

# The Treasury

## Earthquake Commission (EQC) Act Review Submissions Information Release

### Release Document

January 2018

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# New Zealand's Future Natural Disaster Insurance Scheme

Proposed changes to the Earthquake  
Commission Act 1993

Submission Form

July 2015



THE TREASURY  
Kaitohutohu Kaupapa Rawa

New Zealand Government

## New Zealand's Future Natural Disaster Insurance Scheme Proposed changes to the Earthquake Commission Act 1993

### Your responses

Please write your response in the template below.

Please note:

- ▶ you **do not** need to answer all sections – just the ones where you have information you would like to contribute
- ▶ please expand or delete boxes as you need to but **do** keep the original question numbers.
- ▶ please **do not** send us reports or other documents but **do** include references or links to supporting evidence or information
- ▶ please submit your response to [Submissions.Eqcreview@treasury.govt.nz](mailto:Submissions.Eqcreview@treasury.govt.nz) by 5.00pm on Friday 11 September 2015.

Thank you for your time and effort in making your submission.

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## Your contact details

### For individuals

|            |     |
|------------|-----|
| Your name: | [1] |
|            |     |

|                |     |
|----------------|-----|
| Email address: | [1] |
| Phone number:  |     |

|                                             |            |
|---------------------------------------------|------------|
| What city, town or province do you live in? | Wellington |
| Do you own your own home?                   | Yes        |

### For organisations

|                          |  |
|--------------------------|--|
| Organisation name:       |  |
| Nature of your business: |  |

|                      |  |
|----------------------|--|
| Contact person name: |  |
| Position:            |  |
| Phone number:        |  |
| Email address:       |  |

|                                                                                 |  |
|---------------------------------------------------------------------------------|--|
| In what city, town or province is your organisation's New Zealand headquarters? |  |
|---------------------------------------------------------------------------------|--|

## What is the purpose of the EQC scheme?

### Proposal for discussion

1 That the purpose of the EQC Act be to establish a Crown-owned natural disaster insurance scheme for residential buildings in New Zealand that:

- ▶ supports, complements and is closely coordinated with the provision of effective private insurance services to the owners of residential buildings
- ▶ recognises the importance of housing in supporting the recovery of communities after a natural disaster
- ▶ supports improved resilience of New Zealand communities and an efficient approach to the overall management of natural hazard risk and recovery in New Zealand
- ▶ contributes to the effective management by the Crown of fiscal risks associated with natural disasters.

### What do you think?

1a Do you agree that these purposes are appropriate and complete? No

1b If not, what changes would you suggest, and why?

As above, but with the addition "That provides the maximum lawful benefit of the legislation to New Zealanders"

EQC at the present time appears to have deviated from the above.

## What types of perils will EQC cover?

### Proposal for discussion

2 That EQC continue to insure against the following perils: earthquake, natural landslip, volcanic eruption, hydrothermal activity, tsunami, and storm and flood (with, in the case of storm and flood, only residential land being covered).

### What do you think?

2a Do you agree that EQC should continue to provide cover against the same perils as it currently does?

Largely yes

2b If not, what changes would you suggest, and why?

It may be that Government may want to extend the scheme to include any catastrophic event it declares to be a natural disaster. I believe this type of scheme is in existence already in some other countries. The effects of terrorism, nuclear contamination, things not covered by normal insurance spring to mind. The Waihi mine disaster is a clear example of a catastrophic event (below ground subsidence ) not covered by EQC or insurers at present but one that the whole population including parliament expected EQC to cover. I stress that it must be catastrophic in nature and that government must be the body to declare the event a catastrophe.

## What types of property will EQC insure?

### Proposal for discussion

3 That EQC building cover continue to be available to residential buildings and dwellings in non-residential buildings.

### What do you think?

3a Do you agree that EQC building cover should continue to only be available to residential buildings and dwellings in non-residential buildings? .

3b If not, what forms of accommodation or living arrangements do you think should be added or removed, and why? YES BUT specific definitions of what parts of the building is to be included where dwellings are in otherwise commercial buildings, Alternatively dwellings be excluded where the building is of mixed useage. That type of risk should be insured via private insurers. Claims for dwellings in multi use buildings are very difficult to administer and the priorities of private homeowners are very different to that of commercial users. Where you have a commercial building with, for instance residential flats on upper stories, the question of who pays for damage to lower stories or lower structural elements upon which the upper residences depend is not clearly defined under the current Act.

### Proposal for discussion

4 That EQC land cover only be available for land associated with residential buildings. Therefore, dwellings in non-residential buildings would not receive any EQC land cover.

### What do you think?

4a Do you agree that EQC land cover should only be available for land associated with residential buildings?  
Yes but have it clearly defined in the event of mixed use buildings and or multi storey buildings

4b If not, what coverage of land cover would you prefer, and why?

## Extending building cover to include more siteworks and main access way

### Proposal for discussion

5 That EQC building cover be extended to include siteworks and the main access to the building.

### What do you think?

5a Do you agree that EQC building cover be extended to include siteworks and the main access to the building? No

5b If not, what do you think should be done instead, and why?

Keep current land areas insured as defined in the current Act. Not all insurers cover retaining walls (and retaining walls need defining properly as the current Act does not do this). I can well imagine that private insurers will stymie re building of a dwelling where the landowner will not be able to fund repair of insurer excluded items thus be out of home for an extended period or forever in fact. The definition of site works has not been spelt out sufficiently really to categorically say yes or no. However, if the current areas of insured land are to be deleted and "site works" substituted I would say that I disagree with that. It should be noted that the current definition under the Act includes access ways and the building foot print/s. It also includes areas around structures that in most cases is sufficient for a building to remain occupied with useful land area. I believe that if a harsh definition is developed, then home owners will find themselves with a repaired house but with only sufficient land to access it. Landslips can cause such complete loss of land and create such ongoing risks that a homeowner would be stopped from inhabiting the property by the local authority involved, Note that the only form of land insurance in NZ offered by a private insurer, I understand, is that provided to

farmers. I do not see insurers changing their stance on this any time soon.

## EQC to no longer provide contents insurance

### Proposal for discussion

6 That EQC no longer offer residential contents insurance.

### What do you think?

6a Do you agree that EQC should no longer offer residential contents insurance?

YES....providing that insurers DO NOT increase their premiums on contents substantially AND they be made to offer Natural disaster insurance in respect of contents.

6b If not, what level of contents cover do you think EQC should offer, and why?

If EQC is to offer contents insurance then the current limit to apply and EQC to specify its own terms and conditions, so that insurers specific policy coverage does not have to be sought.

6c For insurers, what do you anticipate the impact would be on premiums your company charges for residential contents insurance, if EQC no longer offered residential contents insurance?

Please note the information in section 1.4 regarding the Official Information Act.

## How much insurance will EQC offer?

### Proposal for discussion

7 That the monetary cap on EQC building cover be increased to \$200,000 + GST.

### What do you think?

7a Do you agree with the proposed increase in the building cap to \$200,000 + GST?

YES

7b If not, what cap would you prefer, and why?

7c Do you have strong views on the merits of a \$150,000 + GST cap versus a \$200,000 + GST cap? YES  
there is no merit on a half way measure.

7d If so, what are they?

Given the time that has elapsed and inflationary factors plus the effect of building regulations / statutory requirements inflating construction prices and practices, there is no point in only increasing the cover for a residential dwelling to \$150,000

7e For insurers, what do you anticipate the impact would be on premiums your company charges for residential property insurance, if the proposals in this document regarding changes to building cover were implemented? Please provide this information for a monetary cap for EQC building cover of both \$150,000 and \$200,000.

Please note the information in section 1.4 regarding the Official Information Act.

## Reinstatement of EQC cover after an event

### Proposal for discussion

8 That EQC building cover reinstate after each event.

### What do you think?

8a Do you agree that EQC cover should reinstate after each event? If not, what is your preferred alternative, and why? The question of reinstatement after each event (whatever that may be) has been addressed largely already by Justice MacKenzie. In the definition of building the Act effectively says the building remains insured whilst ever the building has a contract of insurance in force on it. In the case of earthquake then, each time there is a tremor that causes damage the insurance available under the Act for the building is \$100,000 plus GST. This is so despite the provisions of the Third Schedule enabling EQC to obtain extra premiums for "reinstatement of cover". EQC is not set up to administer such a thing. It is very clear that currently the legislation is meant to ensure that coverage is continuous following a natural disaster. If EQC had exercised its right to cancel coverage after constructive total loss of a dwelling following an earthquake in one of the many earthquakes that Canterbury had, then when the catastrophic quake of February had occurred, where land was severely damaged, anyone who had had their house total loss claim settled and the coverage cancelled would not have had a valid land claim. That in itself would be another catastrophe. It is sheer luck that EQC did not cancel coverage as quickly as it could have done after the September and December 2010 quakes.

8b Do you agree with retaining the current definition of an event? NO - The Act does not have a definition of Event in it, it only defines what it considers natural disaster to be.



8c If not, what is your preferred definition, and why?

In respect of earthquake, the event is the earthquake that GNS or some other suitably qualified body says is the actual shock and will include any foreshocks or aftershocks that the suitably qualified body classes as such. This will mean that GNS and or other experts will need to define their understanding of this before the change to the legislation, such that it cannot be later successfully challenged in a court of law. I say this because given the lack of definition of event at the moment, each and every tremor is its own event as such. This if you feel a tremor and you have damage then that is the event. That there may be a hundred tremors in a day is irrelevant, you have potential to have 100 sets of damage from that one day and thus 100 claims / EQC caps. AS AN ALTERNATIVE, you could simply define an event as per the excess provisions currently spelt out in Clause 1 of the Third Schedule of the Act (or similar).

## EQC land cover

### Proposal for discussion

9 That land cover be limited to situations where the insured land is a total loss meaning it is not practicable or cost-effective to rebuild on it.

### What do you think?

9a Do you agree that the proposed enhanced building cover, combined with restricting land cover to situations where the site of the insured building cannot be rebuilt on, would resolve, for future events, many of the recent difficulties with the interaction between land and building cover?

NO

9b If not, what is your preferred alternative, and why?

In my experience land claims in terms of the current Act are not difficult to administer. What may be clouding the issue are the expectations of the insuring public versus the explanation of land coverage available to the insuring public. No one else covers residential land (other than farm land as far as I know). In the case of imminent threat as defined in the Act, having a sum insured available as a financial exposure can and has made the difference in EQC being able to remedy natural disaster damage such that the homeowner can stay in the home.

9c Do you agree that restricting land cover to situations where the site of the insured building cannot be rebuilt on is appropriate, given the EQC scheme's focus on providing homeowners the resources to repair, rebuild or re-establish homes elsewhere?

NO,

I have not seen the EQC focus to encourage people to relocate elsewhere. During my term at EQC the focus was entirely the opposite – that is to enable people to maintain occupation of their own home on its existing site. I do not consider that a focus on re-siting people is in any way desirable. If for instance a major calamity struck the South Islands West Coast I do not think it a good outcome if every one left the area encouraged by for instance by EQC to do so. EQC does not have the skill or right to say where I should live or not live. Such a focus will encourage the exercise of such a right. This is a democracy we live in and whilst not perfect is the better way of living. Other less fortunate nations without robust insurance schemes are known to simply erect high density living accommodation and instruct disaffected people to simply take a flat in a high rise or go without a home (Turkey is an example according to the previous GM of EQC). New Zealanders rightly expect more than that.

9d If not, what is your preferred alternative, and why?

Leave land cover as it is, it provides homeowners with some assurance that they will be able to continue to occupy their home in majority of cases.

From a sheer practical point of view, imagine a landslip has affected your property. It is within 1 metre of your house. There is now a steep drop below. Where does the proposed "site works" start and finish? Is it a case of some person in EQC saying that your house is undamaged therefore you have no land claim? Or does EQC say we will reinstate a parcel of land so you have two meters to walk around your house (and your kids will have great fun falling to their deaths when they scale any barrier?) Who determines what the site works area is – EQC or local council or whom? At least the current Act specifies this.

Currently the Act allows EQC, after advice, to provide compensation or repair on the basis of imminent threat arising out of a natural disaster. Thus your property may not be damaged but your and other properties' exposure to imminent damage may result in EQC being able to remove the threat on a sheer economic basis even though at the time your property is unharmed. The Act enables this by including imminent threat within

the definition of damage. Insurers do not recognise this they simply cancel your cover until such time as you normalise the risk at your expense – which can be crippling to a homeowner. Some of EQC’s largest but most successful claims prior to Christchurch earthquakes have enabled homeowners to remain in their homes by addressing and removal of imminent threat.

9e Do you have any concerns regarding the proposed change to the configuration of building cover in light of the move by most insurers to provide sum insured home insurance policies?

Not at all. What insurers do is up to them and unless you legislate against a particular practice there is nothing one can do. Insurers (NZI actually) of their own volition back in the 1970’s elected to offer no sum insured replacement policies. That they failed to adequately administer the exposures (by for instance asking policy holder to confirm any alterations to their homes every year), brought about a situation whereby reinsurers did not know their actual exposure to claims from a major catastrophe. As a result reinsurers have forced change, to the detriment of homeowners.

9f If so, what is your preferred alternative, and why?

## Better aligning EQC and private insurers’ standard of repair

### Proposal for discussion

10 That EQC’s current statutory repair obligation already appears broadly consistent with industry practice.

### What do you think?

10a Do you agree with the Government’s assessment that EQC’s legislated standard of repair is broadly consistent with current industry norms?

Very broadly

10b If so, do you have views on why EQC’s standard of repair is seen as markedly different from current insurance industry norms?

EQC appears to have taken the most conservative interpretation of the Act, in some instances perhaps more harsh than insurers. Given that part of the reason to create the original Earthquake and War Damage Act was, I understand, a response to unwilling insurers to pay or insure people this seems as direct conflict with the Act purpose.

10c If not, do you have suggestions for reforms that you consider would move the EQC standard of repair closer to current insurance industry norms for residential property?

If this is a concern simply adopt insurer repair strategy so they are consistent. EQC appears to completely missed the point that it could set the standards for the Christchurch response and instead for whatever reason sought the input of the courts (all of which EQC appear to have largely failed on) when it simply did not need to.

## Simplifying EQC's claims excess

### Proposal for discussion

11 That EQC has a standard claims excess of \$2,000 + GST per building claim.

### What do you think?

11a Do you agree that EQC's building claims excesses should be standardised and simplified to a flat dollar amount? NO

Whether you have \$2000 or \$200 is irrelevant in the overall cost of a disaster such as Christchurch from EQC point of view. A large excess will not cut down administration costs as each claim lodged will need inspection to determine whether it is natural disaster in origin and whether remedy will go past the excess. Damage by natural disaster is not as simple as fire or storm – sometimes natural disaster damage is unrecognisable to a layperson until their house travels down a hill whilst they are in it !!

11b If yes, do you agree that \$2,000 + GST is the appropriate claims excess on building claims?

No and the \$2000 + GST figure will create hardship for people on fixed incomes. This level of excess is not consistent in any way with insurance generally for houses. In addition, if introduced, it will soon be taken by insurers as a norm and be imposed on all insurance of a domestic nature.

11c If not, what would you prefer, and why?

If a high excess is to be introduced it would be fairer to have it as a franchise so that if a claim is accepted and the value of that claim goes beyond the franchise, it all gets paid. Given that the Act levy is compulsory for homeowners it seems perverse that a homeowner cannot elect to find coverage with more favourable terms and opt out of EQC.

### Proposal for discussion

12 That EQC have no claims excess on land claims.

### What do you think?

12a Do you agree that EQC should have no claims excess on land claims?

NO

12b If not, what would you prefer, and why?

Have the current excess provisions apply

## Regularly reviewing main monetary settings of cover

### Proposal for discussion

13 That the EQC Act require monetary caps, premium rates and claims excesses on EQC cover to be reviewed at least once every five years.

### What do you think?

13a Do you agree that monetary caps, premium rates and claims excesses on EQC cover should be reviewed at least once every five years?

Yes

13b If not, what alternative would you prefer, and why?



## How will homeowners access EQC insurance cover?

### Proposal for discussion

14 That EQC cover continues to automatically attach to fire insurance policies on residential buildings, as defined in the EQC Act.

or

15 That EQC cover automatically attach to insurance policies on residential buildings, as defined in the EQC Act, on a peril by peril basis; so if a peril covered by EQC is excluded from the private policy, it is also excluded from the EQC cover.

### What do you think?

14a Do you agree that EQC cover should continue to automatically attach to fire insurance policies on residential buildings? Or

Yes

15a do you agree that EQC cover should automatically attach to insurance policies on residential buildings, and EQC cover should exclude any natural disaster peril that is excluded from the fire insurance policy it attaches to?

No, EQC coverage should stand alone and insurer policy wordings should not be taken into account. After all the Act coverage is compulsory for all who insure. Insurers have been known to issue wordings on the fly which have perverse results (for instance they have ignored clause 30 of the Act to their peril).

15b If you do not agree with either of these options, what alternative arrangement do you prefer, and why?

Keep the Act and insurer wordings separate.

### Proposal for discussion

16 That EQC continue to have the ability, but not the obligation, to directly provide EQC cover to homeowners who request it.

### What do you think?

16a Do you agree that EQC should continue to be able, but not be obliged, to directly provide EQC cover to homeowners who request it?

YES

16b If not, what alternative arrangement would you prefer, and why?

## Who will handle EQC claims in future?

### Proposal for discussion

17 That all EQC claims be lodged with claimants' private insurers.

### What do you think?

17a Do you agree that EQC claimants should be required to lodge all EQC claims with claimants' private insurers?

NO

17b If not, what alternative arrangement would you prefer, and why?

Make this an option (it is already). Bear in mind in the event of another Christchurch, insurers will not have

sufficient staff to cope with new claims or assessments and through lack of training, will be making decisions on acceptance of notifications that will be incorrect.

## Deadline for reporting claims

### Proposal for discussion

18 That the current three-month time limit for claims notification be retained, but EQC be able to accept claims up to two years after an event, unless doing so would prejudice EQC.

### What do you think?

18a Do you agree that the current three-month time limit for claims notification should be retained, but EQC should be able to accept claims up to two years after an event, unless doing so would prejudice EQC?

NO

18b If not, what alternative arrangements would you prefer, and why?

Keep the existing three month period after the damage has occurred. Extending the notice required to lodge a claim after damage has occurred will simply exacerbate the problem. It is not unreasonable to expect people to keep a regular eye on their properties or make arrangements for inspection should the owners not be absentee. EQC faced claims from Edgcombe owners more than ten years after the Edgcombe quakes for damage to underground services that the local council discovered after the council decided to utilise the latest underground camera facilities. It is unreasonable to expect any organisation or pseudo insurer to be able to provide for this eventuality. Determining whether damage to house or land is as a result of a natural disaster is almost impossible after a two year period, unless of course the disaster is so widespread that damage is obvious. People have a responsibility to maintain their properties and part of that is regular inspection.

## Ensuring the scheme meets its expected costs

### Proposal for discussion

19 That the new EQC Act contain pricing and transparency principles requiring the scheme to adequately compensate the Crown for its expected costs and risks.

### What do you think?

19a Do you agree that the new EQC Act should contain pricing and transparency principles requiring the scheme to adequately compensate the Crown for its expected costs and risks?

YES but...

19b If not, what alternative arrangements would you prefer, to ensure the scheme's future financial sustainability, and why?

Has the possibility of creating a situation similar to the old pre ACC motor pool where homeowners nominate an insurer to carry their natural disaster insurance needs ?

Has the possibility that EQC simply be a reinsurer accessible by insurers been considered ?

## Allow but do not require differentiated EQC premiums

### Proposal for discussion

20 That the current legislative flexibility to charge flat-rate or differentiated EQC premiums be retained.

### What do you think?

20a Do you agree that the current flexibility to charge flat-rate or differentiated EQC premiums should be retained? YES

20b If not, what alternative arrangement would you prefer, and why?

20c Do you agree with the Government's intention to continue charging EQC premiums at a universal flat rate?

YES



## How will EQC finance its risk?

### Proposal for discussion

21 That the Natural Disaster Fund be retained in broadly its current legislative form.

### What do you think?

21a Do you agree that the Natural Disaster Fund should be retained in broadly its current legislative form?

YES...but

21b If not, what changes would you like to see considered?

Create a pool that is funded and administered by insurers similar to the old pre ACC motor pool, where insured's nominate their disaster insurer each year and that insurer then gets the benefit of the premium.

Assuming insurers would participate of course.

### Proposal for discussion

22 That the Act enable EQC to use other forms of risk transfer, in addition to traditional reinsurance.

### What do you think?

22a Do you agree that the Act should enable EQC to use other forms of risk transfer, in addition to traditional reinsurance?

YES

## Do you have any other feedback?

### Other feedback

23a Are there any issues not discussed in this document that you would like to bring to the Government's attention at this stage?

YES

23b What submissions would you like to make on those issues?

In respect of the insurance part of the Act:

The current Act, whilst relatively concise, is very difficult for the average person to understand, perhaps more difficult than their own insurance policy even.

Having clauses in the Act referring to, for instance Schedules and lists of exclusions, the Act is open to wide misinterpretation.

Some of the definitions are open to misinterpretation even by lawyers.

As a single example, the definition of dwelling includes pipes services and the like. That is then modified by the Schedule 1 set of exclusions and that again is modified by clause 21. The result is that administration of the Act is open to error, especially when a narrow view is taken. This is grossly unfair given that the insurance afforded by the Act is compulsory, one cannot opt out. There are many more examples of this situation in the Act.

I submit then that the Act insuring clauses in their entirety should be examined and re written in plain unambiguous English by a panel of people with insurance expertise and a lawyer/s.

If land cover is removed as is being suggested, that is no land cover except for the building/s envelope and perhaps enough room around that envelope to effect a repair, the result will be that where a major land movement occurs that threatens many properties imminently, coverage for the affected owners may simply

not exist. But if it did exist, EQC would not be able to aggregate the value of land and buildings as it currently can do to obtain an exposure in dollar terms to then provide meaningful assistance to owners.

There is some suggestion that land and building claims are too difficult to administer. Given the current Act coverage I do not see that it is so. In the case of land in Christchurch that has sunk, I believe EQC exposure is the dollar value of remediation of the land (eg; restore pre loss level/s OR the value of the affected area of insured land. If the repair process entails removal and reinstatement of a building, then those costs are simply part of the land repair costs. If all of the costs involved exceed the value of the affected insured land area AND the EQC sum insured of the house then EQC pays out on those amounts leaving the homeowner to effect repair or whatever. If the insurer of the house will not contribute, that is not unusual, as most do not recognise imminent loss threat.

It seems to me that the insurance industry has, over the last thirty years tried to simplify procedures somewhat. My own experience with insurers and brokers as an employee and a consumer, revealed that neither insurers nor brokers understood the Act in any great depth at all. Unless insurers and others are provided with real financial incentives to take a greater interest in the Act I do not see that handing large areas of administration to such parties will result in savings for EQC and may well provide the insuring public with some adverse outcomes.

[1]

The scheme is the best available as far

[1]

as I can see in the world. At a post Hurricane Katrina insurer conference, US insurer representatives were amazed at the existence of the scheme and its benefit to a country such as ours. Incidentally, most insurer representatives at that conference said that they avoided engaging in repairs because of the possibility of being sued for substandard repairs.