

The Treasury

Earthquake Commission (EQC) Act Review Submissions Information Release

Release Document

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10 September 2015



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Dear Steve

Environment Canterbury submission: Proposed changes to the Earthquake Commission Act 1993

Thank you for the opportunity to comment on the proposed changes to the Earthquake Commission Act 1993. Environment Canterbury's submission is attached.

We appreciate the opportunity to provide these comments – based in our direct experience over the last five years of the Canterbury earthquakes and the rebuild and recovery processes – and to outline the priorities for our work as a regional council. We would be happy to contribute to a dialogue process with central and local government and relevant sector organisations, to help develop improved risk and hazard management systems for New Zealand communities and businesses.

For further information, please contact:

Dr Ronnie Cooper, Senior Strategy Advisor – Policy

[1]

Yours sincerely

A handwritten signature in blue ink, appearing to read "Margaret Bazley", is written over the typed name and title.

Dame Margaret Bazley ONZ DNZM Hon DLit
Chair of the Commissioners

Encl: *Environment Canterbury submission: Proposed changes to the Earthquake Commission Act 1993*

SUBMISSION to the TREASURY

PROPOSED CHANGES TO THE EARTHQUAKE COMMISSION ACT 1993

10 September 2015

1. Environment Canterbury thanks the Treasury for the opportunity to comment on the proposed changes to the Earthquake Commission Act 1993 (the EQC Act) as set out in the Discussion Document *New Zealand's Future Natural Disaster Insurance Scheme* (July 2015) (Discussion Document).
2. The following submission is offered on the basis of Environment Canterbury's roles, functions and responsibilities under the Resource Management Act 1991 (RMA), the Local Government Act 2002, the Civil Defence Emergency Management Act 2002 and the Canterbury Earthquake Recovery Act 2011.
3. Environment Canterbury welcomes the review of the EQC Act as an opportunity to apply some of the important lessons learned from the experiences of our region through the 2010/11 earthquakes, and the ongoing recovery and rebuild process. This organisation has been closely involved with the region's communities, business sectors, stakeholder groups and partner agencies in the recovery and rebuild. Through the diverse roles and interactions we have had in this process, and the extraordinary events and courageous actions we have witnessed, we have gained a powerful sense of the scale and depth of the impacts and stresses on our region and its communities – across all levels from the personal, neighbourhood, economic, infrastructure, cultural and environmental – and of the vital importance of getting it right in the aftermath of a major disaster. Support for the recovery and rebuild continues to be one of Environment Canterbury's overarching priorities, endorsed by our Commissioners in our *Strategic Directions* documents and the new *Long Term Plan 2015-25*.¹
4. Environment Canterbury acknowledges the intent of the proposed changes to the EQC Act, as articulated in the Discussion Document and associated information, as being:
 - to improve claims management
 - retain or enhance the Earthquake Commission's (EQC) existing contribution to reducing the costs to New Zealand communities of managing and recovering from natural disasters
 - ensure New Zealanders can access affordable, effective natural disaster insurance
 - to ensure that EQC's research, education and risk management roles continue.

¹ The other two priorities are the Canterbury Water Management Strategy and our Tuia relationship with Ngāi Tahu.

5. As a regional council, Environment Canterbury's interests are in the second and fourth of these aims. Our analysis of the proposed changes has identified five matters which have relevance for our ability to fulfil our statutory responsibilities, strategic objectives and community commitments. The following submission will focus on these matters:

- Availability of information about hazards
- EQC research
- Consistency across a whole-of-government approach
- Consistency in the legislation
- Implications for land use and urban development planning.

6. Environment Canterbury is also aware of a considerable number of highly significant policy issues for EQC which have been very evident in our region's experiences over the last five years. These matters include crucial questions of resourcing, preparedness, effective utilisation of data and information, and the systems and processes in place for appropriate and timely interactions with councils, other agencies and communities. While such policy and operational matters are not within the scope of this review of the legislation governing EQC, Environment Canterbury considers that these matters need to be addressed by EQC and the Government, in order to resolve some of the difficulties experienced in Canterbury since September 2010.

Availability of information about hazards

7. Under the RMA and other statutes Environment Canterbury has a range of roles, functions and responsibilities in relation to natural hazards management and flood protection and control in the Canterbury region. We work closely with Canterbury's territorial local authorities and a number of other partner organisations. The availability of information about these hazards and the risks for our communities is vitally important for this work.
8. At present the EQC Act (section 32(4)) requires that information gathered by EQC shall not be divulged or communicated except in limited circumstances. This constraint has meant that it has not always been possible to know the hazards history of a property, which has created a legacy of ignorance of unknown proportions for greater Christchurch. This significantly affects the ability of this council and other local authorities to fulfil both our hazard management roles and our longer-term planning. Environment Canterbury is aware that a lack of adequate, reliable information about the impacts of the earthquakes and the remediation of hazards has been the cause of significant stress and costs for many people and businesses in greater Christchurch.
9. EQC has gathered a vast amount of valuable data and information that could and should be used in hazard and risk management and planning at the local and regional levels. There are strong public interest reasons for making this information available – with appropriate safeguarding of personal and commercial details to protect individual property owners.

10. This matter was highlighted by the Canterbury Earthquakes Royal Commission, which recommended that the EQC Act be amended to require information about hazards from quake-damaged buildings to be disclosed to the relevant councils, and to allow information to be accessible for public health and safety purposes (Recommendations 94 and 95(a), *Canterbury Earthquakes Royal Commission Final Report, Part Two, Vol 4*). The Royal Commission included a recommended change to section 32(4) of the EQC Act, to include an additional exception to the presumption that records will not be shared, where it is:

(e) for the purpose of preventing or lessening a threat to public health or public safety or to the life or health of any person.

11. Environment Canterbury considers that the principle of making useful information available for these reasons should apply to all kinds of hazard information gathered and held by EQC, and not only to the potential dangers from quake-damaged buildings.

12. The Treasury's Discussion Document for the proposed changes to the EQC Act mentions the accessibility of information only briefly as one of a number of technical changes 'that may potentially form part of a future EQC Bill'. However there is no actual commitment to address these issues.

13. Environment Canterbury also requests that the review process address the questions of where this hazards data and information are to be held, and which agency is to have responsibility for management of that data and information. Regular updating will be necessary to ensure reliability and comprehensiveness.

Recommendations:

14. *Environment Canterbury:*

*a. **supports** recommendations 94 and 95(a) of the Canterbury Earthquakes Royal Commission and the Royal Commission's recommended changes to section 32(4) of the EQC Act*

*b. **strongly recommends** that, in the public interest, all relevant hazard data and information gathered and held by EQC be made accessible to councils, other agencies and communities – with appropriate safeguards to protect personal and commercial details*

*c. **recommends** that the EQC Act Review process determines where this hazards data and information is to be held, and which agency is to manage the data and information.*

EQC research

15. Environment Canterbury acknowledges and commends the important research undertaken by and supported by EQC.

16. Environment Canterbury has worked in partnership with EQC on significant research projects over a number of years, and values the co-funding contributions and collaboration which have enabled more to be achieved than would otherwise have been possible.

17. The Treasury's Discussion Document proposes, in the Ministers' Foreword, that EQC's role in supporting research and education is maintained (p 1), and this work is noted again at p 8. However despite EQC's roles in research and information being included in the matters that will be covered in the Review (p 14), there is no specific commitment to maintain or develop these areas of activity.
18. The general proposal (p 20) that the purpose of the EQC Act should include '[support for] improved resilience of New Zealand communities and an efficient approach to the overall management of natural hazard risk and recovery in New Zealand' could be interpreted as signalling the intention to maintain EQC's research roles, however this intention is not made explicit.
19. We note that the EQC Act currently has no statement of purpose equivalent to Part II of the RMA. However the EQC Act (section 5, *Functions of Commission*) includes under section 5(1)(e) facilitation of 'research and education about matters relevant to natural disaster damage [and] methods of reducing or preventing natural disaster damage'.
20. Given the crucial importance of information and understanding for communities' ability to minimise risk and prepare for and recover from disasters, we consider that EQC's research role should be made explicit, and not only 'kept', but indeed strengthened. There are positive opportunities to work with councils, universities, Crown Research Institutes and others to develop a broad base of knowledge and expertise of practical value to communities in New Zealand and internationally.

Recommendation:

21. *Environment Canterbury:*

- a. **recommends** that EQC's statutory function to facilitate research and education be specifically protected in the Review of the EQC Act
- b. **suggests** that this role be expanded to develop a programme of research excellence into reducing or preventing natural disaster damage and supporting communities to prepare for and recover from natural disasters.

Consistency across the whole of government

22. The principle of effective alignment across the different agencies and statutory and regulatory frameworks involved in hazard and risk management has been strongly highlighted in two recent studies.
23. Local Government New Zealand's paper, *Managing natural hazard risk in New Zealand – towards more resilient communities* (October 2014) emphasises: 'the need for integration and collaboration to develop and deliver effective responses across the many players' in the sector. LGNZ calls for a more strategic approach via a framework for better, more integrated decision-making and action at all levels, synergising capabilities to be as effective as possible. LGNZ recommends a pan sector natural hazards initiative to be collectively developed across local and central government and the broader hazards management sector, and greater alignment in the provision of natural hazards information to support better risk management decisions.

24. The Insurance Council of New Zealand's (ICNZ) report, *Protecting New Zealand from Natural Hazards* (also October 2014), states that:

'As natural hazards are a major risk to New Zealand, we should expect to have a co-ordinated strategy to address them. Reducing impact will require a high degree of co-ordination across many sectors... The framework of this strategy would achieve strong alignment of legislation and policy that central government is responsible for with the actions and decisions by local government, business, communities and individuals.' (p 5)

25. The ICNZ report's recommendations include *inter alia* recommendations for national coordination and planning, legislative alignment, and a consistent approach across New Zealand (p 4).

26. Environment Canterbury endorses the importance of better coordination and alignment across government, including local and regional councils. The priority must be to build connectivity and integration across the diverse agency roles, statutes, policies and systems, in order to support the growth of resilient, sustainable communities. Determining the most efficient, practical ways forward needs a whole-of-government approach, as promoted in the State Services Commission's *Better Public Services* initiatives, which encourage improved integration as agencies work more closely together to address complex long-term issues. Better coordination and alignment will be achieved via a collaborative process involving central and local government, business and the hazards management sector.

Recommendation:

27. *Environment Canterbury recommends that the Review of the EQC Act is based on and guided by a wider process of strategic coordination and alignment of the statutory roles, functions and activities of central and local government agencies and other organisations and groups working in and with interests in natural hazards management.*

Consistency in the legislation

28. The ICNZ report noted above includes a specific recommendation for legislative alignment, recommending a review of the legislation to ensure risk management of natural hazards is aligned and consistent with overarching strategy (p 4).

29. Environment Canterbury has identified two particular areas of inconsistency in the legislation that should be addressed in the Review.

30. The first inconsistency is in the types of perils that EQC provides cover for. The coverage provided for damages or losses from storm and flood is for residential land only, with dwellings and buildings being excluded. However for all other perils, including natural landslips, full cover is provided and is proposed to continue (pp 20-21, Discussion Document). The rationale for different provisions to be provided for storm and flood events is not discussed.

31. Experience suggests that there is little justification for the different provisions for storm and flood events. Interpretation can be uncertain and this can create situations of inequity. This has been seen in New Zealand with debris flows, such as occurred at

Matata in 2005, where the event may be classed either as a flood or as a landslip, with corresponding major implications for the communities affected and for their ability to recover from the disaster. If a dwelling swept away by a tsunami is covered, why should a house swept away by a river in spate not be covered?

32. The second area where inconsistencies create considerable uncertainty is in the definitions provided in the interpretation sections of the principal statutes under which natural hazards risk management is governed.
33. The EQC Act (section 2(1)) defines the terms 'natural disaster', 'natural disaster damage', 'natural disaster fire' and 'natural landslip'. The RMA (section 2(1)) has a different definition of 'natural hazard', which includes phenomena not covered in the EQC Act definitions such as erosion, subsidence, sedimentation, wind and drought. The Building Act 2004 (section 71(3)) provides a third different definition of 'natural hazard', including further natural occurrences such as snow and ice debris falls, inundation from storm surge, tidal effects or ponding, and a generic 'slippage'.
34. The inconsistencies in the range of phenomena covered in the different statutes, and in the interpretations of terminologies, should be resolved as part of the more aligned, integrated approach to natural hazards risk management recommended above at paragraphs 20-25.

Recommendations:

35. *Environment Canterbury:*
 - a. **recommends** that the EQC Act be amended to give consistency and improved certainty and clarity, by requiring EQC to provide the same cover for storm and flood events as for other perils
 - b. **recommends** that the EQC Act (section 2(1)) definitions of 'natural disaster', 'natural disaster damage', 'natural disaster fire' and 'natural landslip' be reviewed to align more consistently with the provisions and definitions in other key legislation affecting natural hazard management, in particular the RMA and the Building Act.

Implications for land use and urban development planning

36. Environment Canterbury's analysis of the proposed changes to the EQC Act indicates that some of the matters included in the proposals will, over the longer term, have significant implications for local government – in our planning for land use and urban development, our provision and maintenance of infrastructure, our management of crucial natural resources, and our strategic policies for growing sustainable, resilient communities.
37. There has not been time to fully explore all the potential ramifications of all the changes proposed, but one example will demonstrate the kinds of future implications that will need to be taken into account. It is proposed 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 (Proposal 9, pp 28-30). This is explained as aiming to bring 'conceptual clarity to what land damage is covered and EQC's obligations regarding land damage that has not damaged the building' (p 28).

38. This proposal may appear to be a straightforward measure to establish a distinction between land and buildings. However, considering the longer term implications raises a number of potentially far-reaching consequences. The issues for property owners left without cover for their land could be significant, and could result in an effective redrawing of the risk profile lines for some areas or groups of properties adversely affected. This could have implications for councils' responsibilities for land use and urban development planning and infrastructure. In Greater Christchurch councils and residents are already dealing with significant legacy problems that have arisen from post-quake urban shifts away from risk-prone areas, particularly into Waimakariri and Selwyn districts.

Recommendation:

39. *Environment Canterbury **recommends** that, as part of the wider process of strategic coordination and alignment recommended at paragraph 25 above, a collaborative process be established including representatives of regional councils and territorial authorities, to consider the longer-term consequences of the changes to the EQC Act and the most effective means of managing and mitigating the wider impacts on communities affected by natural disaster events.*

For any enquiries, please contact:

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Or: Don Chittock, Programme Manager – Hazards, Risk and Safety

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