

The Treasury

Treasury Advice Related to Modernising the EQC Act Information Release

December 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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Treasury Report: Overview of the review of the Earthquake Commission Act 1993

Date:	11 November 2020	Report No:	T2020/3379
		File Number:	TY-2-1-17-2

Action sought

	Action sought	Deadline
Hon Dr David Clark Minister Responsible for the Earthquake Commission	Note the contents of this briefing. Meet officials to discuss the timing and key areas of focus of the review of the EQC Act,	Prior to your meeting with Treasury officials on Thursday 12 November 2020

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Elizabeth Bolton	Senior Analyst, Earthquake Commission Policy Team ^[39]	N/A (mob)	
Helen McDonald	Manager, Earthquake Commission Policy Team	^[35]	✓

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Treasury Report: Overview of the review of the Earthquake Commission Act 1993

Purpose of Report

1. The purpose of this report is to provide a brief overview of the review of the Earthquake Commission Act 1993 (EQC Act), to inform your initial discussions with Treasury officials. This includes the background to the review and decisions taken by previous ministers. In addition, this briefing provides an outline of the current status of the review, along with decisions that will shortly need to be made on the scope and timing of the review and associated trade-offs.

Analysis

Background to the review

2. A review of the EQC Act was first announced by the previous National Government in 2012 following the Canterbury earthquake sequence. That review envisaged a comprehensive policy and legislative review, culminating in a new EQC Act. This included public consultation and the release of a discussion document '*New Zealand's Future Natural Disaster Insurance Scheme: Proposed changes to the Earthquake Commission Act 1993*' in 2015. Following this work, a number of proposed reforms were announced in June 2017.
3. Following the change in Government in 2017, the EQC Amendment Act 2019 drew on that work to make four high priority reforms to the EQC Act. These:
 - removed EQC insurance cover for contents;
 - increased the monetary cap on EQC residential building cover from \$100,000 to \$150,000;
 - extended claims filing deadlines from three months to two years; and
 - clarified when EQC may share and publish personal information.
4. During the 2017 policy process, the then Minister Responsible for EQC indicated to Cabinet that she envisaged the EQC Act would be substantively reviewed following the Public Inquiry into the Earthquake Commission (the Inquiry) (CAB-18-SUB-0081 refers).
5. Dame Silvia Cartwright PCNZM DBE QSO DStJ was appointed in November 2018 to chair the Inquiry. The Inquiry report was presented to the House on 9 April 2020. Among the Inquiry recommendations were a number of recommendations to review the EQC Act.
6. Modernisation of the EQC Act is a key theme of the Government's response to the Inquiry, with the response proposing to address 10 of the Inquiry's 70 recommendations in a future review of the EQC Act.
7. On 1 July 2020, the Cabinet Economic Development Committee (DEV) directed officials to report back to Cabinet by 31 March 2021 with decisions for a bill modernising the EQC Act to ensure the bill can be introduced by July 2021. Work on the review of the Act is being led by the Treasury, working closely with the Earthquake Commission (EQC).

Decisions taken by previous ministers on the review of the EQC Act

8. Officials provided the previous Minister Responsible for EQC with three options for reviewing the EQC Act in June 2020 as follows (T2020/1766 refers, this report is attached):
- Option One - a targeted reform (that identifies and implements a small set of discrete, high-priority changes);
 - Option Two - an evolutionary review that would thoroughly review the EQC scheme, including considering all relevant Inquiry recommendations, while retaining the core features of the current design of the scheme; or
 - Option Three - a first-principles review (that re-tests the objectives motivating the EQC intervention in insurance markets, and evaluates the EQC scheme design, against other intervention models).

The previous Minister agreed to Option Two, an evolutionary (modernising) review. This work will consider a broad range of matters relating to the EQC scheme, and consider all relevant Inquiry recommendations.

9. The previous Minister Responsible for EQC decided not to undertake public consultation or consult on an exposure draft of the legislation, noting the public consultation on a number of the proposals in 2015, and the more recent Inquiry which involved significant consultation with the people of Canterbury.
10. The previous Minister also agreed that the following core design features will be retained:
- the EQC scheme remaining a first-loss scheme focused on residential property;
 - EQC cover applying to buildings and land;
 - access to EQC cover being determined by compulsory attachment to qualifying private insurance policies;
 - EQC premiums being collected by private insurers and passed to EQC; and
 - EQC continuing to be a Crown entity.
11. The Minister further agreed to a set of policy objectives to guide the review of the EQC Act (T2020/2370 refers, this briefing is attached):
- help create the right conditions for high levels of homeowner disaster insurance, including through supporting availability and affordability of insurance, and facilitating better public understanding of property risks and insurance;
 - minimise the potential for property owners to experience socially unacceptable distress and loss in the event of a natural disaster;
 - support an efficient approach to the overall management of natural disaster risk and recovery, that contributes to New Zealand's long-term preparedness and resilience, both nationally and across regions;
 - contribute to the effective management by the Crown of fiscal risks associated with natural disasters; and
 - respond to the recommendations of the Public Inquiry into the EQC that have been identified as being addressed through the review of the EQC Act (Cab DEV-20-MIN-0116 refers).

12. These decisions have guided the work that has been undertaken over the past four months.
13. We have also provided advice to the previous Minister on options for further refining the objectives of the EQC scheme (T2020/3164 refers, a copy is attached). This advice raised strategic questions, including whether the Government's interests extend beyond repairing homes to a safe and sanitary standard, and if so, to what extent. Decisions on the options identified will inform our future advice on the scope of building and land cover. We understand decisions have not been made on these options.
14. We are conscious that there is a lot of analysis underlying the previous decisions on the review of the Act. We welcome discussions on how we best support you to form your views on the scope and objectives of the review of the EQC Act.

Closely related issues

15. Alongside the review of the EQC Act, the Minister of Finance has also raised concerns regarding the affordability and availability of property insurance, especially in high earthquake risk regions. EQC cover provides a potential lever to address these concerns. On 11 December 2019, Cabinet directed Treasury to provide advice on options for improving the affordability and availability of property insurance, including further work on increasing the EQC cap. The Minister of Finance also directed the Treasury to look at ways to facilitate improved consumer understanding of insurance pricing and risk. You may wish to discuss with the Minister of Finance the linkages between these two pieces of work.

Where we are at on the review of the EQC Act

16. We are well advanced in developing advice on key issues which will be provided in separate briefings, covering the following:
 - Institutional issues relating to the role of EQC and the purpose of the EQC scheme. This will include preliminary advice on the statutory purpose statement, responding to the findings and recommendation of the Inquiry.
 - Scheme coverage. The EQC scheme covers dwellings, residential buildings, and associated residential land against damage from a range of hazards. Issues to address range from significant policy questions, such as the focus and objectives of EQC cover, and the interactions between EQC land and building cover, through to a range of technical issues (that often also have some policy implications).
 - The EQC scheme's treatment of hazards exacerbated by climate change. We have considered whether any changes are required to the scheme in order to address the implications of climate change. As part of this we have also considered EQC's role in land-use planning processes, in response to a recommendation by the Public Inquiry into EQC which stated that Government should clarify EQC's role in this space (recommendation 1.1.2).¹
 - The monetary cap on EQC residential cover. We are currently exploring whether the EQC cap, or alternative targeted options, could be an effective lever to use to address concerns on the affordability and availability of residential property insurance.
 - EQC's financial disclosures, including a regular review of key financial settings supported by public disclosures.

¹ Recommendation 1.1.2 of the Public Inquiry states Government should "Clarify expectations with EQC about its responsibility in land-use planning before, and for the coordination of land remediation after, a major natural disaster."

- Claims handling and settlement, including advice on changes relating to an independent dispute resolution mechanism, the assignment of the benefits of EQC claims, and modernising the EQC Act offences and penalties.
17. The changes to the EQC Act being considered in the review are intended to ensure that the legislation enables more resilient communities, including facilitating community recovery following a natural disaster, by:
- clarifying the purpose of the scheme and ensuring this purpose aligns to government policy objectives (as described in T2020/2370);
 - improving the clarity and certainty of the scheme and of EQC's role, including in relation to EQC's obligations to its claimants; and
 - providing mechanisms to support future sustainability and enable EQC, and the EQC scheme, to evolve as circumstances change.
18. We have undertaken targeted consultation to inform the development of our advice with a range of stakeholders from the private insurance and reinsurance industry, a Canterbury claimant representative group, the legal profession, the retail banking sector, and property ownership groups.

Decisions in the short term

19. We would like to discuss your preferences regarding the scope, timing and objectives for the review. This will involve some difficult trade-offs between timing and the scope of the reforms.
20. The Parliamentary Counsel Office (PCO) has advised that it needs at least four months to draft a bill. To achieve the current timeframe of introduction in July would require going to Cabinet in February. It will involve you making decisions on the policy issues noted above by the end of November 2020. This would enable the Treasury to prepare a draft Cabinet paper in December for your consideration. Given the need for time for you to consider a wide range of issues, including a number of significant policy issues, we doubt that it will be feasible to meet the timeframe of introduction by July 2021.
21. This timing will also impact on the scope and depth of our advice. Our advice on land would be more limited, and would not include advice on options to improve the complex interaction between building and land cover, which, due its complexity, requires further consultation with insurers to ensure the workability of potential changes. This would result in a significant issue from the Canterbury earthquakes not being addressed.
22. We expect to provide advice on the EQC cap and high-level advice on other options to respond to concerns regarding affordability and availability of property insurance in the coming weeks. However, these other options will require significant further development and would need to be advanced on a later timeline if Ministers would like to pursue them further.
23. We have identified two options that would still enable introduction next year, while providing more time for the development of policy options:
- **Cabinet by late March/ introduction August 2021:** This option meets the 31 March report-back to Cabinet agreed by DEV, with introduction of the bill in August 2021. This would still require tight turnarounds on advice and Ministerial decisions this year, but allows more time for your engagement in the substantive policy detail. Policy decisions would be needed by the end of December 2020, with a draft Cabinet paper in early 2021. We expect that this timeframe will enable the inclusion of advice on options for improving the interaction of building and land cover.

- **Cabinet by early July/ introduction December 2021:** This option would enable more time for undertaking analysis and identifying any gaps, including scope for wider public consultation on policy proposals. In particular, an extended timeframe would support the Treasury and Ministers to better understand and discuss the merits and implications of more targeted options to address insurance affordability and availability issues, which are outside the evolutionary scope of the review. Depending on what, if any, option is chosen, the option might be implemented by inclusion in the EQC Bill, or, if implemented elsewhere, provide important policy context for proposals contained in the EQC Bill.

Next Steps

24. You will meet with senior officials from the Treasury as part of an initial briefing.
25. Working level Treasury officials would also like to discuss this report with you. Key immediate issues for discussion are:
 - The timing of the review (see paragraphs 19-23 above); and
 - The scope and objectives of the review (see paragraphs 8-13 above).

Recommended Action

We recommend that you:

- a **note** that the Treasury, with support from the Earthquake Commission (EQC), is currently undertaking a review of the Earthquake Commission Act 1993 (EQC Act)
- b **note** that this will include consideration of the relevant recommendations of the Public Inquiry into the EQC
- c **note** that the previous Minister Responsible for EQC had agreed to an evolutionary review of the Act that thoroughly reviews the EQC and the EQC scheme, including all relevant Inquiry recommendations, while retaining core features of the current design
- d **note** that the previous Minister Responsible for EQC agreed to five high level objectives for the review (TR2020/2370 refers)
- e **note** that the previous Minister Responsible for EQC also agreed that the following core design features will be retained:
 - i. the EQC scheme remaining a first-loss scheme focused on residential property;
 - ii. EQC cover applying to buildings and land;
 - iii. access to EQC cover being determined by compulsory attachment to qualifying private insurance policies ;
 - iv. EQC premiums being collected by private insurers and passed to EQC; and
 - v. EQC continuing to be a Crown entity
- f **note** that on 1 July 2020 the Cabinet Economic Development Committee directed officials to report back to Cabinet with policy decisions for a bill modernising the EQC Act by 31 March 2021, to ensure the bill can be introduced by July 2021

- g **note** that officials doubt that introduction of a bill by July 2021, which will require substantive policy decisions to be made by the end of November, will be feasible
- h **note** Treasury officials would like to discuss two alternative timing options with you that would still enable introduction next year, while providing more time for the development and consideration of policy options.
- i **meet** officials to discuss your preferences regarding the timing, and how we best support you to form your views on your scope and objectives for the review of the EQC Act

Helen McDonald
Manager, Earthquake Commission Policy Team

Hon Dr David Clark
Minister Responsible for the Earthquake Commission

Appendix One

Timing associated with the three options

Timing agreed by the previous Minister

Task	Completion date
Advice and decisions on Public Inquiry final report	Cabinet July 2020
A stream of advice on: EQC's policy rationale, what EQC insures, claims handling and settlement and treatment of claimants, EQC funding and risk financing	July-September
General Election	17 October 2020
Further advice as required (including follow-up advice)	October-November
Cabinet policy decisions	
1. First draft of Cab paper and accompanying first draft of RIA/ RIS delivered to Minister Responsible for EQC (MREQC)	December 2020 (for Xmas reading)
2. Advanced draft DEV paper sent to MREQC 1 week prior to circulation to colleagues	Thursday 4 Feb
3. DEV paper circulated to other Ministers 1 week before lodgement	Thursday 11 Feb
4. DEV/ Cab paper lodged	Thurs 18 Feb
5. DEV consider Cab paper	Weds 24 Feb 2021
6. Cabinet agrees policy and directs PCO	Monday 1 March
Legislation Drafting	
1. PCO draft bill (PCO require 16 weeks).	4 March -24 June
2. Drafting cover TR after bill finalised (1 week)	From 24 June
3. LEG paper sent to MREQC 1 week prior to colleagues	Thurs 1 July
4. LEG paper circulated to other Ministers 1 week before lodgement	Thurs 8 July
5. LEG paper lodged	Thurs 15 July
LEG approves Bill	Tues 20 July
Cabinet approves bill for introduction	Mon 26 July 2021
Bill introduced	27-30 July 2021
Parliamentary process and passage	Mid 2021 -early 2022
Implementation and any consequential regulations	2022-2023

Cabinet by late March/Introduction by August 2021

Task	Completion date
Advice and decisions on Public Inquiry final report	Cabinet July 2020
All substantive advice to MREQC, and Ministerial decisions, made on EQC Act reform	23 December 2020
Cabinet policy decisions	
1. First draft of DEV/ Cab paper and accompanying first draft of RIA/ RIS	Fri 12 Feb 2021

Task	Completion date
delivered to MREQC	
2. Feedback received from MREQC	Thursday 18 Feb
3. Advanced draft DEV paper sent to MREQC 1 week prior to circulation to colleagues	Thursday 25 Feb
4. DEV paper circulated to other Ministers 1 week before lodgement	Thursday 4 March
5. DEV/ Cab paper lodged	Thurs 11 March
6. DEV consider Cab paper	Weds 17 March 2021
7. Cabinet agrees policy and directs PCO	Monday 22 March
Legislation Drafting	
1. PCO draft bill (PCO require 16 weeks).	23 March –Tues 15 July
2. Drafting cover TR after bill finalised (1 week)	From 15 July.
3. LEG paper sent to MREQC 1 week prior to colleagues	Thurs 22 July
4. LEG paper circulated to other Ministers 1 week before lodgement	Thurs 29 July
5. LEG paper lodged	Thurs 5 August
LEG approves Bill	Tues 10 August
Cabinet approves bill for introduction	Mon 16 August 2021
Bill introduced	17 - 20 August 2021
Parliamentary process and passage	August 2021 - early 2022
Implementation and any consequential regulations (ICNZ have requested at least 18 months between passage and changes to the scheme taking effect)	2022 – 2023

Cabinet by early July/ Introduction December 2021

Task	Completion date
Advice and decisions on Public Inquiry final report	Cabinet July 2020
All substantive advice to MREQC, and Ministerial decisions, made on EQC Act reform	By early May 2021
Cabinet policy decisions	
1. First draft of DEV/ Cab paper and accompanying first draft of RIA/ RIS delivered to MREQC	Thurs 27 May 2021
2. Feedback received from MREQC	Thursday 3 June
3. Advanced draft DEV paper sent to MREQC 1 week prior to circulation to colleagues	Thursday 10 June
4. DEV paper circulated to other Ministers 1 week before lodgement	Thursday 17 June
5. DEV Cab paper lodged	Thurs 24 June

Task	Completion date
6. DEV consider Cab paper	Weds 30 June 2021
7. Cabinet agrees policy and directs PCO	Monday 5 July 2021
Legislation Drafting	
1. PCO draft bill (PCO require 16 weeks)	Tuesday 6 July – Tues 26 October
2. Drafting cover TR after bill finalised (1 week)	From 26 October
3. LEG paper sent to MREQC 1 week prior to colleagues	Thurs 4 November
4. LEG paper circulated to other Ministers 1 week before lodgement	Thurs 11 November
5. LEG paper lodged	Thurs 18 November
LEG approves Bill	Tues 23 November
Cabinet approves bill for introduction	Mon 29 November 2021
Bill introduced	30 Nov-7 Dec 2021
Parliamentary process and passage	First half of 2022
Implementation and any consequential regulations (ICNZ have requested at least 18 months between passage and changes to the scheme taking effect)	Late 2023