

The Treasury

Earthquake Commission (EQC) Act Review Submissions Information Release

Release Document

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New Zealand's Future Natural Disaster Insurance Scheme

Proposed changes to the Earthquake
Commission Act 1993

Submission Form

July 2015



THE TREASURY
Kaitohutohu Kaupapa Rawa

New Zealand Government

New Zealand's Future Natural Disaster Insurance Scheme Proposed changes to the Earthquake Commission Act 1993

Your responses

Please write your response in the template below.

Please note:

- ▶ you **do not** need to answer all sections – just the ones where you have information you would like to contribute
- ▶ please expand or delete boxes as you need to but **do** keep the original question numbers.
- ▶ please **do not** send us reports or other documents but **do** include references or links to supporting evidence or information
- ▶ please submit your response to Submissions.Eqcreview@treasury.govt.nz by 5.00pm on Friday 11 September 2015.

Thank you for your time and effort in making your submission.

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Grounds for withholding information are outlined in the OIA. Reasons could include that the information is commercially sensitive or that you wish personal information, such as names or contact details, to be withheld. An automatic confidentiality disclaimer from your IT system will not be considered as grounds for withholding information.

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Your contact details

For individuals

Your name:	Bruce Rogers
	Indicate here if you do not wish your name to be included in any summary of submissions that we may publish.

Email address:	[1]
Phone number:	

What city, town or province do you live in?	Christchurch
Do you own your own home?	Yes

For organisations

Organisation name:	
Nature of your business:	

Contact person name:	
Position:	
Phone number:	
Email address:	

In what city, town or province is your organisation's New Zealand headquarters?	
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What is the purpose of the EQC scheme?

Proposal for discussion

1 That the purpose of the EQC Act be to establish a Crown-owned natural disaster insurance scheme for residential buildings in New Zealand that:

- ▶ supports, complements and is closely coordinated with the provision of effective private insurance services to the owners of residential buildings
- ▶ recognises the importance of housing in supporting the recovery of communities after a natural disaster
- ▶ supports improved resilience of New Zealand communities and an efficient approach to the overall management of natural hazard risk and recovery in New Zealand
- ▶ contributes to the effective management by the Crown of fiscal risks associated with natural disasters.

What do you think?

1a Do you agree that these purposes are appropriate and complete?

To some extent.

I do not believe the current approach achieved the second purpose in Christchurch, but that was probably not the fault of the Act, but rather the performance of EQC and the home repair programme.

1b If not, what changes would you suggest, and why?

I am not convinced that private insurance cannot be used to manage this risk. The reinsurance appetite seems to remain, and EQC needs to access some and perhaps a lot of this anyway. Was compulsory private insurance considered as an alternative to manage the perceived moral hazard risk to the Crown? And since there is no requirement to insure at all, how does linking EQC cover to insurance manage that risk?

What types of perils will EQC cover?

Proposal for discussion

2 That EQC continue to insure against the following perils: earthquake, natural landslip, volcanic eruption, hydrothermal activity, tsunami, and storm and flood (with, in the case of storm and flood, only residential land being covered).

What do you think?

2a Do you agree that EQC should continue to provide cover against the same perils as it currently does?

It's not quite the same: land damage not associated with the building is excluded. As we know from the Christchurch earthquakes land damage can be over a very wide area, but with lots of local variation. The new approach could, it seems to me, leave a homeowner with a rebuilt house on an otherwise unusable section.

2b If not, what changes would you suggest, and why?

A reconsideration of this aspect. I admit EQC has found it very difficult to do these land damage assessments, but that probably says more about EQC than the task.

What types of property will EQC insure?

Proposal for discussion

3 That EQC building cover continue to be available to residential buildings and dwellings in non-residential

buildings.

What do you think?

3a Do you agree that EQC building cover should continue to only be available to residential buildings and dwellings in non-residential buildings?

If commercial buildings can be privately insured, then what is the market failure with respect to residential buildings and dwellings?

3b If not, what forms of accommodation or living arrangements do you think should be added or removed, and why?

Proposal for discussion

4 That EQC land cover only be available for land associated with residential buildings. Therefore, dwellings in non-residential buildings would not receive any EQC land cover.

What do you think?

4a Do you agree that EQC land cover should only be available for land associated with residential buildings?

See comment above in response to 3a.

4b If not, what coverage of land cover would you prefer, and why?

Extending building cover to include more siteworks and main access way

Proposal for discussion

5 That EQC building cover be extended to include siteworks and the main access to the building.

What do you think?

5a Do you agree that EQC building cover be extended to include siteworks and the main access to the building?

I think this is really a clarification, but yes.

5b If not, what do you think should be done instead, and why?

EQC to no longer provide contents insurance

Proposal for discussion

6 That EQC no longer offer residential contents insurance.

What do you think?

6a Do you agree that EQC should no longer offer residential contents insurance?

This would certainly permit more focus on what really matters, but why is there a market failure / moral hazard problem with buildings and land but not contents?.

6b If not, what level of contents cover do you think EQC should offer, and why?

6c For insurers, what do you anticipate the impact would be on premiums your company charges for residential contents insurance, if EQC no longer offered residential contents insurance?

Please note the information in section 1.4 regarding the Official Information Act.

How much insurance will EQC offer?

Proposal for discussion

7 That the monetary cap on EQC building cover be increased to \$200,000 + GST.

What do you think?

7a Do you agree with the proposed increase in the building cap to \$200,000 + GST?

This needs to be considered in the light of the setting of the initial cap of \$100k. What was the basis of that? More conceptually it should come down to what proportion of damage claims is the scheme aimed at covering in full.

7b If not, what cap would you prefer, and why?

7c Do you have strong views on the merits of a \$150,000 + GST cap versus a \$200,000 + GST cap?

7d If so, what are they?

7e For insurers, what do you anticipate the impact would be on premiums your company charges for residential property insurance, if the proposals in this document regarding changes to building cover were implemented? Please provide this information for a monetary cap for EQC building cover of both \$150,000 and \$200,000.

Please note the information in section 1.4 regarding the Official Information Act.

Reinstatement of EQC cover after an event

Proposal for discussion

8 That EQC building cover reinstate after each event.

What do you think?

8a Do you agree that EQC cover should reinstate after each event? If not, what is your preferred alternative, and why?

Probably, but it was this aspect that led to EQC needing to do apportionment in the light of multiple events. EQC was so spectacularly bad at this that it ended up being a major cause of its delays. It has never been explained why apportionment delayed settlement when it could not change the amount payable by EQC, at least in cases where the total was less than the cap.

8b Do you agree with retaining the current definition of an event?

8c If not, what is your preferred definition, and why?

EQC land cover

Proposal for discussion

9 That land cover be limited to situations where the insured land is a total loss meaning it is not practicable or cost-effective to rebuild on it.

What do you think?

9a Do you agree that the proposed enhanced building cover, combined with restricting land cover to situations where the site of the insured building cannot be rebuilt on, would resolve, for future events, many of the recent difficulties with the interaction between land and building cover?

With respect to the building yes, but it does mean damage to land not related to the structure would be uninsured?

9b If not, what is your preferred alternative, and why?

9c Do you agree that restricting land cover to situations where the site of the insured building cannot be rebuilt on is appropriate, given the EQC scheme's focus on providing homeowners the resources to repair, rebuild or re-establish homes elsewhere?

The value of a property is not just the building. Damage to other land does affect value, and therefore potential loss due to earthquakes.

9d If not, what is your preferred alternative, and why?

9e Do you have any concerns regarding the proposed change to the configuration of building cover in light of the move by most insurers to provide sum insured home insurance policies?

No but this does inform the decision about the EQC cap. The Christchurch earthquakes showed that getting overcap was the great prize as it engaged the private contract, which often had more favourable terms, and more professional and competent approach to assessment. This is a key reason why EQCs poor performance around establishing overcap early was so critical. Many insureds had to wait more than 4 years to get to the point where their private contract was engaged. In my view the Act should have more and clearer performance standards on EQC's assessment and settlement.

9f If so, what is your preferred alternative, and why?

Better aligning EQC and private insurers' standard of repair

Proposal for discussion

10 That EQC's current statutory repair obligation already appears broadly consistent with industry practice.

What do you think?

10a Do you agree with the Government's assessment that EQC's legislated standard of repair is broadly consistent with current industry norms?

Possibly for repair, but private contracts we believe had much greater variation in the terms of replacement insurance.

We also note the spectacular confusion created by MBIE's multiple revision of repair standards and guidelines

particularly as regards technical categories and foundation repairs.

EQC's reaction to MBIE's land technical categories in Christchurch was and is bewildering. Specifically, EQC decided that repairs to TC3 properties should wait until geotech was complete while CERA was saying this only applied where geotech was required ("Green means go"). But no one could say whether geotech was required for specific cases, and this in turn reflected EQCs poor assessments: they did not know and therefore could not say. This unconscionably delayed TC3 repairs. At one public meeting EQC said that geotech was not required where foundation damage was less than 30%, but when asked EQC staff did not know about this measure, and in any case had no idea what the percentage was for specific cases.

(I note that there has never been a good explanation of how the technical categories themselves were defined and established. Precisely what are the risks of type 1 and type 2 errors in the classification given the very small number of geotech results used to define it? This is especially important given that the descriptions of the categories themselves overlap. These categories have affected our lives and our wealth. Surely there is something substantive behind them?)

10b If so, do you have views on why EQC's standard of repair is seen as markedly different from current insurance industry norms?

EQC/Fletchers is widely perceived as totally incompetent. The problem starts with assessment, where not only were the assessors of dubious and quite varied competence (viz Mrs Kettle's daughter and a still unexplained plethora of ex policemen whose job seemed to be to inspect the claimant rather than the property) but EQC insists to this day that (pile) foundation damage assessment can be done without going under a house. It is this sort of ridiculous position that explains the contempt in which EQC is held. No one trusts a repair strategy that is based on poor assessment. All this has become more apparent as accurate assessments of repairs have been carried out, and an alarming proportion of them have been found wanting.

10c If not, do you have suggestions for reforms that you consider would move the EQC standard of repair closer to current insurance industry norms for residential property?

Perhaps the Act could specifically prohibit the use of old chair legs in foundation repairs?

Simplifying EQC's claims excess

Proposal for discussion

11 That EQC has a standard claims excess of \$2,000 + GST per building claim.

What do you think?

11a Do you agree that EQC's building claims excesses should be standardised and simplified to a flat dollar amount?

See comment below. But simplification seems sensible.

11b If yes, do you agree that \$2,000 + GST is the appropriate claims excess on building claims?

The excess should be considered in the context of the likely scenario of claims. The most important thing is to focus on is the worst affected. In the Christchurch earthquakes tens of thousands of claims related mainly to cosmetic damage, which amounted to not much more than most people will spend on maintenance of a house over the course of a few years. This combined with the ill-fated and ill-conceived home repair programme meant the focus was on the least badly affected, who basically just had their houses redecorated at someone else's expense. Meanwhile, EQC was unable to coherently respond to and progress more complex claims in TC3 areas severely exacerbating the psychological impact of the quakes.

To me this suggests a much larger excess is appropriate.

11c If not, what would you prefer, and why?

See above.

Proposal for discussion

12 That EQC have no claims excess on land claims.

What do you think?

12a Do you agree that EQC should have no claims excess on land claims?

12b If not, what would you prefer, and why?

Regularly reviewing main monetary settings of cover

Proposal for discussion

13 That the EQC Act require monetary caps, premium rates and claims excesses on EQC cover to be reviewed at least once every five years.

What do you think?

13a Do you agree that monetary caps, premium rates and claims excesses on EQC cover should be reviewed at least once every five years?

Yes.

13b If not, what alternative would you prefer, and why?

How will homeowners access EQC insurance cover?

Proposal for discussion

14 That EQC cover continues to automatically attach to fire insurance policies on residential buildings, as defined in the EQC Act.

or

15 That EQC cover automatically attach to insurance policies on residential buildings, as defined in the EQC Act, on a peril by peril basis; so if a peril covered by EQC is excluded from the private policy, it is also excluded from the EQC cover.

What do you think?

14a Do you agree that EQC cover should continue to automatically attach to fire insurance policies on residential buildings? Or

15a do you agree that EQC cover should automatically attach to insurance policies on residential buildings, and EQC cover should exclude any natural disaster peril that is excluded from the fire insurance policy it attaches to?

15b If you do not agree with either of these options, what alternative arrangement do you prefer, and why?

I don't think it really matters, but I doubt many knew that EQC cover was attached to fire insurance. I certainly did not. Choose whatever is least likely to cause accidental non-insurance. As noted though this only works if homeowners insure in the first place.

Proposal for discussion

16 That EQC continue to have the ability, but not the obligation, to directly provide EQC cover to homeowners who request it.

What do you think?

16a Do you agree that EQC should continue to be able, but not be obliged, to directly provide EQC cover to homeowners who request it?

Did anyone ever take this up? It seems an unnecessary distraction given the availability of private insurance and EQC's very limited capabilities.

16b If not, what alternative arrangement would you prefer, and why?

Who will handle EQC claims in future?

Proposal for discussion

17 That all EQC claims be lodged with claimants' private insurers.

What do you think?

17a Do you agree that EQC claimants should be required to lodge all EQC claims with claimants' private insurers?

It depends. Lodging claims is not really the important thing: assessment and settlement is. EQC should in my view have much stronger obligations to assess and settle in a timely fashion, and an obligation to focus on the worst affected first. This will be hard to deliver via private insurers, and to me is the compelling rationale for

intervention. However it might be more transparent if EQC was actually set up for emergency response. Having said that, the nonsense of EQC requiring homeowners to provide evidence that they had cover and with whom was an extraordinary waste of time, and established an initial sense of mistrust and suspicion of incompetence. If there is a statutory impediment to EQC and insurers sharing information this should be removed.

Then there was the Treasury inspired delays when it became apparent that the home repair programme could not comply with the law: so the law was changed! Pretty pathetic, and even more pathetic when the home repair programme's compulsory nature was, sensibly, finally abandoned in late 2013, presumably in part because EQC/Fletchers failed to meet target after target. The requirements in the Act around claims settlement within reasonable time frames must be maintained and enforced, not softened.

17b If not, what alternative arrangement would you prefer, and why?

Deadline for reporting claims

Proposal for discussion

18 That the current three-month time limit for claims notification be retained, but EQC be able to accept claims up to two years after an event, unless doing so would prejudice EQC.

What do you think?

18a Do you agree that the current three-month time limit for claims notification should be retained, but EQC should be able to accept claims up to two years after an event, unless doing so would prejudice EQC?

I think three months is reasonable.

18b If not, what alternative arrangements would you prefer, and why?

Ensuring the scheme meets its expected costs

Proposal for discussion

19 That the new EQC Act contain pricing and transparency principles requiring the scheme to adequately compensate the Crown for its expected costs and risks.

What do you think?

19a Do you agree that the new EQC Act should contain pricing and transparency principles requiring the scheme to adequately compensate the Crown for its expected costs and risks?

I don't think this is as important as the Crown establishing how the combination of financing is established. I note the Crown had more exposure because it decided to fund some of the liabilities via the DMO rather than have EQC maintain investments or reinsurance. That is all very well, but this decision should not impact on settlement. There remains a suspicion that it has. Transparency of that decision-making is in my view more important.

19b If not, what alternative arrangements would you prefer, to ensure the scheme's future financial sustainability, and why?

Allow but do not require differentiated EQC premiums

Proposal for discussion

20 That the current legislative flexibility to charge flat-rate or differentiated EQC premiums be retained.

What do you think?

20a Do you agree that the current flexibility to charge flat-rate or differentiated EQC premiums should be retained?

Insurance tends to reflect assessed risk so the flexibility should be retained. However, Christchurch probably showed that it can be very difficult to assess relative risk! In terms of the previous question about pricing, the Crown's risk needs to be appropriately measured so that the premiums help assess when private insurance might be cheaper.

As it turned out EQC tried to limit its liability for older houses by asserting, with little or no evidence, pre-existing damage. This suggest premiums should be lower for older houses. I admit this would be administratively difficult.

20b If not, what alternative arrangement would you prefer, and why?

20c Do you agree with the Government's intention to continue charging EQC premiums at a universal flat rate?

How will EQC finance its risk?

Proposal for discussion

21 That the Natural Disaster Fund be retained in broadly its current legislative form.

What do you think?

21a Do you agree that the Natural Disaster Fund should be retained in broadly its current legislative form?

It is one typical aspect and flexibility seems sensible. However I suspect the most transparent way to price EQC's service is by having it reinsure to a significant extent.

21b If not, what changes would you like to see considered?

Proposal for discussion

22 That the Act enable EQC to use other forms of risk transfer, in addition to traditional reinsurance.

What do you think?

22a Do you agree that the Act should enable EQC to use other forms of risk transfer, in addition to traditional reinsurance?

So long as it does not impact on assessment and settlement.

Do you have any other feedback?

Other feedback

23a Are there any issues not discussed in this document that you would like to bring to the Government's attention at this stage?

Yes.

23b What submissions would you like to make on those issues?

This review is not based on EQCs performance, but that cannot be ignored. Will anyone ever be held accountable for this?

I would like to see EQC have a much stronger focus on needs based response to natural disaster. It did not do this in Christchurch. After all if it is just being an insurer, what value does it add from a public policy perspective?

I would like to see Treasury review its rationale for the compulsory (with a few little publicised and obscure exceptions that EQC did not seem to know about) nature of the home repair programme, and publically admit its mistake and apologise to those of us whose repairs/resolution were unnecessarily delayed. The main element of this rationale was to maintain the quality of the housing stock, although for some reason this became unimportant when compulsion was (sensibly) abandoned in late 2013. Also this approach meant that a concern for quality ended at \$100k, when this was where the concern should be greatest. And surely this concern means that no homeowner in normal circumstances should be allowed to arrange repairs to their home?

Treasury should also apologise to the government for forgetting economics 101: An attempt to control cost (another aspect of their home repair programme) in a situation of much increased demand will show up in reduced quality. That showing up may take some time, perhaps years in many cases, but it will (and in fact based on recent reports, is already starting to). This was particularly an issue when EQC really did not know

what Fletchers was doing, and Fletchers did not really know what its contractors were doing. I have separately corresponded with Minister Brownlee on a small case study of Fletchers managed [sic] repairs to our wastewater pipes. (It has since emerged that Fletchers had no contractual obligations regarding contractor performance and quality under CHRP. Please explain how this came about? I also note a similar contracting model has been chosen via SCIRT. Perhaps a government sponsored cartel was needed initially, but that need ended years ago.)

You should also consider making complaints against EQC to be able to be dealt with by the Disputes Tribunal. EQC is protected from having to defend itself against complaints in a low cost forum which leaves us only the high cost avenue of the Courts. Most of us felt there was no satisfactory recourse against the Kafkaesque monolith that EQC became.

The relevance of the Crown Entities Act needs to be considered in the light of EQC's non-performance. What precisely is section 50 of the CE Act for if it does not require organisations like EQC to perform properly? How would section 50 obligations be enforced?

EQC's abuse of the Official Information Act needs to be recognised by clarifying its obligations either in its own Act or in the OIA. No government agency should be able to use the OIA to limit and delay provision of customer specific information to customers. EQC did this repeatedly. It still does. This is wrong.

Finally, two observations:

- 1- As a reasonably well off, healthy and non-accident-prone citizen I have had little to do with government agencies over the years. The interaction with EQC over the last five years has given me insight into what dealing with government agencies can be like, and as a result I have developed enormous sympathy for my fellow citizens who have to interact with a variety of such agencies on a regular basis when we now know that sustained incompetence is not sufficient to trigger any accountability. It has also given me insight into the poor quality of policy advice that government is being provided with. In one sense it is good to have both these insights, but in a wider sense it is very worrying: I have come to profoundly distrust my government. I now start from the position that government and official policy and statements are not to be trusted. Moreover poor performance will not be penalised. I do not like this state of affairs. It is not how it should be.
- 2- Prior to the earthquakes and the dealings with EQC I was a fairly good humoured and tolerant soul. I maintain a lot of that, but I have known real anger and frustration through this process, much of it on behalf of others, and I don't think any of it was necessary. Most significantly I have watched a government agency respond to a major natural disaster by not focussing on those worst affected and most in need (and this was by no measure me.) How did this happen? And things started so well with the residential red zone approach being a well-founded response for the very worst affected. Sadly this has not been maintained.