

# Modernising the Earthquake Commission Act: Consultation with Māori and iwi



TE TAI ŌHANGA  
THE TREASURY

<https://www.treasury.govt.nz/publications/consultation/modernising-earthquake-commission-act-consultation-maori-and-iwi>

19 January 2022

## The EQC Act is changing

The Government is currently reviewing the Earthquake Commission Act 1993 (EQC Act). We recently released the Cabinet decisions and papers, and supporting Treasury policy papers, on the proposed changes to the EQC Act at:

<https://www.treasury.govt.nz/publications/information-release/treasury-advice-related-modernising-egc-act-information-release>. The changes will be included in a Bill expected to be introduced into Parliament in early 2022.

The purpose of this note is to bring this work to the attention of interested iwi and Māori organisations and provide an opportunity for you to raise any issues or concerns you might have. Any feedback will be reflected in our advice to Ministers, and the Select Committee that considers the Bill.

## Potential impact of proposals on Māori and iwi

We expect the proposed changes will be broadly positive for EQC claimants, including Māori. The changes clarify, simplify, and modestly enhance EQC cover and will support better claimant experiences. With the exception of the increase in the monetary cap on EQC building cover, the changes are largely minor and technical improvements.

To date we have not identified in the currently proposed reform package any negative differential impact on Māori or iwi. However, there may be Māori interests affected we are not aware of. If you think there are, we'd like to hear from you about them.

## Nature of proposals

The objective of the Bill is to update the EQC Act and its associated natural disaster insurance scheme and governing Crown entity, EQC.

The proposals draw heavily on lessons learned since the inception of the current EQC Act, including EQC's response to the Canterbury and Kaikōura earthquakes, and the report and recommendations of the Public Inquiry into the Earthquake Commission. The proposals are intended to improve the operation and claimant focus of EQC and the current EQC scheme.

The Bill retains the existing EQC scheme in largely its current form. The scheme remains focused on providing disaster cover to residential buildings covered by a private fire insurance policy, and any associated residential land. The scheme will continue to be funded by a levy collected by insurers and passed onto EQC and backed by a statutory funding guarantee. It will continue to be administered by a Crown entity with a mandate to support education and research on improving disaster preparedness and resilience.

## The current EQC scheme

### **What does EQC currently cover?**

EQC cover attaches automatically to private insurance fire policies on residential buildings. The current EQC scheme covers dwellings, residential buildings, and associated residential land, against several natural disaster perils, namely earthquake, tsunami, volcanic eruption, hydrothermal activity, and landslip. EQC also covers residential land (but not buildings) against storm and flood damage.

EQC can also provide cover directly, where homeowners buy cover directly from EQC without taking out a private insurance policy. It is current EQC administrative practice to require applicants seeking direct EQC cover to demonstrate they are unable to obtain private insurance.

Entitlement to EQC building and land cover is determined by a building's residential use, and (usually) the building being insured under a private fire insurance policy. This approach accommodates distinctly Māori forms of housing organisation and ownership, including Papakāinga housing, and housing co-located on the same site as marae, and associated residential land, including Māori freehold and customary land.

**EQC building cover** pays the first \$150,000 (plus GST) (increasing to \$300,000 plus GST from 1 October 2022) of damage from the covered perils, less any claims excess. If damage costs exceed the maximum value of the EQC payment, the claimant's private insurance policy will usually pay the rest of the costs of damage, up to the sum-insured of the private insurance policy on the damaged building.

**EQC land cover** is separate from EQC building cover. Broadly speaking, EQC covers damage to land under or within 8 metres of any EQC-insured structure, and land forming the first 60 metres of the main accessway to the residence. EQC land cover also covers any bridges and culverts on that land, and any retaining walls supporting or protecting any of that land.

Land cover is additional to EQC building cover. It pays the cost to repair any land damage, up to the market value of the damaged area of land, plus the indemnity (depreciated) value of damaged retaining walls, bridges, and culverts.

EQC land cover is subject to land area caps, paying out on the basis of the smallest of the actual damaged area of land, 4,000 square metres, or the minimum residential lot size under the district plan applicable to the damaged residential land.

**Excesses on EQC claims vary.** On building claims, the excess per dwelling is the larger of \$200, or 1 percent of the claim settlement. This means claims of \$20,000 or less pay an excess of \$200, and claims of more than \$20,000 pay 1 percent of the claim value, up to a maximum of \$1,725.<sup>1</sup> For land claims, the excess per dwelling is the larger of \$500, or

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<sup>1</sup> \$1,725 being 1 percent of \$150,000, plus GST.

10 percent of the claim, up to a maximum of \$5,000 per claim. This means claims of \$5,000 or less pay an excess of \$500, and claims of more than \$5,000 pay 10 percent of the claim value, up to a maximum of \$5,000.<sup>2</sup>

### ***How is EQC cover paid for?***

EQC levies are collected from policyholders by the private insurer issuing the fire insurance policy to which the EQC cover is attached. EQC cover currently costs \$0.20 per \$100 of EQC building cover, up to a maximum of \$150,000 (plus GST) of cover, or \$345 per dwelling per annum. When the building cover cap increases to \$300,000 from 1 October 2022, the EQC levy will reduce to \$0.16 per \$100 of EQC building cover, resulting in a maximum EQC levy of \$552 (including GST) per dwelling per annum.

Buildings with multiple dwellings, such as apartment buildings, receive EQC cover, and pay EQC premiums, on each dwelling.

The EQC scheme is also backed by a statutory Crown funding guarantee. The EQC Act requires that if the EQC has insufficient assets to meet its liabilities, the government will provide the funds necessary for it to do so.

### ***Natural disaster risk reduction and resilience***

EQC also works to support the reduction of impact before a disaster happens by investing in research and education about natural disaster damage and methods of reducing risk and building resilience.

### **The proposals**

As noted earlier, the proposals retain the key features of the current scheme. The following briefly summarises the more significant policy proposals contained in the Bill.

#### **EQC cover**

##### ***Clarifying and improving EQC cover of mixed-use buildings.***

A mixed-use building is a building with at least one dwelling in it, and less than 50 percent of the building is used for residential purposes. Examples range from multi-story high-rises with shops or offices on lower floors and apartments above, through to dairies attached to a residence.

The Bill improves consistency between the rules used to determine if a building is mixed-use, and EQC cover for that building. It also clarifies and standardises the basis for determining and apportioning EQC building and land cover to the appropriate residential share or residential owners of the building. The policy aim of EQC cover applying to only the residential share of the building and associated land is unchanged.

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<sup>2</sup> The \$5,000 is per claim, not per dwelling, so applies irrespective of the number of dwellings in the residential building.

### ***Improving EQC cover for household property located beyond the property or landholding boundary***

The current EQC Act takes an inconsistent approach to EQC cover for household items located beyond the property boundary (eg, drains crossing other properties, and garages, bridges and culverts on council road reserve). The Bill proposes to extend EQC cover and apply it more consistently in these situations. Examples of items not currently covered under the EQC Act that would be covered in future include drains and other services located beyond the landholding on which the EQC-insured buildings are located, and bridges and culverts providing access to the insured property and are located on council road reserve.

The Bill will also propose a raft of technical changes, modernisations and improvements, including clarifying key definitions and clarifying and updating which property is included or excluded from EQC cover.

### ***EQC land cover***

Sometimes when land is damaged, for instance a landslip affecting a house, the most practicable solution may be to repair and enhance the house foundations rather than attempt to repair the land. The Bill clarifies that when land is damaged in these circumstances, a mix of building and land, or building-only, reinstatement works, can provide an overall land reinstatement solution that is acceptable to EQC. Under the current EQC Act, it is unclear if this is the case.

### ***Cover for retaining walls, bridges and culverts***

EQC cover currently pays out the indemnity (depreciated) value for damaged retaining walls, bridges and culverts. The Bill proposes replacing the indemnity value limit on EQC cover of retaining walls, bridges and culverts with a limit based on the lesser of the undepreciated value, or a fixed monetary cap. The proposed caps on EQC retaining wall cover are \$50,000 per dwelling, and on EQC cover for bridges and culverts are \$25,000 per dwelling (both amounts excluding GST).

This change responds to concerns that the use of depreciated values in existing EQC scheme can result in small payments that make an inadequate contribution to the costs of repair.

### ***Claims excesses***

The Bill will propose simplifying the current, complex EQC claims excesses on building and land claims. It proposes the current excesses be replaced by a fixed flat-rate excess of \$500 (including GST) per claim per dwelling on both EQC building and land claims. The current \$5,000 (including GST) maximum excess per claim for land claims is retained.

### ***Claims handling***

The Bill extends EQC's statutory obligations to EQC claimants, including requiring EQC to offer, and participate in, dispute resolution with claimants disputing their EQC settlement offers. This will provide more affordable and accessible dispute resolution options to claimants as an alternative to court action. The Bill is also expected to provide for a code of conduct defining the rights of EQC claimants.

## **EQC information gathering and sharing**

The Bill proposes several changes intended to clarify and strengthen EQC's information gathering powers, including information requested of claimants, and to facilitate more effective information sharing within Government.

## **Governance, roles, and sustainability**

The Bill proposes a range of measures intended to update the governance of the EQC to reflect modern practice, and to require periodic review of the scheme's key financial and risk management settings. Proposals include:

- Specifying statutory objectives for EQC (the current EQC Act does not have any). Amending EQC's functions to better reflect its intended role, with an increased focus on claimants, and on improving New Zealand's resilience to natural hazards.
- Specifying the statutory basis for EQC levies is to cover the cost of providing EQC insurance cover and any associated operating costs.
- Requiring the EQC's key financial settings, including the insurance premium and monetary cap on building cover, be reviewed at least every five years.
- Allowing for EQC to provide services to the government in exchange for public funding (eg, in cases where the EQC contributes to wider government priorities falling outside what is able to be funded by the EQC levy).

## **EQC capitalisation, funding and the Natural Disaster Fund**

The Bill proposes a range of measures intended to better align the statutory relationship between the Minister, EQC and the fund it manages, with current institutional design and legislative practice. Other than provisions regarding levy-setting principles, these provisions are not expected to have any direct effects on EQC cover or claimants.

## **Entry into force**

Decisions on the timing of the entry into force of the Bill are still being worked through.

## **Other relevant policy context: Climate change**

The modernisation of the EQC Act is separate to, and will precede, other streams of policy work addressing the challenges of climate change, including the National Adaptation Plan, and the Climate Change Adaptation Act. The modernisation of the EQC Act therefore is not intended to address the broader policy challenges arising from natural hazards exacerbated by climate change, such as flooding and coastal inundation.

## Questions to consider

Questions you may wish to reflect on could include:

- Has your iwi or organisation experienced pricing or availability difficulties insuring residential property (and hence accessing EQC cover)?
- Has your iwi or organisation experienced difficulties with EQC cover or an EQC claim? If so, are any of those difficulties due to distinctly Māori forms of ownership or organisation?
- As well as providing disaster insurance, EQC also performs significant other functions, including natural hazard and disaster education, research, and preparedness. Are there any considerations you think we should take into account as part of these functions? Do you have any comment on how EQC interacts with Māori in those other areas of its business?
- Do you have any other issues with, or suggestions for change to, the EQC Act? Are there other EQC policy or legislative settings that could better support Māori and iwi?

This consultation focuses only on the modernisation of the EQC Act. However, if there are any matters relating to EQC's operations or functions which you would also like to discuss, EQC would be keen to hear about these and we can put you in touch with them.

## How you can provide feedback

If you wish to provide feedback, or to be consulted more closely, please contact us by phone or email in the first instance, and we will work with you to agree on how to proceed from there. Ideally, we would like to hear from you by the end of January. If that is not possible we would appreciate comments after that date, and will engage with late submitters.

Please contact the Treasury's Earthquake Commission Policy Team

Contact email: [submissions.eqcreview@treasury.govt.nz](mailto:submissions.eqcreview@treasury.govt.nz)

## Next steps

We expect the EQC Bill will be introduced into Parliament early next year. Therefore, timing constraints may prevent any feedback being reflected in the Bill as introduced. If this occurs, the feedback will be reflected in our advice to the Select Committee. We expect the Select Committee will also call for public submissions.

## Official Information Act

Any materials provided to the Treasury become subject to the Official Information Act 1982. If you consider some or all of any of your correspondence should not be released if it subsequently falls within the scope of an Official Information Act request, please clearly indicate this, and the grounds for withholding the information.

## **Further information is in the proactively released policy papers**

The Government recently released the policy and Cabinet papers that led to the proposals contained in the Bill <https://www.treasury.govt.nz/publications/information-release/treasury-advice-related-modernising-egc-act-information-release>. If you wish to know more, we suggest first reading the Cabinet papers and resulting Cabinet minutes for an overview of the aims and nature of the proposals. The departmental papers and Regulatory Impact Statements provide further information. We are happy to discuss any of the issues raised in the papers with you.

## **Papers from the Public Inquiry into the Earthquake Commission**

[Report of the Public Inquiry into the Earthquake Commission](#)

[Te Reo Māori Findings and Recommendations](#)

[What we heard: Summary of feedback from the Inquiry's public engagement](#)

[Government Response to Public Inquiry into EQC](#)

[Cabinet paper on proposed Government response to Inquiry into EQC](#)