation proposed by the opposition during the committee stage, all but one was rejected.[100]

The third reading heard final arguments restating the view that CER Bill was to be the most draconian legislation ever passed by a New Zealand parliament. There was resounding frustration from the opposition and academics that whilst this was an extraordinary event, it did not justify such extraordinary powers.[101] Despite the opinion held by some in the house that the legislation took the form of a "parliamentary steamroller", the legislation passed its third reading.[102]

Following the enactment of CER Act, commentators argued that the scope of the powers within the Act were unparalleled since regulations made in wartime.[103] Palmer contended that such powers are rarely justified, except in extreme circumstances. However, he suggested that, despite criticisms surrounding the virtually untrammelled power of the executive, the legislation presents an opportunity to engage in innovative and creative planning.[104] The removal of ordinary procedures may allow for better outcomes for Christchurch, where wider adoption of Orders in Council may streamline and simplify the burden of regulations that already apply. It was suggested that ultimately these changes could have the effect of leaving a "positive legacy" after the devastating earthquakes.[105]

95 (12 April 2011) 671 NZPD 18198.
96 Above n 86.
97 Professor Philip Joseph "Hearing of evidence on the Canterbury Earthquake Recovery Bill" at [1]
98 Dean Knight "Canterbury Earthquake Recovery Bill 2011" at [5].
99 Above n 95.
100 Ibid.
101 Ibid.
102 Ibid.
103 Palmer, above n 51 at 5.
104 Ibid, at 6.
105 Ibid, at 6.

IV. Conclusions

The occurrence of significant natural disasters transforms the ordinary into the extraordinary. In order to deal with the post-earthquake reality that Canterbury faced following the 2010 and 2011 earthquakes, parliament acted in an extraordinary way. The novelty of the circumstances was such that ordinary rules did not apply. Legislation was enacted with urgency, with little opportunity for public consultation or participation. The challenges were unfamiliar and the circumstances were constantly changing. The parliamentary response reflected this. In order to address the need for flexibility, the powers granted in the legislation were untrammelled, likened to wartime powers. Consequently, the legislation enacted was described as draconian and an affront to democracy.

The fear that without urgency and a broad empowering approach the recovery process would never have got under way was valid. The international experience indicated to the government that recovery should commence as soon as possible, as "recovery delayed is recovery denied". The broad powers delegated to the executive in the Canterbury Earthquake Recovery Act 2011 will remain in place until 2016. Whether or not the recovery process would have been substantially hampered by a more tempered legislative approach remains to be seen.