

The Treasury

Treasury Advice Related to Modernising the EQC Act Information Release

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Cabinet Document Details

Title: **Cabinet Minute: CAB-21-MIN-0177: Modernising the Earthquake Commission Act 1993: Further Proposals**

Date: **24 May 2021**

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[25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information

[33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials

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Cabinet

Minute of Decision

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Modernising the Earthquake Commission Act 1993: Further Proposals

Portfolio **Earthquake Commission**

On 24 May 2021, following reference from the Cabinet Economic Development Committee, Cabinet:

EQC cover

EQC cover for retaining walls, bridges and culverts

- 1 **noted** that Earthquake Commission (EQC) cover for damaged retaining walls, bridges and culverts (land structures), and any associated damaged land, currently pays the estimated, or actual, cost of repairing the damaged land structure, up to the indemnity (depreciated) value of the damaged land structure, plus the value of any associated damaged land;
- 2 **agreed** that the indemnity (depreciated) value limit be replaced by a limit based on the lesser of the undepreciated value, or a fixed monetary cap on EQC retaining wall cover of \$50,000 per dwelling, and a fixed monetary cap on EQC cover for bridges and culverts of \$25,000 per dwelling (both amounts excluding GST);
- 3 **agreed** that the future EQC Act include an empowering provision enabling the \$50,000 and \$25,000 amounts specified in paragraph 2 above to be increased by regulation;

Exclusions from EQC cover

- 4 **agreed** that the current list of exclusions from EQC cover in Schedule 2 of the EQC Act be updated to reflect that EQC no longer provides contents cover, and to make other clarifying or technical changes;
- 5 **agreed** that the EQC Act include an empowering regulation-making provision that provides for some flexibility in the list of exclusions while retaining the key policy principles in the Act itself;

EQC claims excesses

- 6 **agreed** that the current, complex EQC excesses on building and land claims be replaced by a fixed flat-rate excess of \$500 (including GST) per dwelling on both EQC building and land claims (that is, \$500 each, per dwelling), and that the current \$5,000 (including GST) maximum excess per claim for land claims be retained;
- 7 **agreed** that the future EQC Act retain an empowering provision enabling EQC claims excesses to be made by regulation;

EQC claims

Delegating EQC's claims settlement functions to private insurers

- 8 **agreed** that EQC be able to delegate some or all of its claims settlement function to insurers licensed under section 19 of the Insurance (Prudential Supervision) Act 2010;

Clarifying that the information requirements for reporting claims in the EQC Act apply on an ongoing basis

- 9 **agreed** to clarify that the current obligation on claimants to provide evidence to support a claim applies to all claims, that is, reopened as well as new claims;

EQC information gathering and sharing

- 10 **agreed** that the EQC Act provide EQC with a power to specify a reasonable timeframe within which information requested by EQC must be produced or furnished by the person to whom the EQC information request applies;
- 11 **agreed** that the EQC Act make explicit the obligation of third parties, including private insurers, to provide EQC, in a reasonable timeframe, the information that EQC reasonably requires for the purposes of the EQC Act in a form acceptable to EQC;
- 12 **agreed** that the EQC Act include a new regulation-making power enabling regulations to be made specifying with more particularity the requirements placed on information providers under the obligations proposed in paragraph 11 above;
- 13 **agreed** that the EQC Act confirm EQC's ability to disclose information held by EQC to another government agency provided the requesting/receiving agency has a proper interest in receiving the information for law enforcement purposes, or for the performance of its functions or exercise of its powers;

EQC funding and governance

EQC Capitalisation, funding and the Natural Disaster Fund

- 14 **agreed** that the EQC's statutory shareholding be reduced to its current net value (that is, zero) and be removed from the Act to align with standard ownership arrangements for Crown entities;
- 15 **agreed** that the EQC continue to manage the National Disaster Fund (NDF) on behalf of the Crown;
- 16 **agreed** that the NDF be held, accounted and reported as a separate pool of financial assets from EQC's operational assets;
- 17 **agreed** that the current Crown guarantee be retained to meet any deficiency in the NDF;
- 18 **agreed** that the Crown also be able to make discretionary contributions to the NDF, that is, contributions other than those it is required to pay under the Crown guarantee to meet an actual or impending deficiency in the NDF;
- 19 **agreed** that the Crown retain the ability to require repayment of Crown funds when contributed to the NDF as either an advance to meet a deficiency, or as a discretionary contribution (plus any interest, if applicable);

- 20 **noted** that the Crown's ability to require repayment of Crown funds contributed to the NDF would not affect the Crown's current obligations to meet any deficiency in the NDF under the guarantee;
- 21 **agreed** that the EQC Act clearly reflect the Crown's current interest (or rights) as the ultimate owner of the NDF (and associated insurance liabilities), to ensure the Crown can act in its own interest to influence the risks that it guarantees, for example by a direction as to how funds held within the NDF are managed;
- 22 **agreed** that the current ability for the responsible Minister to determine that EQC pay a dividend be discontinued;
- 23 **agreed** that the current ability for the responsible Minister to determine that EQC make payments in lieu of tax be discontinued;
- 24 **agreed** that the current ability for the responsible Minister to determine that EQC pay a fee, in recognition of the Crown guarantee to fund any deficiency in the NDF, be discontinued;
- 25 **agreed** that monies from EQC levies and the NDF may be expended on the costs of insurance claims and any associated operating costs;
- 26 **agreed** that NDF monies may also cover the cost of EQC's other functions, such as education or research, where the EQC Board considers the cost has the potential to either provide a benefit to insured property owners or reduce the estimated future costs of the scheme;

Removing EQC's discretion to allow insurers discount (i.e. retain some of) the EQC premium (levy) revenue collected by insurers

- 27 **agreed** to remove the current ability for EQC to allow insurers discretionary discounts in respect of the EQC premium revenues collected by insurers and passed to EQC;

Fiscal implications

- 28 **noted** that as EQC is self-funded from EQC premiums, changes in EQC costs and revenues arising from these proposals do not directly affect any appropriation, but, in the event of a future large claims event, may marginally affect the size and timing of payments from the Crown to meet any shortfall in the NDF;
- 29 **noted** that the future EQC Act's requirements to review EQC's key financial settings at least every five years [DEV-21-MIN-0062] will provide a framework for ongoing monitoring and adjustment of EQC's funding, costs, and risk management, including reviewing EQC premium rates to reflect the expected costs of the EQC scheme and EQC operating costs;

Improving EQC cover for retaining walls, bridges and culverts

- 30 **noted** that:
- 30.1 EQC estimates that the upper bound of the cost of the proposed changes to EQC cover of retaining walls, bridges and culverts is about \$8.7 million per annum in typical years without major claims events;
- 30.2 if a more significant natural disaster occurred, depending on the type, scale and location of that event, under this proposal the land claim costs could be higher;

Updating and simplifying EQC claims excesses

- 31 **noted** that EQC estimates that the proposed changes to the excesses applicable to EQC building cover would reduce the cost of EQC claims by about \$1.2 million per annum, on average, and would reduce the claims cost of a large Wellington earthquake by about \$5 million;
- 32 **noted** that:
- 32.1 due to data limitations, EQC is unable to provide a quantitative estimate of the impact on claims costs of the proposed changes to excesses applicable to EQC land cover;
- 32.2 officials judge the cost impacts will be smaller than are estimated for the changes to excesses on EQC building cover;

Removing EQC's discretion to allow insurers to discount (i.e. retain some of) the EQC premium revenue collected by insurers

- 33 **noted** that removing the insurer discount is estimated to increase EQC's received premium (levy) revenues by about ^[25] million per annum (excluding GST);
- 34 **noted** that any increase in EQC costs arising from commercial arrangements entered into by EQC and insurers as a result of discontinuing the discount may partially offset the revenue gains;

Better aligning EQC's statutory structure with the Crown entity framework

- 35 **noted** that:
- 35.1 the proposals in the paper under CAB-21-SUB-0177 to reduce the EQC's shareholding down to its current net economic value (i.e. zero) and remove it from the EQC Act, would have no impact on the Crown's reported position;
- 35.2 this is because the EQC's net equity position, which is consolidated and reported on the Crown balance sheet, would remain unchanged;
- 36 **noted** that:
- 36.1 the Crown currently charges EQC a Crown guarantee fee of \$10.000 million per annum;
- 36.2 the proposal to discontinue this payment would have no impact on overall Crown net worth or OBEGAL, however it would increase the value of the NDF, and increase core Crown net debt, by \$10.000 million per annum, as the core Crown net debt metric excludes financial assets held by Crown agents, such as the EQC;

Other proposals

- 37 **noted** that the other policy proposals in the paper under CAB-21-SUB-0177 have not been costed, and are anticipated to have not more than minor impacts on EQC premium revenues or costs;

Legislative implications

- 38 ^[33]

- 39 **noted** the intention of the Minister Responsible for the Earthquake Commission to introduce the Bill by the end of 2021;
- 40 **invited** the Minister Responsible for the Earthquake Commission to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals by amendments to the EQC Act and any other legislation requiring consequential amendment;
- 41 **authorised** the Minister Responsible for the Earthquake Commission to make decisions, in consultation with relevant portfolio Ministers as necessary, and consistent with the policy guidance provided by prior Cabinet decisions, on any additional policy, implementation and commencement, drafting or minor technical issues that arise during the development of the Bill and associated regulations to be reflected in the Bill on introduction;
- 42 **invited** the Minister Responsible for the Earthquake Commission to submit the draft Earthquake Commission Amendment Bill to the Cabinet Legislation Committee;
- 43 **noted** that the Minister Responsible for the Earthquake Commission intends to submit a further paper shortly to:
- 43.1 seek Cabinet agreement on the future level of the monetary cap on EQC building cover;
- 43.2 [33]
- 44 **noted** that officials will work with insurers to determine appropriate commencement timeframes for the Bill, and will report back to the Cabinet Legislation Committee on these.

Michael Webster
Secretary of the Cabinet