

# The Treasury

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

December 2021

This document has been proactively released by the Treasury on the Treasury website at:

<https://www.treasury.govt.nz/publications/information-release/treasury-advice-related-modernising-egc-act-information-release>

Please refer to the final version of the Cabinet paper which can be found at:

<https://www.treasury.govt.nz/publications/cabinet-paper/dev-20-sub-0039-mixed-use-buildings-under-earthquake-commission-act-1993>

### Information Withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [27] 9(2)(ba)(ii) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment
- [38] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [25] appearing where information has been withheld in a release document refers to section 9(2)(b)(ii).

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## **Accessibility**

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**Treasury Report:** Coverage of mixed-use buildings under the Earthquake Commission Act: Cabinet paper

|              |                  |                     |             |
|--------------|------------------|---------------------|-------------|
| <b>Date:</b> | 14 February 2020 | <b>Report No:</b>   | T2020/132   |
|              |                  | <b>File Number:</b> | TY-2-1-17-2 |

**Action Sought**

|  | <b>Action Sought</b>   | <b>Deadline</b>          |
|--|--|--------------------------|
| Hon Grant Robertson<br><b>Minister of Finance</b><br><br><b>Minister Responsible for the Earthquake Commission</b> | <b>Sign</b> the attached Cabinet paper on proposed amendments to the EQC Act;<br><b>Agree</b> the amendments should commence from 1 June 2021;<br><b>Refer</b> this report and the attached Cabinet paper to the Minister of Internal Affairs. | 10:00am 27 February 2020 |

**Contact for Telephone Discussion (if required)**

| <b>Name</b>     | <b>Position</b>                            | <b>Telephone</b> | <b>1st Contact</b> |
|-----------------|--|------------------|--------------------|
| Danijela Tavich | Analyst, Earthquake Commission Policy Team | [39]             | n/a (mob) ✓        |
| Helen McDonald  | Manager, Earthquake Commission Policy Team | [35]             |                    |

**Actions for the Minister's Office Staff (if required)**

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|--|
| <p><b>Return</b> the signed report to Treasury.</p> <p><b>Circulate</b> the Cabinet paper for Ministerial consultation.</p> <p><b>Lodge</b> the Cabinet paper with the Cabinet office by 10:00am 27 February 2020 for the Cabinet Economic Development Committee on 4 March 2020.</p> <p><b>Refer</b> a copy of this report to the Minister of Internal Affairs.</p> |
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Note any feedback on the quality of the report

**Enclosure:** Yes

## Treasury Report: Coverage of mixed-use buildings under the Earthquake Commission Act: Cabinet paper

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You have agreed to progress amendments to the Earthquake Commission Act 1993 (the EQC Act) to be introduced in 2020, focusing on the insurance coverage of mixed-use buildings, and the EQC Act's definition of 'residential building' (T2020/100 refers).

The attached Cabinet paper, for your consideration, seeks agreement from Cabinet to begin drafting an Earthquake Commission Amendment Bill to give effect to these amendments. The Bill is intended to focus on EQC cover of mixed-use buildings, and the EQC Act definition of 'residential building', which is a key determinant of the extent of EQC cover provided for a building. The intent of the amendments is to ensure that the EQC Act accounts for homeowners' use of, and interest in, common areas in mixed-use buildings.

We recommend that, should you agree to sign the Cabinet paper, this should be lodged following consultation with your colleagues by 10:00am 27 February 2020, for consideration by the Cabinet Economic Development Committee (DEV) on 4 March 2020.

Due to the implications of a change in the EQC Act residential building definition for the Fire and Emergency New Zealand (FENZ) levy (T2019/4015 refers), we recommend that this report and the attached Cabinet paper should be referred to the Minister of Internal Affairs for noting.

We have also attached a draft version of the Regulatory Impact Statement for the proposals. We will provide a final version for lodgement and update the statement on regulatory quality in the Cabinet paper prior to lodgement on 27 February 2020.

### *Transitional provisions*

EQC suggest that the commencement of the proposed amendments to the EQC Act would trigger a renegotiation process between EQC and its reinsurers. The relevant EQC reinsurance contracts at the time of enactment will expire on 31 May 2021.

Based on this feedback, there are two options for transitional provisions to implement the amended EQC Act:

- Commencement from enactment date, expected to be early 2021 (not recommended due to triggering a renegotiation for EQC and reinsurers);
- Commencement from 1 June 2021 (**recommended**, to allow EQC to renegotiate with reinsurers as part reinsurance of policy renewal)

Delaying commencement risks a significant claims event occurring between enactment and commencement dates. This is a minor risk due to the anticipated short timeframe involved (no more than a two month delay).

Similarly, you have a decision around when individual buildings become subject to the new rules:

- Whether this occurs for all buildings from the commencement date;
- Whether individual buildings become subject to the new rules when their individual insurance policies are renewed (**recommended**).

We recommend the new rules apply to individual buildings as insurance policies are

renewed. This would encourage private insurers to price premiums in accordance with the risk transfer to EQC under the new rules. This approach also matches the approach taken in the EQC Amendment Act 2019.

The Cabinet paper reflects our recommended transitional provisions: a 1 June 2021 commencement date, and that the rules will apply to individual buildings as individual insurance policies are renewed or commence over the following 12 months.

If you wish to take a different approach to transitional provisions, we will amend the Cabinet paper in line with this prior to its circulation to your colleagues.

## Recommended Action

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We recommend that you:

### *Transitional provisions*

a **note** that the commencement of the proposed amendments to the EQC Act would trigger a renegotiation process between EQC and its reinsurers;

b **agree** that the amendments should commence from 1 June 2021;

*Agree/disagree.*

c **agree** that the new rules should apply to individual buildings as individual private insurance contracts are renewed and new contracts are entered into, over the 12 months following commencement of the amendments;

*Agree/disagree.*

### *Cabinet paper*

d **sign** the attached Cabinet paper.

*Agree/disagree.*

e **agree** that your office begin consultation with your colleagues based on this paper.

*Agree/disagree.*

f **agree** that the attached Cabinet paper, subject to any modification arising from consultation with your colleagues, be lodged by 10:00am 27 February for consideration by DEV on 4 March 2020.

*Agree/disagree.*

g **refer** a copy of this report and the attached Cabinet paper to the Minister of Internal Affairs for noting, given the relationship to the Fire and Emergency New Zealand levy.

Helen McDonald  
**Manager, Earthquake Commission  
Policy Team**

Hon Grant Robertson  
**Minister of Finance  
Minister Responsible for the  
Earthquake Commission**