

Departmental Disclosure Statement

Earthquake Commission Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by The Treasury.

The Treasury certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

12 March 2018

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Part One: General Policy Statement

The Bill amends the Earthquake Commission Act 1993 (the Act) to update and improve the operation of the Act. The Bill has a focus on simplifying and speeding up claims handling for natural disaster damage particularly when dealing with a largescale natural disaster.

The Bill removes Earthquake Commission (EQC) cover for personal property (contents) to ensure that EQC's primary focus is on housing repair and recovery. It increases the monetary cap for residential building damage, which has not changed since the Act came into force, and it extends the time limit for claims. It also clarifies EQC's ability to share and publish information for public good and claim settlement purposes.

The monetary cap for residential building cover will increase from \$100,000 to \$150,000 (plus GST). A key strategic goal of the EQC scheme is to keep home insurance affordable, so the great majority of homeowners buy insurance, including homeowners in higher-risk areas. This improves the prospects of timely recovery from the impacts of a disaster and reduces the need for unplanned and unpriced support to homeowners.

Removing EQC cover for contents recognises that, while contents losses may be distressing, they do not create widespread dislocation such as that arising from housing losses. Contents claims can be numerous and require disproportionate resources during the post-disaster recovery phase.

The Bill will also enable EQC to accept claims notified more than 3 months and less than 2 years after the natural disaster event, where doing so does not unduly prejudice EQC's ability to assess the claim. This better aligns the Act with requirements that apply to private insurance claims and enables EQC to respond positively to claims where damage is not observed or does not otherwise become apparent for months after the disaster.

New provisions also clarify that EQC may share claim-related information to support effective implementation of the Act, facilitate settlement of natural disaster claims by EQC and private insurers, and publish information about natural disaster damage to property covered by EQC where this is in the public interest, including to support natural disaster preparedness, response and recovery, or to prevent or lessen a threat to public health, public safety, or to the life or health of any person.

The provisions are not intended to establish a new framework for requesting information from EQC. Rather, the provisions are intended to enable and encourage more proactive information release by the Commission by:

- (a) clarifying the purposes for which information (including personal information) can be released, and the protections that apply; and
- (b) clarifying that property-related information is not personal information and can be released in aggregate or with specific property identifiers.

These clarifications address potential for debate about EQC's ability to share claim related information (including, where relevant, information about the claimant) in carrying out its functions under the Act. It would also facilitate EQC sharing property information with other agencies, or local government when it is in the public interest to do so.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<i>'New Zealand's Future Natural Disaster Insurance Scheme: Proposed changes to the Earthquake Commission Act 1993 - Discussion Document', The Treasury, July 2015</i> http://www.treasury.govt.nz/publications/reviews-consultation/eqc	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<i>'Earthquake Commission Amendment Bill Regulatory Impact Statement', The Treasury, February 2018</i> The RIS is yet to be released as the Bill and related advice is still being considered by Ministers. It will likely be published on the Treasury website along with other public EQC Act review documents at http://www.treasury.govt.nz/publications/reviews-consultation/eqc	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
On 28 February 2018, the Regulatory Quality Team at The Treasury advised that it "...considers that the Regulatory Impact Statement accompanying meets the quality assurance requirements. The proposals and their relationship with the wider ongoing review of the EQC Act are clearly explained and the analysis of their likely consequences is well evidenced, including with reference to extensive stakeholder engagement."	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>The Cabinet paper seeking policy approval for the Bill includes advice on Implications for EQC costs, risks, premiums and EQC-insurer risk-sharing and detailed information about financial implications. Some of this information is repeated in the RIS (see above)</p> <p>The Cabinet paper is yet to be released as the Bill and related advice is still being considered by Ministers. It will likely be published on the Treasury website along with other public EQC Act review documents at http://www.treasury.govt.nz/publications/reviews-consultation/eqc</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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Treasury officials do not consider the changes this Bill gives effect to raise any issues regarding New Zealand's international obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

As outlined earlier in this document, Treasury commenced public consultation on proposals to reform the Act in July 2015 and received numerous submissions from individuals and organisations alike. The four amendments to the Act being made by the Bill received support from submitters and no Treaty of Waitangi issues were raised.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, will be accessible on the Ministry's website at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
Clause 31A.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner (OPC) was consulted during the consultation phase on proposals to reform the Act. As a result of the comments received by OPC, clause 31A has been drafted to clarify the circumstances (in addition to those in Privacy Principle 11 of the Privacy Act 1993) in which EQC may disclose information about property and claims. Clause 31A ensures the confidentiality of personal information that EQC holds, by requiring EQC to put in place appropriate protections to maintain the confidentiality of such information when it is disclosing information under clause 31A(1)(a) to (c).</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>As outlined earlier in this document, Treasury commenced public consultation on proposals to reform the Act in July 2015.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>EQC, private insurers and other technical experts have been involved in the consultation process and preparation of documents relevant to the implementation of the policy, including reviewing and providing comments on draft Cabinet papers and the draft Bill. EQC has provided technical comments regarding the draft provisions of the Bill and practical comments on the operation of the new clauses contained in the Bill.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>Clause 7(2) of Schedule 3 gives EQC discretion to accept claims notified more than 3 months but less than 2 years after a natural disaster event. If an insured person notifies a claim more than 3 months but less than 2 years after the damage, EQC can reject the claim if it is satisfied the insured person's failure to notify within 3 months materially prejudices EQC's ability to assess the claim. For EQC to be able to rely on this clause, it will need to show its ability to assess has been materially prejudiced. This is a reasonably high threshold.</p> <p>This approach is consistent with the approach taken in section 9 of the Insurance Law Reform Act 1977 which allows a private insurer to decline a claim where the insurer is prejudiced by the failure of the insured to make a timely claim.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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