

The Treasury

Modernising the Earthquake Commission Act: Proactive Release of Recent Policy Papers Information Release

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Office of the Minister Responsible for the Earthquake Commission

Cabinet Legislation Committee

Natural Hazards Insurance Bill: Approval for Introduction

Proposal

- 1 This paper seeks the Cabinet Legislation Committee (LEG) approval for the introduction of the Natural Hazards Insurance Bill 2022 (the Bill).

Policy

- 2 This Bill will implement the policy decisions made by the Cabinet Economic Development Committee (DEV) on 14 April 2021 [DEV-21-MIN-0062 refers], 19 May 2021 [CAB-21-MIN-0177 refers], and 7 July 2021 [DEV-21-MIN-0150 refers] having been authorised by Cabinet to have the Power to Act [CAB-21-MIN-0128, CAB-21-MIN-0180, CAB-21-MIN-0267 confirms].

The Public Inquiry into Earthquake Commission (EQC)

- 3 In November 2018, the Government appointed Dame Silvia Cartwright to undertake a Public Inquiry into 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 the Government has either accepted, accepted in principle, or committed to undertaking further work on.
- 4 Key themes of the Inquiry's recommendations include 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 to better support claimants in the future.

Changing the Earthquake Commission's name

- 5 I propose adopting a new name for the Commission: Toka Tū Āke – Natural Hazards Commission¹. As part of the Inquiry, Dame Silvia Cartwright recommended the Commission change its name to better reflect the breadth of its work, which extends beyond earthquakes to other natural hazards.
- 6 Leading with a Te Reo Māori name reflects EQC's commitment to Crown Māori relations and incorporating the principles of *Te Tiriti o Waitangi* into its work.

¹ This name reflects the whakapapa of New Zealand and New Zealanders. Our land has been shaped by significant earthquakes and volcanic eruptions, and communities have adapted to living alongside those perils. EQC's Māori adviser translates Toka Tū Āke as 'the foundation from which we stand strong'. Toka Tū Āke reflects the role of the organisation in providing a solid foundation for helping New Zealanders stand strong through times of adversity caused by natural disasters.

- 7 In developing its new name, EQC engaged with cultural advisors, staff, and its National Reference Group.

The Bill modernises the Earthquake Commission Act 1993

- 8 The Natural Hazards Insurance Bill 2022 replaces and modernises the EQC Act taking into account the recommendations of the Inquiry and lessons learnt from the Canterbury Earthquake sequence.
- 9 The amendments have three overarching objectives:
 - 9.1 enabling better community recovery following a natural disaster;
 - 9.2 updating and improving the clarity and certainty of the future role of the Toka Tū Āke and the cover it provides; and
 - 9.3 supporting the future durability and flexibility of the Act.

Decisions to modernise the EQC Act

- 10 The Bill modernises the current EQC Act to clarify the cover provided and to ensure the Bill aligns with modern drafting standards.
- 11 On 19 April 2021, Cabinet agreed [CAB-21-MIN-0128 refers] to the following suite of amendments that sought to improve the clarity and certainty of the future role of Toka Tū Āke and the cover that it provides.
 - 11.1 **Purpose, objectives and functions:** introducing a purpose statement and objectives to clarify Toka Tū Āke's functions to, among other things, recognise the obligation to fairly settle insurance claims.
 - 11.2 **What Toka Tū Āke will insure:** Cabinet concluded that current EQC cover was largely fit for purpose, but clarifications were required to: define the scope of insurance building and land cover; extend the period for a singular volcanic event from 48 hours to 7 days; introduce more equitable cover for homeowners within mixed-use buildings; and clarify the purpose and nature of land entitlements.
 - 11.3 **Offences and penalties:** updates to offences and penalties to ensure that they are sufficient to incentivise compliance and align with other legislative regimes.
 - 11.4 **Claims management and dispute resolution:** Toka Tū Āke will participate in an approved dispute resolution scheme that is user-focused, accessible, independent and fair, efficient, effective, and accountable. Changes were also made to provide for or clarify assignment of claims, salvage rights, and to enable Toka Tū Āke to decline claims with no financial loss.
 - 11.5 **Review of financial settings:** the Bill requires that key financial settings be reviewed at least every five years with improved transparency and publication of the outcome of review.
- 12 On 24 May 2021 [CAB-21-MIN-0177 refers] Cabinet agreed further changes that updated or removed obsolete clauses to: align Toka Tū Āke's structure with the Crown entity framework; clarify current insurance cover; and to ensure statutory powers remain fit for purpose.

- 12.1 **Funding and governance:** changes will align Toka Tū Āke's statutory structure with the Crown entity framework to clarify what the Natural Hazard Fund can be spent on and remove the current discretion to discount the insurance premiums payable by private insurers.
 - 12.2 **Natural hazard cover:** improving cover of retaining walls, bridges and culverts; updating and standardising claims excesses; and updating the EQC Act's list of exclusions from cover.
 - 12.3 **Claims management:** clarifying Toka Tū Āke's ability to delegate claims settlement functions to private insurers.
 - 12.4 **Information:** clarifying and strengthening information-gathering and sharing powers, including information sharing with other government agencies.
- 13 On 7 July 2021 Cabinet agreed to increase the EQC residential building cap from \$150,000 to \$300,000 [CAB-21-MIN-0267 refers]. This change was made under regulations and will be confirmed in the Bill.

The Bill also implements decisions made under delegated authority

- 14 Cabinet authorised the Minister Responsible for the Earthquake Commission 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 Bill and associated regulations to be reflected in the Bill on introduction. (CAB-21-MIN-0128 refers).
- 15 Decisions made under this delegated authority include:
- 15.1 Introducing a code of conduct for Toka Tū Āke that confers rights on insured persons. The code is intended to include a procedure for how breaches will be dealt with by Toka Tū Āke including a right for independent review.
 - 15.2 Clarifying that natural hazard cover does not extend to paying for building upgrades, such as seismic improvements of earthquake-prone buildings, that were legally required before the damage-causing natural disaster event occurred.
 - 15.3 New regulation-making powers to allow the Government to define measurement standards to guide the apportionment of natural hazard cover for mixed-used buildings that include residential and commercial properties.
 - 15.4 Changes to the definition of volcanic events to separately define how insurance cover applies for purely hydrothermal events.
 - 15.5 Clarifying that cable cars can be covered as appurtenant structures.
 - 15.6 Changes to the determination of land cover to cover a pro-rated fraction of the underlying land calculated with respect to the share of residential property within the entire mixed-use building (e.g. a building with commercial and residential properties).

- 15.7 Provision of building cover for items located wholly or partly outside of the insured landholding including in circumstances where the claimant may use or maintain a service, but does not own the asset (e.g. stormwater).
- 15.8 Standardised treatment under land cover for items located wholly or partly outside the insured landholding including retaining walls, bridges, or culverts.
- 15.9 Updating the requirement to reinstate a building within one year to instead require that the building is reinstated as soon as is practicable, to provide a more realistic timeline for the response to larger-scale events.

Clarifying the approach to common property within mixed-use buildings

- 16 EQC cover for mixed-use buildings (MUBs) depends on the residential share of the building (the 50% test). Properties that are over 50% residential are fully covered by EQC, while buildings that do not meet this test receive cover for the residential areas only.

Clarifying treatment of common property in MUBs

- 17 I propose that the Bill should treat common property consistently, which will require a minor amendment to the Cabinet's previous decision as to how Toka Tū Āke will meet the cost to reinstate the insured's interest or ownership in common property and other shared property.²
- 18 The change will allow settlement for common property in non-residential MUBs (i.e. buildings that are less than half residential dwellings) to be based primarily on the proportion of the residential insured **owners' interests**, rather than the residential **floor area** [DEV-20-MIN-0039 refers].

Treatment of common property in the calculation of the 50% test

- 19 The Bill has also simplified the calculation of the residential proportion of a MUB by excluding common property from the 50% residential building test calculation. The proposed approach will be simpler to implement compared to the previous Cabinet decision, which agreed that common property should be apportioned between commercial and residential areas on a pro-rata basis.
- 20 Officials have provided advice that the proposed amendment will reduce the administrative complexity of insurance settlement with no detrimental impact on insured persons. Homeowners will receive treatment that is no less favourable than the treatment agreed by Cabinet.

Impact analysis

- 21 A regulatory impact analysis was submitted when Cabinet policy approval was sought for the Bill that these proposed amendments are consequential to (DEV-21-MIN-0062 and CAB-21-MIN-0177 refer).

Compliance

- 22 The Natural Hazards Insurance Bill 2022 complies with:

² If a building contains two or more dwellings, or includes some non-residential premises, some parts of the building will be shared by the owners of all premises in the building – such as the roof and foundations, lifts, or a communal car park. This is common property.

- 22.1 the principles of the Treaty of Waitangi;
- 22.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 22.3 the departmental disclosure statement requirements (attached to this paper);
- 22.4 the principles and guidelines set out in the Privacy Act 2020;
- 22.5 relevant international standards and obligations;
- 22.6 the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 23 The Treasury has worked collaboratively with EQC throughout the current review process. The Treasury has also consulted with a targeted group of stakeholders and relevant government agencies and other public bodies on relevant policy proposals over several years to inform policy development:
 - 23.1 relevant government departments or other public bodies:
 - i EQC, Department of Internal Affairs (DIA), the Ministry for the Environment (MfE), the Ministry of Business Innovation and Employment (MBIE), the Inland Revenue Department (IRD), Ministry of Justice (MoJ), the Ministry of Housing and Urban Development (MHUD), Land Information New Zealand (LINZ), the Financial Markets Authority (FMA), Department of Prime Minister and Cabinet (DPMC), the National Emergency Management Agency (NEMA), Te Kawa Mataaho Public Service Commission, Northland Regional Council, Waipa District Council, Christchurch City Council, Hawke's Bay Regional Council, and the Reserve Bank of New Zealand (RBNZ).
 - ii Core agencies EQC, DIA, MfE, MBIE, MoJ, MHUD, LINZ, DPMC, NEMA, and RBNZ have been consulted as appropriate on policy papers produced throughout the review process.
 - 23.2 relevant private sector organisations and public consultation processes:
 - i The Insurance Council of New Zealand (ICNZ), the New Zealand Bankers' Association (NZBA), Inner City Wellington, the Body Corporate Chairs Group, the EQC Claimant Reference Group, Consumer New Zealand, the Society of Actuaries, Barrister John Goddard, Local Government New Zealand, and the New Zealand Insurance Law Association.
 - ii Material summarising the proposals in the Bill has been circulated with a range of Māori organisations and iwi for feedback.
- 24 I do not intend to release an exposure draft of the Bill for consultation. The Cabinet policy papers and minutes, and supporting departmental policy papers, were proactively publicly released in December 2021.
- 25 Treasury officials have discussed the Bill with the Legislation Design Advisory Committee (LDAC) and received written and verbal feedback.

Allocation of decision-making powers

- 26 The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Binding on the Crown

- 27 The Bill's provisions will be binding on the Crown, as the current EQC Act is binding on the Crown.

Associated regulations

- 28 The current EQC Act includes provisions empowering the making of regulations.
- 29 Pre-existing regulations, among other things, may: clarify eligibility and the scope of insurance cover; specify conditions associated with land and building cover; amend key financial settings including the cap, levy, and excesses; set information requirements; define procedural requirements; specify the terms under which a late claim may be accepted; and may set operational requirements relating to the payment of levies.
- 30 The Bill includes new regulation making powers that will:
- 30.1 allow the Government to define measurement standards to guide the apportionment of natural hazard cover for mixed-use buildings that include residential and commercial properties.
 - 30.2 specify timeframes, the form, and format within which information must be provided to Toka Tū Āke.
 - 30.3 allow the Minister to make a code of conduct, which confers rights on insured persons and obligations on Toka Tū Āke, that will define how claimants must be treated.
 - 30.4 give effect to a new statutory entitlement allowing claimants to seek an independent review of unresolved complaints arising from an alleged breach of the code of conduct. Procedural requirements and the rules of review will be set via regulation.
 - 30.5 approve an alternative dispute resolution scheme or define rules in the situation where Toka Tū Āke sets up its own scheme.
- 31 It is anticipated that some of these associated regulations will need to be repealed, drafted, or updated, to give effect to the provisions in the Bill and implement some aspects of the policy. I expect the regulations will come into force at the time of the commencement of the Natural Hazards Insurance Bill 2022. I anticipate the drafting effort would be moderate.

Definition of Minister/department

- 32 The Bill removes the current definition of the Minister of Finance as the Minister Responsible for the Earthquake Commission. The use of the standard definitions within the Legislation Act 2019 aligns with modern drafting standards.
- 33 The Cabinet Office has been consulted on the proposed definition of the Minister Responsible for the Earthquake Commission.

Commencement of legislation

- 34 This Bill will enter into force the later of i) one year after this Bill gains Royal assent or ii) 1 December 2023. This date may be deferred by Order in Council.

Parliamentary stages

- 35 The Cabinet Legislation Committee has agreed that the Bill should have priority ^[33] rating on the 2022 Legislative agenda. If the Committee and Cabinet approve the Bill, I will seek to have the Bill introduced in early 2022.
- 36 It is proposed that the Bill be referred to the Finance and Expenditure Select Committee for consideration.

Proactive Release

- 37 I propose to publish this Cabinet paper on the Treasury's website, subject to redactions as appropriate under the Official Information Act 1982, within 30 days of Cabinet's decision.

Recommendations

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

- 1 **note** the Natural Hazard Insurance Bill 2022 (the Bill) modernises the Earthquake Commission Act 1993 by, among other things, giving greater emphasis in its revised title to the cover for covered natural hazards other than earthquakes;
- 2 **note** that the Bill renames the Earthquake Commission to Toka Tū Āke (the Natural Hazards Commission);
- 3 **note** that the Bill holds a category ^[33] priority on the 2022 Legislation Programme;
- 4 **note** that the Bill includes the amendments agreed by Cabinet to modernise the Earthquake Commission Act 1993 that respond to the findings of the Public Inquiry into the Earthquake Commission and lessons learnt from the Canterbury earthquake sequence [CAB-21-MIN-0128, CAB-21-MIN-0267, CAB-21-MIN-0177 refer];
- 5 **note** that Cabinet authorised the Minister Responsible for the Earthquake Commission to make decisions on any additional policy, implementation and commencement, drafting or minor technical issues that arise during the development of the Bill and associated regulations for Cabinet Legislation Committee [CAB-21-MIN-0177 confirms];
- 6 **note** the additional policy decisions I have taken under the delegation referenced in recommendation 5 include:
 - 6.1 introducing a code of conduct that confers rights on insured persons and obligations on Toka Tū Āke. The code will publish a procedure for how breaches of the code will be dealt with including a right for claimants to seek an independent review;
 - 6.2 clarifying the exclusion of building upgrades, including earthquake strengthening, the claimant was legally required undertake prior to a natural disaster;
 - 6.3 changes to the definition of volcanic events to separately define how natural hazards insurance cover applies for purely hydrothermal events;
 - 6.4 clarifying that cable cars can be covered by Toka Tū Āke as appurtenant structures;

- 6.5 changes to the determination of land cover to cover a pro-rated fraction of the underlying land calculated with respect to the share of residential property within an entire mixed-used building (i.e. a building with commercial and residential premises);
 - 6.6 inclusion of new regulation-making powers to allow the Government to define measurement standards to guide the apportionment of natural hazards cover for mixed-used buildings;
 - 6.7 provision of insurance cover for items located wholly or partly outside of the insured landholding including in circumstances where the claimant may use or maintain a service but does not own the asset (e.g. stormwater);
 - 6.8 standardised treatment under natural hazards land cover for items located wholly or partly outside the insured landholding including retaining walls, bridges, or culverts;
 - 6.9 updating the requirement to reinstate a building within 1 year to instead require that the building is reinstated by Toka Tū Āke as soon as is practicable, to provide a more realistic timeline for the response to larger-scale events;
- 7 **agree** to amend Cabinet's previous decision relating to coverage of mixed-use buildings under the EQC Act so that cover for common property in non-residential mixed-use buildings (i.e. buildings that are less than half residential dwellings) will be based on the proportion of the residential insured owner(s)' interests, rather than the residential floor area, unless the ownership interest cannot be ascertained [DEV-20-MIN-0039 refers];
 - 8 **agree** to amend the previous Cabinet decision by excluding common property from the residential building test (50% test) that determines whether a mixed-use building should receive full or partial cover as the exclusion simplifies the application of the test with no change to the outcome for insured persons compared to the pro-rata test agreed by Cabinet [DEV-20-MIN-0039 refers];
 - 9 **approve** the Natural Hazards Bill 2022 for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
 - 10 **agree** that the Natural Hazards Insurance Bill be introduced;
 - 11 **agree** that the Government propose that the Bill be:
 - 11.1 referred to the Finance and Expenditure Committee for consideration;
 - 11.2 enacted the later of i) one year after this Bill gains Royal assent or ii) the 1 December 2023.

Authorised for lodgement

Hon Dr David Clark
Minister Responsible for the Earthquake Commission.