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Office of the Minister Responsible for the Earthquake Commission

Chair, Cabinet Economic Development Committee

MODERNISING THE EARTHQUAKE COMMISSION ACT: PAPER TWO

Proposal

1. This paper is the second of three papers seeking agreement to a suite of proposed amendments to modernise the Earthquake Commission Act 1993 (EQC Act). Key proposals in this paper include:

   - **EQC cover:** improving the current EQC cover of retaining walls, bridges and culverts; updating and standardising EQC claims excesses; and updating the EQC Act's list of exclusions from EQC cover.
   - **EQC claims:** introduction of a ten-year time bar on reopening EQC claims, and clarifying EQC's ability to delegate claims settlement functions to private insurers.
   - **EQC information:** clarifying and strengthening EQC's information-gathering and sharing powers, including information sharing with other government agencies.
   - **EQC funding and governance:** better aligning EQC's statutory structure with the Crown entity framework, clarifying what the Natural Disaster Fund can be spent on, and removing EQC's discretion to discount the EQC premiums payable to EQC by a private insurer (the discount currently results in insurers retaining a small percentage of the EQC premium collected by insurers).
   - [33]

2. The first paper was considered by Cabinet on 19 April (DEV-21-MIN-0062 refers). Key decisions included Cabinet agreement that the future EQC Act:

   - clarify the purpose and coverage of the EQC scheme, functions of EQC, and financial governance, roles and sustainability
   - require EQC to participate in a claimant dispute resolution scheme that is user-focused and accessible, independent and fair, efficient, effective, accountable, and cost effective
   - update and expand existing offences and penalty provisions.

3. The third paper will consider an increase in the current $150,000 (plus GST) monetary cap on EQC building cover (the cap).

4. The package of amendments across the three papers has three overarching objectives:

   4.1 enabling better community recovery following a natural disaster

4.2 updating and improving the clarity and certainty of the role of EQC and the cover it provides, and

4.3 supporting the future durability and flexibility of the EQC Act.

Relation to government priorities

5. 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

6. 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]

7. 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.

8. Some of the proposals in this paper address recommendations of the Inquiry. Others update the scheme to better align with the policy objectives of the EQC scheme. These will amount to meaningful improvements in the scope and certainty of cover provided by EQC, and EQC's funding and governance arrangements.

Key proposals

9. The proposed amendments have three overarching objectives:

9.1 **Enabling better community recovery following a natural disaster.** Proposals supporting this objective include:

9.1.1 **EQC cover:** improving the current EQC cover of retaining walls, bridges and culverts.

9.1.2 **EQC information:** clarifying and strengthening EQC's information-gathering powers and supporting information sharing with other Government agencies.

9.2 **Updating and improving the clarity and certainty of the role of EQC and the cover it provides.** Proposals supporting this objective include:

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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].

9.2.1 **EQC cover:** updating and standardising EQC claims excesses, and updating the EQC Act's list of exclusions from EQC cover.

9.2.2 **EQC claims:** introduction of a ten-year time bar on reopening EQC claims, and clarifying EQC's ability to delegate claims settlement functions to private insurers.

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

9.3.1 **EQC funding and governance:** better aligning EQC's statutory structure with the Crown entity framework, clarifying what the Natural Disaster Fund can be spent on, and removing EQC's discretion to discount the EQC premiums payable to EQC by a private insurer (the discount currently results in insurers retaining [25] of the EQC premium collected by insurers).

[33]

Next steps

10. 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]

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:

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3 [33]

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.[4]

13.2 *Land cover:* the value of the damaged insured land (up to the minimum lot size under the applicable district plan, or 4,000m^2), 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 value of a claim, up to the sum insured amount.

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, some 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 the way it responded to the Canterbury earthquake sequence.

4 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.

18. EQC plays a critical role in New Zealand's ability to recover from natural disaster events, however its response to the Canterbury earthquake sequence caused significant reputational damage. Given EQC's importance, the Government established a Public Inquiry (the 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 improving the current EQC cover of retaining walls, bridges and culverts, and clarifying and strengthening EQC's information-gathering and sharing powers.

    20.2 **Updating and improving the clarity and certainty of the role of EQC and the cover it provides.** Proposals supporting this objective include updating and standardising EQC claims excesses, updating the EQC Act's exclusions from EQC cover, the introduction of a ten-year time bar on re-opening EQC claims, and clarifying EQC's ability to delegate claims settlement functions to private insurers.

    20.3 **Supporting the durability and flexibility of the EQC Act for the future.** Proposals supporting this objective include better aligning EQC's statutory structure with the Crown entity framework, clarifying what the Natural Disaster Fund can be spent on, removing EQC's discretion to discount the EQC premiums payable to EQC by a private insurer, [33]

Policy decisions

21. I am seeking Cabinet decisions on policy issues relating to the following:

    21.1 EQC cover – what EQC insures

    21.2 EQC claims – how EQC handles claims

    21.3 EQC funding and governance, and

    21.4 [33]

22. The remainder of this paper is structured in accordance with these policy areas.

Proposed amendments for a modernised EQC Act

EQC cover – what EQC insures

23. I propose three changes to EQC cover, namely:

- Valuing damaged retaining walls, bridges and culverts at their undepreciated value,[5] instead of the current indemnity (i.e. depreciated) value, and introducing maximum monetary caps of $50,000 (plus GST) for retaining walls, and $25,000 (plus GST) for bridges and culverts (akin in concept to the maximum monetary cap on EQC building cover).
- Updating and standardising EQC claims excesses to $500 per dwelling for both EQC building and land claims, and retaining the current maximum excess of $5,000 per claim for land damage claims (the $5,000 maximum has the effect of capping the excess for land claims paid by multi-unit buildings (MUBs) at the amount payable by a ten-unit building, namely $500 x 10 units).
- A technical update of the current EQC Act's list of exclusions from EQC cover.

EQC cover for retaining walls, bridges and culverts

24. EQC settlements for damaged retaining walls, bridges and culverts (collectively dubbed "land structures") and associated damaged land currently pay:

- the estimated (or actual) cost of repairing the damaged item, up to the indemnity (depreciated) value of the damaged land structure, plus
- the value of any associated damaged land.

25. The land and land structure settlement forms one pool, so settlement monies from land damage that are not directed to land reinstatement may be devoted to reinstating land structures, and vice-versa.

26. The indemnity value limit often results in settlement amounts for land structures that are insufficient to replace them. This is inconsistent with the proposed purpose of the EQC Act "*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."* (DEV-21-MIN-0062 refers). This outcome is most likely when the land structure is older, and so largely depreciated, and when the associated damaged land is of relatively low value, and so makes a relatively modest contribution towards costs of repairing the damaged land structure. Further subsidiary concerns are:

- Reinstatement or replacement of land structures, especially large or complex retaining walls, can be very expensive (settlements can be for several hundred thousand dollars). This raises equity issues (noting EQC land cover is not separately priced through levies) and raises policy issues regarding appropriate risk sharing between EQC, homeowners, and private insurers.
- Indemnity values are not known in advance of a claim, so are not clear, certain, and transparent. This means homeowners can only estimate their level of EQC

[5] Undepreciated value is the estimated cost of replacing the damaged structure with exactly the same structure, i.e. a like-for-like replacement. Indemnity value is calculated by depreciating that value. Therefore, the undepreciated value will always be larger than the indemnity value.

cover for land structures, making it difficult to make informed choices regarding the purchase of further top-up cover for these structures from private insurers.

27. I propose addressing these concerns by:

- Improving adequacy by replacing the indemnity value cap with an undepreciated value cap.
- Improving equity and certainty by introducing a fixed monetary cap, akin in concept to the cap on building cover.

28. Regarding the actual monetary values for these caps, my suggested key policy aims are to:

    (a) provide cover for a large proportion of damage to land structures within the cap, and

    (b) provide a clear point from which homeowners with more extensive land structures can buy private insurance top-up cover.

29. Based on EQC's claims data and analysis, summarised below, I propose a monetary cap (cap) on EQC retaining wall cover of $50,000 per dwelling, and a cap on cover for bridges and culverts of $25,000 per dwelling (both amounts excluding GST).

30. The available EQC claims data, which is limited, suggests that the great majority of EQC claims settlements involving these land structures would be increased or unchanged by these proposals. The proposals would result in lower claims settlements for expensive structures, where the indemnity value and the estimated cost to repair the damage both exceed the proposed cap amounts. EQC data suggests that such claims are rare, but can be large, e.g. several hundred thousand dollars.

31. EQC land claims since 2014 (when claims data improved) have cost EQC an average of $19.4 million per annum. EQC claims data does not separate the claims costs of land structures from the total costs of all land claims. Therefore, to estimate the cost of these proposals, EQC has sampled claims from 2014-2020, and on this basis EQC estimates that the proposals would cost about $8.7 million per annum. Treasury and EQC officials consider this is likely to be a material over-estimate, but does provide an upper bound to the cost of the change. However, data limitations prevent a better estimate being developed.

32. The data since 2014 does not capture any events causing major land losses, so can be seen as representing typical land claims years. 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.

33. In line with the approach taken to the modernisation of the EQC Act as a whole, any changes to these caps will be forward-looking: current EQC claims would not be affected by any change.

EQC claims excesses

34. A claims excess is the amount the claimant must pay themselves if they decide to make a claim. As a small portion of the insured risk, its primary purpose is to help prevent large numbers of low value/minor damage claims from consuming claims handling capacity. Having an excess contributes to the affordability of EQC cover, but it is also important, for equity and recovery reasons, that the excess amount is set at a level that most claimants can reasonably be expected to pay.

35. Existing EQC claims excesses are:

- For EQC building cover, the excess ranges from $200 to $1,725 (including GST) for a single dwelling residential building. The excess is calculated as the greater of $200 per dwelling in the building, or 1 percent of the claim. Therefore, as EQC building cover is currently capped at $150,000 (plus GST) per dwelling, the maximum excess is $1,725 (including GST). If the cap on EQC building cover is increased, the one percent excess, if retained, would also increase.
- For EQC land cover, the excess ranges from $500 to $5,000 (including GST) for a single dwelling residential building. The excess is calculated as the greater of $500 per dwelling in the residential building that is situated on the damaged land, or 10 percent of the claim, to a maximum of $5,000 (GST inclusive) per claim, irrespective of the number of dwellings in the associated residential buildings.

36. The current excess calculations are somewhat complex, especially when dealing with large numbers of claims after a major natural disaster. Excesses based on a percentage of the claim value create uncertainty for customers and EQC, as the excess cannot be calculated until a claim is finalised, and the excess may change if a claim is reopened.

37. The real value of the minimum excesses has also declined over time. The $200 minimum excess for building claims was established in 1984. If adjusted for Consumer Price Index (CPI) inflation it would now be well over $600.

38. It is also likely that some claimants, particularly those on fixed/low incomes would struggle to meet the cost of maximum excesses of $1,725 and $5,000 respectively for high-value building and/or land claims.

39. I propose that the current EQC excess provisions are replaced by a fixed flat-rate excess of $500 (including GST) on both EQC building and land cover (that is, $500 each, per dwelling) and that the current $5,000 (including GST) maximum excess per claim for land claims be retained. I consider this better balances efficiency, acceptability/affordability, and recovery concerns.

40. This would result in EQC building claims that settled for less than $50,000 paying higher excesses than at present. Building claims settled for more than $50,000 per dwelling, and land claims settled for more than $5,000 per dwelling, would pay lower excesses than at present. Land claims settled for less than $5,000 would be unaffected by the change.

41. As the bulk of EQC claims are for relatively low values, under this proposal a significant majority of building claims (EQC modelling suggests about 90 percent)

would pay higher excesses than at present. No land claims would pay higher excesses (as the current and proposed land excesses are the same: $500).

42. I consider the simplification benefits, the benefits to claimants who have suffered higher levels of damage, and the post-disaster claims-management benefits of reducing low-value claims, justify the increased excesses for lower-value claims.

43. Table 1 below, based on EQC modelling, shows the impact of different flat-rate building claim excesses on EQC claim numbers and costs based on a Wellington reference event.[6] The table does not account for land claims as EQC systems do not enable changes in land claim excesses to be modelled.

Table 1: Impact of different building claim excesses for reference event

Excess on building claims	Reduction in reference event number of EQC building claims	Reduction in reference event expected liability %	Reduction in reference event expected liability $ million	Reduction in average annual liability %	Reduction in average annual liability $ million
$500	2.8%	0%	5	1%	1.2
$1,000	6.0%	1%	81	3%	4.1
$2,000	10.5%	4%	228	7%	9.3

44. The proposed excess amounts would be the subject of regular review (at least once every five years) as a key financial setting (DEV-21-MIN-0062 refers).

45. EQC excesses are set via regulations made under the EQC Act. I envisage the implementation of the proposed change to EQC excesses aligning with the (yet to be decided) implementation timings of the modernised EQC Act.

Updating exclusions from EQC cover

46. The current EQC Act includes a list of exclusions at Schedule 2 titled ‘Property not insured by this Act’. I propose changes to:

    a. update the list of exclusions, including to clarify that the Act no longer covers contents, and other minor clarifications

    b. include an empowering regulation-making provision in the Act that provides for some flexibility in the list of exclusions.

47. The current list of exclusions dates from when EQC also insured household contents, therefore it excludes a range of specified contents items such as jewellery, precious stones, and so on. As EQC no longer provides contents insurance, I propose the specific exclusions be removed, or consolidated into more general terms. These

6 The “Wellington reference event” is EQC’s probable maximum loss event, the event that will inflict the largest modelled loss within a given timeframe. For EQC that is a large (magnitude 7.5) Wellington earthquake, which has an expected return period of about once every 840 years.

changes are mostly of a technical nature and follow usual insurer practice regarding the dividing line between buildings and contents cover.

48. I am also proposing other minor and technical clarifications to the list of exclusions, such as excluding mailboxes from EQC cover, and clarifying that the exclusion for artificial paved surfaces applies only to outside surfaces.

Ensuring flexibility in the exclusions list over time

49. The list of exclusions in the EQC Act should be relatively flexible so that future Governments are able to make minor clarifying and updating amendments over time without a full legislative process. As the ways in which people live continue to evolve, there may be future structures that need to be reflected in the list. Additionally, the way structures or items are characterised may need to be updated again in future, in response to technological or other advancements.

50. The current EQC Act provides the ability to make new exclusions by way of regulation, but not to edit or remove exclusions already in Schedule 2. I propose that the EQC Act should 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 – how EQC handles claims

51. I propose three changes to EQC cover, namely:

- introducing a ten-year time bar on reopening settled EQC claims
- establishing EQC's ability to delegate claims settlement functions to private insurers, and
- clarifying that information required to be provided by claimants to EQC in relation to the reporting of claims apply on an ongoing basis, regardless of whether the claimant has previously settled with EQC.

Introducing a time bar on reopening settled EQC claims

52. The EQC Act currently places a two-year time limit on when an initial claim must be notified to EQC following an event. In contrast, once a claim has been lodged and settled, there is no time limit on a claimant's ability to reopen a claim, for example if further damage is later discovered.

53. I propose that the modernised EQC Act introduces a legislative time bar on reopening EQC claims. The proposed time bar would provide EQC claimants with a ten-year time period in which to reopen their claims, starting from the date of the first settlement. EQC has advised me that a ten-year time bar provides a reasonable timeframe for reopening claims. It balances the impact on the rights of claimants to access entitlements, with a number of negative impacts caused by the open-ended ability to reopen claims.

54. The time bar would not apply retroactively. It would not affect the rights of claimants whose claims arose from the Canterbury earthquake sequence, or any other natural disaster prior to the entry into force of an amended EQC Act.

55. All of the Canterbury earthquake sequence claims currently being managed by EQC are reopened claims, many of which have been reopened multiple times. EQC currently receives around 450 – 600 reopened claims a month. Around 55 percent of reopened claims relate to missed damage, while 23 percent relate to issues with previous EQC repairs. About 50 percent of all reopened claims are reopened by property owners who did not own the damaged property at the time of notification of the claim to EQC. On average, 40 percent of reopened claims go no further, after the initial triage of a claim (for reasons including the EQC had already paid for damage, EQC had paid up to cap already, or that there is insufficient evidence).

56. This proposal is intended to address the following problems identified by EQC:

- difficulties attributing damage to an event as time passes, and
- a lack of certainty for all stakeholders in the system and possible impacts this could have on the ongoing appetite of reinsurers for EQC risk.

57. The difficulties associated with attributing damage to an event as time passes is problematic for both claimants and EQC. The longer the period since the event cover is being claimed for, the more difficult it will be to find evidence to support damage being related to a natural disaster event, vis-à-vis other causes such as age and general maintenance of the property. This is especially the case when properties are sold and the new owner does not have direct knowledge of the damage caused by the natural disaster. A ten-year time bar would incentivise claimants to reopen claims within a reasonable time period. This would enable claims finalisation at a time when damage can be attributed to a natural disaster without undue complexity.

58. EQC has advised me that a time bar on reopening claims would also mitigate the risks associated with an open-ended ability to reopen claims on EQC’s continued ability to secure reinsurance on reasonable terms, as well as potential pressure on the EQC premiums, while maintaining claimants’ ability to reasonably access their full legislative entitlement.

59. EQC advises that a ten-year time bar would have a limited impact on claimants accessing their entitlement under the EQC Act, as only a small number of claimants are likely to seek to reopen their claim beyond the proposed ten-year time bar. That is in part because changes to EQC processes, as a result of lessons learned from recent large claims events, are expected to significantly reduce the number of reopened claims.

How would a time bar work?

60. I propose that the EQC Act is amended to introduce a ten-year time bar on reopening claims, starting from the date of the first settlement.

61. The ten-year period aligns with the ten-year limitation period in the Building Act 2004. This reflects a time period in which it is reasonable to expect a claimant to complete repairs and which will enable claimants to detect building damage that may not have been included in the settlement, or faulty building work where EQC was responsible for managing the repairs.

62. The first settlement, which starts the clock on the ten-year time bar, would be the date on which all aspects of both building and land claims relating to a property are settled for the first time.

63. The time bar would prevent a claimant reopening a claim more than ten years after the first settlement. It would not remove the ability of claimants to bring legal proceedings or access external dispute resolution mechanisms in relation to the claim, prior to and following the expiration of the time bar.

64. A time bar starting from the date of the first full settlement is fairer to all claimants than starting from the date of the event, as it means the time bar clock only starts running once EQC has fully met (or appears to have fully met) all its settlement obligations to the claimant.

65. EQC does not currently hold data on the number of Canterbury claims that have been reopened and settled within different periods starting from the date of the first settlement. The claims management system used by EQC at the time of the Canterbury earthquake sequence was not able to reflect the date of the first full settlement of the entire claim. EQC upgraded its claims management system in 2017 so that in future it will be able to identify the date of the first settlement of a claim.

66. My officials offered conflicting advice on this issue. EQC favours introducing a time bar, for the reasons outlined above. Treasury prefers the status quo, largely due to concerns that a time bar would disadvantage some claimants. On balance I prefer introducing a time bar. I consider the fairly lengthy (ten-year) time bar helps mitigate any disadvantages from its introduction. I propose that any legislative time bar be mandatory and not be subject to any exceptions. Officials are still working through detailed design issues and I anticipate receiving more advice on this issue during the legislative drafting process.

Concerns raised by the insurance industry

67. The Insurance Council of New Zealand (ICNZ) considers that “the existing regime is appropriate” and does not support the proposed time bar. ICNZ note the absence of a time bar largely aligns with private insurance as section 9 of the Insurance Law Reform Act 1977 generally prohibits time bars in insurance contracts. The introduction of a time bar in the EQC Act would introduce a new difference between EQC and private insurer claims. ICNZ also considers that “…this is an extremely complex matter that cannot be fully considered in such a short timeframe”.

Delegating EQC’s claims settlement functions to private insurers

68. Historically, in the absence of any claims handling arrangements between EQC and private insurers, EQC claimants had to make separate claims to EQC and their private insurer. This increases cost, complexity and creates confusion for claimants. Currently, the EQC Act enables EQC to appoint any person as its agent to receive claim notices and inquire into claims. It also provides, however, that no settlement may be effected by an agent without EQC’s authority. Under the Crown Entities Act 2004 (Crown Entities Act), Ministerial approvals have been given since 2008 that have enabled EQC to delegate its claims settlement and other functions. More recently, EQC has reached agreements with several insurers, whereby those insurers will act

as EQC claims and settlement agents for EQC claims made by the insurers' customers.

69. I propose the future EQC Act should enable EQC to delegate the claims settlement function to insurers licensed under section 19 of the Insurance (Prudential Supervision) Act 2010, that is, licensed insurers whose activities are subject to regulatory oversight by the Reserve Bank of New Zealand. This would enable EQC to delegate these settlement functions to regulated insurers without the need for ongoing Ministerial approval under the Crown Entities Act. Ministerial approval would still be required for any other parties that might be considered in future as potential settlement delegates.

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

70. Homeowners are currently required by the EQC Act to provide evidence to support their claims, including: the origin and cause of the natural disaster damage; and information relating to the circumstances under which it occurred. However, the EQC Act is unclear whether this obligation applies to reopened as well as new claims. I propose clarifying that the obligation to provide evidence to support a claim applies to all claims, that is, reopened as well as new claims.

EQC information gathering and sharing

71. EQC needs to be able to obtain a range of information to enable it to perform its functions. To facilitate this, the Public Inquiry into the Earthquake Commission (the Inquiry) recommended: amending the EQC Act to require private insurers to advise EQC of policyholders' locations and ownership; and considering how the 2019 changes to the EQC Act in relation to information sharing could enable better information sharing between EQC and private insurers.[7]

72. I am advised that EQC has sufficient powers to obtain and share all the information it needs for the efficient and effective performance of its functions. This includes requiring and sharing specific information as recommended by the Inquiry. EQC also has the ability to share certain information where it is in the public interest to do so. Implementation of the 2019 changes is an ongoing operational matter with the key constraint being measures to ensure the protection of personal information.

73. Consistent with the intentions of the Inquiry recommendations, I do, however, propose some changes to clarify the information gathering and sharing provisions in the EQC Act to better support effective administration of the EQC scheme. These include:

- **Information gathering:** enabling EQC to specify a reasonable timeframe within which information must be provided, to set requirements around the form and format in which requested information is provided.
- **Information sharing:** to clarify EQC's ability to disclose information held by EQC to another government agency provided the requesting/receiving agency

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[7] Recommendations 6.3.1 and 6.2.2.

has a proper interest in receiving the information for law enforcement purposes, or for the performance of it functions or exercise of its powers.

EQC funding and governance

74. I propose three changes to EQC funding and governance, namely:

- better aligning EQC’s statutory structure with the Crown entity framework
- clarifying what the Natural Disaster Fund can be spent on, and
- removing EQC's ability to allow insurers to retain a portion of the EQC premiums collected by insurers.

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

75. Cabinet has recently made decisions regarding the inclusion in the modernised EQC Act of provisions regarding EQC’s purpose, objectives, financial governance and respective roles of EQC and the responsible Minister, and ongoing financial review and sustainability, (DEV-21-MIN-0062 refers). Taken together, these provide clarity regarding the Government’s intent for the EQC scheme, EQC’s role, and our expectations for how the entity will carry out its obligations.

76. I propose a range of further institutional reforms to support those previous Cabinet decisions, to provide further clarity regarding the Government’s intentions for EQC and the EQC scheme, and to align it with the wider Crown entity framework.

77. The reform of the then-Earthquake and War Damage Commission in the late 1980s and early 1990s that resulted in EQC’s establishment, was predicated on an expectation that the disaster insurance market over time might be entirely deregulated. This expectation is reflected in several provisions of the current EQC Act, including EQC being capitalised by way of shares (EQC is the only Crown entity so-capitalised), and the responsible Minister can demand dividends or payments in lieu of tax from EQC (both provisions intended to enable competitive neutrality).

78. In addition, the current EQC Act makes the assets of the Natural Disaster Fund (NDF) inseparable from the assets of EQC the crown entity.[8] This is inconsistent with best-practice separation of funds from the entities managing them.

79. Therefore, I propose a range of changes intended to better reflect a policy view that EQC (in some form) is expected to be an enduring part of New Zealand’s residential insurance landscape (i.e. it is not on a path to deregulation), and to modernise EQC’s statutory structure and reporting obligations to better reflect current practice for Crown entities and Crown financial institutions. The proposals include:

- removing the Crown’s statutory shareholding
- introducing a statutory framework to allow the Crown to capitalise the NDF directly with contributed capital without a need to acquire shares in the EQC
- establishing a more conventional relationship between EQC and the NDF. EQC would continue to hold and manage the NDF on behalf of the Crown but would

8 See section 13(3) of the EQC Act “All money in bank accounts established by the Commission, and all investments and other assets of the Commission, shall be deemed to form part of the Fund.”

also be able to hold operational assets on its own account, and separately account for both in its reporting

- retaining the Crown's current ability to influence the risk and/or the management of funds within the NDF, reflecting the Crown's interest (or rights) as the ultimate owner of the NDF (and associated insurance liabilities)
- removing the ability for the responsible Minister to determine that EQC pay dividends, or make payments in lieu of tax
- retaining the current Crown funding guarantee (section 16 of the EQC Act), which requires that, if the NDF has insufficient resources to meet its payments, the Crown will fund the NDF sufficiently for it to do so
- removing the ability for the responsible Minister to charge EQC a fee for the Crown funding guarantee (as it amounts to the Crown charging a fund that it legally owns)
- providing for the responsible Minister to be able to require EQC to repay funds (and associated interest, if any) contributed to EQC or the NDF by the Crown, and
- requiring that EQC levies and the NDF may only cover the costs of insurance claims and any associated operating costs, including any relevant education or research, which the Board expects to either provide a benefit to insured property owners or reduce the estimated future costs of the scheme.

80. The conversion of EQC's share capital to contributed capital will result in consequential fiscally-neutral changes to the Crown accounts.

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

81. EQC premiums (the EQC levy is called a premium) are payable to EQC by the private insurer when the insurer issues a relevant insurance contract. At the same time, the premium amount becomes a debt due by the insured person to the insurer and may be recovered by the insurer. The EQC Act provides that, subject to any regulations made under the EQC Act, EQC may, "as it thinks fit", discount the premiums payable to EQC by private insurers.

82. EQC currently exercises this discretion and, if a discount applies, it is set at [25] The practical effect of this for insurers receiving the discount is to allow private insurers to retain [25] of the premiums payable to EQC. This totalled almost [25] (GST exclusive) in the 2019/20 financial year. The discount is longstanding (since the 1940s) and appears to have been intended to compensate insurers for their costs in collecting EQC premiums.

83. Enabling discounts or retainers for private persons required by law to collect a government tax or levy are very unusual (but not unique). More general examples of the usual practice that the private collector not retain a share of a tax or levy are PAYE income tax, GST and Accident Compensation Corporation levies.

84. More specifically, general insurers also pay the Fire and Emergency levies (FEL) on a wide range of general insurance policies, including residential insurance policies. This

long-running practice stems from the insurer-owned origins of fire brigades. The Fire and Emergency New Zealand (FENZ) Act 2017 (and antecedent legislation) does not provide for insurer discounts on FEL. My officials advise me that the current review of FEL will retain this long-standing practice. While FENZ benefits insurers by reducing their liabilities (for example, reducing fire damage claims), EQC also substantially reduces private insurer liabilities, by taking on large natural disaster exposures that might otherwise fall on private insurers.

85. Therefore, I propose the future EQC Act remove the ability for EQC to make discretionary discounts on the EQC premium. Removing the discount would align the EQC Act with the standard government policy and legislative approach.

86. Removing the discount from legislation does not prevent EQC and insurers negotiating a reasonable fee for insurers collecting EQC premiums on EQC's behalf. EQC recognises that these functions generate costs for insurers, and supports removing the discount, in part as it would clarify that any remuneration arrangements between EQC and insurers are to be based on entirely commercial grounds, rather than the current blended approach (of the discount plus other commercial arrangements). Future negotiations between EQC and insurers would provide an opportunity to address insurer any concerns regarding the discontinuation of the insurer discount.

Expected impact on consumer pricing

87. If EQC's premiums are set according to the agreed pricing principles (DEV-21-MIN-0062 refers), then, in principle, the removal of insurer discount should not change the total amount paid by residential property owners for their EQC and private insurance cover.

88. That is because, under the status quo, EQC will calculate its breakeven premium rate and then adjust it upwards to account for the [25] discount. If the discount is discontinued, the breakeven premium will be [25] lower, and private insurers can be expected to increase their private premiums, excluding the premium, to recover the lost revenues. In this case the net effect on residential property owners' private plus EQC premiums would be zero.

89. In practice, however, insurer price responses would depend on a range of market and internal considerations, and vary between insurers. Possible insurer responses could include adding the full [25] revenue into their premiums, adding their actual (unknown to officials) costs to premiums, recovering the revenue from EQC through commercial agreements, as noted above, or not increasing premiums at all. Also, removal of the discount might reduce the size of any future increase in EQC premiums, rather than result in EQC premiums declining. Therefore, the price impacts on individual policy holders, or classes of policy holders, cannot be predicted with any certainty.

90. However, any price effects appear likely to be modest. If private insurers fully recovered the lost discount revenue from policies with EQC cover attached, the price increase would be up to [25] per dwelling per annum [25]

91. In consultations with officials, insurers have strongly opposed removal of the discount. In opposing removal, private insurers outlined a range of activities they say create significant operational costs in collecting EQC premiums from their customers and otherwise managing EQC-related transactions. The insurers consider that the discounting option helps to offset those costs and that removal would disrupt longstanding arrangements that have worked well. Insurers expect that removal would create new costs that would likely be passed on to their customers in the form of premium increases.

[33]

92. [33]

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Implementation

96. 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.

97. I propose the following timing for introducing the legislation:

97.1 Initial drafting instructions to PCO: April 2021

97.2 Second Cabinet paper on remaining policy matters, including the EQC cap, considered by Cabinet: May 2021

97.3 Further drafting instructions issued to PCO: May-June 2021

97.4 LEG and Cabinet for approval and introduction: November 2021

97.5 Introduction of the Bill: end of 2021

97.6 Select Committee report back: Mid-2022

97.7 Date of enactment: Late 2022.

98. 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. Commencement provisions will also need to consider EQC's and private insurers' reinsurance arrangements.

99. Any new provisions that have implications for private insurance cover will likely be applied to EQC cover attached to individual insurance policies as those insurance policies are renewed or new contracts are entered into, so that private insurers have the opportunity to price premiums based on the changed EQC cover.

100. I have requested further advice on appropriate commencement and implementation arrangements and timeframes, and seek authorisation to make decisions on these matters, for inclusion in the resulting Bill considered by Cabinet Legislation Committee.

Financial Implications

101. EQC estimates the financial implications of the proposals are as follows.

Improving EQC cover for retaining walls, bridges and culverts

102. EQC estimates that the upper bound of the cost of these proposals is about $8.7 million per annum in typical years without major claims events. Treasury and EQC officials consider this is likely to be a material over-estimate. However, data limitations prevent a better estimate being developed. 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

103. 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. This would increase for larger events. EQC estimate the proposed changes would reduce the claims cost of a large Wellington earthquake by about $5 million.

104. 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. However, officials judge the changes to excesses for land cover will have smaller cost impacts than are estimated for EQC building cover.

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

105. This is estimated to increase EQC premium (levy) revenues by about [25] per annum (excluding GST). EQC premium discounts retained by insurers totalled almost [25] (excluding GST) in the 2019/20 financial year. Any 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

106. The EQC Act currently holds $1.5 billion in share capital, which is "deemed" to have been subscribed for and paid in full. Accumulated losses (i.e. retained earnings) are subtracted from this amount, which left the EQC with a negative net equity position of -$689 million as of 30 June 2020.

107. The proposal in this paper to reduce the EQC's shareholding down to its current net economic value (i.e. zero) and remove it from the Act, would have no impact on the Crown's reported position. This is because the EQC's net equity position, which is consolidated and reported on the Crown balance sheet, would remain unchanged.

108. The Crown currently charges EQC a Crown guarantee fee of $10 million per annum. The proposal to discontinue this payment would have no impact on overall Crown net worth or OBEGAL.[9] However, it would increase the value of the NDF, and increase core Crown net debt, by $10 million per annum, as the core Crown net debt metric excludes financial assets held by Crown agents, such as the EQC.

Other proposals

109. The financial implications of the remaining proposals in this paper not been quantified as they are anticipated to be minor.

110. If the EQC premium is priced to reflect the expected costs of the EQC scheme and EQC operating costs, the above cost impacts will flow through to future EQC premium rates.

111. If agreed, the proposals to review EQC's key financial settings at least every five years, and the review to include publication of a funding and risk management statement, (DEV-21-MIN-0062 refers), will provide a framework for ongoing monitoring and adjustment of EQC's funding, costs, and risk management.

Legislative Implications

112. Legislation is required to give effect to the proposed changes, as the relevant concepts are described in the EQC Act. [33]

113. The current EQC Act makes regulations by way of the Governor-General by Order in Council. I propose the modernised EQC Act retain this approach.

114. These proposals would result in a number of regulation-making powers being retained, introduced, or regulations made under the EQC Act, including the setting of claims excesses on EQC claims, increasing the specified monetary caps on retaining wills, bridges and culverts (matching current practice regarding the cap on EQC building cover), modifying exclusions form EQC cover, and specifying the information-provision obligations of third parties.

115. I seek Cabinet authorisation to make decisions, in consultation with relevant portfolio Ministers as necessary, on any additional policy, implementation and commencement,

9 Crown operating balance before gains and losses

drafting or minor technical issues that arise during the development of the EQC Bill and associated Regulations for Cabinet Legislation Committee. [33]

116. 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

117. The impact analysis requirements apply to proposals in this paper. An impact assessment has been prepared and is attached as Annex 1.

118. A quality assurance panel with representatives from the Regulatory Impact Analysis Team, Economic Policy Team and Macroeconomic and Fiscal Policy Team at the Treasury has reviewed the Regulatory Impact Statement (RIS) "EQC Act Technical Issues" produced by the Earthquake Commission Policy Team at The Treasury. This RIS is one of four to support proposals to amend the Earthquake Commission Act 1993 (EQC Act). The Panel considers that it meets the Quality Assurance criteria.

119. This RIS covers the following technical issues identified in the EQC Act:

 119.1 A time bar on reopening EQC claims

 119.2 Monetary caps on retaining walls, bridges, and culverts

 119.3 Updating excesses for building and land cover

 119.4 Updating Earthquake Committee (EQC)'s ability to provide insurer discounts

 119.5 Clarifying what the Natural Disaster Fund can be spent on

120. The Panel notes that there was no public consultation on the options, which has created some risk that unexpected technical or other issues may be raised at the Select Committee stage. However, this risk is mitigated by the extensive consultation that took place during previous public consultation, the Public Inquiry and targeted consultation on the proposals. The RIS notes that while the public is likely to have an interest in increased excesses (Issue 3) the proposed excess amount is consistent with conclusions reached after considering the public consultation feedback on this issue.

121. The Panel further notes that the Treasury's recommended approach to Issue 1 differs with the proposal to be implemented by the EQC and the Minister responsible for the EQC.

Climate Implications of Policy Assessment

122. 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

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

Human Rights

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

Consultation

Relevant consultation during a previous review of the EQC Act

125. 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

126. 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 leading to this and the two companion Cabinet papers:

    126.1 Relevant government departments or other public bodies:

        126.1.1 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, the 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 (RBNZ).

    126.2 Relevant private sector organisations and public consultation processes:

        126.2.1 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.

127. 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 6 months to report back to House.

Consultation on this paper

128. 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

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

Proactive Release

130. 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

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

EQC cover

EQC cover for retaining walls, bridges and culverts

1. **note** that 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. **agree** 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. **agree** that the future EQC Act include an empowering provision enabling the $50,000 and $25,000 amounts specified in recommendation (2) to be increased by regulation;

Exclusions from EQC cover

4. **agree** that the current list of exclusions from EQC cover at 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. **agree** 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. **agree** 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. **agree** that the future EQC Act retain an empowering provision enabling EQC claims excesses to be made by regulation;

EQC claims

Introducing a time bar on reopening settled EQC claims

8. **agree** that that the EQC Act include a ten-year time bar on reopening claims;

9. **agree** that the ten-year period start from the date of the first full EQC settlement of the building, land, or land and building claims, forming the claim;

10. **agree** that the time bar not be subject to any EQC administrative discretions;

Delegating EQC's claims settlement functions to private insurers

11. **agree** 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

12. **agree** 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

13. **agree** 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;

14. **agree** 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;

15. **agree** 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 recommendation (14);

16. **agree** 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 it functions or exercise of its powers;

EQC funding and governance

EQC Capitalisation, funding and the Natural Disaster Fund (NDF)

17. **agree** 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;

18. **agree** that the EQC continue to manage the NDF on behalf of the Crown;

19. **agree** that the NDF be held, accounted and reported as a separate pool of financial assets from EQC's operational assets;

20. **agree** that the current Crown guarantee be retained to meet any deficiency in the NDF;

21. **agree** 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;

22. **agree** 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);

23. **note** 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;

24. **agree** 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;

25. **agree** that the current ability for the responsible Minister to determine that EQC pay a dividend be discontinued;

26. **agree** that the current ability for the responsible Minister to determine that EQC make payments in lieu of tax be discontinued;

27. **agree** 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;

28. **agree** that monies from EQC levies and the NDF may be expended on the costs of insurance claims and any associated operating costs;

29. **agree** 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

30. **agree** 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

31. **note** 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 Natural Disaster Fund;

32. **note** that the future EQC Act's requirements to review EQC's key financial settings at least every five years (DEV-21-MIN-0062 refers) 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

33. **note** that 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. 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

34. **note** 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;

35. **note** that 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. Officials judge the cost impacts 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

36. **note** that removing the insurer discount is estimated to increase EQC's received premium (levy) revenues by about [25] per annum (excluding GST);

37. **note** 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

38. **note** that the proposal in this paper 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. This is because the EQC's net equity position, which is consolidated and reported on the Crown balance sheet, would remain unchanged;

39. **note** that the Crown currently charges EQC a Crown guarantee fee of $10.000 million per annum. 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

40. **note** that the other policy proposals in this paper have not been costed, and are anticipated to have not more than minor impacts on EQC premium revenues or costs;

Legal

41. [33]

42. **note** the Minister Responsible for the EQC's intention to introduce an Earthquake Commission Amendment Bill by the end of 2021;

43. **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;

44. **authorise** the Minister Responsible for the EQC 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 Earthquake Commission Bill and associated regulations for Cabinet Legislation Committee. [33]

45. **invite** the Minister Responsible for the EQC to bring a draft Earthquake Commission Amendment Bill to Cabinet Legislation Committee;

46. **note** the Minister Responsible for the EQC intends to bring a paper to Cabinet shortly seeking Cabinet agreement on the future level of the monetary cap on EQC building cover;

47. **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

48. **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;

49. **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