

The Treasury

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Office of the Minister Responsible for the Earthquake Commission
Chair, Cabinet Economic Development Committee

MODERNISING THE EARTHQUAKE COMMISSION ACT

Proposal

1. This paper is the first of two seeking agreement to a suite of proposed amendments to modernise the Earthquake Commission Act 1993 ('EQC Act'). The amendments have three overarching objectives:
 - 1.1 enabling better community recovery following a natural disaster
 - 1.2 updating and improving the clarity and certainty of the role of the Earthquake Commission (EQC) and the cover it provides, and
 - 1.3 supporting the future durability and flexibility of the EQC Act.
2. I intend to bring a second paper seeking Cabinet agreement on remaining matters in shortly.

Relation to government priorities

3. Housing is a Government priority.¹ The EQC scheme exists to support a high level of homeowner insurance. High insurance uptake is critical for ensuring people have a home to return to following a natural disaster, maintaining the long-term quality of New Zealand's housing stock, and protecting what is many New Zealanders' greatest financial investment.

Executive Summary

4. In November 2018, the Government appointed Dame Silvia Cartwright to undertake a Public Inquiry into the EQC (the Inquiry). The Inquiry's purpose was to ensure lessons are learnt from people's experiences following recent natural disaster events in New Zealand. The Inquiry's report, which was publicly released on 9 April 2020, contains 70 recommendations, all of which Government has either accepted, accepted in principle, or committed to undertaking further work on.²
5. Key themes of the Inquiry's recommendations included the need to modernise the EQC Act to ensure that enduring lessons are learnt from the Canterbury experiences, and that EQC has the appropriate policies and operating structures in place for improved operational practices in the future.

¹ See the 26 November 2020 Speech from the Throne.

² The Government response to the Inquiry was agreed by Cabinet on 3 July 2020 [DEV-20-MIN-0116 refers].

6. I propose that the Government introduce a suite of amendments to the EQC Act, in order to address the Inquiry's recommendations that relate to modernising the Act, with the aim of:
 - 6.1 Enabling better community recovery following a natural disaster.
 - 6.2 Updating and improving the clarity and certainty of the role of EQC and the cover it provides.
 - 6.3 Supporting the future durability and flexibility of the EQC Act.
7. These proposals address several recommendations of the Inquiry (see Annex 1 for a table of relevant recommendations). These will amount to meaningful improvements in the scope and certainty of cover provided by EQC.

Next steps

8. Should Cabinet agree to the proposals, amending the EQC Act should be a matter of priority to ensure these improvements are in place should a natural disaster event occur in the near-term. ^[33]
9. Additionally, I intend to shortly bring a second paper seeking Cabinet agreement on remaining policy matters including the level of the EQC cap, further institutional changes to better align the EQC Act with the Crown Entity framework, and a range of technical issues including EQC excesses and EQC cover for retaining walls, bridges and culverts. A two-paper Cabinet process will enable the Parliamentary Counsel Office (PCO) to begin drafting the proposals outlined in this paper as soon as possible, while my officials continue to work through policy and technical issues that will be covered in the second paper.
10. Raising the EQC cap is a particularly complex issue. Cabinet previously agreed that Treasury undertake further work on options to address insurance affordability and availability, including through increasing the EQC cap (DEV-19-MIN-0332 and DEV-19-MIN-0208 refer). Increasing the EQC cap is one way to address rising residential property insurance premiums in regions with high seismic risk, to support residential property insurance that is affordable, available and appropriately contributes to New Zealand's long-term resilience. However, there is some uncertainty about how the insurance market might respond to a cap increase, and what this will mean for the final insurance prices that homeowners will pay. I have met with private insurers to discuss raising the EQC cap over March 2021 and will report back to Cabinet on the outcomes of those discussions and my proposals for increasing the cap shortly.

Background

The EQC Act

11. The EQC Act provides for capped natural disaster insurance cover for residential buildings and associated residential land against earthquake, volcanic eruption, tsunami, landslip, and hydrothermal activity. Residential land is insured against storm and flood damage. The Act also covers fire occurring as a result of these natural disaster events.
12. EQC cover is mandatory for residential buildings insured against fire. Private insurers issuing such fire policies must collect and pass on EQC premiums (the EQC levy is called a premium). EQC cover helps to ensure affordable, defined insurance cover against the specified hazards for residential building owners.
13. The scope of EQC cover for each natural disaster event is:
 - 13.1 *Building cover*: up to \$150,000 (plus GST), less claims excess, for each dwelling in the insured residential building. A residential building can be made up of one or more dwellings (like self-contained apartments) and other non-residential parts. EQC cover for a residential building also includes the practical facilities needed to support day-to-day living in the dwelling. For example, services like sewerage, and appurtenant structures like garages.³
 - 13.2 *Land cover*: the value of the damaged insured land (up to the minimum lot size under the applicable district plan, or 4,000m²), or the cost of reinstating the land to its pre-event condition, whichever is lower, less claims excess. Covered land is land under the insured residential building and appurtenant structures, land within 8 metres of the building/structures, land supporting up to 60 metres of the main access way to the building, and associated retaining walls, bridges and culverts.
14. International evidence suggests that homeowners in high-risk regions tend to underinsure or lose access to affordable insurance due to characteristics of insurance markets. Governments face significant pressure to provide ad hoc assistance to those homeowners after large natural disasters. This creates risks and uncertainty for homeowners, insurers, and governments. Schemes such as EQC support the availability and affordability of insurance to help mitigate this.
15. As EQC cover is capped, residential property also has significant private insurer involvement. Private insurers will cover the remaining of the value of a claim, up to the sum insured amount.

³ EQC practice takes 'appurtenant' to be that it belongs to the dwelling, in a way that is ancillary, i.e., ownership interest and used for household purposes. See section 1.3, page 6 of the EQC insurers' guide: https://www.eqc.govt.nz/sites/public_files/documents/EQCover/EQCover-Insurers-Guide-Feb2019.pdf

16. EQC levies paid as part of home and contents insurance premiums are deposited in the Natural Disaster Fund. EQC then uses the money in the Fund in its day-to-day business. This includes:
 - 16.1 settling claims made to EQC
 - 16.2 purchasing reinsurance from international financial markets
 - 16.3 meeting the costs of administering the EQC scheme, and
 - 16.4 improving understanding of natural hazard risk and how to reduce it by funding research and education.

Learning from the past and modernising EQC

17. During 2010 and 2011, the Canterbury region experienced New Zealand's most significant earthquake sequence in modern times. EQC has handled 469,437 claims from the Canterbury earthquake sequence across 200,000 properties. Frustratingly for Canterbury homeowners, many claims have had to be reopened due to faulty repairs or missed scope, and EQC still has approximately 1,800 Canterbury claims to resolve. EQC has since publicly apologised to its claimants and the wider Canterbury community for its shortcomings.
18. EQC plays a critical role in New Zealand's ability to recover from natural disaster events, however it has suffered significant reputational damage since the Canterbury earthquakes. Given EQC's importance, the Government established an Inquiry into EQC's approach to the land and residential claims management process and the related outcomes for the Canterbury earthquake events in November 2018. The Inquiry report was presented to the House and publicly released on 9 April 2020.
19. The Government's response to the report recommendations was released in July 2020. The response accepted, accepted in principle, or committed to undertaking further work on all recommendations [DEV-20-MIN-0116 refers]. Modernisation of the EQC Act is a key theme of the Government's response to the Inquiry, with the response proposing to address several recommendations in a review of the EQC Act.

Objectives underpinning a modernised EQC Act

20. The proposed amendments have three overarching objectives:
 - 20.1 **Enabling better community recovery following a natural disaster.**
Proposals supporting this objective include:
 - 20.1.1 Clarifying EQC's core functions to reframe EQC's obligation to 'protect the value' of the Natural Disaster Fund in favour of clearer functions and function-specific objectives that recognise EQC's obligations to different stakeholders, most notably claimants and the community. These include:

- a revised insurance function framed around claims management with a clear statutory objective requiring EQC to ensure that settlements are timely and fair
- targeted revisions to ensure that the research and education functions have sufficient flexibility to allow EQC to contribute to community resilience, a whole-of-government disaster response, or work that seeks to reduce the cost of insurance over time, and
- clarifying EQC's investment mandate for the Natural Disaster Fund on behalf of the Crown. EQC must invest accumulated EQC premiums that are held within the Natural Disaster Fund on a prudent, commercial basis to offset the Crown's future insurance costs.

20.1.2 Requiring EQC to participate in an independent dispute resolution scheme to ensure that claimants have out-of-court dispute resolution options.

20.1.3 Introducing more equitable cover for homeowners of mixed-use buildings, compared with the treatment of standalone houses.

20.2 Update and improve the clarity and certainty of the role of EQC and the cover it provides. Proposals supporting this objective include introducing:

20.2.1 a statement of purpose to the EQC Act, to make clear the EQC scheme exists to i) reduce the impact of natural disaster damage by encouraging resilience and by contributing to the timely replacement or reinstatement of residential land and buildings, and ii) encourage the uptake or availability of catastrophe insurance for residential buildings

20.2.2 legislative definitions for currently undefined terms, including: appurtenant structures; temporary accommodation; and each natural hazard covered by the EQC Act

20.2.3 a clear statement of EQC's repair standard for both buildings and land cover, and

20.2.4 a statutory basis defining how EQC premiums will be set.

20.3 Supporting the durability and flexibility of the EQC Act for the future. Proposals supporting this objective include:

20.3.1 requiring reviews of the EQC cap and other key financial settings at least five-yearly, to ensure regular consideration of whether the cap is set at an adequate level to achieve the EQC scheme's objectives

- 20.3.2 requiring Government to publish a funding and risk management statement following each review of key financial settings, including the Government's financing strategy for addressing any funding shortfall, that the Minister Responsible for the EQC and the EQC Board should have regard to in exercising respective financial powers under the Act
- 20.3.3 introducing the option to allow for public funding of EQC's activities that may be beyond the scope of what the Natural Disaster Fund is appropriately used for, such as in situations where EQC inputs into wider policy processes, and
- 20.3.4 enabling EQC to negotiate disaster financing (e.g. reinsurance) on behalf of the Crown.

Policy decisions

- 21. I am seeking Cabinet decisions on policy issues relating to the following:
 - 21.1 the purpose of the EQC Act
 - 21.2 what EQC insures
 - 21.3 how EQC handles claims
 - 21.4 updating offences and penalties and introducing a new offence, and
 - 21.5 financial governance, roles, and sustainability.
- 22. The remainder of this paper is structured in accordance with these policy areas.

Proposed amendments for a modernised EQC Act

The purpose of the EQC Act

- 23. The Public Inquiry into the EQC (the Inquiry) has recommended that the EQC Act include a purpose statement and set of decision-making principles to guide the discharge of EQC's responsibilities as an insurer.
- 24. In assessing EQC's role, the Inquiry emphasised the need to promote improved treatment of claimants, encourage contributions to future resilience, and allow for EQC's possible contribution to a range of other public policy processes.⁴
- 25. Adding a purpose statement will align the EQC Act with best practice legislative design standards applied to other Acts, while publicly supporting the customer-centred operational changes that EQC is already making through an enduring change to the statutory framework.
- 26. Because purpose statements serve a specific legal purpose, I propose a purpose statement that describes the outcomes the EQC Act is seeking to

⁴ 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>

achieve. At this stage, I am only seeking agreement to a description of these outcomes, with the exact wording to be refined by PCO in drafting the Bill. The outcomes being:

26.1 *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*

26.2 *to encourage the uptake and availability of catastrophe insurance cover for residential buildings.*

Functions for a modernised EQC

27. In addition to the purpose statement, EQC's institutional functions define what EQC does and how it delivers that purpose. EQC has a unique skill set and expertise relating to insurance, reinsurance and New Zealand's risk profile. One of my objectives in introducing the targeted amendments to EQC's functions is to ensure the legislation clearly provides sufficient flexibility to allow EQC to contribute its expertise to wider government processes and decision-making to meet demands that may arise in future.

28. EQC's current functions are to:

28.1 administer the EQC insurance scheme

28.2 collect premiums

28.3 provide education and research about matters relevant to natural disasters including methods to reduce or prevent damage

28.4 purchase reinsurance

28.5 administer the Natural Disaster Fund and, so far as is reasonably practicable, to protect the Fund's value.

29. In recognition of the Inquiry's findings from Canterbury, I propose recognition be given to the EQC's primary insurance function, which is to settle claims. In addition, I propose to:

29.1 Broaden EQC's research and education functions to clarify that EQC may contribute more broadly to initiatives or policy that seek to reduce risk and loss, improve community resilience, or respond to natural disasters. I note that this function will enable EQC to contribute its knowledge to policy or advice prepared by other agencies, departments, or local councils.

29.2 Introduce a new function to recognise the financial analysis, expertise, or information that EQC already shares with the Minister Responsible for the EQC, the Treasury, or any other agency, for inclusion in advice provided to the Government. Examples where this may be utilised include informing advice on managing the Crown's exposure to natural disaster risk.

- 29.3 Introduce flexibility to allow EQC to organise disaster financing (e.g. reinsurance) on behalf of the Crown to manage the risks of either the EQC scheme or other risks that the Government may seek to reinsure.
30. I propose the requirement to ‘protect’ the Natural Disaster Fund (NDF) should be reframed. Protecting the NDF is not integral to EQC’s role as a claims administrator, and may be seen as inconsistent with the fair treatment of claimants. The Inquiry highlighted the importance of public confidence and the need for greater role clarity within the legislation to clarify that EQC should focus on supporting claimants.
31. EQC will continue to have obligations as a Crown Entity to behave in a financially responsible way.

Objectives to support EQC’s functions

32. The EQC Act should identify objectives for EQC. I propose that EQC’s headline objective should be to reduce the impact of natural disasters by promoting three new objectives to support each of the three core functions of EQC, being: claims management; education, research and information; and NDF management. Institutional objectives articulate how EQC will service the interests of relevant stakeholders. The proposed objectives are:
- 32.1 ***Claims management:*** EQC’s claims management objective should focus on the fair treatment of claimants, to align with this Government’s priority, which is to encourage the timely, fair, and enduring settlements of Canterbury claimants. EQC should contribute to the timely replacement or reinstatement of natural disaster damaged residential buildings or land in future events by ensuring claimants receive a timely and fair settlement of any claims relating to the insurance provided by the Act.
- 32.2 ***Education, research, and information:*** EQC’s research functions should seek to reduce cost or improve community resilience. EQC should develop or contribute knowledge, financial analysis, or expertise 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.
- 32.3 ***NDF management:*** EQC’s fund management mandate should align with the standard requirements that apply to other entities investing assets on behalf of the Crown. EQC must invest accumulated EQC premiums that are held within the NDF, and are not subject to a Ministerial direction, on a prudent commercial basis to offset the Crown’s future insurance costs and, in so doing, must manage and administer the Fund in a manner consistent with:
- 32.3.1 best-practice portfolio management
- 32.3.2 maximising return without undue risk to the Fund as a whole, and

32.3.3 avoiding prejudice to New Zealand's reputation as a responsible member of the global community.

33. Taken together, the introduction of a purpose clause and objectives to the EQC Act amount to a significant improvement by providing clarity regarding the Government's intent for the EQC scheme, and our expectations for how the entity will carry out its obligations, namely by putting claimants at the centre of its work.

What EQC insures

The scope of building cover

34. Officials have reviewed the key concepts in the EQC Act 1993, which underpin the scope of building cover. This exercise has determined that the Act is largely fit for purpose in this respect. However, the scope of cover could be clearer, which would help EQC operational staff and the public to understand their entitlements. I propose a range of changes to clarify the scope of building cover.

Clarifying currently undefined terms

35. A key reason for the lack of clarity of the EQC Act is the lack of defined terms. The definitions provided in the Act itself are high-level and incomplete, with key building cover concepts sitting across legislation, case law and EQC operational policy. Consequently, I propose the following concepts, which are central to the scope of insurance cover provided by the EQC Act, should be clarified:
- 35.1 **Appurtenant structures:** The Act should be clear that an appurtenant structure is a structure separate to the residential building that is used for the purposes of the household (like a garage), and that services related to appurtenant structures (such as drainage, and sewerage) are also covered by EQC (note retaining walls are included in the land cover). The Act should also clarify that appurtenant structures need to be covered by a current fire insurance policy to be covered by EQC.
- 35.2 **Temporary and transient accommodation:** The Act needs to distinguish between *homes* and premises that provide *temporary or transient accommodation*, such as commercial accommodation. I propose to clarify that temporary and transient accommodation means accommodation normally provided for a period less than 28 days. This is in line with the definition used by the Residential Tenancies Act 1986, and is a clarification of EQC's current operational policy, which is not currently defined in the EQC Act. This will help the public better understand what EQC will consider to be a 'home'. I note that privately-owned and used holiday homes will still be covered by the scheme.
- 35.3 **Specific hazards covered by the EQC Act:** I propose to clarify the scope of the currently undefined hazards in the EQC Act, to make clear the extent of coverage intended for each scenario, including for erosion, flooding, earthquake, tsunami, storm, and volcanic eruption.

Extending the period for a singular volcanic activity event from 48 hours to 7 days

36. The EQC Act treats one 48-hour period as one natural disaster ‘event’. This means that, if an event like an earthquake or volcanic eruptions causes damage to a residential building for more than 48 hours, claimants are able to make an additional insurance claim for damage caused in that second 48-hour period, and so on, up to the value of a total loss of the property. Determining new or aggravated damage following each event is called ‘apportionment’. This process increased complexity and contributed to delays in the processes for assessment and for managing claims following the Canterbury earthquake sequence.
37. Volcanic activity is likely to be sustained over time. Where volcanic activity lasts longer than 48 hours, this might cause significant complexity for apportioning claims damage. This concern was echoed by insurers during stakeholder consultation.
38. I propose that the period of a single volcanic event should be extended from 48 hours to 7 consecutive days. This is in line with the treatment of natural disaster fire under the EQC Act, which also has a 7-day period for a single event.⁵ Extending the time period to 7 days is likely to help ease the administrative complexity of apportioning event damage between EQC and private insurers, as there is more time for the cap to reset and for EQC and private insurer assessors to access properties to determine the damage.
39. I note that EQC and insurers are developing improved collaborative processes, including for apportionment, as part of implementing the Insurer Response Model (IRM) that will see insurers managing claims on behalf of EQC. Developing the IRM is one way EQC has acted on the lessons on the past ten years and made changes to be better prepared for the next major event. Building on the relative success of the Kaikōura earthquake response, which piloted the model, EQC has entered into partnership arrangements with private insurers. From quarter two of 2021, claimants will now submit one insurance claim to their private insurer, who will act as EQC’s agent and navigate the customer through both insurance processes. This new process will be faster and easier for customers. This partnership will also double EQC’s capacity from 50,000 to 100,000 claims per year. I expect this will also help to reduce the complexity of apportionment in future post-disaster scenarios.

Introducing more equitable cover for homeowners of mixed-use buildings, compared with the treatment of standalone houses

40. On 23 March 2020, Cabinet considered the paper *Mixed-use buildings under the Earthquake Commission Act 1993*. Cabinet agreed [CAB-20-MIN-0120 refers]:
 - 40.1 to amend the ‘residential building test’ to determine if a building is a residential building, to account for the floor area of the dwellings,

⁵ See Schedule 3 clause 1(b) of the EQC Act.

appurtenant structures, and, in effect, the homeowners' proportionate interest in common areas,⁶ and

40.2 that, where a building is less than 50% residential, EQC cover will extend to common areas on a proportionate basis, determined using the residential floor area in the building (which is measured from behind the door of a dwelling).

41. Because of the other changes being proposed to clarify the definition of residential buildings under the EQC Act, I propose that the proposals at paragraphs 40.1 and 40.2 should be implemented as part of the Bill to modernise the EQC Act, rather than through a standalone Bill. The provisions should give certainty to homeowners by making clear how the residential building test will be calculated.

The scope of land cover

42. I propose three sets of reforms for EQC land cover, intended to support clarity, certainty, equity, and adequacy of land cover:

42.1 clarifying the purpose of land cover

42.2 enabling land cover settlements to be used for building works, and

42.3 simplifying the determination of land cover entitlements.

Clarifying the purpose of land cover

43. The core policy purpose of EQC land cover is to compensate residential property owners for damage to land that protects and supports the affected residential building and access to the building. If an affected land holding is uneconomic to repair, the land cover provides sufficient compensation to enable the affected owner to buy land of similar quality to that which has been lost (albeit based on the smallest land area permitted under the relevant local district plan).
44. The EQC Act itself does not make this policy rationale clear. Including statements on the purpose of land cover in the Act would bring significant policy, administrative, and interpretative clarity to these provisions. For example, there are still unresolved legal disputes between EQC and insurers regarding EQC land claims arising from the Canterbury earthquakes that are exacerbated by the current lack of legislative clarity.
45. Therefore, I propose that the future EQC Act include that the Government's policy interest regarding EQC land cover is to:

⁶ If a mixed-use building is more than 50% residential, EQC classifies it as a 'residential building' which means EQC will provide cover for the whole building, including common areas like lobbies. Currently, if a building is less than 50% residential, EQC will only provide cover for the dwellings (e.g. the individual apartments) within that building. Note Cabinet's decisions mean EQC cover will be extended for buildings that are less than 50% residential, to include a residential proportion of common areas (e.g. a 40% residential building will receive cover for 40% of its common areas).

45.1 contribute resources to reinstate or replace land damaged by natural disasters where that land contributes to providing support and protection for a residential building, and/or the main accessway to the building, and

45.2 if it is not practicable to replace or reinstate a residential building on the affected land, provide resources to help contribute to the land-related costs of establishing another residential building elsewhere.

Enabling land cover settlements to be used for building works

46. Currently, the EQC Act treats building and land cover as separate entitlements. The Act is also silent on the interaction between them. This has caused debate and uncertainty between EQC, private insurers, and claimants. It has also created impediments to implementing the most effective reinstatement strategy, when that involves building works (like strengthened foundations), instead of, or in addition to, land remediation.

47. A potential barrier to homeowners using a mix of land and building solutions is that under the Act, EQC may decline cover, or decline a claim, if monies from a claim are not devoted to a repair. This raises the possibility that directing land claim monies to a building repair may cause EQC to cancel cover or decline a claim on the basis that the land has not been repaired.

48. I propose the future EQC Act address this concern by clarifying that directing land claim monies to a building repair can provide an overall reinstatement solution that is acceptable to EQC. This approach reflects current EQC operational practice regarding some but not all land claims, so would also result in a more consistent approach to this question across different types of land claim.

Further work underway on the valuation of damaged retaining walls, bridges and culverts

49. At present, the monetary caps on the valuation of damaged retaining walls, bridges and culverts are determined by the indemnity (depreciated) value of the damaged item. I have requested further advice from officials on reform options, and intend to include proposals on this shortly in a subsequent Cabinet paper.

Minor and technical clarifications for building and land cover

50. I also propose minor clarifications to the EQC Act to make clear the scope of building and land cover, including:

50.1 introducing a clear statement of EQC's repair standard for both buildings and land cover,⁷ based on current EQC operational practice

50.2 clarifying what costs associated with claims handling and settlement are covered by EQC

⁷ Including for retaining walls, bridges, and culverts.

50.3 clarifying how EQC values lost or damaged land when that damage affects only a portion of the affected site. In these instances, EQC needs to make an assessment of the value of the fraction of the site that has been damaged. This is intended to codify current EQC practice, which recognises that land value is determined in part by the utility to the home owner of the particular lost or damaged land (e.g. on a given site, damaged land supporting a house or accessway is worth more per square metre than land comprising garden).

How EQC handles claims

51. The Inquiry made a significant number of recommendations relating to improving the claimant experience after a future natural disaster. This included the need for greater fairness, timeliness, and certainty in the settlement of claims. Many of these recommendations are operational in nature and are being implemented by EQC. To complement the operational changes already underway, I propose amendments to the EQC Act to support a claimant-centred approach to claims handling and settlement.

Requiring EQC to participate in an independent dispute resolution scheme

52. Currently, claimants have limited access to formal mechanisms for resolving disputes with EQC outside of the High Court. This denies claimants an affordable and timely means of resolving disputes. It has also contributed to a growth in the insurance advocate industry, where often vulnerable homeowners use the services of insurance advocates who work on a commission basis. 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.

53. 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”.

54. The Inquiry also made recommendations in relation to resourcing of Community Law and regulating insurance advocates (recommendations 8.1.2 and 8.1.3). The Treasury, Ministry of Business, Innovation, and Employment (MBIE) and the Ministry of Justice (MoJ) are currently scoping the work required to implement these recommendations. MBIE will provide further advice on the form of a standing dispute resolution mechanism in the last quarter of 2021. This work is on a longer timeframe than the current review of the EQC Act.

55. I propose that the EQC Act require the provision of a dispute resolution mechanism that is user-focused and accessible, independent and fair, efficient, effective, accountable, and cost effective. I propose that the EQC Act be non-prescriptive on the form of the dispute resolution regime that must be provided.

This will ensure that the Act is sufficiently flexible to accommodate the design of a future scheme, which may change over time.

Changes to provisions relating to claims handling and settlement

56. I also propose changes to the EQC Act's claims handling and settlement provisions, including:
- 56.1 Providing for the assignment of the benefits of an EQC claim to a subsequent purchaser of a home, and the process for doing so, in line with current practice. 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.
- 56.2 Clarifying the matters EQC must take into account in order to exercise its rights to salvage property. EQC's salvage rights are currently very wide and the proposed changes will clarify and narrow them slightly. The proposals will align the EQC Act with EQC operational policy and practice.
- 56.3 Introducing a new ground for declining claims that will enable EQC to decline claims where there is no financial loss. This will ensure that claimants do not receive inappropriate financial gains from the EQC scheme, which is levy funded. This would not deprive claimants of the funds necessary to repair their properties as where there is no financial loss, the claimant either has no intention of repairing the property, or the damage has already been repaired.

Updating the offences and penalties in the EQC Act and introducing a new offence

57. I propose changes to the EQC Act's offences and penalties to ensure that the penalties are sufficient to incentivise compliance with legislative obligations, align with the maximum penalties for similar behaviour in other legislative regimes, and that it is clear who the offences apply to and in what circumstances. The proposed changes to the maximum financial penalties were based on a comparison with offences and penalties relating to similar behaviour in other legislation, including the Fire and Emergency Act 2017, the Customs and Excise Act 2018, and the Accident Compensation Act 2001.
58. Proposals include:
- 58.1 Increasing the maximum financial penalties for offences⁸ requiring a deliberate act from \$2,000 to \$25,000 for individuals and \$50,000 for body corporates.⁹ These offences include:
- providing false or incorrect statements

⁸ In sections 35(1) and 35(2)(a) of the EQC Act.

⁹ In this context, 'body corporate' refers to an organisation such as a company that is considered to have its own legal rights and responsibilities.

- making a material omission from a statement, and
- destroying, mutilating or rendering illegible records necessary for the purposes of the EQC Act.

58.2 Increasing the maximum financial penalties from \$1,000 and an additional \$100 per day the offence continues, to \$25,000 for individuals and \$50,000 for body corporates and removing continuing offences for:

- resisting, obstructing, deceiving or attempting to deceive any person authorised by EQC to undertake an inspection,¹⁰ and
- breaching the obligation of secrecy relating to amounts of premium payments.

58.3 Increasing the maximum financial penalties from \$1,000 and an additional \$100 per day the offence continues, to \$5,000 for individuals and \$25,000 for body corporates and removing continuing offences for strict liability offences¹¹ including:

- persons who without lawful excuse fail to comply with any requirement necessary for EQC to inspect property, obtain information, and enter land,¹² and
- insurance companies who without lawful excuse breach their obligations¹³ to keep records relevant to the EQC Act.

58.4 Clarifying the application of and the circumstances in which offences apply in relation to:

- amending the offence relating to breaches of the obligation of secrecy regarding the amounts of premium payments¹⁴ so that it applies to EQC's commissioners and employees, rather than EQC itself, and changing it to an offence requiring a deliberate act so that inadvertent breaches are not penalised; and
- clarifying the application of the offence relating to persons who without lawful excuse, fail to comply with a request made by EQC using its powers relating to the production, copying and furnishing of certain types of information, so that it applies to people who fail to comply with a request, rather than applying to EQC when exercising its powers under this section.

59. I am also proposing a new offence for deliberate breaches of the obligation on insurance companies to pay EQC premiums collected on its behalf within a

¹⁰ Advice from the Ministry of Justice is that this offence requires a deliberate act.

¹¹ Where the person is legally responsible for the consequences flowing from an activity even in the absence of fault or criminal intent on the part of the defendant.

¹² In section 35(2)(b) of the EQC Act.

¹³ In section 26 of the EQC Act.

¹⁴ The obligation of secrecy relating to amounts of premium payments is located in section 25 of the EQC Act.

specified period, along with the related obligation on officers and agents of insurance companies to provide a certificate stating that the payment is correct.¹⁵ This will have maximum penalties of \$25,000 or a two month term of imprisonment for individuals. In addition, it will have a maximum penalty of \$50,000 for body corporates. EQC currently has limited ability to take action where there is deliberate or reckless non-compliance with these obligations. The proposed changes reflect the potential harm associated with a failure to pass on the premium and to verify that the amounts of premium payments are correct.

Financial governance, roles, and sustainability

60. I propose a range of measures to modernise the financial disclosures and powers of EQC. The financial settings of the EQC Act have been somewhat neglected: EQC insurance premiums were unchanged between 1944 and 2012, and the insurance cap was not reviewed between 1993 and 2019. The general financial provisions are in need of modernisation and future-proofing to ensure the Act is transparent and durable.
61. As mentioned above, the Inquiry highlighted the importance of public confidence in the EQC scheme. The proposed amendments to EQC's financial settings, in particular the introduction of a funding and risk management statement, aim to support public confidence in the fairness of EQC premiums, and in EQC and the Crown's ability to make good on post-disaster insurance claims.

Requiring regular review of key financial settings

62. The lack of regular review of EQC's premiums between 1944 and 2012 was partly attributable to the infrequent nature of the financial risks that EQC faces, and a period of geological inactivity. However, I want to ensure that regulatory stewardship of the EQC Act does not lapse in future, and that regular and deliberate reviews of its financial settings are undertaken going forward.
63. To this end, I propose the EQC Act should specify the maximum period between reviews of the insurance premiums, the cap, and other key financial settings to ensure that these settings take relevant developments into account and remain up to date. The cap in particular should be set at a level that is adequate to achieve Government's objectives for the EQC scheme. I propose the maximum period between reviews should be five years, which allows for more frequent review if desired.

Requiring Government to publish a funding and risk management statement following a review of financial settings

64. To support the transparency of the EQC Act, I propose the Minister Responsible for the EQC should publish a funding and risk management statement following each review of key financial settings. This requirement is based upon a similar

¹⁵ The new offence supports the existing obligation on insurers to pay EQC premiums and the related obligation on officers or agents of the insurance companies to certify that the payment is correct. The obligations are located in section 24 of the EQC Act 1993.

statutory requirement that exists with respect to the Accident Compensation Corporation.

65. The funding statement should disclose financial information from a whole-of-Crown perspective including the projected costs of the insurance scheme and the Government's financing strategy for addressing any projected funding shortfall over time. The statement would also disclose the allocation of risk and relevant governance material such as any guidance provided to the EQC Board (e.g. directions or strategic financial guidance as to how the Natural Disaster Fund should be invested).
66. The Minister Responsible for the EQC and the EQC Board should have regard to the funding statement in exercising respective financial powers under the EQC Act.

Introducing a statutory basis and disclosure requirements for EQC insurance premiums

67. The EQC Act does not specify a statutory basis for compulsory EQC insurance premiums (levies), which is inconsistent with the Legislation Design and Advisory Committee (LDAC) guidelines for levies.
68. I propose that the EQC Act specify that the basis for EQC insurance premiums is to pre-fund or recover for the Crown the cost of EQC insurance cover and any associated operating costs relating to the discharge of EQC's insurance functions.
69. To support this statutory basis, the EQC Act should include a set of decision-making considerations that the Minister may "have regard to". The introduction of such considerations will support consistent and transparent decisions. The intent is also to allow the Minister to consider other matters besides the value of the Natural Disaster Fund in setting EQC premiums. For example, as the EQC scheme supports insurance uptake, future Governments may deem it appropriate to set the EQC premium below a breakeven rate to subsidise premiums. To this end, I propose the Ministerial considerations include:
 - 69.1 the financial position of the Government (as guarantor)
 - 69.2 the impact that EQC premiums will have on the uptake of private insurance cover, and
 - 69.3 the benefits for the public of predictable premiums (i.e. the need to avoid large annual changes).
70. Additionally, I propose this list of decision-making criteria also include cross-references to other provisions within the EQC Act that are relevant to setting premiums (e.g. the ability to require EQC to pay back historic advances under section 16).
71. There may be additional decision-making considerations that are appropriate for the Minister Responsible for the EQC to have regard to. I have asked officials

for further advice to finalise the list of considerations. I am seeking authorisation from Cabinet to make decisions on the final list for inclusion in the EQC Act.

72. The Minister Responsible for the EQC should also disclose the financial projections and other relevant policy considerations that have been considered in setting EQC premiums within the periodic funding and risk management statement as proposed above (paragraphs 64-66 refer).
73. In the future, any pricing decisions on EQC premiums made as part of the proposed five-yearly reviews of EQC financial settings will be reported to Cabinet for confirmation, in accordance with the expectations for Cabinet consultation as set out in the Cabinet Manual.¹⁶

Providing flexibility in how EQC is financed

74. I have recommended that EQC's functions be broadened to allow it to contribute to initiatives or policy that seek to reduce risk and loss, improve community resilience, or respond to natural disasters (paragraph 29.1 refers).
75. A key component of EQC funding comes from premiums paid by property owners, via the Natural Disaster Fund. Charging property owners for non-insurance services may be inconsistent with the proposed insurance basis for premiums (paragraph 68 refers), if EQC's work is to provide wider community benefits.
76. As a result, I propose that the EQC Act provide the option to allow for public funding of EQC's activities that may be beyond the scope of what the Natural Disaster Fund is appropriately used for, such as in situations where the Government directs EQC to input into wider policy processes.
77. I note that similar provisions have been made for the Fire Service, which regularly contributes to public good services outside the scope of the firefighting services funding by the Fire and Emergency levy.¹⁷ I note also that EQC has previously undertaken work to support a crisis response that may be appropriately covered by this provision in future, such as reinstating land in the Edgecumbe community (including uninsured and non-residential land) by removing silt and debris that had inundated the town as a result of storms and floods in April 2017. Arranging Crown funding for such activities has required, and will continue to require, an appropriation on a case-by-case basis.

Implementation

78. Should Cabinet agree to the amendments, I propose a Bill be introduced to the House by the end of 2021. Amending the EQC Act should be a matter of priority to ensure these improvements are in place should a natural disaster event occur in the near-term.

¹⁶ Refer paragraphs 5.11 and 5.12 of the Cabinet Manual 2017: 'Items for consideration by Cabinet'.

¹⁷ An appropriation for Fire and Emergency New Zealand Public Good Services is part of the Non-Departmental Appropriations in Vote Internal Affairs.

79. I propose the following timing for introducing the legislation:
- 79.1 Initial drafting instructions to PCO: April 2021
 - 79.2 Second Cabinet paper on remaining policy matters, including the EQC cap, considered by Cabinet: Mid-2021
 - 79.3 Further drafting instructions issued to PCO: Mid-2021
 - 79.4 LEG and Cabinet for approval and introduction: November 2021
 - 79.5 Introduction of the Bill: end of 2021
 - 79.6 Select Committee report back: Mid-2022
 - 79.7 Date of enactment: Late 2022.
80. As part of previous consultations on the EQC Act, the Insurance Council of New Zealand (ICNZ) requested at least 18 months between passage of the Bill and changes to the EQC scheme taking effect. Officials will work with insurers to determine appropriate commencement timeframes for this Bill and will report back to the Cabinet Legislation Committee on these. Commencement dates will also need to align with renewal of EQC and private insurers' reinsurance contracts. Reinsurance contracts effectively underwrite the natural hazard cover provided under the EQC Act. Aligning the legislative commencement date with the renewal dates for reinsurance contracts will avoid the need to undertake a potentially costly renegotiation of these contracts.
81. 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.

Financial Implications

Improving flexibility in EQC pricing and funding

82. The proposed EQC premium pricing principles would see EQC adjusting premiums periodically 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.
83. The proposed changes provide a flexible framework that may require future Budget decisions. EQC costs are expected to be met primarily by insured property owners. However, future Governments will have the option to reduce premiums if, for instance, insurance was to become unaffordable or should uptake suffer.
84. The proposed amendments also allow for public funding via a suitable statutory mechanism, such as a services agreement, in situations where the EQC contributes to wider Government processes. A services agreement would require an appropriation, which may have Budget implications in future.

Legislative Implications

85. Legislation is required to give effect to the proposed changes, as the relevant concepts are described in the EQC Act. ^[33]
86. The Bill's provisions are expected to be binding on the Crown, as the current EQC Act is binding on the Crown.

Impact Analysis

Regulatory Impact Statement

87. The impact analysis requirements apply to proposals in this paper. An impact assessment has been prepared and is attached as Annex 2.
88. A cross-agency Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Assessment (RIA) 'Impact *Summary: EQC Act Modernisation*' produced by The Treasury and dated February 2021. The review team considers that it meets the Quality Assurance criteria.
89. Overall, the RIA shows clearly that the options have been carefully considered and analysed, and implementation risks identified and mitigated.
90. 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.
91. The Regulatory Impact Analysis Team at the Treasury has determined that several of the regulatory proposals in this paper, which are outlined in an appendix to Annex 2, are exempt from the requirement to provide a Regulatory Impact Statement on the basis that they have no or minor impacts on businesses, individuals or not-for-profit entities.

Climate Implications of Policy Assessment

92. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

93. There are no specific population implications of the proposals in this paper.

Human Rights

94. There are no human rights implications of the proposals in this paper.

Consultation

Relevant consultation during a previous review of the EQC Act

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

More recent consultation as part of the current EQC Act review

96. 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 and 2021 to inform policy development:

96.1 relevant government departments or other public bodies:

- 96.1.1 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 Department of Prime Minister and Cabinet (DPMC), the National Emergency Management Agency (NEMA), Te Kawa Mataaho Public Service Commission, and the Reserve Bank of New Zealand.

96.2 relevant private sector organisations and public consultation processes:

- 96.2.1 the Insurance Council of New Zealand, 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 on the policy package as a whole.

97. The Insurance Council of New Zealand (ICNZ) has raised with me and my officials their concerns that consultation timeframes have been too short for adequate consideration of complex issues and that they have been consulted only on specific policy issues rather than being given an opportunity to comment on the EQC Act modernisation policy package as a whole. To ensure that the Select Committee has sufficient time to fully consider any concerns raised by stakeholders in submissions, including by ICNZ, I intend that, following the first reading of the bill, the Select Committee be provided the usual six months to report back to House.

Consultation on this paper

98. EQC, DIA, MBIE, MfE, RBNZ, MHUD, MoJ, NEMA, PCO, LINZ, and the Treasury have been consulted on this paper. DPMC (Policy Advisory Group) has been informed.

Communications

99. I intend to announce the proposed amendments following Cabinet approval.

Proactive Release

100. A version of this paper will be published on the Treasury's website following Cabinet agreement to the proposals set out in this paper. The paper will be published subject to withholdings that are consistent with the Official Information Act 1982.

Recommendations

101. The Minister Responsible for the Earthquake Commission recommends that the Committee:

The purpose of the EQC Act

1. **note** the Public Inquiry into the Earthquake Commission (the Inquiry) recommended that the Earthquake Commission Act 1993 (EQC Act) include a purpose statement and set of decision-making principles to guide the discharge of the Earthquake Commission's (EQC) responsibilities as an insurer;
2. **agree** that the EQC Act should include a purpose statement that describes the outcomes the Act is seeking to achieve, which are:
 - 2.1 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;
 - 2.2 to encourage the uptake and availability of catastrophe insurance cover for residential buildings;
3. **agree** the following amendments to EQC's functions:
 - 3.1 reframe EQC's current administrative insurance functions to recognise its core function of settling claims;
 - 3.2 expand EQC's current research and public education functions to clarify that EQC has the flexibility to contribute knowledge or expertise to improve community resilience and risk management, respond to natural disasters, or contribute to other whole-of-government initiatives that are consistent with its statutory objectives;
 - 3.3 introduce a new function to recognise the financial analysis, expertise, or information that EQC may share with the Minister Responsible for the

EQC, the Treasury, or any other agency for inclusion in advice provided to the Government;

- 3.4 introduce flexibility to allow EQC to organise disaster financing (e.g. reinsurance) on behalf of the Crown to manage the risks of either the EQC scheme or other risks that the Government may seek to reinsure;
- 3.5 reframe EQC's function to 'protect' the Natural Disaster Fund to better define EQC's objectives as a fund manager;
4. **agree** that the headline objective for EQC, the administrative entity, should be to reduce the impact of natural disasters;
5. **agree** this headline objective should be supported by three function-specific objectives that should be:
 - 5.1 **claims management:** EQC's claims management objective should focus on the fair treatment of claimants, and contribute to the timely replacement or reinstatement of natural disaster damaged residential buildings or land by ensuring claimants receive a timely and fair settlement of any claims relating to the insurance provided by the EQC Act;
 - 5.2 **education, research, and information:** EQC's research functions should seek to reduce cost or improve community resilience, and EQC should develop or contribute knowledge, financial analysis, or expertise 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;
 - 5.3 **Natural Disaster Fund management:** align the EQC's fund management mandate with the mandate of other entities that invest assets on behalf of the Crown, which requires that they invest any funds, not subject to a Ministerial direction, on a prudent commercial basis consistent with both responsible investment standards and best practice portfolio management (e.g. seeking to maximise return without undue risk);

What EQC insures

The scope of building cover

6. **agree** to:
 - 6.1 clarify the following concepts: appurtenant structures, temporary and transient accommodation, and the scope of each natural hazard covered by the EQC Act;
 - 6.2 extend the period for a volcanic activity event from 48 hours to 7 days;
7. **agree** the changes to the treatment of mixed-use buildings under the EQC Act approved by Cabinet on 23 March 2020 should be introduced through the Bill to modernise the EQC Act [CAB-20-MIN-0120 refers];

The scope of land cover

8. **note** the changes proposed to EQC land cover are intended to support clarity, certainty, equity, and adequacy of cover;
9. **agree** the EQC Act should include provisions to articulate the Government's policy interest regarding EQC land cover, namely that it is to:
 - 9.1 contribute resources to reinstate or replace land damaged by natural disaster where that land contributes to providing support and protection for a residential building, and/ or the main accessway to the building, and;
 - 9.2 if it is not practicable to replace or reinstate a residential building on the affected land, provide resources to help contribute to the land-related costs of establishing another residential building elsewhere;
10. **agree** to provide greater clarity that using monies from EQC land settlements to fund a mix of building and land, or building-only, reinstatement works, can provide an overall reinstatement solution that is acceptable to EQC;

Minor and technical clarifications for building and land cover

11. **agree** to the following minor clarifications to the EQC Act to make clear the scope of building and land cover:
 - 11.1 introducing a clear statement of EQC's repair standard for both buildings and land cover, based on current EQC operational practice;
 - 11.2 clarifying what costs associated with claims handling and settlement are covered by EQC;
 - 11.3 codifying existing EQC practice regarding the valuation of different areas of land on a damaged landholding, to more clearly recognise that different areas of land on a given landholding have differing utility and value;

How EQC handles claims

Requiring EQC to participate in a dispute resolution scheme

12. **note** EQC is already implementing the operational recommendations of the Inquiry relating to improving the claimant experience after a future natural disaster;
13. **agree** EQC should be required to participate in a dispute resolution scheme that is user-focused and accessible, independent and fair, efficient, effective, accountable, and cost effective, to support a claimant-centred approach to claims handling and settlement;

Changes to provisions relating to claims handling and settlement

14. **agree** to the following changes to provisions relating to claims handling and settlement:

- 14.1 providing for the assignment of the benefits of an EQC claim to a subsequent purchaser of a home, and the process for doing so;
- 14.2 clarifying the matters EQC must take into account in order to exercise its rights to salvage property;
- 14.3 introducing a new ground for declining claims that will enable EQC to decline claims where there is no financial loss;

Updating the offences and penalties in the EQC Act and introducing a new offence

15. **note** changes are required to the EQC Act's offences and penalties to clarify their application and incentivise compliance with legislative obligations;
16. **agree** to the following changes to update offences and penalties:
 - 16.1 increasing the maximum penalties for offences requiring a deliberate act to \$25,000 for individuals and \$50,000 for body corporates;
 - 16.2 increasing the maximum penalties and removing continuing offences for any EQC Commissioner or staff member who acts in contravention of the EQC Act's secrecy requirements to \$5,000 for individuals and \$25,000 for body corporates;
 - 16.3 clarifying that the above offence is directed at EQC's commissioners and employees, rather than EQC itself, and that it apply only to deliberate (as opposed to inadvertent) behaviour;
 - 16.4 increasing the maximum penalties and removing continuing offences for any person who fails to comply with any requirement necessary for EQC to inspect property, obtain information, and enter land, to \$5,000 for individuals and \$25,000 for body corporates;
 - 16.5 clarifying the wording of the above offence to state that this applies to persons who, without lawful excuse, fail to comply with a request made by EQC using its powers relating to the production, copying and furnishing of certain types of information;
 - 16.6 increasing the maximum penalties and removing continuing offences for private insurers who, without lawful excuse, breach their obligations to keep records to \$5,000 for individuals and \$25,000 for body corporates;
17. **agree** to introduce a new offence for deliberate breaches of the obligation on insurance companies to pay EQC premiums collected on its behalf within a specified period, along with the related obligation on officers and agents of insurance companies to provide a certificate stating that the payment is correct, with maximum penalties of \$25,000 or a two month term of imprisonment for individuals and \$50,000 for body corporates;

Financial governance, roles, and sustainability

18. **note** EQC's general financial provisions are in need of modernisation to ensure the EQC Act is transparent, durable, and supports public confidence in EQC and the Crown's ability to settle post-disaster insurance claims;
19. **agree** EQC's key financial settings, including the insurance premium and EQC insurance cap, should have a maximum period of five years between reviews;
20. **agree** that, following each review described in recommendation 19, the Government should publish and table in Parliament a funding and risk management statement, that discloses changes to key financial settings, financial forecasts, and the Government's funding strategy for addressing any projected funding shortfall;
21. **agree** that the EQC Act should specify that the basis for EQC insurance premiums is to cover the cost of EQC insurance cover and any associated operating costs (including any contributions or historic advances made by the Crown) that relate to the discharge of EQC's insurance functions;
22. **agree**, to give effect to recommendation 21, that the EQC Act should include a set of decision-making considerations that the Minister Responsible for the EQC may "have regard to" and that these should include:
 - 22.1 the financial position of the Government (as guarantor);
 - 22.2 the impact that EQC premiums will have on the uptake of private insurance cover;
 - 22.3 the benefits for the public of predictable premiums (i.e. the need to avoid large annual changes);
23. **authorise** the Minister Responsible for the EQC to make relevant additions to decision-making considerations for inclusion in the EQC Act;
24. **agree** that the Minister Responsible for the EQC should disclose the policy considerations that have been taken into account in setting EQC premiums within the periodic funding and risk management statement discussed in recommendation 20;
25. **agree** that the Act should include a suitable statutory mechanism, such as a services agreement, that allows the EQC to provide services to the Government in exchange for public funding (i.e. in circumstances where the EQC contributes to wider Government priorities that fall outside the definition of costs that may be funded by the EQC insurance premium);

Fiscal

26. **note** the policy proposals in this paper have minor impacts on EQC premium revenues. In a significant natural disaster event, they will increase the expected value of claims settlements, but costs are expected to be minor in the context of the scheme as a whole;

Legal

27. ^[33]
28. **invite** the Minister Responsible for the EQC 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 as a result of the changes proposed in this Cabinet paper;
29. **authorise** the Minister Responsible for the Earthquake Commission to make decisions on transitional provisions and other policy matters that arise as the Bill is drafted;
30. **invite** the Minister Responsible for the EQC to bring a draft Earthquake Commission Amendment Bill to Cabinet Legislation Committee;
31. **note** the Minister Responsible for the EQC's intention to introduce an Earthquake Commission Amendment Bill by the end of 2021;
32. **note** the Minister Responsible for the EQC intends to bring a second paper shortly seeking Cabinet agreement on remaining complex and technical matters including the level of the EQC cap, EQC cover for retaining walls, bridges and culverts, further institutional changes, and technical issues;
33. **note** officials will work with insurers to determine appropriate commencement timeframes for this Bill and will report back to the Cabinet Legislation Committee on these;

Communications

34. **note** the Minister Responsible for the EQC will announce the intention to introduce an Earthquake Commission Amendment Bill, subject to Cabinet agreement to the proposals set out in this paper;
35. **note** that this Cabinet paper will be proactively released as soon as possible following Cabinet decisions, subject to any redactions consistent with the Official Information Act 1982.

Authorised for lodgement
Hon Dr David Clark

Minister Responsible for the Earthquake Commission

Annex 1: Recommendations of the Public Inquiry into EQC addressed through modernising the EQC Act

#	Recommendation	Comment
1.1.1	Provide a mandate in legislation for EQC (or another appropriate agency) to coordinate the residential insurance response to ensure housing recovery following a natural disaster, including setting roles and responsibilities, monitoring performance and requiring assistance from other government agencies.	<p>I propose that the new EQC Act will include a clear statement of purpose, functions, and objectives for EQC. The new claims management objective will note that EQC should contribute to the timely replacement or reinstatement of natural disaster damaged residential buildings or land by ensuring claimants receive a timely and fair settlement of any claims relating to the insurance provided by the EQC Act. This will put EQC at the centre of the Crown's participation in any post-disaster residential insurance response.</p> <p>Work is progressing in response to recommendation 1.1.3 regarding post-disaster roles and responsibilities, for housing recovery efforts that are broader than the insurance response.</p>
1.1.2	Clarify expectations with EQC about its responsibility in land-use planning before, and for the coordination of land remediation after, a natural disaster.	<p>Work to modernise the EQC Act has considered EQC's role in land-use planning. I propose that the new Act will broaden EQC's research and education function to better support community resilience and cross-government initiatives. It will also introduce the option to provide public funding to EQC where EQC is directed to support cross-government activities that are broader than the insurance function funded by EQC premiums, such as in the land-use planning and broader community resilience space.</p> <p>EQC's role in land remediation is subject to further decisions on recommendation 1.1.3.</p>
1.1.3	Determine how a managed repair programme might be initiated and executed should it be required and whether EQC should be the lead agency to conduct the programme. If not, then	<p>A cross-agency work programme, led by the National Emergency Management Agency, is clarifying roles and responsibilities for post-disaster housing</p>

#	Recommendation	Comment
	<p>specify EQC's role in a managed repair and rebuild programme. As part of this, review the discretion in Schedule 3 of the EQC Act enabling EQC to manage the replacement or reinstatement of properties.</p>	<p>recovery. This work is on a longer timeframe than the work to modernise the EQC Act.</p> <p>However, I have considered whether, at this time, there is a need to amend EQC's discretion in Schedule 3 of the EQC Act enabling EQC to manage the replacement or reinstatement of properties. I consider that the discretion remains appropriate and aligns with private insurer practice. It is also consistent with a claimant-centred approach, as it allows EQC to undertake repairs and reinstatement. This includes for vulnerable claimants who may not be in a position to undertake their own repairs.</p> <p>Future decisions made as part of the cross-agency process may necessitate a review of the discretion at a later date.</p>

[33]

1.2.1	<p>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.</p>	<p>I propose to:</p> <ul style="list-style-type: none"> • Introduce a purpose statement to the EQC Act, to make clear that EQC exists 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. • Introduce a claims management function with a clear statutory objective requiring EQC to ensure that settlements are timely and fair. • Reframe EQC's function to 'protect' the Natural Disaster Fund to better define the EQC's objectives as a fund manager.
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#	Recommendation	Comment
1.3.1	Review the legislative framework so that there is a greater clarity of key provisions and definitions, including definitions of the phrases in the legislation such as “when new”, and “reinstatement”.	I propose to clarify currently undefined terms including: appurtenant structures; temporary accommodation; and each natural hazard covered by the EQC Act. I also propose to introduce a clear statement of EQC’s repair standard for land and buildings.
1.3.2	Review the EQC Act in light of the High Court ruling on reinstatement of cover following each natural disaster event and other judicial determinations that have had a significant impact on EQC’s work.	Work to modernise the EQC Act has included a review of relevant case law and considered the High Court ruling on reinstatement. Any proposals relating to reinstatement of cover following a natural disaster will be covered in a subsequent report to Cabinet.
1.4.1	Ensure that when ministerial directions or reviews are initiated these are clearly signalled, discussed with EQC to ensure that they will advance rather than hinder its response to a major natural disaster, and recorded.	<p>A purpose statement and the provision for clear statutory objectives and functions for EQC may serve to address the concerns raised in recommendation 1.4.1 by defining the scope of future Ministerial directions.</p> <p>The proposed funding statement setting out the Government’s funding strategy provides a softer direction setting instrument that may act as a guide for the EQC’s financial functions (e.g. the purchase of reinsurance).</p> <p>The proposed service agreement and insurance basis for EQC premiums will i) ring fence insurance resources and ii) set an expectation that the Government provide funding for any additional non-insurance duties.</p>
1.5.1	Review the EQC cap on residential building cover to establish whether it should reflect at least the current building costs and provide a mechanism for regular adjustment thereafter, as required.	<i>To be covered in a subsequent report to Cabinet.</i>

#	Recommendation	Comment
1.6.2	Consider a provision in legislation that allows EQC to work with the homeowner to enable necessary structural but non-natural disaster repairs to be dealt with at the same time as natural disaster repairs (at the homeowner's cost).	Work to modernise the EQC Act has considered whether changes are necessary to enable homeowners to undertake other repairs at the same time as EQC repairs. There is nothing preventing this in the EQC Act currently and I consider it is desirable for EQC to continue to exercise its discretion on this matter on a case by case basis. As a result, no changes are proposed to implement this recommendation.
1.7.1	Consider the need for legislative change to provide greater clarity on EQC's responsibilities to property owners in multi-unit and mixed-use buildings.	I propose to introduce more equitable cover for homeowners of mixed-use buildings, compared with the treatment of standalone houses, in line with decisions made by Cabinet in March 2020 [CAB-20-MIN-0210 refers].
2.3.1	Ensure a suitable advisory group or body is in place to provide representative community input into its work and associated responsibilities. EQC must consider the advice and act upon it appropriately. Following a major natural disaster, a specific group or body should be established that reflects communities affected by that event.	Treasury has considered whether any legislative change is needed to support the establishment of an EQC advisory group, and found that none are required. EQC is advancing the establishment of a national reference group to provide representative community input across a range of sectors to support EQC readiness for, and responses to, future national hazard events.
6.2.2	Consider how changes made to the EQC Act in 2019 can be used to enable better information sharing between it and private insurers.	<i>To be covered in a subsequent report to Cabinet.</i>
6.3.1	Consider a legislative requirement for private insurers to advise EQC at least annually of their residential policyholders' location and property ownership.	

#	Recommendation	Comment
6.4.2	Consider granting EQC standing to appear in formal land-use planning hearings.	Treasury has considered whether any further legislative change is needed to support EQC to appear in formal land-use planning hearings. EQC is already able to do this under the Resource Management Act 1991 (RMA) through the submission process of RMA Schedule 1 (for plan-making), and for notified resource consent applications where a hearing is held. Consequently, no legislative changes are proposed.
8.1.1	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.	<p>I propose to amend the EQC Act to require EQC to participate in a dispute resolution scheme that is: user-focused and accessible; independent and fair; efficient and effective; accountable; and cost effective.</p> <p>The Ministry of Business, Innovation and Employment will provide further advice on the form of a standing dispute resolution mechanism in the last quarter of 2021.</p>