

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
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- [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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Treasury Report: Accelerated Claims Review Programme

Date:	6 April 2018	Report No:	T2018/884
		File Number:	CM-1-3-15

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	None	N/A
Minister Responsible for the Earthquake Commission (Hon Dr Megan Woods)	Note the contents of the report	20 April 2018

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact	
Lars Piepke	Senior Analyst, Commercial Operations – Strategy and Policy	[39]	[23]	✓
Shelley Hollingsworth	Acting Manager, Commercial Operations – Strategy and Policy	[39]	[23]	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes Appendix 1: Accelerated Claims Review Programme Outline

Treasury Report: Accelerated Claims Review Programme

Purpose of Report

1. In order to achieve your objective of faster and fair Canterbury claims resolutions, we have been engaging with key stakeholders around a potential Accelerated Claims Review Programme (ACRP) aimed at improving engagement and data sharing between the Earthquake Commission (EQC) and the over-cap insurers. The purpose of this report is to provide you with the draft ACRP outline document that we have prepared and a summary of the initial feedback that we have received from EQC and the over-cap insurers.
2. We have provided the draft ACRP outline document to your independent Ministerial advisor (into EQC), Christine Stevenson, Acting Comptroller of the New Zealand Customs Service. She was interested in the programme and whether such an approach could help to achieve faster and fair Canterbury claims resolutions.

ACRP outline

3. The aim of the ACRP is to enhance the early identification of over-cap and likely over-cap Canterbury claims. Since over-cap insurers have the established processes and procedures to enable the resolution of over-cap (or likely to be over-cap) claims, the ACRP will facilitate the transfer of such claims as early as possible to the relevant over-cap insurer. The over-cap insurer's resolution of such claims can then be tracked to determine if it meets best industry practice.
4. Appendix 1 sets out the draft ACRP outline as well as some initial insights. In order to develop this outline, we engaged with EQC and Southern Response to learn from their experience of the Joint Accelerated Review Team process. This document was provided to the independent Ministerial advisor on 21 March 2018.
5. Of note, this work-stream has been referred to a number of times as a 'forensic audit' or 'actuarial audit' of EQC claims. This is not a clear representation of the work-stream that the Treasury has proposed. The ACRP (or a similar programme) has the potential, however, to enhance the quality of data inputs to EQC's own liability valuations and to inform the separate actuarial process that is now underway in support of a private-insurer led proposal relating to future over-cap claims liabilities. A separate aide memoire has been provided which notes these linkages [refer T2018/966].

Initial feedback from EQC and the over-cap insurers

6. Since 21 March 2018 we have been canvassing feedback from EQC and the over-cap insurers to our suggestion that an ACRP (or similar programme) should be established.
7. EQC is supportive of an ACRP (or a similar programme) to improve engagement and data sharing. Separately, EQC also mentioned that some of the private over-cap insurers (such as [34]) have recently reduced their engagement with EQC.
8. Southern Response (SR) is supportive of an ACRP (or a similar programme) and mentioned that the supporting data that they have been recently receiving from EQC is enabling a faster transfer to them of over-cap and likely over-cap claims.
9. Private over-cap insurers ([34]) expressed little appetite for an ACRP (or a similar programme) and stated that the benefits of such an approach would

be marginal compared to the extra resources that would be required. From our discussions with the private insurers, it is clear that they do not have much faith in the accuracy and/or relevance of the data that has in the past been provided by EQC to them.

10. The private insurers have not proposed an alternative solution to enable faster and fair resolution of current claims. Their strong preference is to focus on their own proposal that all over-cap claims received after 30 June 2018 be transferred to a Crown entity (such as SR) for resolution. The private insurers propose that they pay an initial fee to the Crown entity to cover these future over-cap claims liabilities. In addition, the private insurers propose that they secure and pay for adverse developments cover (from a reinsurer) to mitigate any loss that the Crown may incur if the initial fee paid is not sufficient to cover all the future private insurer over-cap claims liabilities.
11. We have noted to these insurers that an ACRP provided an opportunity to not only gain more certainty regarding current claims potentially outstanding, but also would enable better information transparency over future expected claim flows to inform and improve the actuarial valuation that would be required for their proposed transfer of future over-cap claims.

Next Steps

12. We have provided the draft ACRP outline to the independent Ministerial advisor and she may provide a recommendation on an ACRP or similar programme in her report (which we understand will to be finalised on or about 12 April 2018).
13. We are evaluating the private insurers' proposal for the resolution of all over-cap claims post 30 June 2018. We are also considering how we can encourage the private insurers' to engage in an ACRP as soon as possible to enable a faster and fair resolution of the claims that EQC has already received and will be over-cap or are likely to be over-cap.
14. It is our view that an ACRP or similar programme will also provide important insights into the flow of new remedial claims relating to the EQC managed repair programme. This will provide additional valuable information into any valuation process that would be required as part of the private insurers' over-cap claims transfer proposal, however the private insurers are still reluctant to engage on an ACRP or similar programme.
15. We expect to provide separate advice on the private insurers' over-cap transfer proposal during April 2018 once we have received a formal term sheet from them.

Recommended Action

We recommend that you:

- a **note** the contents of this report

Shelley Hollingsworth
Acting Manager, Commercial Operations – Strategy and Policy

Hon Dr Megan Woods
Minister Responsible for the Earthquake Commission

APPENDIX 1

DRAFT DOCUMENT

ACCELERATED CLAIMS REVIEW PROGRAMME (ACRP) OUTLINE

In order to achieve Minister Woods' primary objective of faster and fair claims resolutions, Treasury suggests establishing an ACRP aimed at improving engagement and data sharing between EQC and the over-cap insurers. The aim is to enhance the early identification of over-cap and likely over-cap claims. Since over-cap insurers have the established processes and procedures to enable the resolution of over-cap (or likely to be over-cap) claims, the ACRP will facilitate the transfer of such claims as early as possible to the relevant over-cap insurer. The over-cap insurer's resolution of such claims can then be tracked to determine if it meets best industry practise.

Key components of an effective ACRP:

1. A common goal amongst EQC and the over-cap insurers to engage and share core information that determines whether a claim is over-cap or is likely to go over-cap.
2. A Memorandum of Understanding (MoU) between EQC and each over-cap insurer clearly specifying the engagement protocols and outcomes. The MoU needs to include agreement as to financial obligations relating to reimbursements linked to MoU protocols (eg. where EQC pays the over-cap portion if it is close to cap or where EQC pays the full cap but may be due a refund if the claim does not actually reach cap). The format and timing of such payments also needs to be clearly specified. The MoU needs to deal with all potential administrative matters, including matters such as "ex gratia" payments that may be required to progress a claim to over-cap.
3. A clear delegation of authority by both EQC and each over-cap insurer to their respective ACRP responsible person to enable effective decision-making ability without continuous recourse to higher executive levels.
4. A dedicated ACRP team that comprises a claims management unit (co-ordinated by an independent claims management advisor with significant claims management experience) and a technical resource unit (co-ordinated by an independent technical advisor such as an engineer, quantity surveyor or building manager with significant experience in insurance claims).
5. The claims management unit will provide best practice with regard to data sharing and relevant document sourcing in order to identify all claims that are over-cap or are likely to become over-cap. A standard process and documentation template for all over-cap or likely to become over-cap claims must be agreed so that there is limited ability to reject the transfer or resolution of such claims. The claims management unit is expected to comprise an appropriately sized team of claims management staff (including the independent claims management advisor) with insurance policy and claims resolution experience.
6. The technical resource unit (comprising an appropriately sized team of technical specialists including the independent technical advisor) will ensure that key technical matters are analysed and resolved as soon as it becomes apparent that a technical assessment (from desktop through to site visit) will be required as part of the standard process and documentation template. The independent technical advisor must be authorised to ensure effective decision making in line with the MoU protocols. Any

technical disagreements that cannot be resolved by the technical unit will be resolved by the decision of an already agreed upon third party technical resource (such as a reputable engineering firm) as per the terms of the MoU. The process needs to encourage the fast and fair resolution of all technical matters.

7. Each over-cap insurer must have an authorised person/s to enable it to engage fully with the ACRP team with regard to formally accepting the over-cap and likely to become over-cap claims.
8. The independent claims management advisor and the independent technical advisor will provide a performance monitoring function and will report on the effectiveness of the ACRP to Treasury.

By way of an example, Southern Response mentioned to Treasury that using the Joint Accelerated Review Team (JART) process and an internal team of (on average) 6 claims management personnel and 2 technical resources, they managed to investigate 2,500 EQC related Southern Response policyholder claims to determine which claims were over-cap (or likely to become over-cap). The JART process was not yet fully established (with regard to exact data specifications and minimum document requirements) when Southern Response began the investigation and it took around 4 months to complete the process. Southern Response considers that it should be possible under an ACRP (once fully established as described above) to investigate around 2,500 EQC claims to identify over-cap and likely to become over-cap claims within a 2-month to 3-month period.

MATTERS WHICH SHOULD ACCELERATE CLAIMS RESOLUTION (regardless of whether or not specifically included in an ACRP)

Following our meetings with personnel from EQC and Southern Response, we consider that the following measures could make a material difference to the pace of fair claims settlement, although those that require “resolution” (eg actually engaging professionals to complete building or remedial work) would require additional measures.

1. Enabling EQC to complete settlement of more claims that end up not substantially over-cap, rather than transferring such claims to the over-cap insurer. This could be achieved by lifting the level of payments EQC is able to make as long as arrangements are in place for reimbursement of the over-cap amount by the over-cap insurer.
2. Providing each claims manager with delegated authority to settle claims (including significant discretion/ability to adjust the final settlement amount without needing to seek approval from much higher up the chain).
3. Providing EQC with more flexibility to make ‘ex gratia’ payments (including accommodation for families and their pets while rebuilds, repairs or remedial work are undertaken). Under current arrangements, it appears that EQC is unable to make ex gratia payments and so relatively small sums are holding back substantial settlements. The impasse might be overcome by the Crown setting up a separate (non-EQC) facility upon which EQC could draw for such payments to be made.

INFORMATION REQUIRED BEFORE MODELLING OF FUTURE CLAIMS IS LIKELY TO PRODUCE MEANINGFUL RESULTS

Regardless of the final form of any settlement vehicle or determining the manner in which future liabilities (claims settlement and claims handling costs) will be managed, the parties should be seeking good quality information on which to base their decisions. The prospective future remedial claims stream can best be modelled once there is a deep and clear understanding of the remedial claims that have arisen to date, including the nature of the problems, their location, geology of the underlying land, the assessor, timing of the original assessment, the work undertaken and the contractor. We consider that the best quality information to better inform any actuarial or valuation process is likely to be derived through an ACRP or some similar approach.