

# 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

Treasury:3208710v1



## 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.

### Official Information Act 1982

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Grounds for withholding information are outlined in the OIA. Reasons could include that the information is commercially sensitive or that you wish personal information, such as names or contact details, to be withheld. An automatic confidentiality disclaimer from your IT system will not be considered as grounds for withholding information.

We will take your objections into account when responding to requests under the OIA.

Any personal information you supply in the course of making a submission will be used by the Treasury only in conjunction with the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that we may publish.

## Your contact details

### For individuals

Your name: [1]

Email address: [1]

Phone number:

What city, town or province do you live in? Christchurch

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?

Yes

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

## 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?

Yes

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

## 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?

### 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

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?

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

## 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?

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

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?

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?

7d If so, what are they?

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?

8b Do you agree with retaining the current definition of an event?

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



## 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?

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

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?

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

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?

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?

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

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?

## 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?

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

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

### 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?

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

## 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?

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

### 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?

Yes This should limit the number of assessments and provide for a more 'qualified' industry assessment.

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

## 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?

Yes – but even two years may not provide opportunity to discover hidden or not so readily disclosed damage.

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

## 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?

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

## 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?

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

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

### 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?

## 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?

Fundamentally, it appears something is wrong with the EQC Act when it is possible for an organization to successfully claim and receive approximately \$700,000 EQC compensation in circumstances it can be argued no financial loss to the organization has actually occurred.

I am aware of an organization which just prior to the 22 February 2011 obtained Resource Consent to construct a new complex on Christchurch Central City land on which existed a number of pre 1900 dwellings. These residential dwellings were in a poor state of repair and divided into 13 tenanted flats and one commercial premises.

The organizations proposed and consented new redevelopment was essentially non residential in nature and required all buildings on the site to be demolished to allow for the new development. A demolition consent had been issued by the Christchurch City Council, a quote had been received to undertake the demolition and a demolition line item established in the project budget.

At the time of purchasing the parcel of land it had always been the organizations intention to demolish all the existing buildings and replace them with the proposed non residential complex.

As a consequence of the earthquake each of the residential buildings were considered uneconomic to repair and were subsequently demolished. But for the intervention of the February 22nd earthquake it is probable all the buildings on the site would have been demolished within 3 – 4 months to maintain project momentum . Currently, preliminary ground works on site prior to planned construction commencing, are being undertaken.

As a consequence of sustaining physical damage to the dwellings on 22 February 2011, despite its demolition intentions, the organization lodged claims for compensation with EQC. At the time of the earthquake the buildings were insured with QBE for indemnity values ranging between \$95 - \$115,000. The buildings were not insured for replacement value as QBE had been advised of the organizations demolition intentions from the outset.

As a consequence of making the claims the organization I understand received approximately \$700,000 from the EQC in compensation. Clearly the buildings had sustained some damage as a consequence of the earthquake but nothing like the damage the organization soon planned to inflict on them by way of total demolition. In essence these buildings (other than rental income) represented no value to the organization at the time of the earthquake

Of note, it appears that while QBE the organizations private insurer, compensated the organization for a loss of rental income, it appears not to have compensated it for damage sustained to a former commercially operated building also on site.

The organization has been questioned on ethical and moral grounds by some within its membership for having lodged EQC claims for compensation as the only real potential loss given redevelopment intentions, consisted of the rental income likely to have accrued prior to planned demolition occurring.

The organization continues to defend its decision to seek compensation for these buildings largely on grounds that the claim(s) are legal i.e. that EQC was legally obliged to compensate.

Putting aside the questionable ethics of claiming compensation in these circumstances, it appears that the EQC assessment criteria and apparent obligation to cover the costs of any claims for physical loss or damage to residential property arising from a natural disaster, requires a rethink.

Currently there appears to be no ability under the Act for EQC to decline a claim based on a property owners existing plans for the property even if that might be to demolish the buildings in short order and replace residential dwellings with a non residential complex.

The fact that it has been possible to successfully claim and receive such a significant cash settlement as evidenced in this case calls into question provisions of the EQC Act and EQC's assessment criteria

This perhaps suggests the compensation provisions of the EQC Act are inadequate or too obligatory. Is it possible that the EQC assessment procedures lack the degree of scrutiny or due diligence exhibited by most private insurers?

Should EQC assessment practise require that greater cognizance be given to the fundamental principles on which private insurers operate? i.e. exercising and enforcing the doctrine of "Utmost Good Faith" and the (Legal) Duty of Disclosure.

EQC for example, requires 'Contents' claimants to sign a declaration that all information likely to materially effect the claim has been made available. In contrast, it appears, despite significantly greater dollar values in play, residential building claimants are not subjected to the same degree of disclosure or scrutiny.

A 1974 NZ Supreme Court Decision - Falcon Investments Corporation (NZ) Ltd v State Insurance General Manager [1975] 1 NZLR 520 indicates that the organization in this example would only likely receive Private Insurance compensation for lost rental income and little if anything for the physical damage to the buildings.

That being the case, it appears that the provisions of the EQC Act (which appears to obligate EQC to compensate in such circumstances) are too inflexible and lack sufficient discretionary capability to decline a claim..

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

That a revision of the EQC Act reflects the reality that not every claim for physical loss or damage necessarily represents a financial loss or impediment to an individual or organization such that the EQC is obligated to compensate in the manner current legislation appears to require it to do.

That the Act requires greater accountability on the recipients of cash settlements to ensure that compensation received is utilized for the purpose EQC contemplates i.e. the remediation or replacement of the property damaged, rather than potentially presenting an individual or organization with perhaps an opportunistic 'windfall' payout to do with as they please..