

The Treasury

Treasury Advice Related to Modernising the EQC Act Information Release

December 2021

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Impact Summary: Earthquake Commission Act 1993 Modernisation

Summary: Problem and Proposed Approach

Problem Definition

The EQC Act's effectiveness was tested by the Canterbury earthquake sequence

The Earthquake Commission (EQC) provides natural disaster insurance cover for damage to privately insured residential properties. EQC plays a critical role in New Zealand's ability to recover from natural disaster events and, in doing so, supports New Zealand's living standards across health, housing, safety and security, and subjective wellbeing domains.

During 2010 and 2011, the Canterbury region experienced New Zealand's most significant earthquake sequence in modern times. The EQC scheme's effectiveness was severely tested by the earthquake sequence in Canterbury:

- there was a lack of transparency around and clarity of the roles and responsibilities of EQC
- EQC's claims handling system was significantly overburdened, leading to negative experiences for claimants.¹ This was exacerbated by a lack of understanding of, and mismatched expectations around, the claims handling and settlement process. This sometimes led to legal disputes between the public and EQC, or EQC and private insurers, which initially had no clear process for resolution outside the Courts²
- there was a lack of clarity and certainty around entitlements under the EQC Act including the scope of cover for both land and buildings, and
- there were boundary issues between the responsibilities of EQC and those of private insurers.

Changes are needed to the EQC Act in order to embed lessons learned from Canterbury and other events

Fully responding to the concerns and lessons regarding EQC's performance and experiences requires a range of actions including making changes to the EQC Act. Amending the EQC Act will ensure improvements are in place should a natural disaster event occur in the near-term.

¹ By and large, claimants who participated in the Public Inquiry into EQC expressed dissatisfaction with the operational practices and outcomes of claims they experienced with EQC. See page 7 of the report of the Public Inquiry into EQC (2020): <https://eqcinquiry.govt.nz/assets/Inquiry-Reports/Report-of-the-Public-Inquiry-into-EQC.pdf>

² The Christchurch Earthquakes Insurance Tribunal and Greater Claims Resolution Service were eventually developed to help fill the dispute resolution gap.

Section 1: General information

Purpose

Treasury is solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.

Key Limitations or Constraints on Analysis

Policy

Ministers have directed officials to undertake a review of the EQC Act to modernise the legislation and embed lessons learned following the Canterbury earthquake sequence in 2010 and 2011. The 'modernisation' scope of the work means that a first-principles examination of the purposes and design of EQC has not been undertaken.

As a result, the following core features of the existing scheme and institutional arrangements were retained in all reform options:

- EQC cover being first-loss cover (i.e. EQC takes the first loss in the event of a covered natural disaster, with the private insurer picking up losses beyond the EQC cover as required)
- access to EQC cover being compulsory for any residential building with a fire insurance policy
- EQC premiums being collected by private insurers and passed to EQC
- the EQC scheme being focused on only residential property
- separate EQC building and land covers are retained, and
- EQC continues to be a Crown Entity.

The Minister Responsible for the EQC has also directed that the status quo scope of land and building cover by EQC should be retained. This achieves the above policy goals, and also results in some residential land being insured by EQC that is additional to that needed to achieve the policy goals (in particular, all land within 8 metres of an EQC-insured residential building, which may be more than necessary to reinstate the home).

Officials consider that the above limitations did not impede the review of the EQC Act in addressing the relevant recommendations of the Public Inquiry into the EQC (the Inquiry).

Non-legislative options

It is noted that these amendments are just one aspect of a package of legislative and non-legislative initiatives being progressed across government to implement recommendations of the Inquiry and embed lessons learned from the past.³ Most notably, EQC itself has already implemented a broad suite of operational improvements, including around how it works with claimants and private insurers to support timely, fair, and enduring settlements for Canterbury claimants and future events.

As part of these improvements, EQC is implementing an Insurer Response Model (IRM), which is a partnership between EQC and private insurers. Claimants will have one point

³ The full Government response to the Public Inquiry into EQC, released in September 2020, is available here: <https://www.treasury.govt.nz/sites/default/files/2020-09/govt-response-eqc-inquiry-DEV-20-SUB-0116.pdf>

of lodgement, assessment, and resolution for their insurance claims. EQC is ensuring all of its agents take a consistent approach to treating customers fairly, respectfully, and sensitively by developing an EQC Insurer Manual (as a core operational document for all parties performing claims management under the IRM). EQC is also developing a comprehensive assurance programme to support the IRM. This includes tracking insurer performance of Statement of Performance Expectation measures and customer feedback.

In addition to ongoing improvements in EQC operations, there are three main work streams across government that will take forward the various recommendations of the Public Inquiry into EQC:

1. A substantial modernisation of the EQC Act by Treasury, with an amendment Bill to be introduced 2021;
2. National Emergency Management Agency-led work on clarifying roles and responsibilities in the emergency management system; and
3. Department of Internal Affairs-led cross-government Community Resilience work programme, the overarching objective of which is to build community resilience to natural hazards and climate change risks.

This Regulatory Impact Statement (RIS) focuses on the first of the three workstreams, which addresses matters raised in the Government's response to the Inquiry, and lessons from the Canterbury earthquake sequence that require legislative change to the EQC Act.

Criteria used to assess options

While there is no prescriptive set of arrangements that will be suitable for every entity, there are established principles and examples of good practice. We have assessed against criteria determined for each issue examined. We have generally not sought to establish formal weightings for these criteria, with the preferred option reflecting a judgement about which option is likely to achieve best an appropriate balance of the selected criteria.

We have generally not sought to quantify costs and benefits due to the difficulty of doing so in relation to changes to governance and other institutional arrangements. Assessments reflect a judgement about the relative impact of options against the established criteria.

Data

The evidence base for this analysis has been drawn primarily from EQC claims data, EQC modelling, insurer-provided data, and stakeholder consultation. There are limitations around the availability and quality of data on EQC insured property and claims.

Related Regulatory Impact Statements

This RIS is one of four to support proposals to amend the Earthquake Commission Act 1993. The related RISs cover the EQC cap (currently being prepared in parallel to this RIS) and the treatment of mixed-use buildings under the EQC Act (already completed to a standard that meets the RIS quality assurance criteria). The fourth RIS will cover technical matters in the EQC Act and will be prepared from March 2021 once Ministerial decisions have been made on the proposals. All RISs will be published on the Treasury website once the EQC Amendment Bill is introduced.

Consultation

There has been significant public consultation on problems with the current EQC Act and potential options for change in 2015, and during the more recent Inquiry, which included

extensive consultation with the people of Canterbury. Consequently, the Minister Responsible for the EQC decided not to undertake a full public consultation process, including with iwi/hapū, or to consult on an exposure draft of the proposed EQC Bill. The Treasury has instead undertaken a targeted consultation process with key stakeholders on relevant proposals.

While the package of proposals to modernise the EQC Act do not propose fundamental reforms, they are fairly complex and technical in nature. The targeted consultation process does create a risk that groups not included in the targeted consultation could raise technical or other issues at Select Committee that officials had not previously considered.

Responsible Manager (signature and date):

Helen McDonald
Earthquake Commission Policy Team
Economic System Directorate
The Treasury
[March 2021]

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Ministry of Primary Industries and the Treasury.

Quality Assurance Assessment:

A cross-agency Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement “*Impact Summary: EQC Act Modernisation*” produced by The Treasury and dated February 2021. The review team considers that it **meets** the Quality Assurance criteria.

Reviewer Comments and Recommendations:

Overall, the RIS shows clearly that the options have been carefully considered and analysed, and implementation risks identified and mitigated.

The panel notes that there was no public consultation on the options, which has created some risk that unexpected technical issues may be raised at the Select Committee stage. However, this risk is mitigated by the extensive consultation that took place during the Public Inquiry and targeted consultation on the proposals, including with an EQC claimants group.

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

The EQC scheme supports access to affordable natural hazard insurance

Internationally, private markets for catastrophe insurance tend to be marked by low rates of insurance uptake and fluctuations in supply of this type of cover. This results in significant levels of under-insurance or non-insurance among homeowners.

Without something like the EQC scheme, many homeowners would not be insured against catastrophe risks. The experience elsewhere in the world is that, in that situation, governments provide ad hoc assistance to those homeowners after large natural disasters. This creates risks and uncertainty for homeowners, insurers and governments.

Through its “first loss” insurance scheme, EQC gives New Zealanders access to affordable natural hazard insurance. The current scheme design has EQC taking on a lot of the risk (covering something like 85 per cent of the damage to housing from natural disasters). This contributes to high rates of insurance among New Zealand homeowners compared with other countries that face similar levels of risk from natural disasters. The scheme plays an important role in re-establishing local communities hit by natural disasters.

Additionally, through its research and education functions, EQC:

- improves knowledge and professional practices in order to reduce the Government’s liabilities from natural disasters and make communities more resilient to such events
- helps raise awareness of the ways individuals and communities can better protect their property. Stakeholders have expressed strong support for these educational activities.

Through its reinsurance/risk transfer function, EQC contributes to a better understanding of New Zealand’s risks by international reinsurers/international risk capital markets – EQC’s support of high quality science and engineering research, and practice underpin New Zealand’s ability to assess risk and price it.

The EQC Act’s effectiveness was tested by the Canterbury earthquake sequence

EQC provides natural disaster insurance cover for damage to privately insured residential properties. EQC plays a critical role in New Zealand’s ability to recover from natural disaster events and, in doing so, supports New Zealand’s living standards across health, housing, safety and security, and subjective wellbeing domains.

During 2010 and 2011, the Canterbury region experienced New Zealand’s most significant earthquake sequence in modern times. EQC received more than 583,000 claims for damage to approximately 168,000 residential dwellings from this event sequence. EQC’s response to the Canterbury seismic sequence has been subject to several reviews and inquiries, most notably the Public Inquiry into the Earthquake Commission (the Inquiry), chaired by Dame Silvia Cartwright, that reported in April 2020. The EQC scheme’s effectiveness was severely tested by the earthquake sequence in Canterbury:

- there was a lack of transparency around and clarity of the roles and responsibilities of EQC

- EQC’s claims handling system was significantly overburdened, leading to negative experiences for claimants.⁴ This was exacerbated by a lack of understanding of, and mismatched expectations around, the claims handling and settlement process. This sometimes led to legal disputes between the public and EQC, or EQC and private insurers, which initially had no clear process for resolution outside the Courts⁵
- there was a lack of clarity and certainty around entitlements under the EQC Act including the scope of cover for both land and buildings, and
- there were boundary issues between the responsibilities of EQC and those of private insurers.

The Public Inquiry into EQC

Neither EQC, nor the EQC Act, had been previously tested on an event of this size. Concerns regarding EQC’s response to this event has resulted in a number of reviews, including the Public Inquiry into the Earthquake Commission, chaired by Dame Silvia Cartwright. The purpose of the Inquiry was to ensure lessons are learned from the Canterbury earthquake sequence and subsequent events, and that EQC has the appropriate policies and operating structure in place to ensure improved claims management experiences in the future.

The Inquiry found that, regardless of the views of the performance of EQC, New Zealand “is fortunate to have a natural disaster insurance scheme backed by the Government”.⁶ The report produced a wide-ranging and comprehensive set of findings, resulting in 70 recommendations that can be broadly grouped into three core themes:

1. modernising the EQC Act
2. a more people-centred claims system
3. clarification of roles and responsibilities.

Modernising the EQC Act

The Inquiry identified a need to update the EQC Act across a range of areas. This included improved legislative clarity around specific definitions in the EQC Act (not covered in an Impact Statement), the treatment of multi-unit and mixed-use buildings (covered in a separate Impact Statement on *Mixed-use buildings under the EQC Act 1993*, which will be publicly released when the Bill is introduced). The Inquiry also recommended amending the EQC Act to include a purpose statement to guide the discharge of EQC functions. This would bring the EQC Act in line with modern laws which contain purpose statements to aid in interpretation.⁷

A more people-centred claims system

The Inquiry stated that claimants should be dealt with respectfully, fairly and professionally and with a sensitivity to the post-disaster pressures they might be facing. A more people-centred approach must therefore underpin all aspects of the claims system including:

⁴ By and large, claimants who participated in the Inquiry expressed dissatisfaction with the operational practices and outcomes of claims they experienced with EQC. See page 7 of the report of the Public Inquiry into EQC (2020): <https://eqcinquiry.govt.nz/assets/Inquiry-Reports/Report-of-the-Public-Inquiry-into-EQC.pdf>

⁵ The Christchurch Earthquakes Insurance Tribunal and Greater Claims Resolution Service were eventually developed to help fill the dispute resolution gap.

⁶ Page 58 of the report of the Inquiry: <https://eqcinquiry.govt.nz/assets/Inquiry-Reports/Report-of-the-Public-Inquiry-into-EQC.pdf>

⁷ The injunction in section 5(1) of the Interpretation Act 1999 states that enactments are to be interpreted in light of their purpose.

- the claims management process
- claimant access to information (to be covered in a subsequent Impact Statement)
- EQC's communications approach (not covered by the legislation)
- dispute resolution.

Clarification of roles and responsibilities

The Inquiry's recommendations to clarify EQC's role fell into three groups:

1. EQC's role in the natural disaster system
2. who would operate a managed repair programme, and
3. maintaining the quality of housing stock.

Recommendations in this space that are most relevant to the legislation related to the need for greater legislative and operational clarity about the role of EQC in the Government's emergency management system, in relation to other agencies. For instance, the expectations of EQC in land-use planning and co-ordination of land remediation.

Changes are needed to the EQC Act in order to embed lessons learned from Canterbury and other events

Fully responding to the concerns and lessons regarding EQC's performance and experiences requires a range of actions including making changes to the EQC Act.

While the impact of any individual proposed change is expected to be minor to moderate, the changes collectively amount to meaningful improvements in the scope, certainty, and processes around EQC cover, which will improve New Zealand's resilience in the wake of future natural disasters, and benefit homeowners and private insurers, in navigating the EQC Act, and EQC in implementing it. Amending the EQC Act will ensure improvements are in place should a natural disaster event occur in the near-term. The amendments have three overarching objectives:

1. enabling better community recovery following a natural disaster
2. updating and improving the clarity and certainty of the role of EQC and the cover it provides, and
3. supporting the future durability and flexibility of the EQC Act.

The proposed changes touch on all key parts of the EQC Act, including the purpose, design and coverage of the EQC scheme's insurance, EQC's treatment of claimants, and EQC's functions, powers and relationship with the Crown and responsible Minister, including the principles and processes underpinning EQC's funding and risk management.

2.2 Who is affected and how?

A key theme from the Inquiry was that additional role clarity and preparation is required to inform EQC's preparation for future events. The introduction of a purpose statement and organisational objectives will factor into EQC's future priority setting.

Role clarity, including explicit objectives promoting the timely and fair resolution of Canterbury claims, will influence how the public experience EQC. Clear objectives relating to claims management will influence the management of future EQC claims. Similarly, changes to broaden EQC's mandate will allow EQC flexibility to consider the

impact work to promote resilience or to prepare for future crises will have on the wider community.

Administrative decision-making principles, statutory review periods, and improved disclosures may also affect the relationship to and future engagement with future Ministers Responsible for EQC. While EQC premiums have previously not been reviewed for decades, the EQC Act will now require key financial settings to be reviewed at least every five years. We anticipate a regular strategic conversation will occur involving EQC and the Responsible Minister to discuss the performance of the policy, any funding shortfall, and the Crown's financial strategy to fund this shortfall.

Finally, policy clarifications will lead to a more predictable insurance scheme, which will benefit homeowners, EQC and insurers.

The effects of these changes on these groups discussed are also expected to be positive, as the increased clarity and certainty improves the operation of the EQC scheme and the EQC Act.

2.3 What are the objectives sought in relation to the identified problem?

The proposals have three overarching objectives:

1. enabling better community recovery following a natural disaster
2. updating and improving the clarity and certainty of the role of EQC and the cover it provides, and
3. supporting the future durability and flexibility of the EQC Act.

The proposed changes touch on all key parts of the EQC Act, including the purpose, design and coverage of the EQC scheme's insurance, EQC's treatment of claimants, and EQC's functions, powers and relationship with the Crown and responsible Minister, including the principles and processes underpinning EQC's funding and risk management.

The proposals are generally mutually reinforcing across these objectives and generally do not present difficult trade-offs between them.

In principle there are potential trade-offs between the "clarity and certainty" and "durability and flexibility" objectives. In general, the proposals look to manage this by ensuring that measures intended to improve durability and flexibility are exercised with clarity and certainty. Examples include the proposals to more precisely describe the relationship between the responsible Minister and the EQC Board regarding pricing, funding, risk management and investment decisions, and the proposals to more clearly describe EQC's mandate to contribute to broader whole of Government efforts to improve community disaster resilience and recovery. Additionally, the proposals for outcomes-based objectives for the EQC Act, that are function-specific, are also expected to support greater role clarity and certainty for EQC while still enabling EQC a relatively flexible mandate for how it exercises these functions and achieves its objectives.

Section 3: Options identification

3.0 Policy proposals addressed in this Impact Statement

This Impact Statement addresses the following policy proposals, in the following order:

- **Issue 1: EQC institutional design.** This includes:
 - clarification of EQC's functions, and
 - new institutional objectives for EQC.
- **Issue 2: EQC funding and financial risk management.** This includes:
 - ensuring key financial settings (including premium rates and the EQC insurance cap) are reviewed at least every five years
 - introducing a clear statutory basis for insurance premiums, and
 - requiring disclosures relating to the Government's funding strategy and the basis for key financial settings
- **Issue 3: Requiring EQC to participate in a dispute resolution mechanism**
- **Issue 4: Clarifying the assignment of claims to subsequent owners**
- **Issue 5: Updating offences and penalties**
- **Issue 6: A new offence for non-compliance with levy obligations**
- **Issue 7: Enabling EQC to decline claims where there is no financial loss**
- **Issue 8: Extending the time period for a volcanic activity event.**

Issue 1: EQC Institutional design

3.1 What options have been considered?

As the Government has commissioned a review to modernise the EQC Act while retaining the core design features of the EQC scheme, we have not considered changes to the nature of EQC insurance or significant changes to EQC's current role.

With the goal of improving role clarity, the Minister Responsible for EQC's proposals to Cabinet sought to:

- introduce a purpose statement, which is used to aid legal interpretation and communicate the intent of the policy
- improve the drafting of EQC's current functions to clarify that EQC may contribute to wider Government priorities notably with respect to complementary work to improve resilience or prepare for future natural disasters, and
- introduce new objectives for each of EQC's functions to communicate the financial and non-financial objectives EQC has with respect to each of its key stakeholders.

Problem definition– purpose, objectives, and functions

Submissions made to the Public Inquiry into EQC, "*suggested that EQC lost sight of part of its fundamental purpose following the Canterbury earthquakes... EQC seemed to place insufficient emphasis on the recovery and resilience of Communities.*"⁸

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See page 63 of the report of the Public Inquiry into EQC; <https://eqcinquiry.govt.nz/assets/Inquiry-Reports/Report-of-the-Public-Inquiry-into-EQC.pdf>

The EQC Act does not align with current legislative drafting standards as, while the EQC Act currently defines EQC's functions, it does not identify a purpose for the scheme or objectives for EQC. As a result, public debate has arisen as to scope of EQC's mandate. The Inquiry commented that, "EQC's statutory roles focus on insurance, reinsurance, collecting levies, managing the Natural Disaster Fund, and research and education. The experiences of the major and very complex earthquake and flood events between 2010 and 2017 have demonstrated that a narrow interpretation of these functions is insufficient."⁹

The Inquiry has recommended a clear statement of purpose and decision-making principles to, "provide a clear signal to EQC and New Zealanders what policy makers expect of the Country's natural disaster scheme," (recommendation 1.2.1). The Inquiry noted:

*There is a need to reframe the EQC Act to include such a [purpose] statement. Consideration should also be given to including in its statement of purpose EQC's social responsibility to those who find themselves needing to make a claim under the EQC Act. Not only does the principle of caring for those who need assistance following a major natural disaster require articulation, but it also accords with the original intention and historic application of the legislation, EQC's current mission statement and the expectations of the public."*¹⁰

Decision-making criteria

A trade-off exists between flexibility and durability. A highly prescriptive act provides a high degree of certainty as to what EQC must do, but a prescriptive framework also reduces the scope for administrative discretion.

In identifying criteria, we have considered the breadth of perils covered by EQC, pace of scientific discovery, the dynamic nature of insurance markets, and uncertainty around the nature and severity of future crises. These factors suggest significant uncertainty around EQC's future role.

In considering this uncertainty, the decision criteria that we have adopted are:

- **flexibility** to allow EQC to identify and develop more efficient and effective ways to deliver future cover as new information comes to light
- sufficient **statutory role clarity** to ensure the different aspects of EQC's role are clear, certain, and/or transparently communicated, and
- providing for the **durability** of statutory changes.

Options considered

While the Inquiry recommended the introduction of a purpose statement and decision-making principles, officials did not consider that a purpose statement was the correct statutory device to clarify EQC's statutory mandate. While a purpose statement clarifies the purpose of an Act and aids in its statutory interpretation, a purpose statement alone would not be sufficient to clearly outline clear functions for EQC (the entity) to perform and the objectives it should achieve in doing so. We consider that, further statutory guidance will be required if a modernised EQC Act is to achieve the level of clarity and certainty that the Inquiry report recommends. The alternative options that we considered included:

- **The status quo – no statutory guidance:** The current EQC Act could be retained as it provides a permissive and flexible framework. The absence of

⁹ Page 184 of the report of the Public Inquiry into EQC.

¹⁰ Page 63.

statutory objectives for EQC may provide discretion, although the lack of clarity could contribute to uncertainty around the scope of EQC’s mandate.

- **Option 1: High-level guidance via objectives that define the outcomes (i.e. what) EQC should seek to achieve.** An outcomes-based framework provides guidance for EQC and the public as to the organisation’s priorities, while retaining flexibility as to how the entity should seek to achieve these outcomes.
- **Option 2: Detailed statutory duties, decision making principles, or procedural guidance to specify how EQC should achieve its objectives.** The Inquiry has recommended decision making principles, review requirements, and a high-level obligation that EQC should treat claimants with dignity, fairness, and respect. These factors could be included as statutory requirements that either apply to the entity as a whole or to discrete decisions relating to specific functions.

This RIS focuses on matters raised in Government’s response to the Inquiry and learnings from the Canterbury earthquake sequence that require legislative change to the EQC Act to be implemented. Non-legislative options were not relevant for this specific issue.

Options Analysis

Summary of analysis:

	Status Quo	Option One: Statutory Objectives	Option Two: Detailed Guidance
Flexibility	Yes	Yes	No
Role Clarity	No	Yes	Yes
Durability	Yes	Yes	No

Status Quo: no statutory guidance on EQC’s mandate

The Canterbury earthquake sequence was unprecedented and required a significant change in the scope of EQC’s functions over a short space of time. EQC took on over 1000 staff to manage claims on over 160,000 properties.

EQC also faced trade-offs between its functions. While EQC sought to treat claimants fairly, the lack of clear claims management objectives generated public debate as to whether EQC had financial objectives and as to how these were applied.

In summary, the status quo has proven to be both **flexible and durable**. EQC was able to expand its functions to respond to the crisis without a need for significant changes to the EQC Act.

With respect to the Inquiry’s findings, the current EQC Act may suffer from real or perceived issues relating to **role clarity**. The EQC Act only defines EQC’s functions and the Inquiry suggested that EQC interpreted its functions too narrowly.

Secondary considerations include the risk that the current EQC Act may not provide sufficient role clarity to allow EQC to plan for future events.

Option 1: High-level guidance on objectives that define the outcomes (i.e. what EQC should seek to achieve)

Changes could be made to clarify the scope of EQC's mandate without defining how decisions should be made, and therefore retaining a significant degree of flexibility. These include:

- introduction of a purpose statement to describe the purpose of the EQC scheme (discussed above)
- a broadening of EQC's functions to clarify what EQC does (most notably as to whether it has statutory obligations to contribute to community resilience beyond its insurance-specific functions)
- the introduction of statutory objectives to clarify how each of EQC's core functions (claims management; education, research and information; and Natural Disaster Fund management) contributes to the purpose of the EQC scheme.

These changes could be structured to operate as a flexible package. We suggest they would define: the purpose of the scheme; what the entity does; and the ways by which the entity delivers the scheme's purpose and/or supports a range of different stakeholders.

Function-specific and outcome-based objectives meet our three decision criteria.

Outcome based objectives provide additional role clarity that can provide a basis for planning by communicating EQC's priorities and focus with limited impact on the flexibility EQC currently has to improve systems and processes over time.

Organisational objectives that allow for change are also expected to be more enduring/durable in nature.

Option 2: Detailed statutory duties, decision-making principles, or procedural guidance to specify how EQC should achieve its objectives

While the Inquiry recommended decision making principles to "assist EQC in carrying out its duties to the standard expected of it",¹¹ it primarily focused on EQC's claims management function and did not consider all of EQC's other functions (e.g. how it has managed the Natural Disaster Fund).

Other comparable legislation includes additional statutory detail or guidance to assist in the discharge of functions. For example:

- regulators, such as the Reserve Bank of New Zealand, are often provided decision-making principles that they should have regard to
- the Accident Compensation Corporation (ACC) must produce and publish a code of claimant rights, and
- the Veteran's Support Act 2014 includes a duty to "take a benevolent approach to claims."

The statutory objectives discussed in Option 1 can be used to provide role clarity and a general framework to encourage positive policy outcomes. While additional statutory detail such as is included in comparable legislation as outlined above (e.g. decision-making principles) could influence how EQC discharges its duties and principles also

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See the Inquiry recommendation 1.2.1, which stated that the Government should: *Consider inclusion of a purpose statement and set of principles in the EQC Act that will guide the discharge of EQC's responsibilities as an insurer with a social responsibility to claimants.*

come with additional legal risk compared with the status quo or utilising more high-level objectives (i.e. Option 1).

The more detailed the legislation is, the less flexibility EQC has to adapt its processes in response to a crisis. This reduction in flexibility may require future changes to the EQC Act, which undermines the durability of the legislation.

Consequently, we see a trade-off between the certainty additional legal requirements may provide versus the impact they may have with respect to flexibility or durability.

EQC differs from other state insurance agencies (e.g. ACC) in that its claims arise as a result of a regional natural disaster. Should EQC require additional guidance, the EQC Act provides sufficient powers under the status quo to allow for this guidance to be provided via other more flexible channels. For example, should circumstances require it, the Minister Responsible for EQC may:

- communicate the Government's interests via a letter of expectations
- comment on EQC's statement of intent
- direct EQC, under section 12 of the current EQC Act and sections 103 and 112 of the Crown Entities Act 2004.

3.1A Which of these options is the proposed approach?

Officials have recommended Option 1 (statutory objectives) as the preferred approach. This entails:

- the introduction of a purpose statement discussed above
- a broadening of EQC's functions to clarify the discretion EQC has to contribute to wider government processes in the disaster recovery and resilience space
- introduction of statutory objectives to clarify EQC's key stakeholders and obligations with respect to each function.

We consider this option best meets the three key decision criteria:

- **Sufficient statutory clarity to ensure the different aspects of EQC's role are clear, certain, and/or transparently communicated.** The current EQC Act specifies EQC's functions with limited guidance as to the purpose of the insurance scheme. Option one recommends a purpose statement that communicates the policy intent to aid interpretation of the EQC Act. The proposed institutional objectives describe how EQC should contribute to this purpose.
- **Flexibility to encourage EQC to identify more efficient and effective ways to deliver future cover.** Outcomes-based objectives that are function-specific support EQC's decisions on its priorities and areas of focus without determining how these outcomes should be delivered. This allows EQC to identify more efficient or effective ways to design its processes or to deliver its services.
- **Durability of statutory changes.** A more flexible, less prescriptive framework is expected to be more durable over time. While other Crown Financial Institutions have detailed procedural changes, EQC's processes may need to evolve. The processes used within small events with limited loss, for example, may not be appropriate in response to a significant regional disaster.

Drafting objectives for the EQC Act

We will work through the drafting of objectives into the EQC Act with the Parliamentary Counsel Office. As a starting point, we anticipate objectives similar to the following, in line with EQC's three core functions: claims management; education, research and information; and Natural Disaster Fund management:

Claims management	<ul style="list-style-type: none">• <i>Focus on claimants as the stakeholder.</i>• <i>Encourage timely and fair settlement of claims.</i>
Education, research, and information functions	<ul style="list-style-type: none">• <i>Focus on the Crown, claimants and the wider public as stakeholders.</i>• <i>To develop or contribute knowledge that encourages improvements in the resilience of residential buildings, a reduction in the cost of insurance settlements, or a more effective response to natural disasters over time.</i>
Fund management mandate (involves investment of assets on behalf of the <u>Crown</u> .)	<ul style="list-style-type: none">• <i>Focus on the Crown as the stakeholder.</i>• <i>Grow assets, comply with best practice financial management, and act responsibly.</i>

Inclusion of Purpose Statement

While not discussed in this Impact Summary due to being below the impact threshold for inclusion, for completeness it is noted that the Cabinet paper accompanying this RIS also recommends a broad purpose statement that recognises the different parts of EQC's current role. While the EQC Act provides public insurance against natural disaster damage to residential buildings, EQC (the entity) has education and research functions that seek to reduce the impact of future natural disasters.

The Cabinet paper proposes that the current purpose of the EQC scheme should be articulated in the following way:

To reduce the impact of natural disaster damage by encouraging resilience and by contributing to the timely replacement or reinstatement of residential land and buildings.

Issue 2: EQC funding and financial risk management

3.2 What options have been considered?

Status quo/problem definition

The EQC Act specifies that EQC insurance may be funded via premiums, reinsurance, or via provision of public support provided under a Crown guarantee provided by the EQC Act. Under the EQC Act, the Minister (and/or Cabinet) are responsible for decisions relating to key financial settings, including changes to insurance premiums, or reviews of the EQC insurance cap. The EQC Act does not:

- identify any statutory requirements relating to when key financial settings should be reviewed (consequently EQC insurance premiums were not reviewed between 1944 and 2012)
- specify a basis for EQC "premiums" in contrast to best practice defined within Legislation Design Advisory Committee (LDAC) guidelines¹²

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See chapter 17 of the Legislation Guidelines: 2018 edition: <http://www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/issues-particularly-relevant-to-empowering-secondary-legislation/chapter-17/>

- identify how, when, or whether reviews should involve public consultation, or
- require any disclosure of how insurance costs will be shared between the Natural Disaster Fund (i.e. levies) and the Crown (via the Crown guarantee).

In summary, while EQC publishes financial statements for EQC, there is no requirement that the EQC insurance scheme remain fully funded. Notwithstanding this, there is no structured framework in place that requires review, disclosures relating to whether a funding shortfall exists, and the Government's funding strategy and/or financial decisions.

This means the status quo financial settings in the EQC Act lack transparency and, due to the lack of requirement for review, durability to ensure the scheme is funded at an appropriate level over time. The current statutory framework does not meet Legislation Design Advisory Committee (LDAC) guidelines for the setting of fees and levies, which states that these should have a statutory basis, and it should be clear how these will be set. The lack of review of EQC premiums between 1944 and 2012 may not have encouraged outcomes that are consistent with good regulatory stewardship or fiscal prudence.

Introducing measures to address these shortcomings will support a more modern EQC Act which is in line with legislative best practice, and encourage greater public understanding of and confidence in the EQC scheme (and in doing so, support social capital).

The Inquiry into EQC also recommended that future use of the Crown's financial powers, such as payment of dividends, should be exercised more transparently in future.¹³

Decision-making criteria

We have identified three criteria:

- **Consistency with LDAC guidelines:** the EQC Act should clearly describe how levies are set and reviewed
- **Regular review:** both fiscal prudence and regulatory stewardship support regular review of key financial settings
- **Transparency:** the compulsory nature of the levy and insurance risks to personal property suggest the Government should be disclosing how levies are set and how claims will be paid.

Options considered

Given the policy problem is a lack of alignment with legislative design standards regarding review and the basis for EQC premiums, the options are to either:

- retain the **status quo** as above, which provides a great degree of flexibility for the Crown, but a lack of transparency for the public, or
- **Option 1:** introduce **greater legislative clarity** on review periods and the mandate underpinning EQC premiums in a new EQC Act.

This RIS focuses on matters raised in Government's response to the Inquiry and learnings from the Canterbury earthquake sequence that require legislative change to the EQC Act to be implemented. Non-legislative options were not relevant for this specific issue.

Options Analysis

The status quo

The EQC Act provides powers for Ministers to decide key financial settings, but under the status quo there is no guidance as to how or when the following decisions should be made:

- setting a premium
- reviewing of premiums or the effectiveness of the insurance scheme
- reviewing other key financial settings (e.g. insurance excesses, or the EQC insurance cap).

As outlined in the problem definition, the status quo financial settings in the EQC Act lack transparency and, due to the lack of requirement for review, durability to ensure the scheme is funded at an appropriate level over time.

Option 1: Introducing greater legislative clarity on EQC premiums

Options to improve legislative clarity include:

- Clarification that the “premium” identified in section 36 of the EQC Act is intended to cover the costs of EQC natural disaster insurance and any associated costs, suggesting that work to encourage community resilience or support uninsured homeowners would be publicly funded (see below).
- Specification within the EQC Act of the matters which Ministers may consider (pricing considerations). While LDAC guidelines cap levies at cost recovery, the EQC Act could clarify whether Ministers have discretion to subsidise the scheme (subject to Cabinet approval and/or an appropriation).
- Specification of a maximum review period to ensure that the scheme is regularly reviewed to ensure it remains effective
- Obligations relating to public disclosure. While EQC publishes a statement of intent and financial reports, there are no disclosures as to how the Government plans to address (or accept) any funding shortfall. The public may also have an interest as to how risk funded on the Crown balance sheet is funded and/or managed.

We consider these options are best implemented as a policy package, as they are complementary in nature rather than mutually exclusive.

3.2A Which of these options is the proposed approach?

It is proposed that (Option 1):

- EQC's key financial settings (including premium rates and the EQC insurance cap) be reviewed at least every five years
- the EQC Act include a clear statutory basis for insurance premiums
- the EQC Act require additional disclosures relating to the Government's funding strategy and the basis for key financial settings.

The status quo, which is not considered to be consistent with modern legislative standards, provides limited guidance around the review, funding, and setting of EQC natural disaster insurance.

These changes do not provide the Crown or the Responsible Minister with any additional powers as the EQC Act already provides a power for the Minister Responsible for EQC to increase the cap or change premiums under regulation.

These proposals will improve transparency and will support social capital via additional disclosures intended to:

- communicate the Crown's funding strategy and share of risk, and
- safeguard the adequacy and fairness of EQC premiums and/or cover in response to economic or scientific developments.

Issue 3: Requiring EQC to participate in a dispute resolution mechanism

3.3 What options have been considered?

Status quo

Currently, claimants in Canterbury have a range of dispute resolution options available for resolving disputes with EQC (and private insurers). This was not the case immediately following the Canterbury earthquake sequence (CES). The gap in dispute resolution mechanisms was a factor in the Government's establishment of the Greater Christchurch Claims Resolution Service in 2018 and the Canterbury Earthquakes Insurance Tribunal in 2019. The publicly funded schemes established following the CES have effectively resolved outstanding disputes but remain geographically and event limited. Claimants with property damage relating to non-CES events have limited access to formal mechanisms for resolving disputes with EQC outside of the courts.

Problem definition

The lack of dispute resolution mechanisms resulted in considerable distress for homeowners following the CES. Claimants had to either accept settlements or engage in litigation. As well as being expensive, court proceedings tend to prolong disputes, reducing the overall efficiency of a response. In addition, the Inquiry observed that the "vast majority of claims" that were dealt with through the courts were technical rather than legal disputes and "should not have been there".

The situation in Canterbury also contributed to a growth in the insurance advocate industry, where often vulnerable homeowners used the services of insurance advocates who work on a commission basis.

Several submitters on the 2015 discussion document relating to the Treasury's previous review of the EQC Act, including private insurers, expressed concern about the lack of dispute resolution provisions in the EQC Act. They also noted the practical limitations on the jurisdiction of the Parliamentary Ombudsman, and the Insurance and Savings Ombudsman (now known as the Insurance and Financial Services Ombudsman). The former is an officer of Parliament, and handles complaints and investigates the administrative conduct of state sector agencies. The latter is intended to resolve contractual disputes between financial services providers (FSPs) and their customers.

the Inquiry (recommendation 8.1.1) recommended the Government:

“Develop a standing dispute resolution mechanism that is robust, accessible, timely and responsive to complainants, drawing on the experience of the Canterbury earthquakes, including the experiences of EQC and claimants; this may include enacting legislation to support such a mechanism”.

The Government accepted the recommendation in principle, subject to further consideration of the mechanism. The Treasury and the Ministry of Business, Innovation, and Employment (MBIE) are conducting further scoping work in relation to the recommendation.

Decision-making criteria

The following criteria informed the options analysis:

- claimants have access to a dispute resolution mechanism for resolving disputes with EQC outside of the court system, and
- the dispute resolution mechanism is robust, accessible, timely and responsive to claimants.

Options considered

- **Status quo:** EQC has discretion as to whether it participates in formal dispute resolution mechanisms and makes these available to its claimants.
- **Option 1:** Require EQC to participate in a dispute resolution scheme, while not being prescriptive on the form of the dispute resolution mechanism that must be provided.
- **Option 2:** Require EQC to belong to an FSP dispute resolution scheme established under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act).
- **Option 3:** Require EQC to participate in a mechanism developed as part of the interagency work in response to the Inquiry.

This RIS focuses on matters raised in the Government's response to the Inquiry and learnings from the Canterbury earthquake sequence that require legislative change to the EQC Act to be implemented. Non-legislative options were not relevant for this specific issue.

Options analysis

Option 1: Require EQC to participate in a dispute resolution scheme with key features, while not being prescriptive on the form of the dispute resolution mechanism

Requiring EQC to participate in a dispute resolution scheme would ensure that property owners have access to a mechanism for resolving disputes outside of the courts. This would mitigate against the likelihood of claimants experiencing socially unacceptable distress associated with litigation in the event of a natural disaster. It would also increase

the likelihood of claimants resolving disputes and the payment of money or execution of repairs necessary to support a housing recovery.

This requirement would be sufficiently flexible to accommodate the design of a future scheme or schemes developed through the cross-agency work programme. It would also support EQC's participation in the two FSP dispute resolution schemes it currently subscribes to. Additionally, the flexibility of the requirement will enable participation in any future government or private scheme with the necessary attributes that may be developed over the longer term, ensuring that claimants have access to a dispute resolution mechanism on an ongoing basis.

Consistent with guidance issued by the Government Centre for Dispute Resolution, the EQC Act would require the provision of a dispute resolution mechanism that is:

- user focussed and accessible
- independent and fair
- efficient
- effective, and
- accountable.

Requiring these features in any dispute resolution scheme EQC participates would ensure that claimants have access to a dispute resolution mechanism that is robust, timely and responsive to the needs of claimants. This would apply on an ongoing basis, providing flexibility, but also ensuring certain key features are retained.

Option 2: Requiring EQC to belong to an FSP dispute resolution scheme

Insurers are required by the FSP Act to belong to an approved FSP dispute resolution scheme. EQC currently subscribes to two of the schemes. ICNZ has advised that it is supportive of EQC's participation in the FSP schemes. While the FSP schemes currently provide an accessible and credible alternative to claimants, they also have features that mean they may not provide a complete solution to the problems identified by the Inquiry.

The financial cap on disputes these schemes may consider will often be lower than a combined EQC and insurance claim or an EQC land claim. This reflects that these schemes are designed to be an alternative to the District Court. This may mean that they are not in a position to consider many claims. This lessens the likelihood that the FSP schemes will be able to consider a significant proportion of disputes following a future event. Furthermore, the low cap means that the benefits associated with a combined approach to resolving disputes in relation to over cap claims are unlikely to be realised. The FSP dispute resolution schemes are also designed to make decisions on the facts of a contractual dispute between private insurers and their customers. This approach may not always be compatible with disputes relating to statutory entitlements under the EQC Act.

Last, dispute resolution mechanisms established following the Canterbury earthquake sequence had a number of features that FSP dispute resolution schemes are not designed to include. Some of the features could be reflected in a future standing dispute resolution mechanism. Examples include, a tiered dispute resolution process, access to technical and legal advice, and facilitating engagement with other relevant public services.

Option 3: Retaining the status quo and requiring EQC to participate in a dispute resolution mechanism developed as part of the inter-agency work in response to the Inquiry once it is finalised

As noted, the work to develop a standing dispute resolution mechanism in response to the Inquiry recommendation is on a longer time frame than the modernisation of EQC Act. An alternative may be to retain the status quo in the interim, and amend the EQC Act at a later date to require EQC to participate in a permanent solution.

In the absence of a permanent scheme there is a risk that claimants may not have access to a mechanism for resolving disputes outside of the courts. Waiting until a scheme is developed leaves open the potential for there to be limited or no access to a suitable dispute resolution mechanism in the intervening period. In addition, even if a scheme were to already be in place, prescribing the form of the scheme may limit the flexibility and durability of the EQC Act over the longer term.

3.3A Which of these options is the proposed approach?

Officials recommend Option 1: Require EQC to participate in a dispute resolution scheme, while not being prescriptive on the form of the dispute resolution mechanism that must be provided. Consistent with guidance issued by the Government Centre for Dispute Resolution, we recommend that the EQC Act require the provision of a dispute resolution mechanism that is:

- user focussed and accessible
- independent and fair
- efficient
- effective, and
- accountable.

This option will address the concerns of the Inquiry relating to the lack of options for claimant dispute resolution outside of the Court system following the Canterbury earthquake sequence. The proposed requirement will be sufficiently flexible to accommodate EQC's current participation in the FSP schemes, along with participation in any public or private scheme that may be developed in future. It also avoids pre-empting the outcomes of the cross-government work programme that is underway to develop a standing dispute resolution mechanism in response to the Inquiry recommendation.

During stakeholder consultation, the Insurance Council of New Zealand (ICNZ) supported the inclusion of a general enabling dispute resolution provision in the EQC Act, provided that it aligns with insurers' dispute resolution processes.

Issue 4: Clarifying the assignment of claims to subsequent owners

3.4 What options have been considered?

Status quo

Where an EQC claim has not yet been settled, or further natural disaster damage may be identified, a property owner may choose to assign the benefits of an EQC claim to a new owner. The new owner will have the same rights as the previous owner. Private insurance claims need to be assigned to new owners in order for the new owner to have the benefits of the insurance claim. In the case of a private insurance claim, the consent of the insurer is also required.

The EQC Act is silent regarding the ability of claimants to assign the benefits of an EQC claim to a purchaser and the process for doing so, and the rights of subsequent property owners to the benefits of an existing EQC claim.

Problem definition

The lack of clarity regarding the assignment of the benefits of EQC claims has resulted in some purchasers of damaged properties in Canterbury being unable to access the funds required to repair the property. This was because the EQC claim was either not assigned to them or was assigned incorrectly. This may cause further distress for property owners following an event and have flow on effects for the quality of housing.

Decision-making criteria

The following criteria were applied to the options analysis:

- purchasers of damaged properties can access the necessary funds to repair their properties, and
- this is balanced against the need for purchasers to continue to be incentivised to undertake due diligence.

Options considered

- **Status quo:** The EQC Act is silent on the ability to assign the benefits of an EQC claim and the process for doing so.
- **Option 1:** Provide clarity in the legislation regarding the ability to assign the benefits of an EQC claim and the process for doing so.
- **Option 2:** Provide for automatic assignment, whereby EQC claims attach to properties rather than homeowners.

This RIS focuses on matters raised in the Government's response to the Inquiry and learnings from the Canterbury earthquake sequence that require legislative change to the EQC Act to be implemented. Non-legislative options were not relevant for this specific issue.

Options analysis

Option 1: Enable the assignment of the benefits of an EQC claim in the legislation and the process for doing so

Amending the EQC Act to provide certainty that the benefits of an EQC claim can be assigned by the homeowner and EQC to a future owner, at the agreement of both parties, and to set out the high-level procedural requirements. This approach will continue to incentivise purchasers to undertake due diligence, while making it easier for purchasers to understand the process for accessing the funds required to undertake repairs if damage relating to a previous event is discovered at a later date.

Option 2: Automatic assignment

An alternative would be to amend the EQC Act to provide for the automatic assignment of the benefits of an EQC claim. This would mean that the benefits of a claim attach to a property, rather than the owner holding the insurance policy at the time of the event. Automatically assigning the benefits of an EQC claim to new owners may assist with ensuring that subsequent property owners are able to access the funds required to repair the property. On the other hand, a property owner may have a legitimate reason for wanting to remain the claimant.

While this option would provide protection to purchasers of damaged properties, it may also reduce the motivation for purchasers to undertake due diligence prior to purchasing a property. Property damage can always be factored into the sale price.

3.4A Which of these options is the proposed approach?

We recommend Option 1, making express provision in the EQC Act for the assignment of the benefits of EQC claims by the homeowner to subsequent purchasers.

This will provide property owners and purchasers with greater clarity regarding their ability to, and the process for, assigning the benefits of EQC claims to new owners. This option also avoids removing an incentive for purchasers to undertake due diligence prior to purchasing a property.

ICNZ was consulted on this proposal and noted that it is supportive of any measures to improve information available to potential purchasers, to ensure they can make a fully informed decision.

Issue 5: Updating offences and penalties

3.5 What options have been considered?

Status quo

Section 35(1) of the EQC Act contains a number of offences for deliberate actions. The maximum penalty applying to these offences is currently \$2,000. When adjusted for inflation, the maximum penalty applying to the section 35(1) offences would be \$3,390.98 in today's money.

The *mens rea* offences currently include:

- Intentionally making false and incomplete statements that are both incorrect and material in any information or particulars provided under the EQC Act.
- Intentionally making any material omission from any information or particulars provided under the EQC Act.
- Intentionally destroying or mutilating or rendering illegible any entry in any record, book, or account required to be kept under or for the purposes of the EQC Act.

Section 35(2)(b) and (c) contain strict liability offences. The maximum financial penalties for breaches of these offences are a fine not exceeding \$1,000 and, if the offence is a continuing one, a further fine not exceeding \$100 for every day or part of a day during which the offence continues.

The strict liability offences include:

- Any person who, without lawful excuse, fails to comply with any requirement necessary for EQC to inspect property, obtain information, and enter land.¹⁴
- Private insurers who without lawful excuse breach their obligations¹⁵ to keep records relevant to the EQC Act.
- An offence relating to resisting, obstructing, deceiving or attempting to deceive a person exercising a power under the EQC Act is currently located with the strict liability offences. The Ministry of Justice has advised that this is a *mens rea* offence.
- An offence for breaching the secrecy obligation on EQC, its commissioners and employees in relation to levy information is currently located in the strict

14 In section 35(2)(b) of the EQC Act 1993.

15 In section 26 of the EQC Act 1993.

liability offences. As discussed below, this will be reframed as a *mens rea* offence so that it captures only deliberate action.

Problem definition

The Treasury compared the offences and penalties in the EQC Act to several more recent pieces of legislation¹⁶ and the Accident Compensation Act 2001. This comparison highlighted that the maximum financial penalties for the same or similar behaviour were much higher in more modern legislation than the maximum financial penalties in the EQC Act.

The Legislation Design and Advisory Committee (LDAC) advises that maximum penalties “should not be disproportionately severe, but should reflect the worst case of possible offending”. In addition, the Ministry of Justice advises that policy makers should ensure that sanctions are set at similar levels to other like offending so that roughly the same sanctions apply regardless of the sector.

The comparison with offences and penalties in other legislative regimes highlighted that the penalties in the current EQC Act are: unlikely to reflect the worst case of possible offending; could be increased without being disproportionately severe; and do not align with modern legislative regimes in other sectors.

The current Act also contains continuing offences. Continuing offences with daily penalties introduce the possibility of large, indeterminate fines. LDAC and the Ministry of Justice recommend against continuing offences, as these kinds of provisions introduce uncertainty in the size of the penalty that can be imposed.

Decision-making criteria

The following criteria informed the options analysis:

- penalties incentivise compliance
- penalties are not unduly severe, and
- penalties are consistent with other legislative regimes.

Options considered

- **Status quo:** The maximum financial penalties are low compared to other legislation. This avoids the imposition of unduly severe penalties on offenders but may not be sufficient to incentivise compliance. The EQC Act also contains continuing offences which are no longer considered desirable.
- **Option 1:** Increase the maximum financial penalties for offences across the EQC Act, consistent with comparable recent legislation, and remove continuing offences.

Options analysis

Option 1: Increase maximum financial penalties for offences across the EQC Act, in line with comparable modern legislation

Mens rea offences

While not directly analogous due to the uniqueness of the EQC scheme, the penalties applying to body corporates in relation to the same or similar *mens rea* offences are relatively similar across the different legislation, that is, a maximum fine of \$50,000. This

¹⁶ Fire and Emergency Act New Zealand Act 2017, Customs and Excise Act 2018 and the Health and Safety at Work Act 2015.

suggests that it would be appropriate to apply a similar penalty to body corporates for the same or similar offences in section 35(1) of the EQC Act and section 35(2)(a).¹⁷

The proposed maximum financial penalty for individuals who deliberately commit offences is \$25,000. This aligns with the maximum financial penalties for individuals in relation to the same or similar offences in the Fire and Emergency Act New Zealand Act 2017 (FENZ Act).

As a result, the maximum financial penalties for the following offences will increase:

- providing false or incomplete statements
- destroying, mutilating or rendering illegible records necessary for the purposes of the EQC Act, or
- resisting, obstructing, deceiving or attempting to deceive an individual authorised by EQC to undertake an inspection.

In addition, the offence relating to a breach of the obligation on EQC commissioners and employees to keep secret information on premiums¹⁸ will be changed from a strict liability offence to an offence requiring deliberate action. The offence will have the same maximum financial penalties as the other *mens rea* offences. Changes to this offence will also remove potential criminal liability for EQC.

The consistency with other modern legislative regimes suggests that the proposed maximum financial penalties are likely to have a deterrent effect in relation to the same or similar behaviour. The consistency with other regimes also reinforces that it is not unduly severe.

Strict liability offences

As above, the penalties applying to the same or similar strict liability offences across modern and comparable legislation was referred to including the FENZ Act 2017, the Customs Act, the HSWA and ACC Act. Based on this comparison, and consistent with Ministry of Justice advice regarding alignment of penalties across sectors, we are proposing that the maximum financial penalties are increased to \$5,000 for individuals and \$25,000 for body corporates. This is an increase from a maximum financial penalty of \$1,000 and an additional \$100 per day the offence continues.

As a result, the maximum financial penalties for the following strict liability offences will increase:

- any person who fails without lawful excuse to comply with any requirement necessary for EQC to inspect property, obtain information, and enter land,¹⁹ and
- private insurers who without lawful excuse breach their obligations²⁰ to keep records relevant to the EQC Act.

As above, the consistency with other modern legislative regimes suggests that the proposed maximum financial penalties are likely to have a deterrent effect in relation to

17 Advice from the MOJ is that the conduct outlined in section 35(2)(a) does require a mental element, even though none is explicitly stated.

18 In section 25 of the EQC Act 1993.

19 In section 35(2)(b) of the EQC Act 1993.

20 In section 26 of the EQC Act 1993.

the same or similar behaviour. The consistency with other regimes also reinforces that it is not unduly severe.

Continuing offences

As noted above, continuing offences are no longer considered desirable and will be removed from the EQC Act. This is consistent with LDAC advice and will remove the possibility of a large and indeterminate penalty.

3.5A Which of these options is the proposed approach?

We recommend Option 1, increasing the maximum financial penalties to ensure that they continue to incentivise compliance with the EQC Act. Option 1 also includes the removal of continuing offences.

This approach strikes an appropriate balance between incentivising compliance and avoiding creating penalties that are unduly severe. It also provides consistency with other legislative regimes.

Issue 6: A new offence for non-compliance with levy obligations

3.6 What options have been considered?

Status quo

Section 24 places an obligation on insurance companies to pay EQC the premiums collected from levy payers within a specific time period. This payment must be accompanied by a certificate signed by an officer or agent of the insurer attesting to the correctness of the payment. The levies contribute to the Natural Disaster Fund, which is drawn on to meet claimant entitlements in the event of a natural disaster. There are currently no consequences associated with a failure to comply with these obligations.

Problem definition

The EQC scheme is funded by compulsory premiums (levies) paid by property owners with fire insurance policies. Levies are paid to insurers who then pass the levy on to EQC. Section 24(1) of the EQC Act requires insurance companies to pay levies within two months after the end of the month on which they are due. Levies are, therefore, fundamental to the design of the scheme. If there were significant failures to pass on the levy, the risk of EQC needing to call on the Crown guarantee increases. In addition, the levy is collected on a compulsory basis with the expectation that it will be passed to EQC. Where insurers retain the levy inadvertently or deliberately, they obtain the benefit of access to this money at the expense of EQC.

In addition, section 24(2) requires payments to be accompanied by a certificate from an officer or agent of the insurer stating that the payment is correct. This requirement places the onus on insurers and their officers and agents to ensure that levy payments are accurate. It also provides assurance to EQC that the payments reflect the levies collected on its behalf.

Taking into account the harm to public and private interests resulting from a failure to pass on the levy, and the fact that this harm is foreseeable and could be avoided by insurers, an offence with a *mens rea* element is considered appropriate. This would have

the benefit of only penalising insurers where the behaviour was deliberate. In addition, we anticipate that it would maintain the current position in relation to self-reporting, as action would only be considered to be an offence where the behaviour is deliberate, and insurers would not otherwise incur financial penalties.

The Treasury and EQC currently have limited information on levels of compliance with these obligations. EQC largely relies on insurers to report non-payments. Under the Insurer Response Model and related data sharing agreements, EQC will have greater access to information on the numbers of property owners who have paid the EQC premium. This will provide EQC with an enhanced ability to assess compliance with levy obligations, as it will have a much better understanding of the payments it should be receiving from insurers.

Decision-making criteria

The following decision-making criteria were applied to this options analysis:

- insurance companies and their officers and agents are incentivised to comply with section 24, and
- consequences associated with non-compliance are not unduly severe.

Options considered

- **Status quo**
- **Option 1:** Introduce a new offence for late or non-payment of the levy.
- **Option 2:** Introduce a 'Use of Money Interest' (UOMI) regime instead of, or in addition to, an offence for non-payment of the EQC levy. With a UOMI regime, interest starts to apply from the date the payment becomes late, regardless of the reasons for the lateness or incorrect payment.
- **Option 3:** Withhold payments to claimants where the levy has not been passed on from insurers.

Options analysis

Option 1: Introducing a new offence

LDAC guidance notes that the purpose of criminalising behaviour is to punish, deter, and publicly denounce conduct that is considered blameworthy and harmful.²¹ A criminal conviction reflects poorly on the convicted party or parties and has the potential to result in negative publicity. It may also have wider consequences for participation in and compliance with other regulatory regimes, for example, where the entity or individuals need to be licenced and/or are subject to fit and proper person requirements. This in itself should provide a deterrent and act as a public denouncement of the conduct, along with demonstrating that the conduct is blameworthy and harmful.

Taking into account the harm to public and private interests resulting from a failure to pass on the levy, and the fact that this harm is foreseeable and could be avoided by insurers, an offence for non-compliance with the levy obligations with a *mens rea*²² element is considered appropriate. This would have the benefit of only penalising insurers and officers and agents where the behaviour was deliberate. In addition, we anticipate that it would maintain the current position in relation to self-reporting, as action would only be considered in relation to deliberate behaviour, and insurers would not otherwise incur financial penalties.

²¹ LDAC, Legislation Guidelines: 2018 edition, p 111.

²² A *mens rea* offence is one where the person committing the offence intends to do the prohibited act or had knowledge of it.

Maximum penalties of \$25,000 for individuals and \$50,000 for body corporates would be consistent with the proposed maximum financial penalties for the other *mens rea* offences. In addition, these reflect the maximum financial penalties in the FENZ Act relating to deliberate failures to provide a levy return. Similar to EQC, insurers collect FENZ levies on behalf of FENZ. In addition, the FENZ Act offence relating to levy returns includes a maximum term of imprisonment of two months for individuals as an alternative to a financial penalty. Adopting a term of imprisonment would broadly align with the FENZ Act. It is also consistent with Ministry of Justice advice that a term of imprisonment is appropriate for an offence with a high *mens rea* standard.

Option 2: Introduce a 'Use of Money Interest' regime

We considered a 'Use of Money Interest' (UOMI) regime instead of or in addition to an offence for non-payment of the levy. With a UOMI regime, interest starts to apply from the date the payment becomes late, regardless of the reasons for the lateness or incorrect payment. This means that even inadvertent failures to pay on time incur interest. UOMI regimes can address both under and over payments of levies resulting from day-to-day operations. They are intended to incentivise correct and timely payments.

This approach is taken by the Inland Revenue Department (IRD) to taxes and duties. A similar system has been provided for in the FENZ Act, albeit that this part of the legislation is not yet in force (levies are still subject to the 1975 legislation while the legislation is under review). The changes introduced by the FENZ Act reflect a wider historic context of significant levy avoidance.²³ We are unaware of significant deliberate avoidance of levies within the EQC regime.

UOMI regimes also require systems that can readily calculate who has paid late, how late the payment is, and how much is outstanding in order to calculate how much interest is owing. Furthermore, these schemes are often supported by an appeal process which also requires an additional layer of process. EQC does not currently have systems that would enable it to readily make this assessment and run an appeal process where the amount owing is disputed.

On balance, a UOMI regime is unlikely to incentivise compliance with the obligation to pass on the EQC levy, could even have negative consequences, and may be difficult for EQC to implement. Based on the information currently available, the non-payment of the levy appears to be inadvertent and comes to the attention of EQC via self-reporting. Introducing a UOMI regime in an environment that appears to have good levels of compliance and self-reporting may be perceived as disproportionate to the nature of the harm. It could also deter self-reporting, at the expense of the Natural Disaster Fund.

Option 3: Withhold payments to claimants where the levy has not been passed on from insurers

Another option may be to withhold EQC payments to claimants where the insurer has failed to pass on the levy. This, however, would penalise the homeowner rather than the responsible party and does not align with the objectives of the current review. Non-payment of levies collected to fund other regimes may lead to other types of action with significant consequences. For example, non-payment of maritime levies can lead to the detention of ships under section 197 of the Maritime Transport Act 1994. Non-payment of oil pollution levies can lead to the withholding of Customs clearance under section 338 of the same Act. These consequences are likely to result in significant negative financial

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and wider commercial outcomes for the affected parties. There are no equivalent means of punishing non-compliant parties under the EQC Act.

3.6A Which of these options is the proposed approach?

We recommend Option 1, introducing a new offence for:

- non-compliance with the obligation on insurance companies to pay levies to EQC, and
- the associated obligation for the payment to be accompanied by a certificate signed by an agent or officer of the company attesting to the correctness of the payment.

The new offence will have a maximum financial penalty of \$50,000 for body corporates, and a maximum financial penalty of \$25,000 or a maximum two-month term of imprisonment for individuals.

This will incentivise compliance with the section 24 obligations, while not imposing consequences that are unduly severe relative to the nature of the behaviour and potential harm.

ICNZ has been consulted on the proposed approach and would prefer that new penalties and offences are not introduced on the basis that they “would add further complexity to the regime and as it does not appear that there is a problem that needs to be solved in this regard”. We note that there is limited additional complexity associated with the proposed offence. The levy obligations are already part of the EQC Act but currently have no related consequences for non-compliance. This creates an incongruity in the legislation where there is a legislative obligation that can be deliberately breached without consequence. EQC is aware of non-payment in some cases but currently lacks the information to be able to detect and measure levels of non-compliance. Following the entry into force of the Insurer Response Model, and as a result of changes to the EQC Act, it will become much easier for EQC to detect and measure levels of non-compliance.

Issue 7: Enabling EQC to decline claims where there is no financial loss

3.7 What options have been considered?

Status quo

A claimant suffers no financial loss where the claimant’s residential building or land has been damaged and there is no negative financial impact on the claimant as a result of the damage. This could be because the damage does not affect the value of the property, or the claimant does not have to expend funds to repair the damage to make the property functional. The grounds for declining a claim in the EQC Act do not include ‘no financial loss’.

Problem definition

There are relatively few instances of EQC claims where the claimant has suffered no financial loss. It did, however, arise as an issue following the Canterbury earthquake sequence, with the following examples being the most common scenarios:

- **Land claim:** where damage has already been repaired by a third party such as the local council at no cost to the claimant.

- **Building claim:** where the claimant does not intend to use the dwelling as a home, such as a house already consented for demolition.

Decision-making criteria

The following decision-making criteria were applied to this options analysis:

- claimants have access to the funds necessary to repair their properties, and
- claimants do not profit from the EQC scheme, which is levy funded.

Options considered

- **Status quo:** Retain the status quo as above, which does not include 'no financial loss' as a ground for declining a claim, or
- **Option one:** Introduce a declinature ground that enables EQC to decline claims where there is no financial loss.

This RIS focuses on matters raised in the Government's response to the Public Inquiry into EQC and learnings from the Canterbury earthquake sequence that require legislative change to the EQC Act to be implemented. Non-legislative options were not relevant for this specific issue.

Options analysis

Option 1: Introducing a declinature ground which enables EQC to decline claims where there is no financial loss

A legislative amendment enabling EQC to decline claims would not deprive claimants of the funds necessary to repair their properties. In cases where there is no financial loss, the claimant either has no intention of repairing the property, or the damage has already been repaired. The EQC scheme is levy funded.

This is the approach taken by private insurers. Including this as a declinature ground would also provide greater alignment between EQC and private insurance policies.

3.7A Which of these options is the proposed approach?

We recommend a legislative amendment to enable EQC to decline claims where the claimant has suffered no financial loss. This will not deprive claimants of funds required to repair properties. It will also ensure that claimants do not receive inappropriate financial gains from the EQC scheme, which is levy funded.

Issue 8: Extending the time period for a volcanic activity event

3.8 What options have been considered?

Status quo/problem definition

In late 2011, the High Court ruled that EQC cover reinstates to the cap (then \$100,000 plus GST) after each natural disaster event, rather than being limited to an aggregate claim of \$100,000 over the term of the underlying insurance contract. Damage resulting from each earthquake could give rise to a claim. Clause 1 of Schedule 3 of the EQC Act provides that EQC cover applies to damage occurring during any period of 48 hours for a natural disaster other than a natural disaster fire. This means that, if a single event occurs for more than 48 hours, each 48 hour period that it continues will count as a new event and be eligible for a new EQC claim up to the capped amount (until the property is a total loss).

Volcanic activity²⁴ (e.g. an “eruptive episode”) can occur over months, meaning damage to property from one active volcano could occur over a period much longer than 48 hours. This could give rise to multiple claims for each property, each attracting a new \$150,000 cap (as is the entitlement to EQC cover) and excess.

The status quo could create a need to apportion damage across back-to-back 48-hour periods, creating significant administrative difficulty for EQC and private insurers. ICNZ in particular raised this as a concern during stakeholder consultation. Assessing volcanic eruption damage may have significant challenges for EQC or its agents at an operational level. If a significant volcanic eruption was to occur, it is likely that whole neighbourhoods would be evacuated and EQC would be unable to access dwellings in specific areas for potentially long periods of time. This would make it difficult to determine when specific damage occurred, whether the damage was caused by a single event or multiple events and how damage should be apportioned between under-cap claims (to be paid by EQC) and over-cap claims (to be paid by private insurers).

The process of apportionment caused significant complexity, delays in settling claims, and disputes following the Canterbury earthquake sequence in 2010 and 2011, due to the difficulty of attributing which damage to which earthquake event.

This suggests the time period for a volcanic activity event should be considered.

Decision-making criteria

The chosen policy intervention should:

- provide certainty to all parties (EQC, private insurers, and homeowners)
- minimise complexity in claims handling and settlement, that is, it should minimise the need for apportionment where appropriate
- balance the Crown versus private insurer liability for volcanic activity claims, and
- support consistency with other claims handling and settlement timeframes provided in the EQC Act.

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This Impact Summary describes the status quo with reference to “volcanic activity”. It is worth noting that the EQC Act currently defines natural disasters as including “volcanic eruption”. This Impact Summary refers to “volcanic activity” as EQC and Treasury have agreed that this is a more accurate way of describing the hazard to be covered. This is a minor amendment that will be made as part of the modernisation of the EQC Act. It does not require analysis in this Impact Summary.

Options considered/analysis:

We have considered the following options:

- **Status quo:** Each 48-hour period is classed as one volcanic 'event'.
- **Option 1:** 7-day period: Under this option, a volcanic activity event would last up to 7 days, and EQC cover would reinstate after each 7-day period.
- **Option 2:** 30 calendar days: Another option is to have a longer period, e.g. 30 calendar days. For some volcanic activity, this could still lead to apportionment issues but generally a period of this nature should greatly reduce the need to apportion damage across events.
- **Option 3:** A fourth option may be to cover each volcanic activity event as a single event with no stipulated timeframe and not commence repairs until the event has ceased. The duration of each event would thereby be determined by EQC. Each event would attract one cap and one excess.

These options are assessed at **Table 1** on the following page.

This RIS focuses on matters raised in the Government's response to the Public Inquiry into EQC and learnings from the Canterbury earthquake sequence that require legislative change to the EQC Act to be implemented. Non-legislative options were not relevant for this specific issue.

Table 1: Analysis of options on the time period for a volcanic activity event

Option	Provides certainty to all parties	Need for apportionment	Impact on Crown liability	Impact on private insurer liability	Consistency with other timeframes
Status quo	+ Private insurers and reinsurers have systems and expectations set based on the status quo.	-- It could create considerable need for apportionment in a scenario where damage occurs over a long period without a total loss.	0 Maintains the Crown's liability.	0 Maintains private insurer liability.	+ Consistent with timeframes for other natural disasters in the EQC Act (other than natural disaster fire).
1: Seven calendar days	+ Provides a stipulated time period that private insurers and reinsurers could use to model their liabilities.	- Could create considerable need for apportionment in a scenario where damage occurs over a long period without a total loss.	+ Reduces the Crown's liability by reducing the amount of up-to-cap payments the Crown would need to make in an ongoing event.	- Increases private insurer liability by reducing the amount of up-to-cap payments the Crown would need to make in an ongoing event. There is a risk this could be reflected in premiums passed on to customers. ²⁵	+ Consistent with the timeframe for natural disaster fire.
2: 30 calendar days	+ Provides a stipulated time period that private insurers and reinsurers could use to model their liabilities.	++ Reduces the need for apportionment considerably compared with the status quo.	++ Reduces the Crown's liability significantly by significantly reducing the amount of up-to-cap payments the Crown would need to make in an ongoing event.	-- Increases private insurer liability significantly by significantly reducing the amount of up-to-cap payments the Crown would need to make in an ongoing event. There is a risk this could be reflected in premiums passed on to customers.	+ Consistent with EQC's hours clause. ²⁶

²⁵ This is a minor risk as private insurance policies tend to offer cover for an "event" without specifying a timeframe for the event. Consultation with insurers has not raised any indication that this proposal may affect premium pricing.

²⁶ EQC has a 30 day "hours clause" (technically 720 hours) which is relatively rare. This means EQC can access reinsurance (up to the sum reinsured) to offset pay-outs for damage covered by EQC that occurs within 30 days of the start of an event.

3: Do not specify a time period, cover each “event” until it ceases	-- Entails reasonably significant uncertainty in determining when an event ends.	+ Theoretically no need to apportion damage from volcanic activity that lasts until its natural conclusion.	++ Reduces the Crown’s liability significantly by providing up to one cap per event.	-- Increases private insurer liability significantly by reducing one liability to up to one cap. This could be reflected in premiums passed on to customers.	-- No consistency with other timeframes.
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3.8A Which of these options is the proposed approach?

There is no perfect timeframe that will work for all real-world scenarios. In our analysis, the Treasury has considered whether options would:

- provide certainty to all parties (EQC, private insurers, and homeowners)
- minimise complexity in claims handling and settlement, that is, it should minimise the need for apportionment where appropriate
- balance the Crown versus private insurer liability for volcanic activity claims, and
- support consistency with other claims handling and settlement timeframes provided in the EQC Act.

Option 1, a 7-day timeframe for volcanic activity, is the approach that best aligns these criteria. This Option will:

- reduce the need for apportionment by extending the timeframe from the current 48-hour period
- align with the timeframe already included in the EQC Act for natural disaster fire, and
- avoid increasing the timeframe by an order of magnitude which would be likely to disrupt the balance of Crown versus private insurer liability for damage.

This change may be perceived as a reduction in cover by EQC, as customers will only be able to make a new claim every 7 days rather than every 48 hours of volcanic activity. However, because private insurers will still pay the over-cap portion of the claim up to the homeowner's sum insured, we do not expect this change to have any material impact on claimants.

We note that the development of the proposal for a 7-day period for volcanic activity was informed by ICNZ feedback on the inadequacy of the current 48-hour event period for volcanic activity. ICNZ have agreed that extending the period for a single volcanic event to 7 days, while not a perfect solution, will ease the administrative burden of apportionment.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties	Comment	Impact
Additional costs of proposed approach, compared to taking no action		
EQC	<p>The proposals are expected to have no, or minor, cost implications.</p> <p>The proposed EQC premium pricing principles would see EQC premiums periodically adjusting to take into account matters such as EQC's expected costs and the impact that EQC premiums will have on the uptake of private insurance cover. Any changes in expected EQC costs are expected to be met by scheme premium payers (i.e. owners of EQC-insured residential property), or via Crown funding where appropriate.</p> <p>The proposal that EQC cover reset less frequently for volcanic activity (from the previous 48-hour period to 7 days) would reduce claims liabilities by an unknown amount in the event of major ongoing volcanic eruptions affecting built-up areas.</p>	<p>Low.</p> <p>No significant volcanic event with residential building damage has occurred in recent times.</p>
Private insurers	<p>Increased cost due to increased fiscal risk which is transferred away from EQC to insurers in volcanic activity events – claims are more likely to become over-cap within a 7-day period which is the insurer's responsibility.</p>	<p>Low.</p> <p>No significant volcanic event with residential building damage has occurred in recent times.</p>
	<p>Possible financial penalties associated with a new offence for deliberate non-compliance with the obligation to pay the levy to EQC and for this to be accompanied by a certificate signed by an agent or officer of the company.</p>	<p>Low.</p> <p>The offence will only apply to deliberate behaviour.</p>
Insured homeowners	<p>Changing the period of a volcanic event from 48 hours to 7 days may be perceived as a reduction in cover by claimants. However, because private insurers will still pay the over-cap portion of the claim up to the homeowner's sum insured, we do not expect this change to have any material impact on claimants.</p>	<p>Nil-Low</p>
Total Monetised Cost	Not available	Not available
Non-monetised costs		Low

Expected benefits of proposed approach, compared to taking no action		
EQC	<p>EQC is expected to benefit from increased clarity and certainty in the legislation, as this will improve the consistent operation of the EQC scheme.</p> <p>The requirement for EQC to participate in a dispute resolution scheme is also expected to carry financial benefits, as this is less costly than litigation.</p>	Low-medium
Private insurers	Improved clarity and certainty around the role of EQC, scope of cover and its claims handling and settlement approaches are expected to support a more effective and efficient working relationship between EQC and insurers.	Low
Insured homeowners	<p>A clear function and purpose for EQC, providing greater disclosures to support transparency of the scheme, and requiring EQC to participate in a dispute resolution scheme are expected to collectively support public confidence and more efficient and effective community recovery following a natural disaster. For example, improved dispute resolution will lessen the likelihood of claimants incurring costs following an event (such as costs associated with litigation).</p> <p>In addition, changes relating to the assignment of the benefits of EQC claims will provide additional protection for purchasers of damaged properties.</p>	Medium
Total Monetised Benefit	Not available	Not available
Non-monetised benefits		Low

4.2 What other impacts is this approach likely to have?

There has been significant previous public consultation on the issues with the current EQC Act and potential options for change in 2015 and during the more recent Public Inquiry, which included extensive consultation with the people of Canterbury. Consequently, the Minister Responsible for the EQC decided not to undertake a full public consultation process, including with iwi/hapū, or to consult on an exposure draft of the proposed EQC Bill. The Treasury has instead undertaken a targeted consultation process with key stakeholders on relevant proposals.

While the package of proposals to modernise the EQC Act do not propose fundamental reforms, they are fairly complex and technical in nature. The targeted consultation process does create a risk that groups not included in the targeted consultation could raise technical or other issues at Select Committee that officials have not considered.

Lack of consultation with iwi/hapū also creates specific risks for the legislative process. Officials could not identify any issues regarding the EQC scheme that iwi might have a particular or distinctive interest in, and expect to be consulted on. EQC cover attaches to all residential buildings with a fire insurance policy, which includes iwi-based living and ownership arrangements such as papakāinga. As with other groups not included in the targeted consultation process, there is a risk that iwi-specific issues associated with the EQC scheme may be raised at Select Committee.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Consultation as part of the current EQC Act review

The Treasury has worked collaboratively with EQC throughout the current EQC Act review process. Treasury has also consulted with a targeted group of stakeholders, relevant government agencies, and other public bodies during 2020 to inform policy development:

- **relevant government departments or other public bodies:**
 - 1.1 EQC, the Department of Internal Affairs (DIA), the Ministry for the Environment (MfE), the Ministry of Business, Innovation and Employment (MBIE), the Inland Revenue Department, Ministry of Justice (MoJ), the Ministry of Housing and Urban Development (MHUD), Land Information New Zealand (LINZ), the Financial Markets Authority, the National Emergency Management Agency (NEMA), Te Kawa Mataaho Public Service Commission, and the Reserve Bank of New Zealand (RBNZ). These organisations have been consulted on relevant policy proposals.
 - 1.2 The Department of Prime Minister and Cabinet (Policy Advisory Group) has been informed.
- **relevant private sector organisations and public consultation processes:**
 - 1.3 the Insurance Council of New Zealand (ICNZ), the New Zealand Bankers' Association, Inner City Wellington, the Body Corporate Chairs Group, the EQC Claimant Reference Group, and the New Zealand Insurance Law Association. These stakeholders have been consulted on relevant policy proposals rather than the policy package as a whole.

Stakeholder perspectives

There have been several consultation inputs to the policy process that informed the proposals in this RIS. Stakeholders were broadly comfortable with proposals contained in this RIS, and relevant stakeholder feedback has been incorporated into the analysis.

Stakeholders have disagreed on only one of the proposals included in this RIS: on issue 8, regarding a new offence for non-compliance with levy obligations. ICNZ was consulted on the proposed approach and stated that they would prefer that new penalties and offences are not introduced on the basis that they “would add further complexity to the regime and as it does not appear that there is a problem that needs to be solved in this regard”.

On other matters outlined in this RIS, stakeholder feedback is broadly summarised as follows:

- **Issues 1-2 concerning institutional matters (institutional design and EQC funding and financial risk management):** Stakeholders outside the Crown were not consulted. This is because these issues relate to legislative design or clarifying our understanding of what EQC is meant to do, rather than being tangible policy proposals that have external impacts beyond the day-to-day workings within EQC and the wider Crown. Additionally, the proposals have drawn significantly on findings of the Public Inquiry into EQC, which were informed by an extensive public consultation process. Government agencies consulted on these proposals, including EQC, DPMC, DIA, RBNZ, and MfE were supportive of the recommendations.
- **Issue 3, dispute resolution:** Stakeholders have been supportive of the proposal to require EQC to participate in a dispute resolution mechanism. Private insurers (ICNZ and IAG), the NZ Insurance Law Association, and representatives of EQC claimants (consulted via the former EQC Claimant Reference Group) saw merit in the proposed approach. Several submitters on the 2015 discussion document relating to the Treasury’s previous review of the EQC Act had also previously expressed concern about the lack of such a requirement.
- **Issue 4, clarifying the assignment of claims to subsequent owners:** ICNZ was consulted on this proposal and noted that it is supportive of any measures to improve information available to potential purchasers, to ensure they can make a fully informed decision.
- **Issues 5-6, updating offences and penalties:** ICNZ’s view on the proposal to introduce a new offence is outlined above. MoJ was also consulted on these proposals as a key Crown stakeholder and is comfortable with the proposals.
- **Issue 7, declining claims with no financial loss:** Insurers (ICNZ and IAG) noted they are not aware of this being a common issue, however signalled broad comfort with the proposals.
- **Issue 8, volcanic activity time period:** ICNZ have agreed that extending the period for a single volcanic event to 7 days, while not a perfect solution, will ease the administrative burden of apportionment.

Relevant consultation during a previous review of the EQC Act

As part of a previous review of the EQC Act, a public discussion document was released in 2015 seeking feedback on reform proposals.²⁷ In total, 63 submissions were received from individuals and a range of organisations.²⁸ This Bill will draw heavily on information and feedback gathered during consultation processes associated with that review.

Relevant consultation during the Public Inquiry into EQC

Public engagement was a significant part of the Public Inquiry into EQC process.²⁹ Officials have drawn heavily on the content of the Public Inquiry report, which was informed by this extensive consultation, to inform policy development for the proposals.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The proposals will require a legislative amendment to the EQC Act. Treasury will work with EQC to develop any necessary non-statutory guidance and communications to support implementation.

Once implemented, EQC will be responsible for the ongoing operation and public education regarding the EQC Act, and Treasury will remain the administering department for the revised EQC Act.

Should Cabinet agree to the amendments, a Bill is intended to be introduced to the House in 2021, with enactment expected to occur in late 2022.

As part of consultation on the EQC Act, ICNZ has requested at least 18 months between passage of the Bill and changes to the EQC scheme taking effect. Current timeframes for the Bill provide for this transitional period. Commencement dates will also be aligned with renewal of EQC reinsurance contracts, which will need to be renegotiated in line with the new rules. Any new rules will apply to individual buildings as individual insurance policies are renewed or new contracts are entered into, so that private insurers have the opportunity to price premiums based on the changes.

²⁷ *New Zealand's future natural disaster insurance scheme: Proposed changes to the Earthquake Commission Act 1993* (July 2015): <https://www.treasury.govt.nz/sites/default/files/2012-09/eqc-rev-discussion-doc.pdf>

²⁸ Submissions in response to the 2015 discussion document are available on the Treasury website: <https://www.treasury.govt.nz/news-and-events/reviews-consultation/earthquake-commission-act-1993/earthquake-commission-act-submissions-received>

²⁹ The Inquiry took an inquisitorial approach and documented the feedback gathered through the engagement process in a compendium to the Public Inquiry report, titled: *What we heard: Summary of feedback from the Inquiry's public engagement.*

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The role of the Treasury as the monitoring agency of EQC (as EQC is a statutory entity), is to assist the responsible Minister to carry out his or her role and to perform or exercise any or all of the following functions, duties, or powers:

- administering appropriations
- administering legislation
- tendering advice to Ministers, and
- any other functions, duties, or powers in the Crown Entities Act or another Act that may, or must, be performed or exercised by the monitoring agency.

The Treasury acts on behalf of the Minister and provides advice on setting expectations, and on the performance of the Board and organisation overall. The Treasury also manages the process to appoint directors on behalf of Ministers and provides advice on the skills required for the Board. These business-as-usual monitoring mechanisms will continue to evaluate the performance of EQC in implementing the new Act over time.

We note that there are limitations in evaluating whether the impacts of the proposed changes materialise, given the nature of the proposals. For example, given the modernising scope of the work, many of the proposals are primarily for purposes of regulatory clarity, such as clarifying EQC's functions and objectives. It is difficult to benchmark the status quo in order to evaluate the changes, however we expect that trends in EQC's general approach to its work will be evident over time.

7.2 When and how will the new arrangements be reviewed?

There are no specific review intentions for the proposals outlined in this RIS, beyond business-as-usual monitoring and policy review processes by the Treasury, and the five-yearly reviews of financial settings that are proposed. This is largely due to the nature of the proposals being to *modernise* rather than fundamentally alter the scope and workings of the EQC Act.

Treasury's business-as-usual commitment to an ongoing regulatory stewardship programme will ensure the EQC regulatory system is reviewed at appropriate intervals to determine whether it is still fit-for-purpose and likely to remain so. The first regulatory stewardship assessment of the EQC Act is expected to be published by the end of 2021 but will focus on the current EQC Act rather than the proposed amendments.

Appendix: Topics excluded from this Impact Statement

The following topics were exempted from inclusion in this Impact Statement due to having no or only minor impacts on businesses, individuals, or not-for-profit entities:

- Introducing the option of EQC receiving public funding where EQC contributes to a whole-of-government process in the disaster response/resilience space.
- Introducing a purpose statement for the EQC Act, which will reflect the objectives of the EQC scheme.
- Introducing legislative definitions for currently undefined terms (including appurtenant structures, temporary accommodation, and each natural hazard covered by the EQC Act).
- Clarifying EQC's rights to salvage.
- Changing the term 'volcanic eruption' to 'volcanic activity'.
- Changing the term 'landslip' to 'landslide'.
- Clarifying that EQC cover for services extends to services of appurtenant structures.
- Clarifying that appurtenant structures need to be covered by a current fire insurance policy to be covered by EQC.
- Introducing a clear statement of EQC's repair standard for land and buildings.
- Removing the requirement for a home to have laundry facilities in order to be eligible for EQC cover, to reflect changes in how people live.
- Clarifying the status quo position that EQC does not provide temporary accommodation costs.
- Clarifying that claims handling expenses are paid for by EQC and are not part of the EQC cap.