

The Treasury

Material Provided to the Public Inquiry into EQC Information Release

August 2021

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- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [26] 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
- [31] 9(2)(f)(ii) - to maintain the current constitutional conventions protecting collective and individual ministerial responsibility
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment;
- [36] 9(2)(h) - to maintain legal professional privilege
- [37] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [38] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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Reference: T2014/178

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THE TREASURY

Kaitohutohu Kaupapa Rawa

Date: 18 February 2014

To: Minister Responsible for the Earthquake Commission (Hon Gerry Brownlee)
Associate Minister of Finance (Hon Dr Jonathan Coleman)

Deadline: None

Aide Memoire: EQC Review: Testing that the Proposed Reforms of the EQC Act Will Help Respond to Future Disasters

When we met on 29 January to consider the draft Cabinet paper on proposed preferred package of reforms of the EQC Act, Ministers noted that the reforms are motivated by experiences and lessons from the Canterbury earthquakes. Ministers asked for more analysis testing that the reforms will also help provide flexible and effective responses to events other than earthquakes. We think three questions were identified:

- Will the reforms retain the current flexibility of response, including through the Ministerial power to direct?
- Will the reforms help EQC respond to non-seismic disasters?
- Are there unidentified but predictable issues that other disasters would generate that we can use this opportunity to improve? Ministers asked that EQC lead a process with GNS and other technical experts to examine this.

Ministers also advised that, once you have answers to the above issues, you wish to take the proposed reform package to Cabinet Strategy Committee.

This note briefs you on these questions and seeks information on your preferences for engaging with Cabinet Strategy Committee.

Retaining Flexibility of Response

Our initial assessment is that the proposed reforms will not reduce the current flexibility of response. Key features of the current permissive legislative approach are retained. These include the Ministerial direction, EQC having flexibility to conduct its own or outsource part of its claims processes, and to settle claims by cash payout, repair or relocation. There may also be opportunities to improve this flexibility, for instance by

strengthening the legislative basis for consolidating land damage claims to conduct and fund area-wide repair or risk mitigation works.

Regarding Ministerial direction, Ministers have previously agreed that the reforms will include the addition of a purpose section in the new Act (T2013/1128 refers). The current draft purpose statement is (the final form requires PCO drafting input):

“The purpose of the Act is to establish a Crown natural disaster insurance scheme for residential buildings in New Zealand that:

- 1. Supports, complements and is closely coordinated with the provision of effective private insurance services to the owners of residential buildings;*
- 2. Helps to ensure sufficient private and public resources are available to restore at least basic, adequate homes after a disaster;*
- 3. Supports an efficient approach to the overall management of natural disaster risk and recovery in New Zealand; and*
- 4. Contributes to the effective management by the Crown of fiscal risks associated with natural disasters.”*

In addition we propose the retention of a Ministerial power to direct. Section 112 of the *Crown Entities Act 2004* states that “...the Minister may direct the entity to perform any additional function that is so added and that is consistent with the entity’s objectives.” Officials and EQC consider that all Ministerial directions made following the Canterbury earthquakes could also be made under the proposed framework.

Will the reforms help EQC respond to non-seismic disasters?

We consider that the reforms will help EQC respond to non-seismic disasters covered by the scheme. Core proposed reforms that will help EQC respond include:

- Higher building caps – this should help keep disaster insurance affordable and coverage rates high;
- Improved interaction between land and building cover – this should reduce (but not eliminate) frictions between EQC, insurers and homeowners, and better match the insurance obligation with the best engineering solution;
- Exit from household contents insurance: removing a major distraction for EQC;
- Improved claims lodgement processes; and
- Substantive technical changes, including the inclusion of a purpose section, more closely aligning the standard of repair obligation with normal private insurer practice, clearer definitions of residential building and dwelling, and clearer limits on land cover.

Are there further opportunities to better equip the EQC legislation for future disasters?

When we met you asked that EQC work with experts such as GNS and Tonkin and Taylor to examine the proposed future scheme and identify any useful further changes in light of recent changes to local flood maps and potential non-earthquake disasters (e.g. an Auckland volcano, or damaging tsunamis).

We understand you want this work complete before you take a paper to Cabinet Strategy Committee.

EQC is keen to assist by facilitating a workshop with relevant experts. The exact format and timing of this is uncertain as it will be dependent on the availability of key participants. EQC has started contacting key participants with a view to convening the meeting of experts as soon as practicable. Initial indications are that this may not be possible until late March 2014. We will provide you with an update when the workshop date and participants have been confirmed.

Cabinet Strategy Committee process

We would also appreciate a brief discussion regarding the Cabinet Strategy Committee process, covering issues such as the scope of material to be prepared to inform Committee discussions, as your preferred format (paper, A3 or PowerPoint?), attendance by officials or EQC, and your preferred timing. There are two annexes to help inform that discussion:

- Annex A: Suggested scope of materials supporting an STR discussion;
- Annex B: Examples of real-world scenarios showing current and proposed EQC cover. These or others could be developed for STR.

Consultation

EQC and the interdepartmental EQC Review Governance Group have been consulted in the development of this note.

Process from here

We will liaise with your offices to determine if you prefer to meet regarding the issues addressed in this aide-memoire soon, or to wait until the results of the EQC-led workshop are reported.

Steve Cantwell, Principal Advisor, Financial Markets, ^[39]
Anna Everton, Acting Manager, Financial Markets, ^[39]

Annex A

Suggested Scope of Materials Supporting an STR Discussion

Background

- Reasons for establishing the original 1945 EQ&WDC scheme.
- Creation of the current EQC scheme – the 1993 reforms and the reasons for them.
- Comparative overview of the current EQC scheme with other international, natural disaster insurance arrangements.
- Comparison of approaches to natural disaster insurance and their relative merits (first loss, second loss, reinsurance etc) and why NZ has opted for the current, first loss approach with EQC.

What works well

- Features of the scheme that have proven to be particularly effective and which need to be retained or enhanced.
- Review change proposals relating to:
 - enhancements of existing provisions that are already relatively effective; and
 - other desirable refinements and enhancements to the scheme that are not specifically related to identified problems.

Opportunities for improvement

- Problems with the current scheme identified since 1993, including those that came to light in dealing with Canterbury earthquake claims.
- Other potential problems related to non-earthquake events.

Key reform policy proposals

- Outline key features of the preferred reform package.
- Other options considered and the supporting rationale for the preferred option.
- Summarise how the proposals address identified problems.
- Risks associated with the reforms and risk mitigation.

Annex B

Draft Examples of Real-world Scenarios Showing Current and Proposed EQC Cover

We can also provide you with summarised scenarios illustrating the different outcomes for claimants under the current and proposed schemes for a range of different natural hazard impacts. Here are six draft examples of such scenarios. Others could be developed.



Scenario 1: Landslip on a site in an Auckland beachside suburb

[23]

Cliff-top site (with beach below) with a block of units. Claim related to [23] Landslip (a large area of land moved and fell off the front of the property) caused both actual and imminent damage to the unit and the land.

- **Building settlement under current EQC cover:** Actual damage to the unit was about \$60,000, but imminent risk damage was assessed as a 'total loss' and therefore exceeded the building cap. Consequently the building settlement was \$100,000 less excess.
- **Land settlement under current EQC cover:** A percentage of common land area was allocated to this claim and \$415,000 less excess, was paid.

Current EQC cover	\$ (GST excl) Settlement amount	Proposal	\$ (GST excl) Settlement amount
Part 1: Buildings (capped at \$100,000)		Part 1: Buildings (capped at \$200,000)	
The dwelling (including outbuildings and services) - assuming a building floor area of 100m² and rebuild cost of \$2200 per m²	\$100,000	The dwelling (including outbuildings and services) - assuming a building floor area of 100m² and rebuild cost of \$2200 per m²	\$200,000
Part 2: Land (no specific \$ cap)		Part 2: Basic land cover (capped at \$350,000)	
Land under the dwelling or separate building, within 8 metres, or under/supporting the main accessway; and retaining walls, bridges and culverts (indemnity value only) within the insured land area.	\$415,000	Land under the dwelling or within 8 metres of dwelling, or under/supporting the main accessway; and retaining walls, bridges and culverts that support or protect the building (replacement value) within the insured land area. (NB: No land cover for 'appurtenant structures' nor for land associated with non-residential buildings containing a dwelling).	\$350,000
Debris removal (within limits of land cap)	\$0	Debris removal (within limits of land cap)	\$0
Subtotal	\$515,000	Subtotal	\$550,000
Excess deductible		Excess deductible	
Buildings: For claims of \$20,000 or less, EQC will deduct an excess of \$200. For more than \$20,000, EQC will deduct an excess of 1%.	\$1,000	Buildings: EQC will deduct an excess of \$2000	\$2,000
Land: For claims of \$5,000 or less, EQC will deduct an excess of \$500. For more than \$5,000, EQC will deduct an excess of 10% (up to a maximum of \$5,000).	\$5,000	Land: EQC will deduct an excess of \$2000	\$2,000
Total EQC settlement amount	\$509,000	Total EQC settlement amount without voluntary additional land cover	\$546,000
		Part 3: Land (voluntary additional cover up to \$500,000).	
		Same terms as for basic land cover	\$65,000
		Total EQC settlement amount if voluntary additional land cover applies	\$611,000

Comments

- The main reason the settlement amount is significantly higher than under the current scheme is the increase in the building cap from \$100,000 to \$200,000.
- If the owner chose not to purchase the voluntary additional land cover the settlement amount would be \$65,000 less (ie, \$546,000 – an amount which is still sufficient to purchase a modest replacement dwelling elsewhere in Auckland).

Scenario 2: Landslip on an offshore island property in the Auckland Region

[23]

Substantial land movement damaged retaining walls and the dwelling on the site.

- **Building settlement under current EQC cover:** Dwelling damage costed at \$27,255.
- **Land settlement under current EQC cover:** Reinstatement of insured land required repair and rebuild of several retaining walls (costed at \$261,000). Settled for \$206,500 based on indemnity value of walls (\$70,000) plus value of insured land (\$136,500).

Current EQC cover	\$ (GST excl) Settlement amount	Proposal	\$ (GST excl) Settlement amount
Part 1: Buildings (capped at \$100,000)		Part 1: Buildings (capped at \$200,000)	
The dwelling (including outbuildings and services)	\$27,255	The dwelling (including outbuildings and services)	\$27,255
Part 2: Land (no specific \$ cap)		Part 2: Basic land cover (capped at \$350,000)	
Land under the dwelling or separate building, within 8 metres, or under/supporting the main accessway; and retaining walls, bridges and culverts (indemnity value only) within the insured land area.	\$206,500	Land under the dwelling or within 8 metres of dwelling, or under/supporting the main accessway; and retaining walls, bridges and culverts that support or protect the building (replacement value) within the insured land area. (NB: No land cover for 'appurtenant structures' nor for land associated with non-residential buildings containing a dwelling).	\$261,000
Debris removal (within limits of land cap)	\$0	Debris removal (within limits of land cap)	\$0
Subtotal	\$233,755	Subtotal	\$288,255
Excess deductible		Excess deductible	
Buildings: For claims of \$20,000 or less, EQC will deduct an excess of \$200. For more than \$20,000, EQC will deduct an excess of 1%.	\$272	Buildings: EQC will deduct an excess of \$2000	\$2,000
Land: For claims of \$5,000 or less, EQC will deduct an excess of \$500. For more than \$5,000, EQC will deduct an excess of 10% (up to a maximum of \$5,000).	\$5,000	Land: EQC will deduct an excess of \$2000	\$2,000
Total EQC settlement amount	\$228,483	Total EQC settlement amount without voluntary additional land cover	\$284,255
		Part 3: Land (voluntary additional cover up to \$500,000).	
		Same terms as for basic land cover	\$0
		Total EQC settlement amount	\$284,255

Comments

- The reason the settlement amount is significantly higher than under the current scheme is because the total cost of repairing the retaining walls is met (as opposed to the indemnity value plus land value approach taken under the current scheme).
- In this case, voluntary additional cover under the proposed scheme does not impact on the final settlement amount as the cost of land-related works (including retaining walls) is less than the \$350,000 cap on basic land cover.

Scenario 3: Landslip in Whakatane

[23]

Major impact damage to the dwelling, major debris inundation and imminent risk.

- **Building settlement under current EQC cover:** Dwelling damage costed at \$98,260.
- **Land settlement under current EQC cover:** Total area of affected landholding is 670 m² and minimum lot size in the area is 350 m². Reinstatement of insured land area requires half share (\$380,000) of new retaining wall and associated backfill. A neighbouring property with similar damage will pay the other half share. The value of the minimum lot size in this area is \$600,000.

Current EQC cover	\$ (GST excl) Settlement amount	Proposal	\$ (GST excl) Settlement amount
Part 1: Buildings (capped at \$100,000)		Part 1: Buildings (capped at \$200,000)	
The dwelling (including outbuildings and services)	\$98,260	The dwelling (including outbuildings and services)	\$98,260
Part 2: Land (no specific \$ cap)		Part 2: Basic land cover (capped at \$350,000)	
Land under the dwelling or separate building, within 8 metres, or under/supporting the main accessway; and retaining walls, bridges and culverts (indemnity value only) within the insured land area.	\$380,000	Land under the dwelling or within 8 metres of dwelling, or under/supporting the main accessway; and retaining walls, bridges and culverts that support or protect the building (replacement value) within the insured land area. (NB: No land cover for 'appurtenant structures' nor for land associated with non-residential buildings containing a dwelling).	\$350,000
Debris removal (within limits of land cap) – included in the land payment	\$0	Debris removal (within limits of land cap)	\$0
Subtotal	\$478,260	Subtotal	\$448,260
Excess deductible		Excess deductible	
Buildings: For claims of \$20,000 or less, EQC will deduct an excess of \$200. For more than \$20,000, EQC will deduct an excess of 1%.	\$982	Buildings: EQC will deduct an excess of \$2000	\$2,000
Land: For claims of \$5,000 or less, EQC will deduct an excess of \$500. For more than \$5,000, EQC will deduct an excess of 10% (up to a maximum of \$5,000).	\$5,000	Land: EQC will deduct an excess of \$2000	\$2,000
Total EQC settlement amount	\$472,278	Total EQC settlement amount without voluntary additional land cover	\$444,260
		Part 3: Land (voluntary additional cover up to \$500,000).	
		Same terms as for basic land cover.	\$30,000
		Total EQC settlement amount if voluntary additional land cover applies	\$474,260

Comments

- The settlement amount, with voluntary additional land cover, is slightly higher under the proposed scheme than under the current scheme. This difference is due to the different levels of excess deductibles.
- If the owner did not purchase voluntary additional land cover, the owner would need to be met the \$30,000 shortfall through other means.

Scenario 4: Earthquake in Eastern Suburbs, Christchurch

[23]

Technical category 3 site referred to Fletcher EQR for repair.

- **Building settlement under current EQC cover:** Total of \$59,000 made up of estimated dwelling repairs of \$36,000 and services repairs (which have already been completed) of \$23,000.
- **Land settlement under current EQC cover:** Category 1-7 land damage (ie, visible damage such as ground cracking or undulations) with repair cost of \$2,415.

Current EQC cover	\$ (GST excl) Settlement amount	Proposal	\$ (GST excl) Settlement amount
Part 1: Buildings (capped at \$100,000)		Part 1: Buildings (capped at \$200,000)	
The dwelling (including outbuildings and services)	\$59,000	The dwelling (including outbuildings and services)	\$59,000
Part 2: Land (no specific \$ cap)		Part 2: Basic land cover (capped at \$350,000)	
Land under the dwelling or separate building, within 8 metres, or under/supporting the main accessway; and retaining walls, bridges and culverts (indemnity value only) within the insured land area.	\$2,415	Land under the dwelling or within 8 metres of dwelling, or under/supporting the main accessway; and retaining walls, bridges and culverts that support or protect the building (replacement value) within the insured land area. (NB: No land cover for 'appurtenant structures' nor for land associated with non-residential buildings containing a dwelling).	\$2,415
Debris removal (within limits of land cap) – included in the land payment	\$0	Debris removal (within limits of land cap)	\$0
Subtotal	\$61,415	Subtotal	\$61,415
Excess deductible		Excess deductible	
Buildings: For claims of \$20,000 or less, EQC will deduct an excess of \$200. For more than \$20,000, EQC will deduct an excess of 1%.	\$590	Buildings: EQC will deduct an excess of \$2000	\$2,000
Land: For claims of \$5,000 or less, EQC will deduct an excess of \$500. For more than \$5,000, EQC will deduct an excess of 10% (up to a maximum of \$5,000).	\$500	Land: EQC will deduct an excess of \$2000	\$2,000
Total EQC settlement amount	\$60,325	Total EQC settlement amount without voluntary additional land cover	\$57,415
		Part 3: Land (voluntary additional cover up to \$500,000).	
		Same terms as for basic land cover.	\$0
		Total EQC settlement amount if voluntary additional land cover applies	\$57,415

Comments

- The settlement amount is a little less than under the current scheme due to the different levels of excess deductibles.

Scenario 5: Earthquake, Central City (hypothetical) Multi-storey Residential Building

[23]

Six-storey, apartment block with a total floor area of 2,700m². Commercial retail and café shops on the ground floor occupy 500m². 18 separate dwellings on the upper floors and associated circulation space occupy the balance of the floor area (ie, 2,200m²). EQC and private insurer (there is one fire policy held by the body corporate) agree that major shaking damage to building foundations and pre-cast, load-bearing beams means that repairs are not practicable and the building is a total loss. Land provides solid bearing and has no significant damage, so a replacement building on the same site is viable. The all-inclusive cost of replacing the building is \$7.8 million.

Building settlement under current EQC cover: A cap payment of 18 x \$100,000 = \$1.8 million (before excess deduction).

Land settlement under current EQC cover: Nil.

Current EQC cover	\$ (GST excl) Settlement amount	Proposal	\$ (GST excl) Settlement amount
Part 1: Buildings (capped at \$100,000)		Part 1: Buildings (capped at \$200,000)	
The dwelling (including outbuildings and services)	\$1,800,000	The dwelling (including outbuildings and services)	\$3,600,000
Part 2: Land (no specific \$ cap)		Part 2: Basic land cover (capped at \$350,000)	
Land under the dwelling or separate building, within 8 metres, or under/supporting the main accessway; and retaining walls, bridges and culverts (indemnity value only) within the insured land area.	\$0	Land under the dwelling or within 8 metres of dwelling, or under/supporting the main accessway; and retaining walls, bridges and culverts that support or protect the building (replacement value) within the insured land area. (NB: No land cover for 'appurtenant structures' nor for land associated with non-residential buildings containing a dwelling).	\$0
Debris removal (within limits of land cap) – included in the land payment	\$0	Debris removal (within limits of land cap)	\$0
Subtotal	\$1,800,000	Subtotal	\$3,600,000
Excess deductible		Excess deductible	
Buildings: For claims of \$20,000 or less, EQC will deduct an excess of \$200. For more than \$20,000, EQC will deduct an excess of 1%.	\$18,000	Buildings: EQC will deduct an excess of \$2000	\$36,000
Land: For claims of \$5,000 or less, EQC will deduct an excess of \$500. For more than \$5,000, EQC will deduct an excess of 10% (up to a maximum of \$5,000).	\$0	Land: EQC will deduct an excess of \$2000	\$0
Total EQC settlement amount	\$1,782,000	Total EQC settlement amount without voluntary additional land cover	\$3,564,000
		Part 3: Land (voluntary additional cover up to \$500,000).	
		Same terms as for basic land cover.	\$0
		Total EQC settlement amount if voluntary additional land cover applies	\$3,564,000

Comments

- Because more than 50 percent of the building floor area is made up of dwellings it is a 'residential building'. Accordingly, if there had been land damage, then a land payment would be made under both the current and proposed schemes.
- The settlement amount for building damage under the proposed scheme is almost double what is payable under the current scheme because of the doubling of the building cap.
- For buildings containing more than one dwelling, the building cap and excess deduction (where relevant) are determined by multiplying the amount that applies to a single dwelling by the total number of dwellings in the residential building (in this case that is 18x).

Scenario 6: Earthquake, Non-residential Building (hypothetical) containing two dwellings

[23]

Two-storey, mixed-use building (retail and offices on both levels with two small rented dwellings on the upper level) with a total floor area of 880m² including a basement carpark. Commercial retail shops and a professional office on the ground floor occupy 400m². On the upper floor there are three more offices (240m²) and two dwellings make up the balance of the upper floor area (ie, 160m²). The basement carpark (80m²) is available for use as part of the tenancies for occupants of the dwellings. There is one owner and one fire insurance policy held by that owner covering the whole building.

EQC and private insurer agree that building damage (limited to significant internal, non-structural damage) can be repaired at a total cost of \$180,000 – of which \$13,000 relates to damage to one dwelling and \$30,000 to the other. A large reinforced concrete retaining wall supporting one side of the basement accessway has collapsed and needs to be replaced at a cost of \$95,000.

Building settlement under current EQC cover: \$ = \$43,000 (less excess deduction)

Land settlement under current EQC cover: \$95,000

Current EQC cover	\$ (GST excl) Settlement amount	Proposal	\$ (GST excl) Settlement amount
Part 1: Buildings (capped at \$100,000)		Part 1: Buildings (capped at \$200,000)	
The dwelling (including outbuildings and services)	\$43,000	The dwelling (including outbuildings and services)	\$43,000
Part 2: Land (no specific \$ cap)		Part 2: Basic land cover (capped at \$350,000)	
Land under the dwelling or separate building, within 8 metres, or under/supporting the main accessway; and retaining walls, bridges and culverts (indemnity value only) within the insured land area.	\$95,000	Land under the dwelling or within 8 metres of dwelling, or under/supporting the main accessway; and retaining walls, bridges and culverts that support or protect the building (replacement value) within the insured land area. (NB: No land cover for 'appurtenant structures' nor for land associated with non-residential buildings containing a dwelling).	\$0
Debris removal (within limits of land cap) – included in the land payment	\$0	Debris removal (within limits of land cap)	\$0
Subtotal	\$138,000	Subtotal	\$43,000
Excess deductible		Excess deductible	
Buildings: For claims of \$20,000 or less, EQC will deduct an excess of \$200. For more than \$20,000, EQC will deduct an excess of 1%.	\$430	Buildings: EQC will deduct an excess of \$2000	\$4,000
Land: For claims of \$5,000 or less, EQC will deduct an excess of \$500. For more than \$5,000, EQC will deduct an excess of 10% (up to a maximum of \$5,000).	\$5,000	Land: EQC will deduct an excess of \$2000	\$0
Total EQC settlement amount	\$132,570	Total EQC settlement amount without voluntary additional land cover	\$39,000
		Part 3: Land (voluntary additional cover up to \$500,000).	
		Same terms as for basic land cover.	\$0
		Total EQC settlement amount	\$39,000

Comments

- Because less than 50 percent of the building floor area is made up of dwellings it is not a 'residential building' and so there is no land cover associated with any dwellings in the building. That is why there is no land-related payment under the proposed scheme.
- The settlement amount for building damage (dwellings only) is slightly less under the proposed scheme because a higher excess applies – that is \$4,000 as compared to \$430.
- The \$4,000 excess under the proposed scheme is arrived at by multiplying the excess for a single dwelling by the total number of dwellings in the building (in this case 2x).