

The Treasury

On-sold Canterbury Properties Information Release

November 2019

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Hon Sir Michael Cullen KNZM
Chair
Earthquake Commission
PO Box 790
WELLINGTON 6140

Dear Sir Michael

CROWN SETTLEMENT OF ON-SOLD OVER-CAP CLAIMS

Thank you for the Earthquake Commission (“**EQC**”) Board’s work to address the on-sold over-cap issue and for keeping me informed of developments through the settlement of the *Gibling* test case.

The Government has considered the complexity of the on-sold over-cap problem and the social issues that have arisen and, as a result, it has decided to intervene through the provision of a temporary ex-gratia package to cover the over-cap cost of repairs.

The Government’s policy objectives in intervening are to:

- 1.1. provide remedies to support a fair, timely, and enduring resolution of the social issues arising from uncompensated damage to on-sold properties from inadequate EQC commissioned repairs or damage missed from the EQC assessments;
- 1.2. notify Canterbury residents of the intended purpose of and limitation upon the EQC’s building assessments to highlight the need for independent advice and pre-purchase due diligence;
- 1.3. reduce the risk and potential cost of litigation for both the EQC and affected Canterbury residents;
- 1.4. reassert that the Government’s policy under the Earthquake Commission Act 1993 (the “**Act**”) is that the home owner (ie. the claimant), not the EQC, is (or was) ultimately responsible for lodging a claim and for any omissions from that claim.

The Government’s overriding objective is to achieve a timely, fair, and enduring settlement of residual Canterbury claims. While the ex-gratia payment provides remedies to on-sold property owners, I consider that the objectives to reduce the future risk of litigation and the need to reassert Government policy under the Act to be of significant long-term importance.

Coverage under this policy

Before settling the *Gibling* test case, the EQC informed me that the test case was unlikely to resolve the on-sold issue by providing a clear widely-applicable precedent.

The Government has decided to provide an ex-gratia payment to on-sold over-cap property owners to cover the cost of repairs arising from:

- EQC commissioned repairs that were either defective or non-compliant; and
- Damage missed during the EQC's assessments.

The payment would be required to be spent on completing the required repairs.

Ministerial Direction

Pursuant to section 112 of the Crown Entities Act as permitted by section 5(1)(f)(ii) of the Earthquake Commission Act 1993 as Minister Responsible for the Earthquake Commission, I now issue a direction to the EQC to add a function to "*administer the support package established by the Crown for qualifying owners of on-sold properties*". In carrying out this additional function, the Commission must act in accordance with the terms and conditions that I have set.

This direction comes into effect immediately and shall continue until it expires on 14 August 2024, unless it is amended, revoked, or replaced in the same way it is given.

I intend to publish the direction in the Gazette and present a copy to the House of Representatives as soon as practicable.

Obligations of the Board

While payment will not be made with respect to any EQC insurance liability, officials have advised me that it would more efficient for the EQC to arrange ex-gratia payments on the basis of damage identified by its current and future insurance assessments.

On the basis of this additional function, I expect the EQC Board to monitor the implementation of the support package in accordance with the agreed terms and conditions contained in the attached On-Sold Canterbury Properties Services Agreement (the Agreement).

Providing remedies to support a fair, timely and enduring settlement of on-sold over-cap claims

As an additional function of the EQC, I would expect that the Board will keep any payments made, and compliance with the requirements of the Agreement, under review.

The attached Agreement provides EQC with sufficient discretion to determine and implement the operational policies necessary to provide the Government a high degree of assurance that:

- the criteria determining eligibility for payment are being met;
- that any funds dispensed are spent (or to be spent) on the specified repairs agreed with the client;
- opportunities for fraud are either limited or are managed carefully.

Managing future legal liability

The Cabinet decision provides a 12 month claims lodgement period to reassert Government policy under the Act. While the EQC may assess insurance claims, it is important that property owners retain ownership and control over the content of their claim.

The EQC has no statutory obligation to: identify all earthquake damage; assess the building as a whole; or to certify the building as sound.

In arranging payment, I expect the Board will oversee sufficient modifications to operational processes and documentation sufficient to satisfy itself that:

- the claimants are made aware that they own and are ultimately responsible for the content of any insurance claim;
- responsibility for any damage missed from that claim sits with the claimants; and
- the claimants are aware that they should seek sufficient independent advice (at their expense) to satisfy themselves that the claim is complete and accurate before signing a full-and-final settlement.

In due course, I would expect that the Board will complete a review of the factors that may have contributed to the allegations being made that the Commission is liable to some claimants. I would encourage you to consider any lessons learnt with respect to the EQC's previous, current, and future operational processes, legal or settlement documentation, and public communications.

While the claims lodgement period under this policy is limited to 12 months, I expect that the EQC Board will develop policies as to how it intends to meet its obligations to its clients under the Act (and any other applicable laws) after the end of this Government policy.

Publicity and public awareness

The Cabinet has agreed that a public awareness campaign is required to raise awareness of the intended purpose and limits of EQC insurance assessments and the responsibilities of property owners (ie. claimants) under the Act.

The Government's objectives for this publicity campaign are to:

- ensure that homeowners eligible to receive ex-gratia payments are contacted to ensure they are aware of the risk that missed damage may exist in the property that they have purchased and that they have a 12 month time-limited opportunity to lodge a claim under this policy;
- raise wider awareness that the property owner at the time of a natural disaster was or is responsible for insurance claims and for any damage missed from that claim; and
- proactively clarify the scope, purpose, and limitations of EQC insurance inspections for prospective purchasers of property in regions affected by natural disaster.

Further advice on corrective repairs

I have included failed building EQC commissioned building repairs within the on-sold ex-gratia package for expedience.

I am seeking advice from the EQC within three months on customer entitlements to have failed repairs corrected under the EQC Act and other New Zealand law, any barriers that may exist for EQC customers seeking to claim entitlements and/or corrective repairs, and any gaps that may exist that may be relevant to Government policy.

In seeking further advice on the EQC's repair policy, I am keen to ensure:

- That the EQC makes publicly available information for both current and on-sold owners about any entitlements they may have to have corrective repairs for non-compliant work corrected, and EQC's processes for making those entitlements available;
- That the EQC's processes for managing corrective repairs be streamlined, customer centric, with a single point of contact to ensure that Canterbury residents will not be drawn into contractual disputes between the EQC and its contractors;
- To the extent that the EQC's contractors may be liable, that the EQC will take all reasonable steps to recover repair costs where it is economic to do so.

Engagement with customers

I would encourage the EQC to continue to develop its new case management model. I agree that customers should continue to be at the heart of everything the Commission does and that operational practices should seek to reduce the stresses and challenges customers have previously experienced.

I would encourage the Board to keep under review:

- the experience of customers under this policy;
- the timeliness of claims management and settlement procedures; and
- the quality of information provided to customers, notably with respect to the line between the responsibilities of the Commission versus those of the claimant.

Engagement with the Treasury

The Treasury will continue to focus on engaging closely with the EQC and needs to remain informed on operational developments including:

- the cost, nature, and number of claims made under this policy;
- the approach to settlements under this policy; and
- any changes to operational policy that affect the split of cost between the EQC, insurers, and the Crown.
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I would like to thank the EQC Board and management for its shared commitment to resolve the outstanding earthquake claims in Canterbury.

I look forward to working with you on the implementation of this policy.

Yours Sincerely,

Hon Grant Robertson

Minister Responsible for the Earthquake Commission

CC: Sid Miller, CEO of the Earthquake Commission