

# Department of the Prime Minister and Cabinet

## Inquiry into the Earthquake Commission Proactive Release November 2018

The document below is released by the Department of the Prime Minister and Cabinet relating to the inquiry into the Earthquake Commission.

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- [1] 9(2)(a) – to protect the privacy of natural persons, including deceased people
- [2] 9(2)(ba)(i) – to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied

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**TO: Minister Responsible for the Earthquake Commission  
(Hon Megan Woods)**

## **Inquiry into the Earthquake Commission: Options for Membership**

|                      |                 |                        |           |
|----------------------|-----------------|------------------------|-----------|
| <b>Date</b>          | 12 July 2018    | <b>Priority</b>        | Medium    |
| <b>Report Number</b> | DPMC-2018/19-36 | <b>File Reference:</b> | 4064734:1 |

|   | <b>Action Sought</b>   | <b>Deadline</b> |
|---|--|-----------------|
| Minister Responsible for the Earthquake Commission (Hon Dr Megan Woods) | <b>Note</b> this briefing and attachments<br><b>Agree</b> to discuss your preferred approach with officials<br><b>Agree</b> to share officials' analysis with the Chair-designate. | 13 July 2018    |

### **Contact for Telephone Discussion (if required)**

| <b>Name</b>  | <b>Position</b>                      | <b>Telephone</b> | <b>1st Contact</b>                      |
|--------------|--------------------------------------|------------------|---|
| Anne Shaw    | Director, Greater Christchurch Group | +64 3 903 0578   | [1]                                     |
| Peter Martin | Project Lead, EQC Inquiry            | +64 912 0543     | [1] <input checked="" type="checkbox"/> |

### **Minister's office comments**

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 Withdrawn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

|   |
|---|
| <b>Comments</b><br><br><br><br><br><br><br><br><br><br> |
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# Inquiry into the Earthquake Commission: Options for Membership

## Purpose

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1. You met with the Chair-designate for the Public Inquiry into the Earthquake Commission (the Inquiry) on Monday 2 July 2018. At this meeting you requested further advice on two options for the membership structure of the Inquiry:
  - a. a single member option, with an appointed Chair supported by expert advisors (option preferred by the Chair-designate); or
  - b. a three-member option, made up of a Chair and two other members.
2. For your consideration, diagrams illustrating the key roles and responsibilities for both options are attached (**Attachment A**), along with a table summarising officials' assessment of the comparative strengths and weaknesses of each model (**Attachment B**).
3. This information and the commentary below is provided to assist with ongoing dialogue with the Chair-designate, Dame Silvia Cartwright, on the establishment of the Inquiry.

## Comment

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### *Assessing the models*

4. The Inquiries Act 2013 does not prescribe a preferred model for the membership of an Inquiry. As previously advised, historical and current inquiries have had memberships that vary from one to six members. Accordingly, in assessing the two options, officials focused, in particular, on which model is best aligned with the underlying purpose(s) of the Inquiry ("form follows function") to enable the Inquiry membership to deliver successfully on its Terms of Reference.
5. In terms of formal arrangements, the differences between the two models are relatively modest. Either model could be made to work by building in processes or practices to mitigate identified risks or relative weaknesses. For example, as discussed at your previous meeting, establishing a community reference group may help with providing the necessary 'lived experience' for a membership lacking such experience. Similarly, under either model, clear and consistent communication can help to manage the risk of creating unrealistic expectations on what the Inquiry will, or will not deliver.
6. In addition, culture, behaviour, relationships, and general operating practices will be as important for the success of the Inquiry (or otherwise) as its "hard wiring." These "soft" processes can be assisted by the form chosen, but will be very much for the Inquiry Chair and support team to determine and operate.

### *Officials consideration of the options*

7. As noted in the table, a potential risk identified with the Chair-alone model is that it could give rise to a perception that the Inquiry is "court-like," with a focus on weighing evidence to establish facts and potentially find fault. This could induce a more adversarial and defensive approach being taken by those called to give evidence or asked to provide advice on specific matters. As a consequence, some submitters may choose to bring, or request, representation when addressing the Inquiry, which may dissuade others from making a submission. This risk is also present in the alternative model, particularly when the Chair is a former Judge. In both cases this can be mitigated through clear communications on the purpose of the Inquiry, which are clear and consistently reinforced.

8. The other concern identified with the Chair-alone option is the overall burden it places on the Chair, and the associated risk of disruption if the Chair is incapacitated or otherwise unavailable for a period of time. However, it is possible that the Chair-alone model may be considered less intimidating to submitters, which would be positive in terms of encouraging wide engagement.
9. For the Chair and members model, scope management is a potential concern. With a greater number of members, perspectives and “reach,” there may be greater pressure for the Inquiry to explore issues outside its stated Terms of Reference or for a ‘rogue’ member to complicate proceedings or decision making. Of course, the risk to the Inquiry’s scope is present under either model, and some adaptation of the original Terms of Reference is always possible as the Inquiry goes about its business, subject to your approval as responsible Minister.

## Timing and next steps

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10. You may wish to discuss this briefing note and attachments with officials at your meeting on Friday 13 July 2018, including whether you would like officials to share this note and attachments with the Chair-designate, Dame Silvia Cartwright, to enable further discussions with her.

## Recommendations

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11. It is recommended that you:

1. **Note** this briefing and attachments YES / NO
2. **Agree** to discuss your preferred approach with officials; and YES / NO
3. **Agree** to share officials’ analysis with the Chair-designate, Dame Silvia Cartwright.

Anne Shaw  
**Director**  
**Greater Christchurch Group**

| NOTED / APPROVED / NOT APPROVED   |
|---|
| <p style="margin: 0;">Hon Megan Woods<br/> <b>Minister Responsible for the Earthquake Commission</b></p> <p style="margin: 0;">Date:     /     / 2018</p> |

Attachment A     Diagrams for the two options for the membership of the EQC Inquiry  
Attachment B     Comparison of the two models



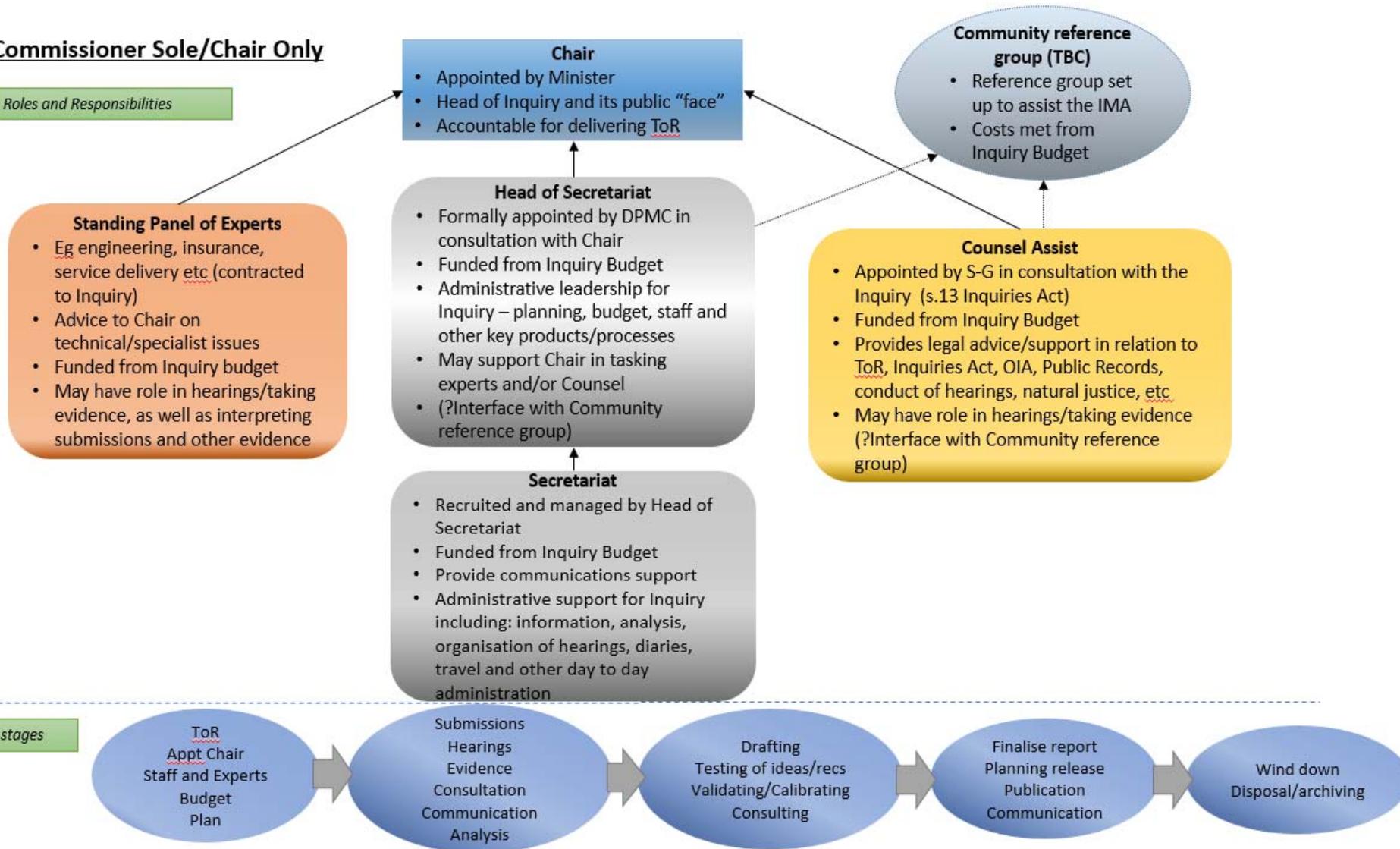
**DEPARTMENT OF THE  
PRIME MINISTER AND CABINET**  
TE TARI O TE PIRIMIA ME TE KOMITI MATUA

## Attachment A

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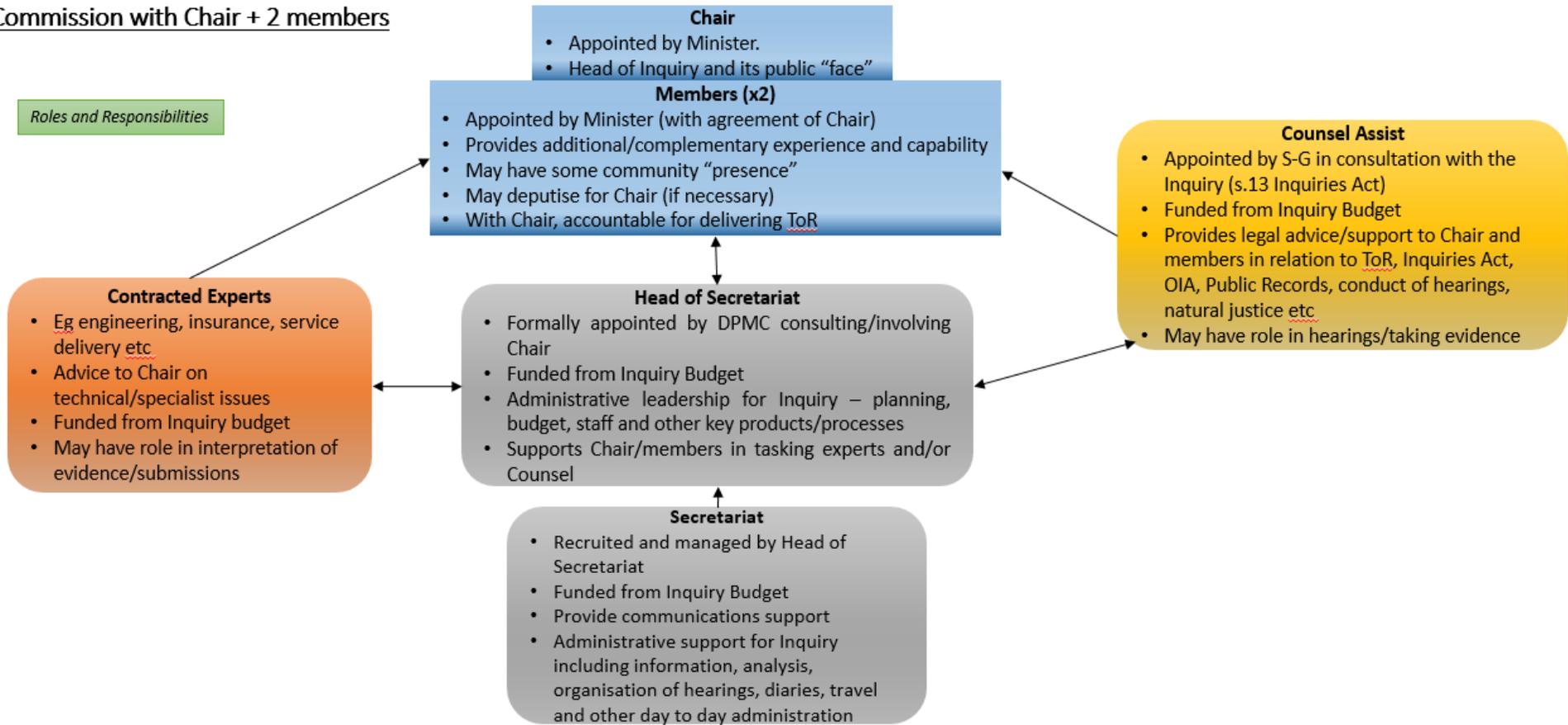
## Commissioner Sole/Chair Only

### Roles and Responsibilities



**Commission with Chair + 2 members**

**Roles and Responsibilities**



**Inquiry stages**



## Attachment B

### Comparison of Models

#### Commissioner Sole/Chair Alone

- May be perceived as judicial, inquisitorial, interpreting and weighing evidence

##### **Relative Strengths**

- Single decision-maker - more efficient, good public accountability/awareness. (However is risk that Chair gets swamped with trivia and/or has to mediate across experts, HoS, counsel assist)
- Higher spending on “experts” (standing panel) is offset by savings in member fees
- Probably better placed to manage risk of “scope creep” as Chair has sole discretion
- Perceived to be more independent
- Less intimidating for submitters
- Conflicts of interest/bias, real or perceived – largely confined to experts

##### **Relative Weaknesses**

- Perception of fact- and “fault”-finding exercise may induce defensive, adversarial behaviour in witnesses or create unreasonable expectations re findings
- May diminish confidence in future focus
- More moving parts, so administratively more complex
- Less “representative” (but mitigated by reference group)
- Key person risk (Chair) – and so less flexible, adaptive
- Perception risk that Chair’s position on any matters is seen as fixed/bias
- Head of Secretariat role primarily functional support – possible less attractive to high calibre candidates
- No redundancy in event anything happens to the Chair

#### Commission with members/Chair + 2 Members

- Mixed experience and perspectives provides diversity of thought and insight in considering evidence

##### **Relative Strengths**

- More “representative”
- Stronger perception of “telling as is”, speaking truth to power
- Greater ability for divvying up tasks/workload among members, sharing the burden
- Have redundancy should any member need to withdraw for any reason
- Less risk of conflicts/bias, real or perceived, among experts (but higher risk re members)
- Less spending on “experts” – ad hoc need
- Greater scope for flexibility, adaptation
- More likely to operate as “partnership” with HoS and Counsel Assist
- Greater clarity and separation of decision-making between Chair and HoS
- HoS role combines policy and admin support – increases attractiveness (but possibly reduces size of pool)

##### **Relative Weaknesses**

- Less independent (eg members may be perceived as having “agenda”)
- Panel for hearings can be intimidating to submitters
- May diminish confidence in future focus, becomes an exercise in hindsight
- Greater risk of scope creep due to more extended “reach” and/or of a “rouge” member complicating hearings/decision-making
- Savings on expert fees offset by members’ fees and other admin costs