

The Treasury

Earthquake Commission (EQC) Act Review Submissions Information Release

Release Document

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In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

Our ref: 8-51
11 September 2015

Review of EQC Act
The Treasury

Submissions.Eqcreview@treasury.govt.nz

Dear Sir/Madam

Submission on EQC Act review

The Office of the Ombudsman welcomes the opportunity to provide comment on the Treasury review of the Earthquake Commission Act (EQC Act).

We have decided to respond by letter, given that there are two key issues that we wish to focus on, rather than the spectrum of issues covered in the submission form.

This letter therefore concerns:

- the current statutory provisions that allow the Earthquake Commission (EQC) no discretion to accept claims that are reported later than three months after the damage has occurred; and
- the need for development of a robust and independent disputes resolution mechanism.

Limitation Period for Claims

The proposal to allow EQC to accept claims made after three months, unless doing so would prejudice EQC, is supported.

As you may be aware, Ombudsmen have commented on the inadequacy of the current limitation period of 3 months for making claims under the EQC Act in their annual reports in 2004, 2005, 2006 and 2007. This issue first arose as a result of a complaint made under the Ombudsmen Act by a person who had a medical condition affecting her vision who did not initially notice damage to her house caused by an earthquake. It was only when her parents visited that she became aware of the extent of the damage, more than three months later. You may recall that the Ombudsman at the time formed the opinion that EQC's decision to decline to accept her claim was made in accordance with a law that is unreasonable and improperly discriminatory.

Since 2010, we have received a number of complaints about "out of time" claims and we have had to deal with people who have experienced frustration and trauma.

New Zealand's Independent Monitoring Mechanism under the Disabilities Convention (which comprises the Office of the Ombudsman, the Human Rights Commission and the New Zealand Convention Coalition Monitoring Group) has also noted the inadequacy of the current three month period for making earthquake related claims. In its Making Disability Rights Real Reports

published in 2012 and 2014, the Independent Monitoring Mechanism recommended that the Government expedite a review of the three month time limit set out for lodging claims.

We are pleased to see a positive step toward addressing this important issue. We would expect EQC to act in a fair and reasonable manner and on the basis of substantive evidence, when considering whether to exercise a discretion not to accept a claim lodged outside the 3 month period on the basis that this would prejudice EQC.

Independent disputes resolution mechanism

We also consider that the legislation should provide for a robust disputes resolution process, with clear rights of review by an independent body. The need for such a process has been highlighted by the Canterbury earthquakes and the wide variety of difficulties which claimants have encountered in dealing with EQC.

While EQC has now put a disputes resolution process in place, it could be made more independent and accessible to claimants. We consider the legislation itself should provide for an independent review process that is both fully accessible and able to deal with technical disputes.

Further discussion

We would like to meet to discuss the above, and we would be happy to provide further feedback on the development of final proposals for changes to the EQC Act.

My personal assistant

[1] _____ is our contact point for arranging a meeting.

We look forward to meeting with you in due course.

Yours sincerely



Leo Donnelly
Deputy Ombudsman