

Departmental Disclosure Statement

Natural Hazards Insurance 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.

10 March 2022

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Part One: General Policy Statement

This Bill will replace the Earthquake Commission Act 1993 (the EQC Act). The changes from the EQC Act reflect both the experiences of the Commission and the recommendations of the March 2020 Public Inquiry into the Earthquake Commission. The 3 overarching objectives of the changes are—

- to enable better community recovery from natural hazards; and
- to clarify the role of the Commission and the cover provided by the Bill; and
- to enhance the durability and flexibility of the legislation.

The Bill will also change the name of the Commission from the *Earthquake Commission* to *Toka Tū Ake – Natural Hazards Commission* to reflect the broad range of hazards covered by the Bill and dealt with by the Commission.

The changes made in the Bill have been designed to meet the 3 objectives by—

Purpose, objectives and functions

- introducing a purpose statement; and
- adding new objectives for the Commission; and
- clarifying the Commission's core functions to better recognise its obligations to stakeholders, including through—
 - a revised insurance function framed around claims management with a clear statutory objective requiring the Commission to ensure claims are managed and settled in a fair and timely manner; and
 - targeted revisions to ensure that the Commission's research and education function has sufficient flexibility to allow it to contribute to community resilience, a whole-of-government disaster recovery, and work that seeks to reduce the cost of insurance over time; and
 - reframing the Commission's function in relation to the Natural Hazard Fund to better reflect its objective as a fund manager, and aligning the Commission's fund management mandate with the mandate of other entities that invest assets on behalf of the Crown; and

Building and land cover

- improving consistency between the rules used to determine if a building is mixed-use and the resulting cover for that building; and
- improving the cover for retaining walls and bridges and culverts, and extending and standardising building cover for items located beyond the boundary of the land on which a residential building is situated; and
- clarifying that cover does not extend to paying for building upgrades, such as seismic improvements of earthquake-prone buildings, that were legally required before a damage-causing natural hazard event occurred; and

- extending the damage period for a volcanic activity event from 48 hours to 7 days, to reflect the fact that volcanic events can continue for extended periods and to help ease the administrative complexity of claims for those events; and
- defining (or providing more detailed definitions for) important terms such as appurtenant structure, service infrastructure, and the various kinds of natural hazards; and
- introducing a clear statement of the repair standard for buildings and land cover; and
- updating and standardising claims excesses; and
- updating the list of excluded property and allowing some amendments to be made to that list by Order in Council; and

Claims handling and settlement

- requiring the Commission to participate in a dispute resolution scheme to ensure that claimants have an out-of-court dispute resolution option; and
- requiring the Commission to act in accordance with a Code of Insured Persons' Rights that sets out how claimants should be treated; and
- including an entitlement for claimants to seek an independent review of unresolved complaints relating to a breach of that code; and
- extending the Commission's ability to delegate claims settlement functions to private insurers; and
- clarifying that the benefits of a claim can be assigned; and
- clarifying how the Commission must exercise its right to salvage property; and
- enabling the Commission to decline claims where there is no financial loss; and

Financial governance, roles and sustainability

- requiring reviews of the insurance levy, monetary cap for residential building cover, and other key financial settings at least every 5 years, and requiring the Minister to publish a funding and risk management statement following each review; and
- introducing service agreements as an option to allow for public funding of the Commission's activities that it is not appropriate to finance from the Natural Hazard Fund; and
- enabling the Commission to negotiate (but not pay for) disaster financing (such as reinsurance) on behalf of the Crown (in addition to the Commission's power to purchase reinsurance relating to natural hazard cover, which is paid for out of the Natural Hazard Fund); and
- introducing a statutory basis defining how the insurance levy will be set; and

- better aligning the Commission’s statutory structure with the Crown entity framework; and
- clarifying what the Natural Hazard Fund can be spent on; and
- providing clearer separation of the Natural Hazard Fund from the Commission; and
- removing the Commission’s discretion to discount levies payable to the Commission by private insurers; and

Other technical issues

- clarifying and strengthening the Commission’s information-gathering powers and supporting information sharing with other government agencies and other persons with a proper interest in receiving it; and
- updating offences and penalties and introducing a new offence for deliberate breaches of the obligation on insurance companies to pay levies to the Commission within the specified period; and

Monetary cap on residential building cover

- including in the Bill the monetary cap on residential building cover of \$300,000 per dwelling that will apply under the EQC Act from 1 October 2022 as a result of regulations under that Act increasing the cap from the current level of \$150,000 per dwelling (both amounts excluding GST).

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
<p>The Bill gives effect to a number of recommendations of the Public Inquiry into EQC. The most relevant documents are:</p> <ul style="list-style-type: none">• <i>'Report of the Public Inquiry into the Earthquake Commission'</i>. March 2020, Public Inquiry into the Earthquake Commission: https://dpmc.govt.nz/sites/default/files/2021-01/report-of-the-public-inquiry-into-the-earthquake-commission.pdf• <i>'Government response to the Public Inquiry into the Earthquake Commission'</i>. 25 June 2020, Office of the Minister Responsible for the Earthquake Commission: https://www.treasury.govt.nz/publications/cabinet-paper/dev-20-sub-0116-government-response-public-inquiry-earthquake-commission <p>The Bill was also informed by a previous review of the EQC Act undertaken by the Treasury, including findings from public consultation on the July 2015 discussion document: <i>'New Zealand's future natural disaster insurance scheme: Proposed changes to the Earthquake Commission Act 1993'</i>: https://www.treasury.govt.nz/sites/default/files/2012-09/eqc-rev-discussion-doc.pdf</p> <p>Policy was developed by a review team at the Treasury. In developing the policy, the team produced a number of reports for Ministers that have since been proactively released. These are available on the Treasury website at: https://www.treasury.govt.nz/publications/information-release/treasury-advice-related-modernising-eqc-act-information-release</p>	

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
<p><i>'Regulatory Impact Statement: Impact Summary – Earthquake Commission Act 1993 Modernisation'</i>. 14 April 2021, the Treasury: https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-impact-summary-earthquake-commission-act-1993-modernisation</p> <p><i>'Regulatory Impact Statement: EQC Act Technical Issues'</i>. 24 May 2021, the Treasury: https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-eqc-act-technical-issues</p> <p><i>'Regulatory Impact Statement: Coverage of mixed-use buildings under the Earthquake Commission Act'</i>. 18 March 2020, the Treasury: https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-coverage-mixed-use-buildings-under-earthquake-commission-act</p> <p><i>'Regulatory Impact Statement: EQC Cap - Options to address insurance availability and affordability including through the EQC Cap'</i>. 7 July 2021, the Treasury: https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-eqc-cap-options-address-insurance-availability-and-affordability-including-through-eqc-cap</p>	

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
See Appendix One for the response to this question.	

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?	YES
A time bar on reopening claims, which was analysed in the Regulatory Impact Statement <i>'Regulatory Impact Statement: EQC Act Technical Issues'</i> from 24 May 2021 is no longer being proposed as part of the Bill.	

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?	NO
<p>The Cabinet papers seeking policy approval for the Bill include advice on financial implications. Some of this information is repeated in the RIS (see above)</p> <p>The Cabinet papers are available on the Treasury website:</p> <ul style="list-style-type: none"> • <i>'Modernising the Earthquake Commission Act'</i>. 14 April 2021, the Treasury: https://www.treasury.govt.nz/sites/default/files/2021-12/eqc-cab-21-sub-0062-4432406.pdf • <i>'Modernising the Earthquake Commission Act 1993: Paper two'</i>. 24 May 2021, the Treasury: https://www.treasury.govt.nz/sites/default/files/2021-12/eqc-cab-21-sub-0177-4457713.pdf • <i>'Mixed-use buildings under the Earthquake Commission Act 1993'</i>. 18 March 2020, the Treasury: https://www.treasury.govt.nz/system/files/2020-12/mixed-use-buildings-ecq-dev-20-sub-0039.pdf • <i>'Modernising the Earthquake Commission Act: Increasing the Cap'</i>. 7 July 2021, the Treasury: https://www.treasury.govt.nz/sites/default/files/2021-10/eqc2-dev-21-sub-0150-4456133.pdf 	

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 consider the changes this Bill gives effect to do not 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?

There has been significant previous public consultation on the issues with the current EQC Act and potential options for change in 2015 and during the more recent Public Inquiry, which included extensive consultation with the people of Canterbury. Consequently, the Minister Responsible for the EQC decided not to undertake a full public consultation process, including with iwi/hapū generally, or to consult on an exposure draft of the proposed Bill.

Lack of consultation with iwi/hapū also creates specific risks for the legislative process. The Treasury is undertaking consultation with Māori representative groups in parallel to the drafting of the Bill. If timing constraints mean feedback from that process cannot be reflected in the Bill as introduced, the feedback may be reflected in officials' advice to the Select Committee that considers the Bill.

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 a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>See Appendix Two for the response to question 3.4(a).</p> <p>With regards to 3.4(b):</p> <p>The Natural Hazards Insurance Bill includes a requirement that the Commission participate in an approved Alternative Dispute Resolution (ADR) scheme (clause 97).</p> <p>While the ADR scheme will not affect the rights of individuals to commence proceedings through the Courts, the Court will be provided additional powers to enforce a decision arising from ADR following an application from either party. Either party may also appeal the decision to a Court of competent jurisdiction.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted on the proposed changes to offences and penalties, and on each paper seeking relevant policy decisions, as a key Crown stakeholder. The Ministry's feedback was reflected in the papers, and the proposals were adjusted to reflect their guidance.</p>	

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
<p>The Bill does not include substantive changes to existing information sharing provisions. However, it does include changes to clarify existing provisions to better support effective administration of the scheme. These include:</p> <ul style="list-style-type: none"> • Information gathering (clause 56): enabling the Commission to specify a reasonable timeframe within which information must be provided (either by claimants or insurers), to set requirements around the form and format in which any requested information is provided. • Information sharing (clause 140): clarifying the Commission's ability to disclose information in its possession provided the recipient has a proper interest in receiving the information for law enforcement purposes, or for performing their functions or exercising their powers. 	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
<p>The Privacy Commissioner was not consulted because the Treasury considers the information sharing changes to be primarily technical clarifications rather than substantive policy changes. Therefore, we considered this to be below the threshold of consultation.</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>The Treasury has also consulted with a targeted group of stakeholders over 2020-2021 to inform policy development:</p> <p>Private sector organisations and public consultation:</p> <ul style="list-style-type: none"> • 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. These stakeholders have been consulted on relevant policy proposals. • At the time of writing (March 2022), material summarising the proposals in the Bill has been circulated with a range of Māori organisations and iwi for feedback. <p>An exposure draft of the Bill was not released for consultation. The Cabinet policy papers and minutes, and supporting departmental policy papers, were proactively publicly released in December 2021. The above-mentioned stakeholders were advised of this release.</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>The Treasury has worked collaboratively with the EQC throughout the review process. The Treasury has also consulted with following government agencies over 2020-2021 to inform policy development:</p> <ul style="list-style-type: none"> • 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). These organisations have been consulted on relevant policy proposals. <p>Treasury officials have discussed the Bill with the Legislation Design and Advisory Committee (LDAC) and received written and verbal feedback, which has been considered through the policy development process.</p> <p>An exposure draft of the Bill was not released for consultation prior to the Bill's introduction.</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?	YES
<p>The Bill leaves the Commission's current powers of salvage and relocation largely unchanged, which are both cases where the Commission can acquire property:</p> <ul style="list-style-type: none">• Salvage (clauses 79-82): The Commission will continue to be able to retain property following a settlement where the property is a total loss. The Bill will include minor amendments to clarify that in exercising its salvage rights, the Commission must take into account the severity of the damage and the salvage rights of private insurers. The Bill will also clarify that these provisions should be used only where the Commission has paid out the full value of the land and/or buildings.• Relocation of a building (clause 62): Instead of paying the amount of any natural disaster damage or reinstating a building or land, the Commission will continue to be able to relocate the building concerned on the same site or to a different site determined by the Commission.	

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?	YES
<p>The Bill leaves the current powers to impose the Commission's premium largely unchanged. Minor changes include changing the name of the premium to a 'levy', removing the Board's discretion to allow insurers to discount (i.e. retain some of) the levy, and introducing a clear statutory basis for the levy (clause 112). The Bill also provides that the Natural Hazard Fund may only be used to pay for specific types of costs, including in particular: claim settlement costs; costs associated with the Commission's functions in relation to natural hazard cover; costs relating to activities in the performance of other functions (for example education and research) if the Commission believes that the activity has the potential to provide a benefit to insured persons or reduce the future cost of providing natural hazard cover (clause 107).</p> <p>The Bill will not authorise the levy to exceed cost recovery suggesting the charge is not in the nature of a tax.</p>	

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?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>Section 35(2)(b) and (c) of the current EQC Act contain strict liability offences. Under the status quo, the maximum financial penalties for breaches of these offences are a fine not exceeding \$1,000 and, if the offence is a continuing one, a further fine not exceeding \$100 for every day or part of a day during which the offence continues.</p> <p>The strict liability offences in the current Act include:</p> <ul style="list-style-type: none"> • Failure, without lawful excuse, to comply with any requirement from a person authorised by the Commission to: produce documents and allow copies or extracts to be made or taken; and to furnish information or particulars required by the Commission in a form acceptable to the Commission (in section 35(2)(b) of the EQC Act 1993). • Failure, without lawful excuse, by an insurance company, to comply with or acting in breach of the requirement to keep safe custody of records of fire insurance contracts for residential buildings, including particular premium-related information (in section 26 of the EQC Act 1993). • Acting in breach of or failing to comply with the obligation on EQC Commissioners and employees to keep secret particular information relating to premiums (in section 25 of the EQC Act 1993). <p>The Bill will increase the maximum financial penalties to \$5,000 for individuals and \$25,000 in any other case for the first two strict liability offences listed above (clauses 143 and 148). Note the Bill will also increase penalties for offences requiring an intentional act to \$25,000 for individuals and \$50,000 in any other case – see Appendix Two for further detail.</p> <p>The third offence relating to the Commission, Commissioners and Commission employees who act in breach of or to fail to comply with the requirement to keep secret particular information relating to premiums (in section 25 of the EQC Act) will be changed from a strict liability offence to an offence requiring an intentional act (clause 118). The offence will have the same maximum financial penalties as the other <i>mens rea</i> offences. Changes to this offence will also remove potential criminal liability for the Commission.</p>	

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>The Bill leaves the Commission's current powers of salvage and relocation largely unchanged, which are both cases where the Commission can acquire property (see answer 4.1).</p> <p>The Bill also includes a requirement that the Commission participates in an approved Alternative Dispute Resolution scheme (clause 97). The Commission would be bound by the decisions made through that scheme.</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?	YES
See Appendix Three for the response to question 4.7.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
See Appendix Three for the response to question 4.8.	

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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Appendix One: Further Information Relating to Part Two

Did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements? – question 2.3.1

Regarding the Regulatory Impact Statement: ‘Impact Summary – Earthquake Commission Act 1993 Modernisation’.

In March 2021, the Regulatory Quality Assurance Panel led by the Ministry of Primary Industries and the Treasury advised:

A cross-agency Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement “Impact Summary: EQC Act Modernisation” produced by The Treasury and dated February 2021. The review team considers that it meets the Quality Assurance criteria.

Overall, the RIS shows clearly that the options have been carefully considered and analysed, and implementation risks identified and mitigated. The panel notes that there was no public consultation on the options, which has created some risk that unexpected technical issues may be raised at the Select Committee stage. However, this risk is mitigated by the extensive consultation that took place during the Public Inquiry and targeted consultation on the proposals, including with an EQC claimants group.

Regarding the Regulatory Impact Statement: ‘EQC Act Technical Issues’.

In April 2021, the Regulatory Quality Assurance Panel led by the Treasury advised:

The Panel considers that the Regulatory Impact Statement meets the Quality Assurance criteria.

A quality assurance panel with representatives from the Regulatory Impact Analysis Team, Economic Policy Team and Macroeconomic and Fiscal Policy Team at the Treasury has reviewed the Regulatory Impact Statement (RIS) “EQC Act Technical Issues” produced by the Earthquake Commission Policy Team at The Treasury. This RIS is one of four to support proposals to amend the Earthquake Commission Act 1993 (EQC Act).

The Panel considers that it meets the Quality Assurance criteria. This RIS covers the following technical issues identified in the EQC Act:

- 1. a time bar on reopening EQC claims*
- 2. monetary caps on retaining walls, bridges, and culverts*
- 3. updating excesses for building and land cover*
- 4. updating Earthquake Committee (EQC)’s ability to provide insurer discounts*
- 5. clarifying what the Natural Disaster Fund can be spent on.*

The Panel notes that there was no public consultation on the options, which has created some risk that unexpected technical or other issues may be raised at the Select Committee stage. However, this risk is mitigated by the extensive consultation that took place during previous public consultation, the Public Inquiry and targeted consultation on the proposals. The RIS notes that while the public is likely to have an interest in increased excesses (Issue 3) the proposed excess amount is consistent with conclusions reached after considering the public consultation feedback on this issue.

The Panel further notes that the Treasury’s recommended approach to Issue 1 differs with the proposal to be implemented by the EQC and the Minister responsible for the EQC.

We note that Issue 1, a time bar on reopening claims, is no longer being proposed as part of the Bill. Note also that the fourth RIS mentioned in the Panel’s comment relates to the monetary cap on residential building cover, which is being implemented through regulations and therefore not through the Natural Disaster Insurance Bill, so is not covered in this Disclosure Statement.

Regarding the Regulatory Impact Statement: ‘Coverage of mixed-use buildings under the Earthquake Commission Act’.

In March 2020, the Regulatory Quality Assurance Panel led by the Treasury advised: *The panel considers the RIS meets the quality assurance criteria.*

Regarding the Regulatory Impact Statement: ‘Modernising the Earthquake Commission Act: Increasing the Cap’.

In May 2021, the Regulatory Quality Assurance Panel led by the Treasury advised:

The Quality Assurance Panel has reviewed the RIS in accordance with the Quality Assurance criteria set out in the Guide to Cabinet’s Impact Analysis Requirements. The panel considers that the information and analysis summarised in the RIS meets the Quality Assurance requirements. The RIS clearly sets out the rationale for early intervention before there is evidence of declining property insurance uptake. A range of options have been identified and evaluated against a comprehensive assessment framework. While there are limitations in quantifying the likely impact of options, the use of modelled data provides a useful indication of the relative scale and distribution of the impacts of different options. The panel notes that the Treasury’s preferred option is to increase the monetary cap on EQC building cover from \$150,000 plus GST to \$200,000 plus GST, which differs from the option proposed in the Cabinet paper. The panel further notes that there was no public consultation on the options, which increases the risk that technical or other issues may be raised at the Select Committee stage. However, this risk is mitigated by the extensive consultation that took place during previous public consultation, the Public Inquiry and the targeted consultation on the proposals.

Appendix Two: Further Information Relating to Part Three

Does this Bill create, amend, or remove offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)? – question 3.4(a)

The Bill includes changes to the Act's offences and penalties to ensure the penalties are sufficient to incentivise compliance with legislative obligations, align with the maximum penalties for similar behaviour in other legislative regimes, and make clear who the offences apply to and in what circumstances. These include:

- Increasing the maximum financial penalties for offences requiring an intentional act from \$2,000 to \$25,000 for individuals and \$50,000 in any other case (in sections 35(1) and 35(2)(a) of the EQC Act 1993). These include: giving misleading information; including misleading information in a required record; altering a required record so that the information in it becomes misleading, and; damaging or destroying a required record (clauses 150 and 151).
- Increasing the maximum financial penalties from \$1,000 and an additional \$100 per day the offence continues, to \$25,000 for individuals and \$50,000 in any other case and removing continuing offences for: obstructing an authorised person in the exercise of particular powers under the Act (clause 146), and; disclosing information about levy payments (clause 118).
- Increasing the maximum financial penalties from \$1,000 and an additional \$100 per day the offence continues, to \$5,000 for individuals and \$25,000 in any other case and removing continuing offences for strict liability offences (i.e. where the person is legally responsible for the consequences flowing from an activity even in the absence of fault or criminal intent). Examples include: persons who without lawful excuse fail to comply with a notice requiring them to: provide information; allow inspection, examination, and copying of information or things (clause 143 of the Bill – section 35(2)(b) of the EQC Act 1993), and; insurance companies who without lawful excuse breach their obligations to keep records relevant to the Act (clause 148 of the Bill – section 26 of the EQC Act 1993).
- Clarifying the application of and the circumstances in which offences apply in relation to:
 - amending the offence relating to breaches of the obligation of secrecy regarding the amounts of premium payments (section 25 of the EQC Act 1993) so it applies to board members and workers of the Commission, rather than the Commission itself, and changing it to an offence requiring an intentional act so inadvertent breaches are not penalised (clause 118); and
 - clarifying the application of the offence relating to persons who without lawful excuse, fail to comply with a request made by the Commission using its powers relating to the production, copying and furnishing of certain types of information (clause 143), so it applies to people who fail to comply with a notice, rather than applying to the Commission when exercising its powers under this section.

The Bill also includes a new offence for intentional breaches of the obligation on insurance companies to pay the Commission levies collected on its behalf within a specified period, along with the related obligation on the insurance company to provide a certified statement from an officer and agent of the company that the payment is correct (the obligations are located in section 24 of the EQC Act 1993). This will have maximum penalties of \$25,000 or a two-month term of imprisonment for individuals and in any other case a fine not exceeding \$50,000 (clause 113). The Commission currently has limited ability to act where there is deliberate non-compliance with these obligations. The proposed changes reflect the potential harm associated with a failure to pass on levies and to verify that the amounts of payments are correct.

Appendix Three: Further Information Relating to Part Four

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? – question 4.7

Amending the list of exclusions at Schedule 2

The current EQC Act includes a list of exclusions at Schedule 2 titled 'Property not insured by this Act'. The list of exclusions in the Act should be relatively flexible so future Governments are able to make minor clarifying and updating amendments over time without a full legislative process.

The current EQC Act includes the ability to make new exclusions by way of Order in Council, but not to edit or remove exclusions already in Schedule 2. Clause 156 of the Bill will maintain the existing provision and extend it to also allow the list of exclusions at Schedule 2 to be edited or removed. The Order in Council will not be able to amend Schedule 2 to exclude property that is part of a dwelling, that will need to be done by amendments to the Act. In addition, the Order in Council must only be made for 1 or more of the following purposes:

- to remove ambiguity about whether property of a particular kind is or is not covered by natural hazard cover
- to modernise the kinds of property that is or is not covered by natural hazard cover (for example, as a consequence of technological changes)
- to make other changes of a minor or technical nature.

Approving a Code of Insured Persons' Rights for the Commission

The Commission will have a new objective to administer natural hazard cover, in particular by managing and settling claims, in a fair and timely manner in accordance with the Act (including the Code of Insured Persons' Rights). The Bill requires the Minister to make a Code of Insured Persons' Rights, the purpose of which is to set out the rights of insured persons to have their claims managed and settled in a fair and timely manner (clauses 84 and 85).

Amending the monetary cap on building cover and other financial figures

The Bill will enable the Governor-General to, on recommendation of the Minister, alter the following financial figures via regulation following a review of financial settings and levy settings (clause 132):

- the rate of the insurance levy and methods for calculating it
- building and land cover excess
- building cover caps
- caps for retaining walls and bridges or culverts
- the rate of the levy, or method for determining it.

Does this Bill create or amend any other powers to make delegated legislation? – question 4.8

Prescribing measurement standards for mixed-use buildings

As part of assessing whether a building meets the 50% test to be a residential building, there may be a need in some borderline cases (i.e., where a building is not obviously half residential or non-residential) for the Commission to engage a surveyor to help determine whether the residential part of the building accounts for half of its floor area.

There may be instances in future where the Government may wish to prescribe clear standards in regulations to support the Commission and claimants to navigate these situations. In the interests of durability of the Act, we propose to provide for a regulation-making power in the Act to enable future Governments to prescribe specific standards of measurement relating to mixed-use buildings (see the definition of floor area at clause 5, and the regulation-making power at clause 155). This may involve cross-referencing survey or valuation industry standards in the Act.

Information gathering

The Bill will enable the Commission to specify a reasonable timeframe within which information must be provided (either by claimants or insurers), and to set requirements around the form and format in which requested information is provided (clause 56). This will ensure the information is provided in a way that is accessible, useful, and timely to enable the Commission to carry out its claims handling and settlement function. The scope of the power is sufficiently constrained so as not to warrant specific safeguards beyond the general processes for delegated legislation.

Code of Insured Persons' Rights and review

The Commission will have a new objective to administer natural hazard cover, in particular by managing and settling claims, in a fair and timely manner in accordance with the Act (including the Code of Insured Persons' Rights). The Bill requires the Minister to make a Code of Insured Persons' Rights, the purpose of which is to set out the rights of insured persons to have their claims managed and settled in a fair and timely manner (clauses 84 and 85). The Code will be deemed to be secondary legislation.

The Act will include an entitlement for claimants to request an independent review of unresolved complaints (clause 89). Regulations can be developed to specify procedural requirements, safeguards, and the rules applying to the review function.

Alternative Dispute Resolution

The Bill will require the Commission to participate in an approved low-cost dispute resolution scheme, such as mediation, to allow claimants to resolve disputes without the need to go to Court (clause 97). The regulations will enable the Minister to approve the dispute resolution scheme and the scheme's rules if the Commission creates its own (clauses 98 and 99).