

# The Treasury

## Treasury Advice Related to Modernising the EQC Act Information Release

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### Cabinet Document Details

Title: **Cabinet Minute: DEV-21-MIN-0062: Modernising the Earthquake Commission Act 1993**

Date: **14 April 2021**

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

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# Cabinet Economic Development Committee

## Minute of Decision

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### Modernising the Earthquake Commission Act 1993

**Portfolio**                      **Earthquake Commission**

On 14 April 2021, the Cabinet Economic Development Committee (DEV):

#### The purpose of the EQC Act

- 1        **noted** that 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        **agreed** that the EQC Act include a purpose statement that describes the outcomes the Act is seeking to achieve, which are to:
  - 2.1      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      encourage the uptake and availability of catastrophe insurance cover for residential buildings;
- 3        **agreed** to 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 **agreed** that the headline objective for EQC, the administrative entity, be to reduce the impact of natural disasters;
- 5 **agreed** that this headline objective be supported by the following three function-specific objectives:
- 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 **agreed** 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 **agreed** that the changes to the treatment of mixed-use buildings under the EQC Act approved by DEV on 18 March 2020 [DEV-20-MIN-0039] be introduced through the Bill to modernise the EQC Act;

### The scope of land cover

- 8 **noted** that the changes proposed to EQC land cover are intended to support clarity, certainty, equity, and adequacy of cover;
- 9 **agreed** that the EQC Act 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** **agreed** 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** **agreed** 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** **noted** that EQC is already implementing the operational recommendations of the Inquiry relating to improving the claimant experience after a future natural disaster;
- 13** **agreed** that EQC 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** **agreed** 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** **noted** that changes are required to the EQC Act's offences and penalties to clarify their application and incentivise compliance with legislative obligations;
- 16** **agreed** 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 **agreed** 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 **noted** that 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 **agreed** that EQC's key financial settings, including the insurance premium and EQC insurance cap, have a maximum period of five years between reviews;
- 20 **agreed** that, following each review described in paragraph 19 above, 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 **agreed** that the EQC Act 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 **agreed**, to give effect to paragraph 21 above, that the EQC Act include a set of decision-making considerations that the Minister Responsible for the EQC may 'have regard to', and that these 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 **authorised** the Minister Responsible for the Earthquake Commission to make relevant additions to decision-making considerations for inclusion in the EQC Act;

- 24 **agreed** that the Minister Responsible for the Earthquake Commission 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 paragraph 20 above;
- 25 **agreed** that the EQC Act 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);

### Financial implications

- 26 **noted** that:
- 26.1 the above policy proposals have minor impacts on EQC premium revenues;
- 26.2 in a significant natural disaster event, they will increase the expected value of claims settlements, but that costs are expected to be minor in the context of the scheme as a whole;

### Legislative implications

- 27 <sup>[33]</sup>
- 28 **invited** the Minister Responsible for the Earthquake Commission to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals by amendments to the EQC Act and any other legislation requiring consequential amendment as a result of the changes proposed above;
- 29 **authorised** 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 **invited** the Minister Responsible for the Earthquake Commission to bring a draft Earthquake Commission Amendment Bill to the Cabinet Legislation Committee;
- 31 **noted** that the Minister Responsible for the Earthquake Commission intends to:
- 31.1 introduce an Earthquake Commission Amendment Bill by the end of 2021;
- 31.2 submit a further 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;
- 32 **noted** that officials will work with insurers to determine appropriate commencement timeframes for the Bill, and will report back to the Cabinet Legislation Committee on these.

Janine Harvey  
Committee Secretary

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**Present:**

Hon Dr Megan Woods (Chair)  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Poto Williams  
Hon Stuart Nash  
Hon Michael Wood  
Hon Dr David Clark  
Hon Phil Twyford  
Rino Tirikatene, MP  
Dr Deborah Russell, MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV

**Hard-copy distribution:**

Minister Responsible for the Earthquake Commission