

New Zealand government uses earthquake to enact sweeping new powers

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New Zealand's parliament voted unanimously last month to pass the Canterbury Earthquake Response and Recovery Act (CERRA), which gives government ministers the power to override almost any law in the country's statute books. The conservative National Party government pushed through the legislation in a single evening, with the full support of the Maori Party, the opposition Labour Party and the Green Party.

Both the government and opposition asserted that the sweeping powers were needed to provide assistance to the city of Christchurch and the surrounding Canterbury region, which was hit by a destructive 7.1 magnitude earthquake on September 4. But the Act does not provide any additional funding or assistance for the disaster victims, many of whom are living in badly damaged houses and have received little or no government assistance.

Rather, this anti-democratic legislation concentrates wide powers in the hands of ministers and their unelected advisers. It sidelines parliament and effectively rules out public debate on measures that potentially have far reaching consequences. The provisions of the CERRA will remain in place until April 2012. For the next 18 months, as one columnist for the *National Business Review* put it, "a few ministers, so long as they can link it to the Canterbury earthquake, can make laws about almost everything by signing a bit of paper".

The government is using the disaster as an opportunity to test anti-democratic forms of rule which could later be applied more broadly. It is already carrying out a savage program of austerity—including cuts to healthcare and education, attacks on welfare beneficiaries and an increase in the consumption tax—forcing the working class to pay for the global economic crisis. It has also introduced draconian labour laws to drive down wages and make businesses more profitable and globally competitive. The ruling elite in New Zealand, as in every other country, is acutely aware that as it deepens these attacks it must prepare to confront resistance from workers.

The government has already announced that it is considering introducing a permanent version of the Act that could be applied in the event of any future emergency.

The scope of the CERRA is vaguely defined. Its stated purpose

is to "enable the relaxation or suspension" of laws that "may divert resources" from recovery efforts, or that "may not be reasonably capable of being complied with, or complied with fully, owing to the circumstances resulting from the Canterbury earthquake".

Decisions about which laws will be relaxed or suspended will be made through "Orders in Council"—essentially decrees issued via the Governor-General. Moreover, even the vague "purpose" need not be complied with because the CERRA states that Orders in Council "may not be challenged, reviewed, quashed, or called into question in any court". Responsible ministers are also protected from legal liability.

A seven-member Earthquake Recovery Commission, appointed by Earthquake Recovery Minister Gerry Brownlee, will advise on which laws should be altered. The commission consists of senior government bureaucrats, an earthquake engineering expert, and the mayors of Christchurch City and the Selwyn and Waimakariri Districts. Only five Acts cannot be modified or bypassed, including the Electoral Act and the New Zealand Bill of Rights Act.

Already, the CERRA has been used to extend state of emergency powers for police—put in place immediately after the earthquake—until the end of November. This allows police to seize vehicles and other property, close off and evacuate public areas and "direct any person to stop any activity" which is deemed to "contribute to any consequences of the Canterbury earthquake". This could potentially include breaking up protests about inadequate relief efforts.

The legislation has been criticised by the Law Society and by legal academics. An open letter issued on September 28 and signed by 27 constitutional law experts from all six New Zealand law faculties described the CERRA as a "dangerous and misguided step" that constituted "an extraordinarily broad transfer of lawmaking power away from parliament and to the executive branch, with minimal constraints on how that power can be used". The letter noted that "parliament can review and reject Orders in Council", but only through "a rather slow and protracted process".

One of the signatories, Otago University Associate Law

Professor Andrew Geddis, described the CERRA on *Pundit.co.nz* as the most “potentially draconian [law] on New Zealand’s statute books since the Public Safety Conservation Act” (PSCA). The PSCA was passed in 1932 following riots by unemployed workers in Auckland and Wellington. It gave police sweeping powers to detain people. In 1939 a Labour government used the PSCA as the basis for wartime legislation, which gave the state what then-Deputy Prime Minister Peter Fraser described as “complete and absolute power... controlling almost every one of our activities”. The PSCA was infamously used in 1951 by a National government to seize union funds and deploy the army to break a bitter and lengthy industrial dispute involving thousands of waterfront workers.

The National government and Labour opposition contemptuously dismissed criticism of the CERRA. Earthquake Recovery Minister Brownlee told Radio New Zealand: “[A]ny suggestion that someone could misuse this bill, outside of the purpose of recovery from the Canterbury earthquake, I think is just not worth even responding to.” Labour MP Clayton Cosgrove declared that Canterbury residents “don’t have the luxury of hypothesising about constitutional theory as some latte drinkers in Kelburn [Wellington] and Ponsonby [Auckland] have.”

The Greens voiced limited criticisms of the legislation. Greens co-leader Russel Norman, wrote on the party’s blog on September 14 that the law showed the government “does not respect basic constitutional principles”. But this “reservation” did not prevent the party from voting for the anti-democratic powers, on the pretext that they were needed “to support Canterbury’s recovery”.

All the parties presented the CERRA as a boon for ordinary Canterbury residents, who continue to suffer the effects of the disaster. However, from the outset, the government’s so-called “recovery” plan for the region has been geared toward satisfying the demands of business, rather than the working people.

More than one month after the disaster, thousands of people remain in a desperate and uncertain situation. Over 50,000 homes have been seriously damaged, with 1,500 confirmed to be uninhabitable. The Earthquake Commission (EQC), the state-owned insurer, has received more than 87,000 claims for damages. As of October 5, only 8,700 claims had been assessed.

EQC payments are only available to people who already had private insurance. An estimated 5,000 uninsured homes have been damaged, but the government has said it will only provide assistance for those who can demonstrate “true hardship”.

Many people in need have received little or no help. Last month, about 100 residents from the badly damaged suburb of Avonside staged a rally to demand assistance. Rally organiser Angela Wasley said in a letter to residents that many people “do not qualify for help from local government agencies or the earthquake fund due to massive waiting lists for structural assessments and overloading of current systems”.

The government’s policy towards businesses has been far more generous. Julian Smith, general manager of business software company MYOB, told TVNZ on September 27 that under state of emergency powers the government had “provide[d] essential lifelines for business. ... In less than a week they cut red tape to provide wage assistance for employers, access to emergency funding, and a truly impressive level of flexibility from the IRD [tax department]”. Smith said the CERRA “provides a model for the kind of legislative environment businesses want across the country”.

Under the new law, even more money is likely to be handed over to businesses. On October 3, Peter Townsend from the Canterbury Employers Chamber of Commerce told TVNZ: “Businesses simply can’t afford to relocate so we’re imploring government to put in place a fund that will assist legitimate well-founded businesses to relocate on a case by case basis.” Brownlee confirmed that the government was considering such a fund.

Sections of the corporate media have applauded the CERRA, with some calling for its powers to be used against workers nationally. Columnist Richard Long wrote in the Murdoch-owned *Dominion Post* on October 5 that Brownlee should use his “dictatorial powers” to “take courageous (read unpopular) big steps”.

Long suggested that Brownlee issue decrees to open national parkland for exploration by mining companies, and “address” spending on Working for Families welfare payments and interest-free student loans “that cost the country billions”. Long further called for the government to “dust off” a report released last year by a government-appointed working group headed by former National leader Don Brash that recommended dramatically lowering taxes on businesses, while cutting health, welfare and education spending and lowering the minimum wage.



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