



# Public Inquiry into the Earthquake Commission

*Uiuinga Tūmatanui ki te Kōmihana Rūwhenua*

## Report of the Public Inquiry into the Earthquake Commission

March 2020



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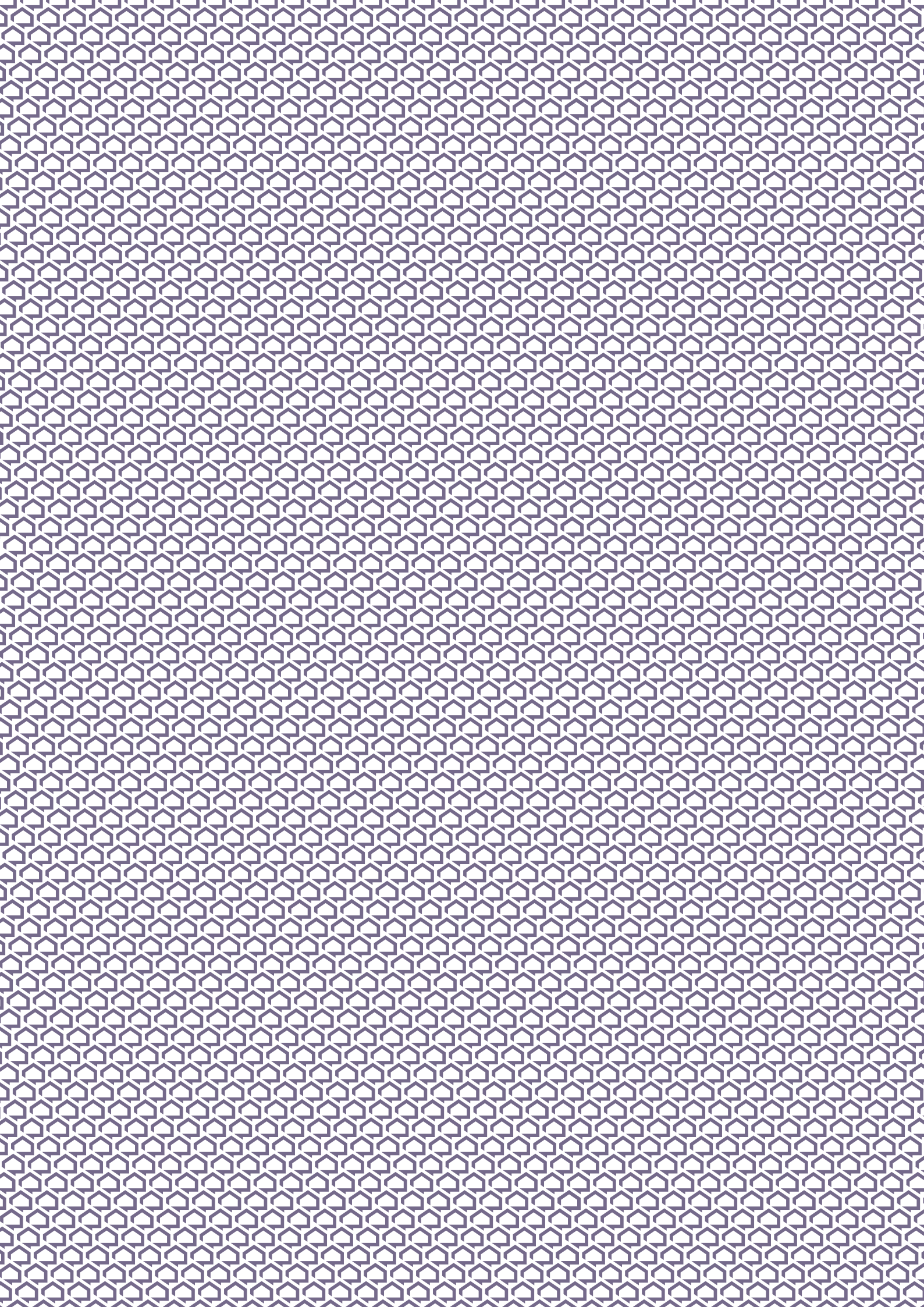
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## Tēnā koutou,

Thank you for your interest in this report, which is the culmination of more than a year's work inquiring into the Earthquake Commission (EQC) and is aimed at making a positive difference for all New Zealanders.

This document sets out my findings and recommendations from the Public Inquiry into the Earthquake Commission. Following receipt by the Governor-General, it provides the Government with the basis for its consideration of next steps. I have tried to present the recommendations and rationale behind them in a clear, readable and concise manner without prescribing how any of these recommendations might best be implemented.

In 2018, after I accepted the responsibility to conduct this Inquiry from the Hon Dr Megan Woods, then-Minister Responsible for the Earthquake Commission, I quickly became aware of the importance of the issues that are so fundamental to the everyday lives of New Zealanders. We all face the ever-present threat of natural disasters and we all want to know that when a disaster strikes we will have the means to rebuild and recover from it.

A highlight of conducting this Inquiry has been the people I have met and spoken with up and down the country. People have generously given their time to detail their own EQC experiences and provide their views in writing or in person through meetings and public forums. In many cases, the people I spoke with were claimants who had their lives turned upside down by earthquakes and the resulting damage to their homes and struggles over insurance claims. I was moved by what people have gone through and, in some cases, what they are still experiencing as they work to get their lives back on track.

In addition to EQC claimants, many people with experience in disaster recovery roles have shared important insights with me through the course of the Inquiry. These participants have included iwi leaders, community groups, insurance advocates, judges, lawyers, engineers, tradespeople, insurers, local body and central government politicians, Chairs of the board of EQC, public servants (such as former and current EQC chief executives and staff) and many others. These interactions in meetings and public forums, combined with close to a thousand written submissions and thousands of pages of documents from EQC and others, have provided me a wealth of information from which to formulate my findings and recommendations.

I have also had the benefit of advice from members of a knowledgeable and committed Community Reference Group, which gave me invaluable advice on how the Inquiry could best engage with the people particularly affected by the Canterbury earthquakes. I want to thank them all for their contributions. I would also like to acknowledge the secretariat, led by Dallas Welch, which has so ably supported me through the course of the Inquiry and my Counsel Assisting, Jane Meares, for her professional and thoughtful advice.

While the Terms of Reference for this Inquiry are focussed on the operational practices of EQC and the outcomes of claims for people, it is impossible to consider these issues in isolation. That being the case, this report touches on a range of related issues and my impressions developed from these, which may be of use to the Government or other interested parties.

The scope of this Inquiry does not include apportioning blame, but I have made clear in this report where I found fault with EQC or where I found its response to be below the expected standard.

In the course of the Inquiry, I found EQC's public response to be instructive. The organisation stated that, in preparation for the Inquiry, it was the first time since the Canterbury earthquakes of 2010-2011 it had gathered such a comprehensive set of information on its handling of the events. As EQC's board Chair Sir Michael Cullen said, it put into perspective how the Canterbury earthquakes had overwhelmed EQC. EQC has made an unreserved apology for its shortcomings in responding to the Canterbury earthquakes and the negative impacts these had on claimants, families and communities. EQC has publicly stated that it is determined to do better in future events and advised that it has made a number of changes. The proof will be in the effective implementation and delivery of these changes, with the true test being the next major natural disaster.

I hope this report goes some way to addressing the issues that have weighed heavily on people affected by earthquakes and other natural disasters in recent years and that it leads to further change that reassures and prepares homeowners for the future.

Ngā mihi nui,



Dame Silvia Cartwright

**Chair of the Public Inquiry into  
the Earthquake Commission**

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# Findings

# Introduction

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The Public Inquiry into the Earthquake Commission commenced in November 2018, some eight years after the first major earthquake in Canterbury. As Inquiry Chair, I was asked to “investigate and report on the lessons that can be learned from the application of the Commission’s operational practices and the Commission’s approaches to claims outcomes in relation to the Canterbury earthquake events and subsequent events”, and to “make recommendations to improve the Commission’s readiness to respond to future events”.<sup>1</sup>

Claimants’ experiences of the Earthquake Commission’s (EQC’s) operational practices and the outcomes of claims have been a very important dimension of the Inquiry. I therefore chose to take an inquisitorial approach to ensure that I met as many people affected by the natural disasters as possible and that they felt comfortable to participate. Being able to undertake relatively informal meetings has also been beneficial in acquiring relevant information from a wide range of people. (Please see the appendices for more information on the conduct of the Inquiry, including its engagement processes and the Terms of Reference).

I recognise that a relatively small proportion of all Canterbury claimants, and claimants from later events, contributed to the Inquiry. There are, of course, a large number of claimants whose experiences and views I have not heard and at least some of those will have had a positive experience with EQC. By and large, however, claimants who did participate in the Inquiry expressed dissatisfaction with the operational practices and outcomes of claims they experienced with EQC.

I heard through submissions, social media, public forums and the Community Reference Group that advised me that some people felt that recounting their experiences with EQC was not worthwhile or too uncomfortable. I appreciate that for some people it is still too upsetting for them to recall the difficult times post-disaster and others are too busy, or have chosen to “move on” with their lives and not look back.

Overall, I believe I have heard from a sufficiently large group with common experiences of what did not go so well, from which we can learn and gain greater wisdom. The Inquiry is presenting a companion report to this one, *What we heard: Summary of feedback from the Inquiry’s public engagement*. As the title suggests, that report summarises the information and comment I heard from many sources, including submissions, public forums, meetings and interviews, and social media. As such, it gives the reader a sense of what mattered to the public and organisations.

I also received extensive and thoughtful material from EQC itself. At times, however, it has been difficult to determine with real clarity the authoritative data or descriptions of EQC business processes as they worked in practice. Although capturing information on business processes might take second place in crises and when the operating environment is complex, taking time to do so to maintain institutional knowledge is essential. The alternative is to start from a position of ignorance and unpreparedness each time there is a major natural disaster.

My impression is that on the whole, EQC staff, managers and governors were doing their best in difficult post-disaster circumstances, even if it may not have appeared that way to the public at the time. I have distilled what I have heard from EQC personnel, past and present, to inform my recommendations. Rather than take a broad sweep across the many topics that have been raised with me, in my report I have chosen to focus on issues that I consider to be of particular importance and have looked at where things might be, or might need to be, done differently in future. Many of the issues are interconnected and there are choices about how to respond.

My findings, presented below, draw largely on the experiences of those affected by the Canterbury earthquakes and those who were part of the recovery, including EQC, as well as the experiences of those affected by other major natural disasters that have occurred since (as specified in the Terms of Reference). The summaries in my report of the views expressed by EQC claimants and staff should not to be taken as findings about any particular individual in a governance, leadership or any other role in EQC.

1. Public Inquiry into the Earthquake Commission Terms of Reference, Appendix 1, Attachment A of this report.

Parts 1-4 of this report address the operational and related practices of EQC before, during and after the Canterbury earthquakes and how these practices were adapted to respond to other events, claimant experiences and the outcomes of claims. I have considered the operational practices thematically and in a roughly sequential order, relating to the process for handling claims. This report includes an overview of the future risk from natural perils that New Zealand faces—the compelling case, even when presented in shorthand, as to why this all matters. The report also canvasses why EQC was first established and remains a vital tool for recovery from natural disasters.

# Preparedness for Canterbury earthquakes

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Given the Canterbury earthquakes of 2010 and 2011 were the largest and most damaging natural disasters encountered in recent New Zealand history, the role that EQC played came under intense scrutiny and continues to do so. Shortcomings in its performance resulted in unacceptable stress, distress and delays in some people's recovery and repair of their homes.

There have been no other major events of the scale and complexity of the Canterbury earthquakes. At the time of the first earthquake in September 2010, the most recent significant events<sup>2</sup> had each produced between only 5,000 to 6,000 claims and provided an inadequate operational basis for the sudden and extreme increase in this part of EQC's work as it dealt with 460,000 claims following the Canterbury events. Its systems for case management, its abrupt need to engage trained loss adjusters and claims managers and the addition of a major repair programme to its responsibilities all contributed to the need for major organisational preparations under acute time pressures.

It is natural in an Inquiry such as this to focus on shortcomings in order to identify areas for improvement. However, there were also positive aspects of EQC's preparedness that assisted in the exercise of its responsibilities. Foremost is the part played by its research into "matters relevant to natural disaster damage, methods of reducing or preventing natural disaster damage, and the insurance provided under [the Earthquake Commission] Act".<sup>3</sup> EQC's collaboration with the Crown Research Institute GNS Science and engineering and environmental consultancy Tonkin & Taylor to improve understanding of New Zealand's natural disaster risks provided vital information and cooperative practices, which enabled a more specific and coordinated response when widespread land damage became apparent in Canterbury.

EQC's prior arrangements with firms of assessors and other professionals paid dividends, allowing the process of leading the assessment of damaged land and the managed repair of residential properties in the affected areas to get underway quickly once the respective decisions had been made. The procedures for increasing staff numbers, managing the financial challenges of such a major project and completing a contract for project management with Fletcher Construction Company Limited (Fletcher) have been assessed positively in formal reviews. As the natural disasters extended across Canterbury and then to other parts of New Zealand, experience gained in the initial events was put to good use, with new initiatives being tried, such as the agency model in cooperation with some of the private insurance industry after the Kaikōura/Hurunui earthquake and the clear up of flood debris in Edgecumbe.

Once the full import of the Canterbury earthquakes, the need to disseminate information about how to make claims, the consequences of land damage and how the managed repair process would proceed became apparent, EQC staff made committed efforts to engage with the public. This was done by holding many public meetings, sometimes conducted in an atmosphere of anger, resentment and distress. EQC staff members, supported on occasion by experts from Tonkin & Taylor and other agencies, deserve credit in undertaking this task, as do those at the frontline facing the mammoth job of dealing with thousands of complaints and requests for information.

2. 2007 Gisborne earthquake and 2009 Tuatapere earthquake

3. Earthquake Commission Act 1993, s5(1)(e), <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305968.html>

# Reputational damage

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Unquestionably, there has been serious damage to EQC's reputation; some deserved but much because it was simply unprepared for the role assigned to it. Prior to 2010, EQC was a trusted Crown entity, left to its own devices by the Government and not given much support for its attempts to secure and build its funds or to plan for the future. It was and continues to be successful in securing reinsurance in spite of New Zealand's seismic risks and the recent catastrophic events, in part because of its commitment to research in understanding future hazards.

EQC is derided by many, predominantly in Canterbury. A similar reaction to private insurers is also apparent, although more muted. But a body such as EQC—seen as the face of government—that had always been helpful and supportive prior to the Canterbury earthquakes was seen to be uncaring, miserly and inefficient. This reputation gathered pace and EQC is now frequently mentioned with distaste and even expletives.

EQC did deal, albeit sometimes poorly, with the repair programme in Canterbury under very challenging conditions. While a proportion of the Canterbury population will not agree, for that EQC should be acknowledged.

# Limitations of advance planning

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The 2009 decision to review EQC's response to catastrophic natural disasters was an example of excellent future thinking and provided the basis for some planning, unfortunately cut short by the first of the major earthquakes in September 2010. Developing and testing response scenarios and enhanced research into the natural hazards facing New Zealand for the future will always pay dividends. However, there were limitations to the 2009 review of the Catastrophe Response Programme. First was the assumption about the type of earthquake and its location. Based on both New Zealand and international experience, the cascading effect of multiple earthquakes had not been considered, nor that they could occur in a part of New Zealand that was outside the usual area assumed for seismic activity.

There was little or no thinking about how to manage land damage and the repair of a vast swathe of urban housing. The Catastrophe Response Programme review did note "as a Crown owned entity, the government may expect EQC to work with other government agencies and insurance companies to facilitate reconstruction work".<sup>4</sup> However, the Government did not engage with EQC to provide guidance and support when the Catastrophe Response Programme review recommendations proposed ascertaining what the Government's expectations of EQC might be in a major event or series of events. The EQC board had earlier decided that it could not take responsibility for a managed repair programme and, I understand, had informed the Government of this. Consequently, no identifiable forward planning had been done for a managed repair programme.

Nor was consideration given to the role of other state entities. EQC was not equipped to take on the full responsibility for managed repair: its functions were narrow and its board and management had not been planning for such a role and had actively rejected it for good reason.

The recommendation that EQC ascertain the Government's requirements of it was prescient and logical, but failure to reach any concrete high-level agreement with the Government prior to September 2010 resulted in critical decisions with far-reaching consequences being made under crisis circumstances.

4. *Review of New Zealand Earthquake Commission's Catastrophe Response Operational Capability*, May 2009  
[https://www.eqc.govt.nz/sites/public\\_files/WeCan%20-%20Appendices%2056-63.pdf](https://www.eqc.govt.nz/sites/public_files/WeCan%20-%20Appendices%2056-63.pdf)



# Readiness for future natural disasters

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EQC has put in place a transformation programme to meet its readiness and response objectives and ensure its operating model can respond effectively to future natural disaster events. This programme is planning EQC's approach to managing claims for future events and includes investment in capability—both people and systems.

EQC recognises that it must be able to respond to a variety of future events and be adaptable to the unique circumstances of the disaster. It has described its transformation work as “developing a toolbox of options for recovery”, which is based on three approaches to managing claims: in house; third-party provider; or private insurer-led delivery, all predicated on cash settlements. The readiness work shows how these approaches would be actioned in different modelled disaster scenarios. EQC has been working closely with the third-party providers it currently has under contract to build the approach and separately with the private insurers to enhance the Kaikōura Memorandum of Understanding (put in place for the private insurer-led management of claims following the Kaikōura/Hurunui earthquake) for the future.

The development of a data hub, which integrates information from EQC's various systems and other sources, is underway and attention is being paid to building the capability of staff and a constructive organisational culture.

EQC's work, while still in its early days, is necessary and appears to be comprehensive and detailed. However, I have some reservations about the assumptions that seem to underpin it:

- It is not clear whether this transformation is being considered from the claimants' perspective or simply from an operational efficiency perspective. For example, the data hub delivering timely, comprehensive and correct information to claimants seems to be a by-product rather than an explicit business driver.
- A cash settlement approach potentially leads to a continuing legacy of unrepaired homes and, in the event of a major natural disaster, homeowners could be faced with the various issues that led to a managed repair programme being undertaken in Canterbury.
- An individual settlement basis means that implementing area-wide or community solutions (e.g. for land remediation) is difficult, with no incentive to explicitly prepare for such programmes.
- With third-party or private insurer-led models it is unclear how quality assessments of damage and appropriate repair strategies will be achieved following a major natural disaster. “Done once, done right” is as important for cash settlement as it might be for a managed repair programme, although there will always be judgements to be made about how invasive assessments should be for any particular claim.

EQC also needs to consider how it might respond to requests or directives outside the modelled scenarios (e.g. a Ministerial directive to do “x”). Although detailed planning for the unknown is unproductive, at least being prepared for such an eventuality would be helpful. Close coordination with the Government as to its expectations should be an ongoing priority.

# Claimant experience in Canterbury

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At an operational level, EQC was poorly prepared for the events of 2010 and onward. Valiant efforts were made to build staff numbers and their skills, but effectiveness was thwarted by the lack of prior planning for such major events. In practice, the systems and operational practices followed by EQC in dealing with claims relating to the Canterbury earthquakes fell well short of what was fairly expected of it by claimants and others.

The Terms of Reference require me to review “the Commission’s customers’ experience of its operational practices and claims outcomes”. It is worth emphasising that although these recounted experiences are subjective and sometimes challenged by EQC and its senior management, they are the reality for many in Canterbury and cannot be dismissed.

As I have already indicated, those who described their experiences to me form a relatively small proportion of the affected population and they mostly had negative experiences. They understood that the events facing EQC were major, but they felt let down. As the accompanying volume, *What we heard: Summary of feedback from the Inquiry’s public engagement*, indicates clearly, there was a consistency in the reported experiences of the public and these views were often substantiated by the staff members I met.

I fully accept that staff, managers and the board of EQC faced an overwhelming task from September 2010, made significantly worse by the ongoing major earthquakes that ensued, an absence of clear prior direction from government, added responsibilities and inadequate internal systems. In the circumstances, EQC’s commitment and aspects of its response are commendable. It is necessary, however, to emphasise that its advance planning had many inadequacies, as did the undertaking of its functions after the major events began. The affected public has borne the burden of this.

## Management of claims

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EQC’s move away from a case management system following the Canterbury earthquakes did not help its relationships with claimants. Many people told me about the difficulty they had contacting EQC and getting information about progress with their claims. They were frustrated by having to speak with a different staff member every time they contacted EQC and having to re-explain their situations. EQC staff also expressed frustration about the fragmented way in which claims were handled.

In addition, EQC took a risk-averse approach to providing its claimants with their own data, leading to significant backlogs of Official Information Act 1982 requests and complaints to the Privacy Commissioner and the Office of the Ombudsman, contact with politicians and recourse to legal proceedings, much of which could have been avoided with some careful prior planning and an efficient computerised system. Privacy issues require careful management, but there are times in a major natural disaster where normal rules might need to be suspended, provided that there is advice and guidance sought from appropriate agencies such as the Privacy Commissioner and the Office of the Ombudsman.

EQC re-adopted a case management approach for subsequent natural disaster events, with a single case manager responsible for dealing with all aspects of a claim and acting as the primary point of contact for the claimant.<sup>5</sup> In 2018, EQC extended this approach to remaining Canterbury claims as part

5. EQC’s response to the 2016 Kaikōura/Hurunui earthquake involved private insurers acting on EQC’s behalf but still involved the claim manager being the single point of contact for claimants.

of what it describes as “a broader shift to the Customer Centred Operating Model”. This is a positive step that acknowledges the needs of claimants and EQC should ensure that claimants remain at the centre of ongoing work to improve its processes for managing claims.

In January 2020 EQC also announced the beginnings of a push to automate part of the process, including use of online lodgement forms, with the stated intention of speeding up the process and improving claimants’ experiences. Use of technology that gives claimants options and streamlines the claim process should be encouraged, as long as it is reliable and does not create confusion or disconnection.

## Data and information management

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A major issue, which led to a multitude of problems following the Canterbury earthquakes, was the inadequacy of EQC’s information management systems. Although its systems were due for an upgrade (in particular to provide an integrated service), this could not be achieved in time to enable more efficient recording and dissemination of information about claims, repairs and even location of properties. EQC needed to share information during the managed repair process with claimants, Tonkin & Taylor, Fletcher and private insurers. However, it lacked the systems to do this.

EQC reports that programmes are underway to address the issues that have plagued its data and information management systems in recent years. It cites upgrading information technology infrastructure, improving data quality and analysis systems and working with private insurers to increase data sharing and connectivity across systems. However, it cautions that this will take time. Given the breadth and extent of the issues and the fundamental importance of “getting it right” in order to meet legislative obligations, EQC must continue to give data and information management improvements the highest priority and continuing attention in its work programmes so that it is better prepared for a future event.

Information sharing processes also need improvement by EQC and others. For example, much greater coordination with Land Information New Zealand, civil defence, local authorities and other government agencies for information about individual homes, their location, known risks and whether there are known vulnerable residents would have smoothed the efforts to reinstate people’s homes.

Private insurers have no excuse that I can discern for declining to provide EQC with the location of the risks that they, and therefore EQC, cover. This issue could have been resolved prior to the Canterbury earthquakes and would have considerably reduced EQC’s administrative workload. Private insurers have been inclined to complain about EQC’s inefficiencies and this was one way they could have assisted.

Consideration needs to be given to:

- what support and assistance EQC might benefit from, and even requisition from, other government entities that are in a position to provide advice and expertise in preparation for and following major natural disaster events;
- whether it would be advantageous for legislative amendment (beyond the recently added section 31A (3) to the Earthquake Commission Act 1993 (EQC Act)) allowing privacy provisions to be suspended following a natural disaster event to make it easier for other agencies, as well as EQC, to share useful and relevant information and, in particular, to foster better recovery and wellbeing of vulnerable people and/or communities;
- how data can be collected, classified and used to identify and prioritise vulnerable claimants in a more efficient way; and
- what sort of information could be held in a centralised database to enable better access to pertinent land and property information by homeowners, claimants and other appropriate parties.

# Assessment of damage

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It is abundantly clear to me that thorough, consistent and accurate assessments of damage underpin the integrity and outcome of the entire process. Time and time again, the root of the problems and disputes claimants described to me with regard to settling their claims stemmed from poorly undertaken assessments of damage. As the Office of the Auditor-General noted in its 2013 report on how EQC had performed in managing the home repair programme<sup>6</sup>:

*Damage assessments are critical to the operation and management of the home-repair programme. This is because damage assessments:*

- *set up homeowner expectations about what will be repaired;*
- *indicate whether the cost of repairing the damage puts the house in the home-repair programme;*
- *indicate the range and quantity of different types of repairs required; and*
- *in aggregate, indicate the overall cost of the home-repair programme.*

It is critical that EQC gets this right.

While the EQC Act places the responsibility on homeowners to prove their claim, this was not well understood by or explained to claimants and EQC's assumption of responsibility for assessing damage after the Canterbury earthquakes did not help. Moreover, when homeowners did attempt to provide their own evidence on the damage to their homes, they were often dismissed by EQC, thus setting the scene for a lengthy dispute. Homeowners who relied on EQC's assessment of damage sometimes found that this was inadequate and later encountered problems with agreeing an appropriate repair strategy or getting their homes adequately repaired.

This cannot happen again. While the next disaster and the type and quantum of damage it will wreak remains largely unknown, EQC must have work underway now to ensure that roles are clearly defined and there are appropriate processes and protocols in place for identifying, assessing and documenting natural disaster damage-responsibilities that may fall again to EQC in a major natural disaster.

It would be valuable for EQC to commit to a set of principles of practice and quality for assessments to define how it undertakes this fundamental part of managing claims. These need to include:

**Fairness and balance:** Claimants are assured that assessments will be made fairly and consistently and that EQC will act with reasonable and practical recognition of damage while meeting the provisions of the EQC Act.

**Competence:** Claimants are confident that assessments are being carried out by trained assessors with appropriate experience and expertise and that this is completed thoroughly, accurately and in a timely way.

**Clear and transparent processes:** Claimants can easily understand the process, access all relevant information and are clear about the basis and standard of reinstatement.

**Manaakitanga/respect:** Claimants are treated with dignity and courtesy, and care is shown for cultural values and vulnerable people.

These principles of practice would require EQC to prepare to have sufficient and appropriate staff resources, training, systems and processes in place after a natural disaster to meet government expectations and fulfil public needs as well as its legislated role.

6. Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme*, October 2013 <https://www.oag.govt.nz/2013/eqc/docs/oag-earthquake-commission.pdf>



# Managed repair

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Prior to the Canterbury earthquakes, EQC's discretion to repair property had been contemplated for isolated events, dealing with a few insured dwellings. A managed repair on a mass scale was not part of EQC's planning, nor was it the preferred option. Nonetheless, after the September 2010 earthquake, the decision was made (in a somewhat opaque way) that a plan to repair thousands of affected homes was needed and that EQC was the best agency to provide the service.

However, EQC's lack of experience in this area led to many mistakes: inadequate quality control, poor staffing decisions, uncoordinated planning—where land assessments were not finalised before home repairs began and were sometimes conducted in parallel—and poor claimant relations. I have been left with a clear impression that there was a climate of urgency that led to decisions being made without adequate time for reflection or planning. Poorly thought through decisions were frequently reversed and added greatly to confusion for both EQC staff and claimants. The furious pace of the managed repair programme, compounded by political and public expectations, left EQC little opportunity to pause and refresh the programme, very much to its detriment. Relationships with other affected entities, such as private insurers and Fletcher, suffered from EQC's lack of prior planning for a managed repair programme.

There is broad scepticism among claimants and the wider public about what became known as “botched repairs”. Quality issues should always be at the forefront when a major programme is planned. However, EQC has been unable to reassure homeowners that the repairs, over which those homeowners had little control, were done to a satisfactory standard (and in some cases, whether they were done at all), which has caused considerable distress to homeowners.

There is little evidence of support and collaboration from other government agencies or departments in executing the managed repair programme. Given that this was the greatest emergency to confront New Zealand since the Second World War, I find the absence of a coordinated state response and forward planning for the housing recovery surprising.

There is every prospect that following a future major event or series of events, it will again be necessary to coordinate repair of land and residential buildings and a similar managed repair process will be adopted. It is rational to undertake a managed repair programme; this fulfils many requirements to provide adequate housing for a traumatised population and ensures that the inevitable costs and rationing of resources can be managed fairly and efficiently. EQC cannot, however, be the sole body to manage the process.

# Land information

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Land was an area where EQC was much better prepared to provide expert advice and assessment of damage thanks to its research programme and its long-standing collaboration with Tonkin & Taylor. Its statutory functions came closer to identifying this as an expected activity.

Even so, it takes a liberal reading of section 5(1)(e) of the EQC Act to interpret it as providing the basis for developing a far-reaching research programme that has evolved into support for the widely admired and used GeoNet platform. The broad information on New Zealand's seismic risk has been invaluable for EQC and other users. I am unclear about the extent of research into other natural hazards such as tsunamis, natural landslips, volcanic eruption, or hydrothermal activity; damage from which are all covered under the current legislation. Greater prescription of research objectives, based in part on experience gained during the Canterbury earthquakes and including social science research concerning the impact on the public, would be valuable as a guide for EQC's future research function.

There will always be a need for expert assessment of land damage after earthquakes, tsunamis, or volcanic eruption to ensure that land is sufficiently stable for housing repair or rebuild. In itself, land assessment demands a unified approach; it is an inefficient use of resources to assess land damage property by property and EQC's research provides a good basis as a starting point.

The looming possibility of climate change-related land damage is one that will inevitably engage EQC and there is a real possibility of a greatly increased level of dispute over whether landslips and other damage are included in EQC's jurisdiction. EQC is one agency that has access to an array of information about the stability of land, particularly in Canterbury where there is now increased flood and liquefaction risk. The fact that it has no voice in decisions about planning for residential land use, for which it will assume some degree of insurance risk, is one that is troubling for the future.

## Resolution of disputes

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The fact that there would inevitably be many disputes arising from EQC claims following a major natural disaster seems not to have been considered by EQC or the Government. There had been no prior consideration of establishing mechanisms for resolution of disputes, either by EQC or in the Catastrophe Response Programme. As a result, EQC was poorly prepared for the number and complexity of the disputes that arose over earthquake and other natural disaster damage.

EQC deployed an inappropriate and unprofessional in-house model that clearly made the situation worse for many claimants. It was slow to develop procedures that enabled claimants to access their information (about the status and progress of building and land assessments and repairs) and its responsiveness to concerns raised was equally slow and inept, resulting in greater stress for claimants and EQC's own staff. Its practices led too readily to formal court-based dispute resolution models. It took too long to realise that many of the disputes could have been resolved by better communication with its claimants, referral to mediation and arbitration, and assistance for claimants to understand the technical material generated in the process. This has cost EQC dearly—financially as well as in terms of its reputation.

Given there will be future natural disasters in New Zealand and that a version of a managed repair programme is likely to be deployed again if the scale of housing damage is significant, the entities and processes established to resolve disputes after the Canterbury earthquakes will provide valuable material for evaluation and future modelling. These dispute resolution mechanisms were introduced too slowly but have been largely successful.

The specialised court lists developed by the High Court and Court of Appeal were valuable and rationalised the areas where litigation would benefit the most claimants and where those courts identified appropriate cases. The Earthquake List has been a successful model for ensuring the efficiency and effectiveness of litigation and is one the courts should ensure becomes a model for litigation arising from future natural disasters, modified to accommodate different situations and new systems and technologies.

Community Law provided an expert and accessible advisory service but was overwhelmed with work and may well have been under resourced to enable it to fulfil the demand it could have usefully serviced.

There is a major issue with the influx of advocates, particularly where they are unqualified and therefore not able to be regulated by the New Zealand Law Society. In many instances they have aggravated the dispute, added substantially to costs and over-promised outcomes for claimants.

I endorse the Canterbury Earthquakes Insurance Tribunal<sup>7</sup> being administered by the Ministry of Justice. The Ministry of Justice has a wealth of experience in administration of a wide range of tribunals and should be able to scale up in the event of a spike in disputes. I agree also with others' recommendations<sup>8</sup> that mediation services be provided by the Ministry of Business, Innovation and Employment (MBIE) to take advantage of its specialised knowledge and expertise in dispute resolution, given it currently provides mediation services for various bodies, such as the Weathertight Homes Tribunal.

Steps could be taken now to resolve the jurisdiction of the Greater Christchurch Claims Resolution Service and the Tribunal, possibly by removing the under-used arbitration service offered by the Greater Christchurch Claims Resolution Service and giving the Tribunal scope to cover on-sold properties. It should also be made clear that once proceedings are filed with the Tribunal, the limitation period is suspended. This would result in fewer proceedings being filed in court simply to stop the limitation clock running.

The end result would be a step-by-step approach to dispute resolution: provision of information; expert advice and mediation; and if that fails, filing in the Tribunal. This is a rational response to disputes that are not simply about damage claims but have a strong overlay of distress and trauma for the claimant.

## Experience of other events

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Where earthquakes and floods occurred in small towns or rural areas, I heard neutral feedback about EQC and greater criticism of private insurers, who led the insurance response in some cases.

Two possible factors explain the more positive claimant experience of EQC's operational response. First, EQC applied its accumulated and invaluable experience, gained during the Canterbury earthquakes between 2010 and 2011, in dealing with its claimants and in the way it approached assessing damage and managing claims during the later events. It had also developed improved working relationships with private insurers, with better exchange of data and greater cooperation for over-cap claims.

Second, the areas were generally less heavily populated and the events were singular occurrences (therefore there was no need for apportionment of damage<sup>9</sup>). Moreover, I got the impression from my visits that the affected communities and their local authorities were well accustomed to working together and caring for each other.

It is important to note that the number and severity of natural disasters occurring between the September 2010 earthquake in Canterbury and the major flood of the Rangitaiki River in 2017 was unprecedented; EQC had never faced such an accumulation of events. Placing responsibility on EQC for functions that were not within its legislative duties, or which it was not normally equipped to discharge, added to the issues the organisation faced. However, the increased staffing and steadily growing skills and experience of EQC's management and staff were of real advantage and EQC's performance improved significantly with each event.

7. Office of the Minister of Justice and Minister for Courts, Cabinet paper, *Establishment of Canterbury Earthquake Insurance Tribunal*, February 2018, <https://www.justice.govt.nz/assets/Documents/Publications/canterbury-earthquakes-insurance-tribunal-28-february-2018.pdf>

8. MBIE's Government Centre for Dispute Resolution, *Dispute resolution following natural disasters: An examination of approaches used in New Zealand and overseas to resolve disputes after a natural disaster*, 2018 <https://www.mbie.govt.nz/assets/f4f8a74157/post-natural-disaster-dispute-resolution-august-2018.pdf>

9. Apportionment is the assignment of damage across a series of events

# Impacts on the public

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The most notable consequence of the Canterbury earthquakes and the later natural disasters in Seddon/Cook Strait, Kaikōura/Hurunui, Eketāhuna and Edgecumbe has been the impact on the affected public. There had been no serious research or planning for dealing with the inevitable increased ill health and financial stress on individuals and the community. The consequence for homeowners has been a palpable re-traumatisation of people, particularly in Canterbury, but also in other parts of New Zealand where there have been natural disasters. This has not been limited to the stress of interactions with EQC; it has extended to dealings with private insurers and government departments.

As well as the impact on the physical and mental health of the affected populations, a deep mistrust of government (represented by EQC) and a suspicion of motives for actions by those in authority has developed and will take many years to overcome. There was also significant resentment at what was seen as a Wellington-imposed plan for recovery in Canterbury. While I acknowledge that those who chose to meet me were the most likely to have had negative experiences, there was, nonetheless, a common thread to their narrative; many felt a heightened need to do their own research and to form advocacy groups. In some cases this has taken over their lives.

A distinction should be clearly drawn between attending to the immediate priority of ensuring public health and safety, which is not an EQC function, and ascertaining the extent of land and housing damage. Time taken to understand and explain the extent of the housing issues will pay dividends in reducing confusion and distress.

All too often following an event that has had a major impact on a community, there is a call for a “people-led” approach to assisting them. This is true of the devastating earthquakes and floods that deeply affected a broad range of New Zealanders from 2010. This approach is not, however, to be understood as a catch-all phrase to be aired whenever institutions or leaders wish to be seen as caring. It must be given meaning if the experiences of the people I have met over the past year are to be respected. The introduction of community-based advisory groups has been helpful for many organisations since the Canterbury events and the methodology for establishing them, as well as the best use of the groups, should be recorded and used as part of future planning.

# Communication

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A significant problem for EQC was communication with the public of its plans, how to obtain information, where to seek advice and how to resolve disputes. Although real efforts were made to transmit useful information during the managed repair process, many members of the public have generally felt ignored and mistrusted and have been left distressed and angry. Outside Canterbury, there is little understanding of the scale and impact of these natural disasters, leaving New Zealanders in other parts of the country unprepared for the consequences of similar major disasters. Much greater emphasis is needed on this pivotal area of EQC’s responsibilities.

There is a fine line between reassuring a population whose homes have been severely damaged that the authorities will support them and giving unrealistic messages about the time within which damage can be repaired; this is particularly the case when events are fast moving and time is needed to assess the damage.

With these matters in mind, I set out a series of principles of practice I believe EQC needs to adhere to in its communications to its claimants and those affected by natural disasters. These are based on the need to make its messaging simple, accessible and inclusive; to deliver it with a sense of empathy; and to demonstrate an agility that matches the changing needs of people after a disaster.

Better integrating the communications with community-led advice will help EQC deal more quickly and effectively with the people it serves. This should be seen as a partnership with the community and one that will help EQC fulfil its mandate more fully than it has in the past. The modern New Zealand community is not prepared to await advice from on high. It has the education, knowledge and experience to operate as part of the system, not as simply a beneficiary of it.

## Claimants' rights and support

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A fuller understanding by all government agencies, including EQC, of the implications of New Zealand's ratification of the International Covenant on Economic, Social and Cultural Rights would be valuable, as would consultation with the New Zealand Human Rights Commission to ensure its application in future major natural disasters.

Better understanding how to define and meet the needs of vulnerable people is a challenge to conventional thinking. Taking advice from agencies such as the Canterbury District Health Board and the New Zealand Human Rights Commission, together with some targeted research on the impact of major natural disasters on vulnerable people, will allow for better preparation for recovery following events in the future.

The ongoing and serious impact on the physical and mental health of those affected, including children, cannot be overlooked. For children, this includes the impact of how adults in their lives are affected, which, in turn, leads to a need to increase the quantity and quality of support provided to these children over the short term and long term.

Among other highly vulnerable groups are tenants, whose housing stability will often be less secure than that of the homeowner. Ascertaining ways the tenant can be better prepared for and given more information following a major natural disaster is important. Equally, agencies need to ensure tenants do not drop down the priority list after the needs of property owners have been taken care of.

## Impact on housing stock

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I hold grave concerns about the quality of the housing stock, particularly in Canterbury, but also in Kaikōura/Hurunui where cash settlement predominated. In Canterbury, historic building practices have left a residue of housing poorly equipped to sustain earthquake damage. The rubble foundation that is common in many parts may be inappropriate for, and cannot readily be brought to, earthquake-resistant standards.

There were innumerable instances where other assessments were inadequate and where scoping of the repair did not take into account the work needed to repair earthquake damage. A major issue has been the assessment of the quality of repairs.

There were a number of allegations that some work, which had been properly assessed and scoped for repair by EQC and the repairs paid for, was not actually undertaken. If true, this fraudulent practice has potentially left these properties vulnerable to future earthquake damage and the unsuspecting owners unprepared for rejection when they come to sell.

There were instances where damage was “repaired” with a cosmetic practice, where infrastructure such as stormwater and sewage drains have not been repaired and where properties were left in a worse state than when the repair began. For a variety of reasons, there are also houses that remain unrepaired, over nine years after the first major event.

There are properties that have been sold “as is, where is” that have had cosmetic repairs and have been on sold to unsuspecting purchasers or rented to vulnerable tenants.

There is also a legacy of damaged drainage infrastructure, particularly in Canterbury, as earthquake-damaged systems deteriorate further. Drainage issues can be undetectable by homeowners until their wastewater or stormwater systems fail. Realistically, EQC will not be able to close its cohort of Canterbury claims for some years, as long as drainage claims continue to be made.

In Kaikōura/Hurunui there are indicators that some cash settlements for repairs have not, as yet, been spent on the assessed damage repair. Issues that could arise include difficulty in gaining insurance or selling the affected houses. Additionally, these unrepaired properties will not necessarily withstand future natural disasters and may, in the meantime, add to existing housing issues of damp, cold, or unsanitary accommodation. I hold some concerns that the cash settlement process has left unexamined the full extent of damage, which may prove far greater once the homeowner embarks on repairs.

The insurance of residential properties is of primary importance to the homeowner and there are a number of prospective problems, including the inability to insure damaged, unrepaired homes. EQC cover is dependent, in most instances, on the homeowner holding fire insurance. Although it can be obtained independently of private insurance, frequently factors such as an unrepaired property will also disqualify those seeking direct EQC cover.

## Roles and responsibilities

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EQC is working to develop a role as “systems integrator” of the residential insurance response to natural disasters, coordinating the efforts of key parties and incorporating in-house capability to manage claims with the ability to contract additional capacity in the event of a major natural disaster. This proposal has real merit. However, I have concerns about EQC’s ability (as a medium-sized Crown entity that, in the past, has been circumscribed by its apparent irrelevance from managing its own affairs) to give effect to this proposal. When EQC has wanted to retain a greater proportion of its funding or to ascertain the Government’s expectation of it in the past, it has not been able to achieve that or advance its planning. Unless EQC is given greater freedom to manage its own specialised work, supported by its research role and the vast experience it has gained through the series of natural disasters over the period from 2010 to 2017, it is unlikely that it will have the authority to become a “systems integrator” for the residential insurance response to the next natural disaster.

There are other, as yet untested, possibilities such as designating in legislation the roles and responsibilities of government departments and entities in the event of a major natural disaster. EQC’s role could then be specified and possibly restricted to its current operations, with a specific responsibility for managing claims. It is in this role that EQC’s pursuit of an agency model, based on the Kaikōura model with private insurers, could be achieved. Private insurers strongly support this model as the preferred approach to settling claims.

In any event, it will be essential to assess the process for creating an agency model that will allow for much greater and more efficient cooperation between EQC and private insurers, such as in data sharing. Equal commitment will be needed from both parties, who each stand to achieve greater efficiencies and claimant satisfaction if they can reach an accommodation.

I have major concerns if the agency model is adopted as the sole model. While it would be valuable for the usual business discharged by EQC, such as responding to flooding and landslips, it may not prove adequate following a major natural disaster. EQC will always be given unanticipated tasks for which it is ill-prepared following a future major natural disaster. I am also concerned that the experience gained during these events could be lost or ignored when another major crisis occurs at some point in the future.

Not unrelated to the above, I am aware that EQC has some well-considered views about which tasks might align well with its core business and which do not. In key areas (e.g. responsibility for a managed repair programme) EQC itself, in collaboration with other appropriate agencies, could take the initiative to determine future alternatives or options for the Government to consider.

It is extremely difficult to provide for practices following future natural disasters of unknown scale and timing. There are, however, some basic rules.

The Government should refrain from adding responsibilities to EQC without a) ensuring it has the capability and b) mandating that all relevant government departments and agencies are closely engaged in collaboration and assistance for as long as it takes for the immediate crisis to diminish.

EQC should prepare and plan regularly for major natural disaster events, extending its knowledge and skill base well beyond scenarios that involve large urban populations and floods, earthquakes and landslides. As the section in this report on future risks demonstrates, other events, such as tsunamis and volcanic eruptions (as evidenced by the Whakaari/White Island event), are likely to occur at some unknown time in the future. These events will produce as yet largely unpredictable consequences for housing and the stability of the land on which that housing is built.

## Planning and collaboration

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It will be a very difficult task for EQC to be more collaborative in the midst of a major event, but many efficiencies would have been achieved and fewer members of the public distressed had that been possible during the response to the Canterbury earthquakes. There were instances, some extraordinary, where the ultimate cost of EQC repairs greatly exceeded the cap or where the quality of the repairs was not of a reasonable standard. Planning for a major repair programme in advance (including determining and providing a formal basis for EQC to take the lead in assessing and scoping) would have identified some of these issues and decisions might have been made concerning the best way to proceed.

A greater collaboration with central and local government, iwi and communities is now vital. Working in partnership with Māori, as demonstrated in Canterbury's recovery legislation and local governance leadership, is an excellent model for the future. Decisions that will be made now, while the past decade's experiences are fresh in the mind and are indeed still being resolved, will inform the process. EQC can be the leader in parts of a recovery, but repairing homes is not currently a core function and suitable support should now be planned.

Regular reviews of EQC's own processes, including the whole-of-government response that may be needed, are also an essential part of the future planning for the next inevitable major natural disaster. Planning must involve greater use of modelling. Climate change will likely exacerbate issues for New Zealand's already vulnerable land, with land instability increasing. Forecasts of massive earthquakes are already widely understood. Future planning will be important to encompass the likely outcomes of events other than earthquakes, as will the differing needs of rural and urban communities.

# Updating the Earthquake Commission Act

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While the Inquiry is constrained by its Terms of Reference in relation to the EQC Act and related matters, I am nonetheless of the view that there would be value in further updating the legislation.

Most importantly, as part of a legislative review, consideration should be given to which entity would be responsible should a managed repair become necessary following a major natural disaster. If EQC is to undertake this responsibility, then clear provision should be made in the EQC Act. In any event, the Act should contain a mechanism that enables a responsible body to be formally designated, in advance of a major natural disaster, to lead a managed repair programme and to specify what EQC's role would then be. This decision should be able to be reviewed periodically to ensure that it remains current.

I consider that a review of the cap on payment to homeowners is essential. The cap proved to be inadequate for repair of many properties and was properly increased in the 2019 amendment to the EQC Act. The lower cap meant that there was, of necessity, far greater interaction than desirable between EQC and private insurers and this led to increased delays in resolving a plan for repair or rebuild. However, the increased sum under the 2019 amendment to the EQC Act is unlikely to be sufficient to enable the average homeowner to rebuild—as was the initial intent of the cap in 1993.

I have identified a number of other areas throughout my report where legislative change might be considered. These include: inserting a clear purpose statement into the EQC Act; clarifying the extent of EQC cover and key definitions (such as the reinstatement standard, apportionment and the treatment of residential areas in multi-unit buildings); giving EQC the ability to call on assistance from other state agencies; ensuring that any new functions assigned to EQC do not detract from its core responsibilities; and enabling a comprehensive and enforceable information-sharing regime that is both flexible and effective. In addition, providing EQC a more formal role in land-use planning might be worthwhile.







# Recommendations

# Recommendations

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The following recommendations, directed at both the Earthquake Commission (EQC) and the Government, follow from the Findings section and broader content of this report. Each of the topics below provides brief context as well as specific recommended actions.

The Treasury intends to further review the legislation that governs EQC—and included in my recommendations are suggested changes or additions to the EQC Act, or other legislation, that I consider would improve EQC’s operational practices and the outcomes for claimants. I acknowledge that in regard to other recommendations, EQC or the Government may already have done some thinking or will have work programmes in train.

It should be noted that the recommendations address issues I have identified relating to the events and within other constraints of my Terms of Reference. Beyond these recommendations, EQC and the Government will need to continue to reflect on how they can improve EQC’s operations and claimant outcomes in the face of new challenges posed by future natural disasters, changing technologies and public expectations.

## 1: Role and responsibilities

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### 1.1: Clarity of role

**Greater clarity of EQC’s role is urgently required, as is a clear mandate and mechanism for its post-disaster operations.** For example, it is unsatisfactory that the discretion in its governing legislation—the EQC Act—was relied upon in pursuing a managed repair programme in 2011. EQC appears well placed to be the “systems integrator” or coordinating body for the residential insurance response to ensure housing recovery following a major natural disaster. It can build on the expertise and experience it has acquired since 2010 to undertake this role, but it would need the authority to do so and its powers and role would need to be specified. If not EQC, then another agency needs to be identified.

**The Government should:**

- 1.1.1 Provide a mandate in legislation for EQC (or another appropriate agency) to coordinate the residential insurance response to ensure housing recovery following a natural disaster, including setting roles and responsibilities, monitoring performance and requiring assistance from other government agencies.
- 1.1.2 Clarify expectations with EQC about its responsibility in land-use planning before, and for the coordination of land remediation after, a major natural disaster.
- 1.1.3 Determine how a managed repair programme might be initiated and executed should it be required and whether EQC should be the lead agency to conduct the programme. If not, then specify EQC’s role in a managed repair or rebuild programme. As part of this, review the discretion in Schedule 3 of the EQC Act enabling EQC to manage the replacement or reinstatement of properties.
- 1.1.4 Review the appropriateness of the title of the EQC Act to make clear its scope is not limited to earthquakes but to a range of natural disasters.
- 1.1.5 Develop a mechanism that identifies the threshold for a “major natural disaster”, which triggers the coordination of a residential insurance response to ensure housing recovery.

## 1.2: Purpose and principles

**A clear statement of purpose and principles in the EQC Act would guide and assist EQC in carrying out its duties to the standard expected of it** and would allow for judicial interpretation when needed.

### The Government should:

- 1.2.1 Consider inclusion of a purpose statement and set of principles in the EQC Act that will guide the discharge of EQC's responsibilities as an insurer with a social responsibility to claimants.

## 1.3: Interpretation of the EQC Act

**A review of definitions and provisions in the EQC Act that are critical to housing recovery would provide clarity for EQC and claimants.** In addition, it would be useful to review the judicial decisions that have emerged since the Christchurch earthquakes, in particular, to determine whether any require legislative action.

### The Government should:

- 1.3.1 Review the legislative framework so that there is greater clarity of key provisions and definitions, including definitions of the phrases in the legislation such as “when new”, and “reinstatement”.
- 1.3.2 Review the EQC Act in light of the High Court ruling on reinstatement of cover following each natural disaster event and other judicial determinations that have had a significant impact on EQC's work.

## 1.4: Ministerial directions and reviews

**A balance is needed to ensure that ministerial directions or reviews intended to assist EQC to conduct its work efficiently do not negatively impact upon the work it is obliged to undertake.** Clarity in the expectations of EQC, a substantive review of its legislation and support for improvements in its operational practices (particularly in data management and information technology) in advance of the next major natural disaster should mean that fewer ministerial directions and reviews are needed while EQC copes with a large volume of claims.

### The Government should:

- 1.4.1 Ensure that when ministerial directions or reviews are initiated these are clearly signalled, discussed with EQC to ensure that they will advance rather than hinder its response to a major natural disaster, and recorded.

## 1.5: The EQC cap

The current cap of \$150,000 (plus GST) on EQC residential building cover is an improvement on that set in 1993. **Consideration should be given to increasing the cap to cover the average cost of building a house in New Zealand, or to removing the cap to provide for EQC cover to the individual sum-insured level.** This should take into account the benefits that might accrue from an increase, through greater efficiency in processes post-disaster, for homeowners and across the insurance sector, while also considering the impacts on New Zealand's insurance market.

### The Government should:

- 1.5.1 Review the EQC cap on residential building cover to establish whether it should reflect at least the current building costs and provide a mechanism for regular adjustment thereafter, as required.

## 1.6: Quality of housing stock

**There is a need to review many of the provisions that underpin the quality of building and related practices.** In Canterbury there is a real sense of uncertainty about the quality of the repair work done on homes and in some instances, whether the contracted work has been done at all and whether, as a result, homes are more susceptible to future natural disaster damage.

### The Government should:

- 1.6.1 Identify changes to provisions in relevant legislation that will require:
- greater certainty of the completion of works;
  - assurance of quality; and
  - future resilience of housing following repairs after a natural disaster.
- 1.6.2 Consider a provision in legislation that allows EQC to work with the homeowner to enable necessary structural but non-natural disaster repairs to be dealt with at the same time as natural disaster repairs (at the homeowner's cost).

## 1.7: Multi-unit and mixed-use buildings

There are a number of issues relating to the practicality and fairness of EQC cover for buildings that combine residential and other uses. **A thorough analysis is needed of the cover for multi-unit and mixed-use buildings.** This should address issues such as having different insurers of property for the same structure, lack of cover for some areas within buildings and confusion over what EQC's responsibility for these buildings is.

### The Government should:

- 1.7.1 Consider the need for legislative change to provide greater clarity on EQC's responsibilities to property owners in multi-unit and mixed-use buildings.

### EQC should:

- 1.7.2 Provide property owners in multi-unit and mixed-use buildings with certainty, as far as is possible, about their building's status as it relates to EQC cover.

# 2: Approach to claimants

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## 2.1: Treatment of people

**Claimants should be dealt with respectfully, fairly and professionally and with a sensitivity to the post-disaster pressures they might be facing.** EQC's operational practices must put the needs of claimants first and at the centre of what it does and ensure people get what they are entitled to.

### **EQC should:**

- 2.1.1 Embed into its operational practices a commitment to treating claimants with respect, fairness, dignity and a sensitivity to post-disaster pressures they might be facing and clearly demonstrate how improvements are being made in claimants' experiences.
- 2.1.2 Make claimants aware of their entitlements under the EQC Act and clearly demonstrate how it is working with claimants to deliver on these entitlements.
- 2.1.3 Ensure, as far as practicable, that claimants have continuity of staff in dealing with their claims and a process that minimises interaction with multiple parties, whether EQC or a third-party is managing the claim, adopting a "case management" approach wherever possible.
- 2.1.4 Seek advice from agencies with experience in trauma and psychosocial services and support, develop clear guidance for its staff on dealing with people affected by disasters and loss and ensure its staff are properly trained and refreshed on the guidance that is developed.
- 2.1.5 Develop a policy for how it classifies claimants as vulnerable and how this is applied to ensure the process is made easier for those claimants. This should be based on advice obtained from appropriate agencies on best practice in this area and should be adapted to recognise the unique nature of each event.
- 2.1.6 Provide training for its staff in dealing appropriately with people with a range of needs, which respects cultural or language differences.

### **The Government should:**

- 2.1.7 Ensure resourcing and support for the housing recovery is available from the outset of a response to a major natural disaster to establish services such as navigators or support coordinators to assist affected communities.

## 2.2: Communication

Better planning is required by EQC for communications directly with claimants and with wider audiences, particularly in the event of a major disaster resulting in large numbers of claims.

**EQC's communications planning should be based on honesty, transparency and an empathy for those affected by natural disasters.**

### EQC should:

- 2.2.1 Commit to sharing information that provides an honest assessment of the post-disaster challenges and shortcomings of its response, including providing regular updates on realistic timeframes and obligations that reflect the best information available.
- 2.2.2 Ensure information is presented in a clear and simple form so that it can be easily understood by audiences who might already be grappling with multiple and complex problems post-disaster.
- 2.2.3 Develop a plan for how it will reach large and diverse audiences in a post-disaster environment where normal channels for communication are restricted or unavailable.
- 2.2.4 Build stronger relationships with media outlets so that they understand more clearly EQC's mandate and disaster response, including encouraging the media to access and use EQC's research.

## 2.3: Community advice and input

**It is essential EQC listens to the experiences and insights of communities, particularly those affected by significant disasters, and responds in a practical way to that feedback.** It should have in place whatever advisory groups or bodies best serve affected communities and encourage feedback that is representative. All of this needs to be done in partnership with locally-led recovery efforts.

### EQC should:

- 2.3.1 Ensure a suitable advisory group or body is in place to provide representative community input into its work and associated responsibilities. EQC must consider the advice and act upon it appropriately. Following a major natural disaster, a specific group or body should be established that reflects communities affected by that event.



# 3: Assessment of damage

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## 3.1: Setting processes and roles

**To ensure the integrity and fairness of the entire process for managing claims, it is critical that assessment of property damage after a natural disaster is thorough, consistent and accurate from the outset, whether carried out by EQC, its contractors or private insurers.** EQC must have clear processes in place and draw on suitable expertise to properly identify and document damage and determine what emergency repairs are necessary. Assessment standards and roles must be clearly defined and homeowners need to have a clear understanding of the process and their part in it. Quality assessment is equally as important to cash settlement as it is to a managed repair.

### **EQC should:**

- 3.1.1 Develop clear guidelines about what an assessment entails and the respective roles of EQC, its staff and contractors, and claimants in the assessment process and ensure this information is widely available.
- 3.1.2 Provide clarity for homeowners as early as possible after a major natural disaster about who will be managing claims and conducting assessments—whether it is led by EQC, third-party contractors, or private insurers—and its responsibilities to cover the cost of expert reports and professional services.
- 3.1.3 After a major natural disaster, provide for suitable initial assessment of damage to land and housing in order to develop a comprehensive plan for full assessment that includes a clear process and realistic timeframes for homeowners.
- 3.1.4 In the initial assessment of damage, identify any need for emergency repairs to ensure temporary shelter and essential services, and share this information with other relevant agencies to act on.
- 3.1.5 Take the time to complete thorough, consistent and accurate assessment of properties from the outset, carefully documenting progress and involving the homeowner through the process as much as is practical to avoid confusion and minimise disputes.
- 3.1.6 Clearly define the expectations of workers involved in the assessment process from the outset of a disaster response and share this information with homeowners.
- 3.1.7 Ensure the assessment process is transparent so that claimants have a clear understanding of the process, including how invasive an assessment will be, and access to all relevant information and documentation.
- 3.1.8 Work with relevant agencies and experts on engineering solutions for housing and land (both area-wide and for individual properties), including determining the need to retire land from residential use and provide monitoring to ensure that these solutions are applied appropriately.

### **The Government should:**

- 3.1.9 Ensure resources are allocated to provide for emergency repairs, as required, to provide at least temporary shelter, including, as needed, heating and services such as electricity, water and sewerage.

# 4: Managed repair

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## 4.1: Responsibilities and expectations

In the event of a future major disaster generating a large number of claims to EQC, a managed repair or rebuild programme might be the best response. **If EQC is to be assigned the lead role in legislation, consideration should be given to the operation of such a programme and what other agencies or organisations might be equipped to assist or support EQC. EQC must not again be left largely unsupported to run a managed repair programme.** If EQC is not to be assigned the lead role, then its responsibilities during the programme should be discussed and settled, and reviewed following a major natural disaster event.

### The Government should:

- 4.1.1 In the event of a “major natural disaster”, according to the formal threshold determined by government, consider whether a managed repair programme is a suitable response to the event, coordinate the response among all responsible agencies and formally document the decision-making process for clarity.
- 4.1.2 Work with relevant agencies to plan for and ensure adequate temporary accommodation is provided in the aftermath of a major natural disaster.

### EQC (or the responsible agency) should:

- 4.1.3 Develop a plan for engaging a workforce that includes expertise in procurement, project management, contracting and engineering.
- 4.1.4 Ensure there are systems developed to identify and discourage fraudulent practices by any party in any repair programme.

## 4.2: Quality assurance

Public confidence in the quality of the housing stock is essential. **EQC needs to make sure that in any repair programme the quality of the work is a paramount consideration and subject to thorough checking throughout the process.**

### EQC (or the responsible agency) should:

- 4.2.1 Agree with government from the outset of any repair programme who will be responsible for quality assurance and sign-off; how this will be implemented, including how building standards will be applied and how the homeowner will be involved; and communicate this to the public.

# 5: Processes for settling claims

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## 5.1: Cash settlement

Cash settlement was EQC's preferred option for settling claims prior to the Canterbury earthquakes, but a managed repair was pursued for various reasons given the severity and scale of these events. **Cash settlement should remain as part of EQC's discretionary approach to managing its work** and will be most useful in day-to-day events.

### **EQC should:**

- 5.11 Develop policies for what related reinstatement or repair costs will be covered by cash settlements and communicate these to claimants.
- 5.12 Make clear to claimants, wherever cash settlements are made, the implications of not using the cash for the purpose for which it is provided, including how this might affect future claims.
- 5.13 Conduct a detailed assessment of the impacts of cash settlement of claims in the example of the Kaikōura/Hurunui earthquake, including the longer-term impact on quality of the housing stock.
- 5.14 Incorporate the findings of the detailed assessment of cash settlement for the Kaikōura/Hurunui earthquake into a larger and ongoing study that tests the advantages and disadvantages of cash settlement, the results of which could be drawn on when deciding the best response to future natural disaster events.

# 6: Data and information management

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## 6.1: Access to information

The collation and management of property-based data by EQC must reflect the basic principle that **the homeowner is entitled as of right to all information held by EQC concerning their property and EQC should be responsive to claimants.**

### EQC should:

- 6.1.1 Ensure that its data and information systems are adequate to fulfil claimants' rights to readily access their full property information held by EQC, in accordance with official information and privacy legislation.
- 6.1.2 Regularly seek advice from the Privacy Commissioner, the Office of the Ombudsman and the Human Rights Commissioner to ensure that its relationships with claimants are fair, reasonable and transparent.
- 6.1.3 Develop and roll out a nationwide online register that provides EQC information on claims specific to individual residential properties. This should be free and simple to access for users such as prospective home buyers and should provide basic information about a claim and its status.

## 6.2: Data systems

Internal and external reviews of EQC's data systems have emphasised various shortcomings. **EQC must invest adequately in its data technology to ensure that it never again finds itself with systems that are unfit for purpose when it needs them most.** This includes negotiating with private insurers as well as other agencies and governmental bodies to share relevant information, support efficient processes for managing claims and identify and respond appropriately to claimants.

### EQC should:

- 6.2.1 Commit to constant and sufficient investment in data and information systems to guarantee that these can support efficient and reliable day-to-day **operations and** have sufficient capacity and capability to support processes for managing claims following a large-scale disaster.
- 6.2.2 Consider how changes made to the EQC Act in 2019 can be used to enable better information sharing between it and private insurers.

## 6.3: Private insurers' information

Assuming private insurers continue to collect the premium for natural disaster insurance on behalf of EQC, then **legislative provision may be required to ensure that the industry is obliged to advise EQC of the location and ownership of the risk**. This will greatly assist EQC in improving its efficiency in managing claims.

### The Government should:

- 6.3.1 Consider a legislative requirement for private insurers to advise EQC at least annually of their residential policyholders' location and property ownership.

## 6.4: Land information

EQC has gained extensive knowledge on land stability from research and its past work. Thought should be given to how this might be shared widely. **Consideration should include whether further detailed land information should be made more widely available (for example, on Land Information Memorandum (LIM) records or other records)**. In addition, EQC personnel might be appropriate independent experts in advising or giving evidence in land-use planning issues. This could avert some of the issues resulting from a lack of independent expertise faced by local authorities when land-use proposals are presented.

### The Government should:

- 6.4.1 Consider changes to relevant legislation to enable greater availability and use of information about land and its stability to inform land-use decision making and current and prospective property owners through appropriate public information sources.
- 6.4.2 Consider granting EQC standing to appear in formal land-use planning hearings.

### EQC should:

- 6.4.3 Proactively share up-to-date local area information about land and hazards with relevant local authorities.

# 7: Advance planning and preparedness

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## 7.1: Relationship building

**It is evident that a greater degree of relationship building is needed to prepare for future major natural disasters.** The events in Canterbury in 2010–2011 illustrate how the greatest disaster risks may lie in unexpected places, requiring a flexible and collaborative approach.

### EQC should:

- 7.1.1 Coordinate an ongoing relationship with key partners, who will be necessary to the residential insurance response following the threshold for a “major natural disaster” being met, to establish the roles and responsibilities of each entity. These partners might include The Treasury, the Ministry of Building, Innovation and Employment, the National Emergency Management Agency, Te Puni Kōkiri, Land Information New Zealand and the Ministry of Social Development.
- 7.1.2 Build significantly improved cooperative relationships with private insurers operating in New Zealand, including ensuring sharing of data that is critical for EQC’s work following a natural disaster.

## 7.2: Research and risk modelling

Research conducted or commissioned by EQC has been a significant asset not only to satisfy reinsurers but also to provide invaluable information on the level, type and location of risks to residential property in New Zealand. **EQC’s research capability and expertise should be encouraged and supported, but a commitment is also needed to social science research on the impacts on homeowners following a major natural disaster.**

### EQC should:

- 7.2.1 Ensure that the range of research it sponsors encompasses new opportunities in relevant fields and includes disasters other than earthquakes.
- 7.2.2 Support social science research that will help it build a greater understanding of the impacts on communities following a major natural disaster.
- 7.2.3 Cooperate with the research community in New Zealand and internationally to disseminate as widely as possible the research findings in all fields it supports.
- 7.2.4 Commit to and resource the ongoing development of scenario planning and modelling of major natural disasters and their consequences for buildings and land. This should focus on preparing it as far as possible for previously unanticipated disaster outcomes, locations and circumstances unique to different events.

## 7.3: Education

**It is critical that homeowners understand EQC's mandate and responsibilities following a natural disaster.** Increased education and information is needed in this area. Innovative approaches need to be developed and applied so that the information reaches people and resonates with them.

### **EQC should:**

- 7.3.1 Consult and work with relevant government and community agencies and private insurers to ensure the most engaging and effective means of educating homeowners about the risks associated with natural disasters and how to minimise damage.
- 7.3.2 Promote awareness among homeowners of the opportunity for direct access to purchase disaster-only insurance, as provided for in the EQC Act.

## 7.4: Workforce recruitment and training

**EQC needs to work on developing staff capability and a structure that handles day-to-day work, while also anticipating its needs in the event of a major natural disaster and a sharply increased workload.** This means keeping an eye to sources of key professional workforces that can be called upon in a response to a major event.

### **EQC should:**

- 7.4.1 Develop further and, where necessary and appropriate, formalise relationships with key workforces such as engineers and loss adjusters.
- 7.4.2 Ensure access to a suitably qualified and trained workforce to manage claims and undertake assessments, including retired personnel, in anticipation of a sudden and significant increase in workload.
- 7.4.3 Work with its staff to review what is being done to support their wellbeing.
- 7.4.4 Build channels for its staff to provide views to management and governance so that people are heard, views and proposals are seriously considered, and, where appropriate, acted upon.
- 7.4.5 Evaluate the skills and attributes required of a workforce to engage with claimants following a natural disaster and apply these as criteria in the recruitment process.

# 8: Resolution of disputes

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## 8.1: Dispute processes and advice

It is inevitable that some disputes will arise between EQC and claimants. **A standing dispute resolution mechanism is required that is simple and responsive to claimants and their advocates and that can cope with a significant volume of complaints.** Claimants' access to legal advice is also fundamental.

### **The Government should:**

- 8.1.1 Develop a standing dispute resolution mechanism that is robust, accessible, timely and responsive to complainants, drawing on the experience of the Canterbury earthquakes, including the experiences of EQC and claimants; this may include enacting legislation to support such a mechanism.
- 8.1.2 Support and ensure adequate resourcing of a community law service that provides free or low-cost legal advice to assist claimants in the event of dispute with EQC, while ensuring any such service is sustainable and carries forward the important knowledge gained from events such as the Canterbury earthquakes.
- 8.1.3 Consider regulation of insurance advocates or those providing related services to claimants to provide assurance and clarity for claimants and to avoid predatory behaviour.

### **EQC should:**

- 8.1.4 Ensure that its complaints procedures for both staff and claimants are professional and fit for purpose, with periodic independent assessment of their suitability and effectiveness.

**The remainder of this report expands upon matters raised in the Findings and Recommendations and canvasses the various issues brought to my attention during the Inquiry. The content that follows is broken into four parts and chapters within each part, for ease of navigation. Supporting information about the Inquiry process is contained in the report's appendices.**







# Part 1

EQC's purpose,  
role and operational  
context



# Background and context



# Events focussed on by the Inquiry

## Eketāhuna earthquake

The Eketāhuna earthquake in the central North Island struck on 20 January 2014, resulting in more than 5,000 claims to EQC.

## Kaikōura/Hurunui earthquake

The Kaikōura/Hurunui earthquake that initially struck near Culverden on 14 November 2016 was the second largest ever claims event for EQC, with just under 40,000 claims.

## Edgecumbe floods

The Edgecumbe floods in the Bay of Plenty in April 2017 contributed to more than 1,000 claims made to EQC as the result of storms at the time.

## Seddon/Cook Strait earthquakes

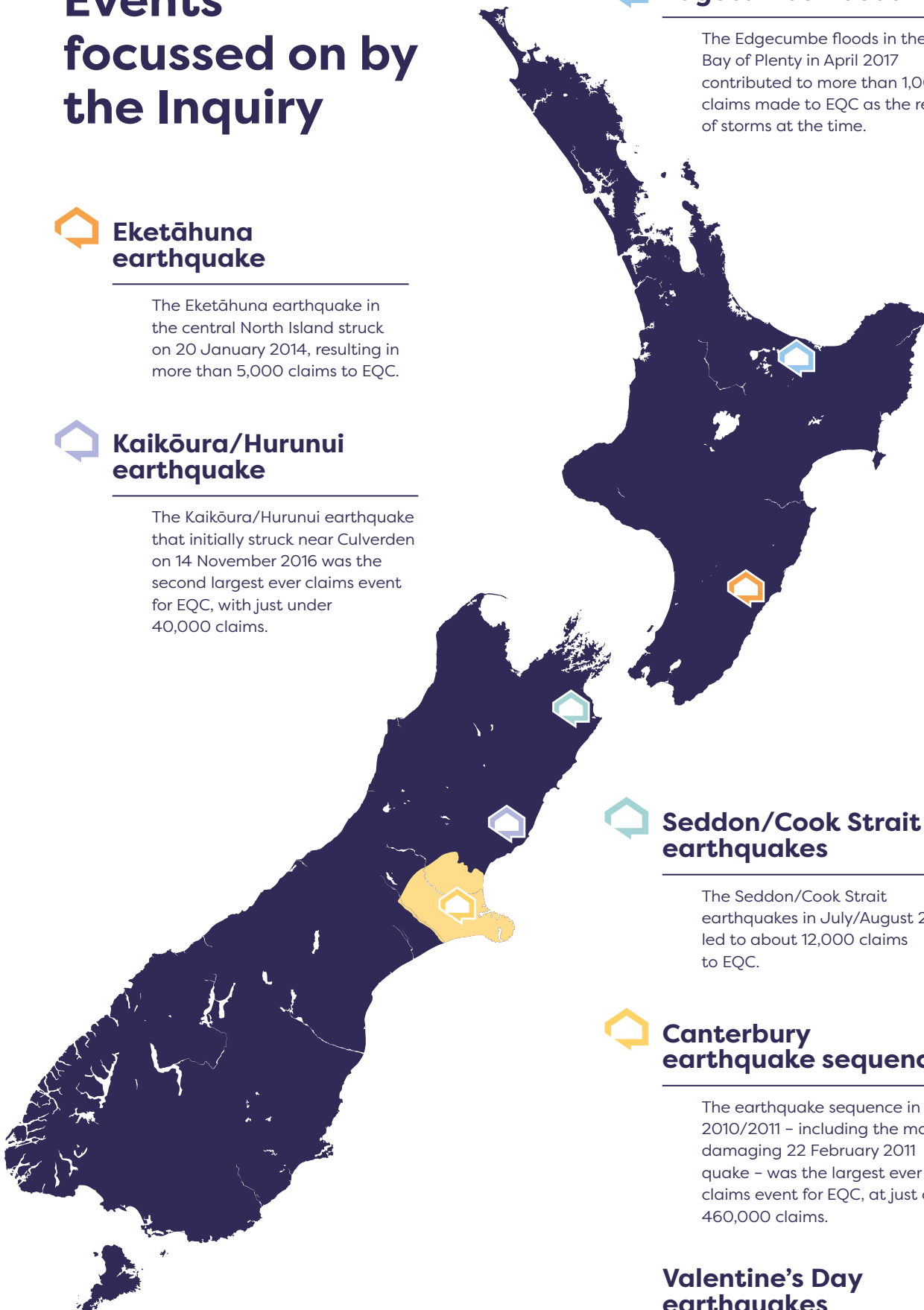
The Seddon/Cook Strait earthquakes in July/August 2013 led to about 12,000 claims to EQC.

## Canterbury earthquake sequence

The earthquake sequence in 2010/2011 – including the most damaging 22 February 2011 quake – was the largest ever claims event for EQC, at just over 460,000 claims.

## Valentine's Day earthquakes

Two further large earthquakes struck near Christchurch on 14 February 2016, resulting in about 14,000 claims.



The geographic areas pointed to on this map are a general guide to the location of the events. They do not precisely identify the epicentre/source of the events, nor do they identify the areas in which claims were subsequently made to EQC.

# 1.1: Canterbury earthquakes

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The Canterbury earthquakes began at 4:35 am on 4 September 2010 when a magnitude 7.1 earthquake struck near Darfield. One person died after the earthquake and two people were seriously injured.

The second major earthquake in the Canterbury earthquake sequence struck at 12:51 pm on 22 February 2011, 10km south of the Christchurch central business district. The magnitude 6.3 earthquake led to the loss of 185 lives and injuries to several thousand people and caused widespread damage to land and buildings.

On the afternoon of 13 June 2011, two significant earthquakes struck Christchurch (magnitudes 5.7 and 6 respectively). These events caused further damage to buildings in the city and more cliff collapses in the Port Hills. One person died and two people were hospitalised with serious injuries. Others suffered minor injuries.

Two earthquakes, measuring magnitude 5.8 and 5.9, struck east of Christchurch on 23 December 2011, bringing additional damage to people's homes, rock fall at Scarborough and further liquefaction.

The 2011 sequence of earthquakes caused more damage than the first, larger magnitude earthquake in 2010 and represented seismic complexity not previously experienced in New Zealand or internationally. The modelling had predicted a major event followed by a number of aftershocks on the same fault that would diminish in size and scale. The 2011 earthquakes did not follow the expected pattern, as none took place on the Greendale fault (which was the source of the September 2010 earthquake) and the damage arising was consequently unpredictable.<sup>10</sup>

The damage to housing and residential land was far greater than anything experienced before and Canterbury was described to me as having the biggest urban liquefaction events in the modern world. Given legislation and practice was developed to deal with landslips, it was understood that it would take time to work through the nature and consequences of the land damage.

For anyone living outside Canterbury, the extent of the land damage is difficult to comprehend:

*a unique feature of the Canterbury earthquake sequence was locally dramatic settlement of the ground where saturated sandy soils liquefied, expelling large volumes of water and sediment. Underground pipe networks and buildings on shallow foundations were damaged in some cases beyond economic repair.<sup>11</sup>*

10. Canterbury Earthquakes Royal Commission (Justice M Cooper, Chair), 2012, [https://canterbury.royalcommission.govt.nz/vwluResources/Final-Report-dcox-Vol-1-S2c/\\$file/Vol-1-S2c.docx](https://canterbury.royalcommission.govt.nz/vwluResources/Final-Report-dcox-Vol-1-S2c/$file/Vol-1-S2c.docx)

11. Cowan H, Dunne B, Griffiths A, Consoseguros, Number 05, *Planning for Loss or Complexity? New Zealand's Earthquake Commission -The Story So Far*, October 2016, <http://www.consosegurosdigital.com/en/numero-05/front-page/planning-for-loss-or-complexity-new-zealandandacute-s-earthquake-commission-the-story-so-far>

All told, the Canterbury earthquakes comprised four major earthquakes,<sup>12</sup> 11 other “damage-causing events” (for the purpose of claims) and almost 18,000 aftershocks.<sup>13</sup> The earthquakes led to just over 460,000 EQC claims. These were made up of just over 760,000 exposures (or subclaims) relating to homes, contents and land. Of the 168,000 damaged homes in Canterbury,<sup>14</sup> over 67,000 were repaired through EQC and Fletcher Construction Company Limited’s (Fletcher) Canterbury Home Repair Programme.

As of 10 March 2020, EQC reports that there were 1,625 open claims relating to the Canterbury earthquakes.<sup>15</sup>

## Government response

EQC mobilised quickly in response to the 4 September 2010 earthquake. The claim numbers from that event were comparable to the large events EQC had planned for through its Catastrophe Response Programme. Three months after the earthquake, EQC had assessed about 56,000 claims and its cohort of qualified loss adjusters was working through the remainder at a rate of about 1,200 claims per day. Submitters told me that their September 2010 experiences of EQC went well, compared with their poor experiences after February 2011.

Although EQC made steady progress with September 2010 claims, the extent of damage, particularly to land, required close government cooperation. The impact of the 22 February 2011 earthquake warranted greater ministerial and government attention: 185 people tragically died, thousands of people were injured and many, many more people were affected by the events of the day. At governmental level, there was no recent experience of a disaster of the magnitude of the Canterbury earthquakes. The fact that the earthquakes occurred in a major city added to the complexity and urgency. The civil defence system had not dealt with an emergency of this scale before and while everyone involved in the initial response acquitted themselves professionally, the Government, the local authorities and EQC were left with huge challenges to resolve in relation to the housing and broader recovery.

In this environment, it is unsurprising that the Government and EQC lacked a clear path. The people of Christchurch were shocked and repeatedly re-traumatised throughout the following months as new earthquakes or aftershocks occurred. The first instinct was to ensure the safety of the population, attend to health and accommodation needs, repair homes that were damaged and restore people’s livelihoods. Subsequently, the Government established the Canterbury Earthquake Recovery Authority (CERA) to begin to address the recovery of greater Christchurch.

12. The four main earthquake events were 3 September 2010; 22 February 2011; 13 June 2011; and 23 December 2011.

13. Nearly 18,000 aftershocks had been recorded by March 2016. More than 35 of these were magnitude 5 or greater. *Earthquake Recovery in Canterbury*, <https://www.eqrecoverylearning.org/about/earthquake-recovery-in-canterbury/>

14. *Earthquake Recovery in Canterbury*, <https://www.eqrecoverylearning.org/about/earthquake-recovery-in-canterbury/>

15. This includes reopened claims, those transferred by Southern Response and claims in litigation or alternative dispute resolution processes.

# 1.2: Other events in Inquiry's Terms of Reference

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## **Seddon/Cook Strait earthquakes**

A magnitude 6.5 earthquake, centred in the Cook Strait, struck the upper South Island and lower North Island on 21 July 2013. A few minor injuries were reported following the event.

Three weeks later, on 16 August 2013, a magnitude 6.6 earthquake struck Lake Grassmere, 10km southeast of Seddon. Much of the damage from these two earthquakes occurred in and around Seddon, however there were reports of glass falling from high-rise buildings in central Wellington. EQC received approximately 12,000 claims from Seddon, other nearby Marlborough communities and Wellington. Over half of these claims (6,099) were from Wellington.

## **Eketāhuna earthquake**

Eketāhuna, in the central North Island, suffered a magnitude 6.2 earthquake on 20 January 2014. The earthquake was widely felt in both the North and South Islands, but few injuries were reported. The event resulted in more than 5,000 EQC claims in the central and lower North Island.

## **Valentine's Day earthquake, Canterbury**

Two earthquakes struck within 10km of Christchurch on the afternoon of 14 February 2016, measuring magnitudes of 5.7 and 4.3. These earthquakes were considered by geologists as part of the Canterbury earthquake sequence, although from an insurance perspective they were new events.<sup>16</sup> There were no reports of serious injuries following the earthquakes.

About 14,000 EQC claims were generated by the events, which were predominantly settled with cash payments to claimants. Following the Valentine's Day event, EQC trialled an approach where a private insurer managed its own customers' EQC claims on EQC's behalf—this pilot was a precursor to the approach later taken in Kaikōura/Hurunui.

<sup>16</sup> GeoNet, 15 February 2016, <https://www.geonet.org.nz/news/iffTtsBXywsY2AG4uq6Km>



## Kaikōura/Hurunui earthquake

At 12:02 am on 14 November 2016 a magnitude 7.8 earthquake struck the South Island. The earthquake, although initially centred between Culverden (Hurunui) and Kaikōura, triggered a series of ruptures along 25 faults lasting almost two minutes. Two people died and dozens of people were injured.<sup>17</sup>

The Kaikōura/Hurunui earthquake was the second largest in EQC's history (after the Canterbury earthquakes) in terms of the number of claims received—it received just under 40,000 claims for the event from Christchurch, Wellington, North Canterbury and Marlborough. EQC claims were predominantly managed by private insurers on EQC's behalf, using an “agency model” for EQC's claims-handling function.

## Edgecumbe floods

In April 2017, ex-tropical Cyclone Debbie brought significant rainfall (182 mm over two days<sup>18</sup>) to Edgecumbe in the Bay of Plenty. On 6 April 2017, the Rangitaiki River breached its stop bank and concrete floodwall, flooding the town.

Over 1,600 residents of Edgecumbe and surrounding areas were evacuated. More than 250 homes were severely damaged in the flood and 12 homes were rendered uninhabitable.

Insurance for damage resulting from storm or floods to homes is outside the scope of cover under the EQC Act, although damage to land is covered. EQC received more than 1,000 claims associated with the April 2017 storms, which were the result of the remnants of ex-tropical Cyclone Debbie passing across much of the North Island and causing floods in the Bay of Plenty, in particular. These claims included 272 that were for land damage in Edgecumbe. By ministerial direction, EQC also cleared silt and debris from underneath and around people's properties in the Edgecumbe area, working with local councils and contractors.<sup>19</sup>

# 1.3: New Zealand's insurance system

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The functions and operational practices of EQC cannot be considered in isolation. EQC is part of a wider insurance sector in New Zealand that comprises privately owned and mutual insurers<sup>20</sup> from New Zealand, Australia and the wider world (collectively referred to as private insurers in this report). EQC and other insurers rely on reinsurance purchased from overseas reinsurers. I am told that without the reinsurance provided by the global reinsurance market, New Zealand would be unable to provide affordable cover to New Zealand property owners for losses from natural disasters.

17. The New Zealand Herald, True damage of 7.8 Kaikōura quake revealed and could change earthquake research worldwide, 24 March 2017, [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11824005](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11824005)

18. The New Zealand Herald, Edgecumbe flood anniversary: A year of highs and lows, 31 March 2018, [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12022736](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12022736)

19. EQC, 22 September 2017, <https://www.eqc.govt.nz/news/eqc-continues-its-success-in-helping-edgecumbe>

20. Mutual insurance companies are owned by their policy holders, rather than by shareholders.

## Role of insurance

Insurance plays an important economic and social function: it supports individual welfare by protecting people from unexpected, harmful events and provides for economic growth by transferring the risk of loss from one party to another. This frees consumers and businesses from reserving funds for emergencies and enables them to use those funds for more productive uses.<sup>21</sup> It assists in economic recovery following a natural disaster and increasingly indicates through policy pricing where greater risk exists. It supports financial markets not only because insurance companies are large investors in financial markets but also because insurers safeguard the financial stability of households and firms by insuring their risks. Many banks will not provide a mortgage to a homeowner without the property being insured.

New Zealand's insurance contract laws are currently spread throughout six statutes.<sup>22</sup> They are one part of the broader insurance regulatory system, alongside other general or financial services laws that apply to insurance products (such as part 2 of the Financial Markets Conduct Act 2013 and the Insurance (Prudential Supervision) Act 2010). The laws are crucial for ensuring that insurers and the insured are able to transact with confidence in a fair, efficient and transparent way.<sup>23</sup> They include an implied duty of good faith on both parties, arising from the need for trust and disclosure so that insurance markets can function effectively.

## The EQC insurance scheme

EQC provides insurance cover, up to a cap, for natural disaster damage to residential properties where that property is privately insured against fire.

Under the EQC Act, insurance is restricted to residential property and residential land with specified limitations. Insurance cover for personal property (up to a set amount) was included in the EQC Act until the changes in the Earthquake Commission Amendment Act 2019 came into effect in July 2019.<sup>24</sup>

Natural disaster damage is defined in section 2 of the EQC Act. A natural disaster is defined as an earthquake; natural landslip;<sup>25</sup> volcanic eruption; hydrothermal activity; tsunami; a natural disaster fire;<sup>26</sup> or in the case of residential land, a storm or flood.<sup>27</sup>

21. MBIE, Review of insurance contract law - terms of reference, March 2018, <https://www.mbie.govt.nz/dmsdocument/964-terms-reference-insurance-contracts-law-review-pdf>

22. These are: Law Reform Act 1936 (Part 3); Insurance Intermediaries Act 1994; Insurance Law Reform Act 1977; Insurance Law Reform Act 1986; Life Insurance Act 1908; Marine Insurance Act 1908.

23. MBIE, Review of insurance contract law - terms of reference, March 2018, <https://www.mbie.govt.nz/dmsdocument/964-terms-reference-insurance-contracts-law-review-pdf>

24. Earthquake Commission Amendment Act 2019, s9, <http://www.legislation.govt.nz/act/public/2019/0001/latest/whole.html#LMS13238>

25. A natural landslip means the movement (by way of falling, sliding, or flowing or a combination of these), of ground-forming materials composed of natural rock, soil, artificial fill, or a combination of these, which before movement, formed an integral part of the ground, but excludes movement of ground due to below-ground subsidence, soil expansion, soil shrinkage, soil compaction or erosion.

26. A natural disaster fire is defined as a fire that is caused by or through or as the result of an earthquake, natural landslip, volcanic eruption, hydrothermal activity, tsunami, or restricted to residential land, a storm or flood.

27. Earthquake Commission Act 1993, section 2 (1), <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305973.html>



Property damage as the result of a natural disaster is defined as any physical loss or damage to the property occurring as the direct result of a natural disaster. It also includes any physical loss or damage occurring (accidentally or not) as a direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate the consequences of, any natural disaster. It excludes physical loss or damage to the property for which compensation is payable under any other enactment.<sup>28</sup>

Natural disaster damage to land is addressed separately and limited to land under an EQC-insured residential building; land within eight metres of the building; land that constitutes the main access way (within 60 metres of the building); and bridges, culverts and retaining walls within the above parameters.<sup>29</sup>

EQC cover is largely automatic for those New Zealand homeowners who hold private fire insurance.<sup>30</sup> In its *Annual Report 2018-19*, EQC reported that New Zealand's rate of house insurance was at 98 percent. EQC covers the first loss for damage to homes caused by natural disaster, up to a specified cap (currently \$150,000 plus GST), with private insurers topping up payments in accordance with people's insurance policies.<sup>31</sup>

For residential land, the maximum payable by EQC is:

- the smaller of the value of the damaged land or the value of 4,000 square metres or the value of the minimum lot size allowed by the district plan in that area; and
- the indemnity value of any damaged bridges, culverts and retaining walls.<sup>32</sup>

Schedule 3 of the EQC Act outlines the conditions that apply to that insurance, including the circumstances in which EQC may decline a claim and the insured's obligations to notify EQC of damage.<sup>33</sup> These conditions function similarly to the terms of an insurance policy. However, the relationship between the insured and EQC is not contractual. It is statutory in nature and EQC is, accordingly, not subject to the Insurance Law Reform Act 1977.

In February 2019, four changes were made to the EQC Act under the Earthquake Commission Amendment Act 2019. Two of the changes took place immediately:

- enabling further scope for EQC to share property-related information
- extending the timeframe for lodging a claim from three months to two years.

Later in my report I refer to the benefits that the greater scope for information sharing could bring for claimants, EQC and private insurers; I also discuss the setting of the cap. The other changes took effect from 1 July 2019. Both changes affect homeowners when they renew their insurance policies. They are:

- removing EQC cover for contents; and
- increasing the cap on EQC residential building cover from \$100,000+GST to \$150,000+GST.

The Treasury anticipates a further review of the EQC Act will be undertaken, in part, to incorporate the Government's consideration of recommendations from this Inquiry.

28. Earthquake Commission Act 1993, section 2 (1), <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305973.html>

29. Earthquake Commission Act 1993, section 2 and section 19, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305968.html>

30. Earthquake Commission Act 1993, section 18 (1) <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM306761.html>

31. An excess is deducted from the maximum payable: \$200 multiplied by the number of dwellings in the building, or 1% of the amount payable, whichever is greater (Earthquake Commission Regulations 1993, regulation 4(1)(a), <http://www.legislation.govt.nz/regulation/public/1993/0345/latest/whole.html#DLM183245>)

32. The excess for residential land is \$500 multiplied by the number of dwellings in the residential building which is situated on the land, or 10% of the amount payable, whichever is greater, to a maximum of \$5,000. Earthquake Commission Regulations 1993, regulation 4(1)(b), <http://www.legislation.govt.nz/regulation/public/1993/0345/latest/whole.html#DLM183245>

33. Earthquake Commission Act 1993, section 27, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM306772.html>

# 1.4: Current insurance environment

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This report is being delivered in a period of heightened public concern about insurance in New Zealand, due, in particular, to what has been perceived as a shift by private insurers to greater emphasis on risk-based pricing<sup>34</sup> of insurance for residential property. Wellington has been a particular focus due to the issues raised about the cost and availability of property insurance in the region.

Under its Terms of Reference, the Inquiry may take into account the outcome of other investigations into related matters, such as the Ministry of Business, Innovation and Employment's (MBIE's) review of insurance contract law, although it is not bound by the conclusions of such investigations.

## MBIE's review of insurance contract law

MBIE's review, which follows previous attempts at law reform in this area,<sup>35</sup> has considered a number of issues that are potentially undermining the effectiveness of New Zealand's insurance markets.<sup>36</sup> Its objective was to ensure that:

- participants in the insurance market are well informed and able to transact with confidence;
- interactions in the insurance market are fair, efficient and transparent;
- barriers to insurers participating in the insurance market are minimised; and
- consumers' interests are recognised and protected when participating in the insurance market.<sup>37</sup>

The review focussed on three main areas: the insured's duty of disclosure; the rules governing unfair contract terms; and the accessibility and clarity of insurance policies, as well as a range of miscellaneous issues. Earthquake insurance is one of a number of areas excluded from the scope of the review.<sup>38</sup>

At the time of writing, the review had been completed and the Government had announced its intention to amend the relevant laws.<sup>39</sup>

34. Risk-based pricing is based on the premise that insurance policy holders in areas more prone to natural disaster and severe weather-related risks pay more for insurance cover than policy holders in other areas.

35. Previous work has included: the 1998 Law Commission report on "Some Insurance Law Problems"; the 2004 Law Commission Report on "Life Insurance"; and 2007 Cabinet agreement for an Insurance Contract Bill, which was discontinued.

36. MBIE, *Review of insurance contract law: terms of reference*, March 2018, <https://www.mbie.govt.nz/dmsdocument/964-terms-reference-insurance-contracts-law-review-pdf>

37. MBIE, *Options Paper: Insurance Contract Law Review*, April 2019, <https://www.mbie.govt.nz/dmsdocument/5157-insurance-contract-law-review-options-paper>

38. MBIE, *Review of insurance contract law terms of reference*, March 2018, <https://www.mbie.govt.nz/dmsdocument/964-terms-reference-insurance-contracts-law-review-pdf>

39. Minister for Commerce and Consumer Affairs, *Insurance contracts to become easier to understand and fairer for consumers*, Dec 2019, <https://www.beehive.govt.nz/release/insurance-contracts-become-easier-understand-and-fairer-consumers>

## Mayor's Insurance Taskforce

In November 2019, the Mayor's Insurance Taskforce in Wellington—convened in response to concerns about affordability and accessibility of insurance—produced a discussion document touching on a number of issues relating to the insurance market. The Taskforce is made up of the Wellington City mayor and representatives of insurers, local property owners and various professional fields related to insurance and property.

In response to questions posed by the Minister of Finance about affordability and access to insurance, the Taskforce queried whether it was feasible that the Government (through EQC) and in partnership with local government, could develop “practical and fresh approaches to hazard risk management” in order to better manage risk before an event and swift recovery afterward.<sup>40</sup>

The Taskforce also suggested in its discussion document that a Wellington Risk Leadership Group involving the various parties and government be established. This group could then oversee an implementation plan, which could include steps such as a review, via EQC, of the role of the state in the insurance market.

In addressing the affordability of residential insurance in Wellington, the Taskforce also identified the options of EQC providing some form of insurance for commercial property, the availability of voluntary insurance from EQC where private insurance cannot be obtained, or increasing the EQC cap to \$400,000 (compared to the current \$150,000 plus GST cap).

In November 2019 the recommendations of the Taskforce were put to the Minister of Finance to consider. While I have noted the recommendations and issues raised by the Taskforce, including those related to EQC, the Public Inquiry into the Earthquake Commission has a different focus as specified in its Terms of Reference. My findings and recommendations will sometimes reflect the issues and concerns raised but are independent of them.

40. Wellington City Council, *Mayor's Insurance Taskforce: Discussion Document*, November 2019, <https://wellington.govt.nz/~media/your-council/news/files/2019/insurance-taskforce-recommendations.pdf?la=en>



# Future natural disaster risk



## 2.1: New Zealand's risk profile

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The Terms of Reference for this Inquiry ask me to make recommendations to improve EQC's readiness to respond to future events. It is, therefore, fundamental to consider the natural disaster<sup>41</sup> risk facing New Zealand—and how that may change over time—so that I can usefully comment on what it is EQC will need to be ready for.

Since 2010, natural disasters in New Zealand have resulted in loss of life, homes and businesses and trauma for thousands of New Zealanders. Yet in time they may be seen simply as a prelude of what is to come.

Most who live in this country are well aware that as a young, seismically active island nation, New Zealand is prone to large natural disasters.

Positioned in the collision zone of two of the world's major tectonic plates, New Zealand is subject to thousands of earthquakes every year, most of which go unnoticed by the public. The collision of geological forces that created New Zealand's landscapes also gives rise to a number of active volcanoes that form part of the Pacific Ocean's "Ring of Fire". This includes Whakaari/White Island, which erupted in December 2019 with tragic results. Many New Zealanders live near the coastline or rivers, with the risk of flooding or tsunami, or beneath hills or sloping land with potential for landslips.

For all of these reasons, insurance coverage for property against losses from natural disasters has long been viewed as essential in the New Zealand context. However, it is not only the historical record of disasters now confronting New Zealand. There are broad and widely validated scientific data that indicate the frequency and severity of certain natural disasters is increasing and will continue to increase in the years to come, as the effects of climate change are felt.

While debate continues on the Internet, the science on climate change is now settled. Even with sustained global efforts to reduce greenhouse gas emissions that contribute to this warming effect, New Zealand can expect further sea level rise and severe weather. Climate change and its impact through enhanced natural disasters, presents an entirely new set of challenges for property owners, insurers, businesses, policy makers and politicians.

## 2.2: Earthquakes and tsunamis

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New Zealand's reputation as the "Shaky Isles" is well deserved. The Canterbury earthquake sequence and major earthquakes in North Canterbury, Marlborough and Eketāhuna in the last decade cemented that view among the public. These recent earthquakes and the subsequent impact on people, are also the primary reasons for my Inquiry and this report.

41. For the purposes of this report and ease of use, I use the term "natural disaster/s" as relied upon in the Earthquake Commission Act 1993. I acknowledge the valid scientific position that "natural hazard/s" is a more precise term and better recognises a broader range of events that may not necessarily impact on the human population.

Earthquakes are perhaps the most feared of disasters given their frequency and their sudden and sometimes violent nature. GeoNet (a partnership between EQC, Crown Research Institute GNS Science (Institute of Geological and Nuclear Sciences Limited) and government agency Land Information New Zealand) locates between 50 and 80 earthquakes in New Zealand each day, or about 20,000 a year.<sup>42</sup> While the vast majority of these thousands of earthquakes are too small to be felt, a study of the frequency of New Zealand earthquakes between 1960 and 2016 found:<sup>43</sup>

- Earthquakes in the range of magnitude between 6.0 and 6.9—such as the destructive February 2011 quake in Christchurch—occur “in general” about three times every two years.
- Earthquakes between magnitude 7.0 and 7.9—such as the major event that struck Canterbury in September 2010—occur “in general” about once every four years.
- Earthquakes of magnitude 8.0 or more occur “in general” about once every 100 years.

(Note: An earthquake’s *magnitude*—measuring the amount of seismic energy released—is a different measure to its *intensity*, which ascertains the severity of shaking and damage resulting from the earthquake).

The Canterbury earthquake sequence from 2010 came as something of a surprise to many people and scientists have since identified previously unknown faults in the region and offshore that could generate further earthquakes. These Canterbury events have unquestionably forced people and institutions to rethink the risk of disaster and the scale of event they might be facing.

As the knowledge of earthquake and associated tsunami risks has grown, so too has the scientific understanding of the extent of the risk facing this country. Recent research into the Hikurangi Subduction Zone—an offshore fault running from the east of Gisborne to the top of the South Island—has prompted civil defence planning for a credible scenario in which a magnitude 8.9 “megathrust” earthquake results in a large tsunami and ground shaking.<sup>44</sup> It is predicted that such an event may provide only a few minutes’ tsunami warning for New Zealanders. The planning is based on what is considered a credible scenario that may face current or future generations. Subduction zone faults have been responsible for most of the world’s deadliest earthquakes and tsunamis and there is evidence the Hikurangi Subduction Zone has produced large earthquakes and tsunamis in the past;<sup>45</sup> a rupture of this fault is considered a certainty at some point.

Often cited as a pressing example of the earthquake risk facing New Zealand is the Alpine Fault, which runs along the western margin of the Southern Alps where the tectonic plates meet. Research published by GNS Science has shown that 24 large earthquakes in the magnitude 8 range have occurred in the past 8,000 years, with one occurring, on average, about every 330 years.<sup>46</sup>

The threat posed to people and property by the Alpine Fault is presented in blunt terms by GNS Science: the fault has an estimated greater than 30 percent chance of rupturing in the next 50 years. It says the rupture will “produce one of the biggest earthquakes since European settlement of New Zealand and it will have a major impact on the lives of many people”.<sup>47</sup> Those working on the civil defence response to an Alpine Fault quake have warned that people will need to be prepared for loss of essential services such as electricity and that some people may need to fend for themselves in the immediate aftermath.<sup>48</sup>

GNS Science research with the University of Otago reveals a large Alpine Fault earthquake will “trigger a cascade of environmental impacts that could persist for up to 50 years after the next earthquake”.<sup>49</sup>

42. GeoNet, Earthquake Statistics, <https://www.geonet.org.nz/about/earthquake/statistics>

43. GeoNet, Earthquake Statistics, <https://www.geonet.org.nz/about/earthquake/statistics>

44. East Coast Lab, Preparing for the big one on the Hikurangi Subduction Zone, January 2019, <https://www.eastcoastlab.org.nz/news/preparing-for-the-big-one-on-the-hikurangi-subduction-zone/>

45. East Coast Lab, Preparing for the big one on the Hikurangi Subduction Zone, January 2019, <https://www.eastcoastlab.org.nz/news/preparing-for-the-big-one-on-the-hikurangi-subduction-zone/>

46. GNS Science, Alpine Fault, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Earthquakes/Major-Faults-in-New-Zealand/Alpine-Fault> & GNS Science, 8000-year quake record improves understanding of Alpine Fault, 28 June 2012, <https://www.gns.cri.nz/Home/News-and-Events/Media-Releases/improved-understanding-of-alpine-fault>

47. GNS Science, Alpine Fault, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Earthquakes/Major-Faults-in-New-Zealand/Alpine-Fault>

48. RNZ, South Island communities preparing for Alpine Fault quake, 12 June 2019, <https://www.rnz.co.nz/national/programmes/checkpoint/audio/2018699323/south-island-communities-preparing-for-alpine-fault-quake>

49. GNS Science, Alpine Fault earthquakes, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Earthquakes/Major-Faults-in-New-Zealand/Alpine-Fault/Alpine-Fault-earthquakes>



It describes a scenario in which the Alpine Fault earthquake will likely rupture the fault for up to 400km in length and the shaking may last for two to four minutes:

*Violent shaking along the entire length of the earthquake rupture will trigger large landslides in steep topography and weaken hillslopes making them more susceptible to landsliding in subsequent storms.*

*The cascade of impacts has the potential to chronically affect towns, road[s], communications and power infrastructure for decades after the earthquake.*

*Additionally, aftershocks triggered by the main earthquake could be expected to be as large as [magnitude] 7 and to continue for many years.<sup>50</sup>*

A 2013 report on New Zealand's tsunami hazard pointed to greater uncertainty that existed about the maximum size of earthquakes on plate boundaries close to New Zealand, which had led to "an increase in the estimated hazard from tsunami triggered by local and regional sources".<sup>51</sup>

*While for most parts of New Zealand the overall levels of tsunami hazard have not changed greatly from the assessed hazard levels in the 2005 report, the estimated hazard has generally increased in those areas most exposed to tsunami from local subduction zones – notably the east-facing coasts of the North Island, and the southwest corner of the South Island.<sup>52</sup>*

## 2.3: Flooding and landslips

The risk of flooding or coastal inundation looms large in the context of climate change. With it comes vexed questions about the insurability of property in at-risk locations, whether it is better to mitigate against the risk, or retreat in the face of it, and who should pay.

The Royal Society Te Apārangi—a trusted independent body supporting the sciences—says most New Zealanders live in areas prone to flooding and that flooding is one of New Zealand's most costly insured disasters.<sup>53</sup> It goes on to state:

*Extreme heavy rainfall events are expected to become more frequent in most parts of the country, by a factor of up to four, especially those regions where an increase in average rainfall is expected.*

*Engineering solutions such as stop-banks and static planning measures such as land-use zoning, while helpful in the short term, could reduce New Zealand's ability to respond as flood risk increases over time. Communities will need to find sustainable solutions and manage on-going risk.*

*It is very likely that the rate of sea level rise around New Zealand will exceed the historical rate and exceed the global average. At least another 30 cm is virtually guaranteed this century but the rise could exceed 1m. With a 30 cm rise in sea level, the current '1 in 100 year' extreme sea level event would be expected to occur once every year or so in many coastal regions.*

50. GNS Science, Alpine Fault earthquakes, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Earthquakes/Major-Faults-in-New-Zealand/Alpine-Fault/Alpine-Fault-earthquakes>

51. William Power, *Review of Tsunami Hazard in New Zealand*, GNS Science Consultancy Report, 2013, <https://www.civildefence.govt.nz/assets/Uploads/publications/GNS-CR2013-131-Tsunami-Report-1-Introduction.pdf> & GNS, New report updates NZ's exposure to tsunami, September 2013 <https://www.gns.cri.nz/Home/News-and-Events/Media-Releases/tsunami-report>

52. William Power, *Review of Tsunami Hazard in New Zealand*, GNS Science Consultancy Report, 2013 <https://www.civildefence.govt.nz/assets/Uploads/publications/GNS-CR2013-131-Tsunami-Report-1-Introduction.pdf>

53. Royal Society of New Zealand, *Climate change implications for New Zealand*, <https://www.royalsociety.org.nz/what-we-do/our-expert-advice/all-expert-advice-papers/climate-change-implications-for-new-zealand> & Royal Society of New Zealand, *Climate change implications for New Zealand*, April 2016 <https://www.royalsociety.org.nz/assets/documents/Climate-change-implications-for-NZ-2016-report-web3.pdf>

The Ministry for the Environment says more frequent, intense winter rainfalls are expected to increase the likelihood of rivers flooding and result in flash flooding where urban drainage systems are overwhelmed.<sup>54</sup>

Two reports released in August 2019—written by the National Institute of Water and Atmospheric Research (NIWA) and the Deep South National Science Challenge—lay bare the current exposure of New Zealand’s people and property to flooding from rivers or coastal flooding.<sup>55</sup>

The first report<sup>56</sup>—looking at rivers flooded by heavy rain and storms—shows almost 700,000 New Zealanders and 411,516 buildings worth \$135 billion are exposed to river flooding in extreme weather events. Also exposed, the report says, are 19,098km of road, 1,574km of railways and 20 airports. This report did not cover the more extreme rainfall events likely to occur with climate change.

The second report<sup>57</sup>—looking at exposure to coastal flooding—says 72,000 New Zealanders are exposed to “present-day extreme coastal flooding”, along with about 50,000 buildings worth \$12.5 billion. The exposure increases markedly, the report says, with sea-level rise—particularly during the first metre of rise. It supports the need to carefully consider further development in coastal areas.

*There is near certainty that the sea will rise 20–30 cm by 2040. By the end of the century, depending on whether global greenhouse gas emissions are reduced, it could rise by between 0.5 to 1.1 m, which could add an additional 116,000 people exposed to extreme coastal storm flooding.*<sup>58</sup>

The Royal Society says at-risk communities will need to decide whether to “hold the line” or relocate in response to known risks or actual climate change impacts. It warns that without clear legislative guidance, litigation is likely to increase.<sup>59</sup> We are already seeing New Zealanders faced with the very real issues of whether retreat from coastal and/or river flood risk is the best option.

In 2005, a torrential downpour caused flooding, landslips and a large flow of debris (including boulders) that destroyed 27 homes and damaged a further 87 properties in the Bay of Plenty beachside town of Matatā. A report on the disaster by GNS Science found it was possible to reduce the danger to some areas of the town to commonly accepted levels by building debris diversion structures. Yet there were other areas where such mitigation was probably not feasible. In these at-risk areas, risks could be reduced through the removal of dwellings.<sup>60</sup> After engineering options were considered, the Whakatāne District Council reached a view that engineering solutions were not feasible in the face of the risk of similar events and a managed retreat was decided upon. Affected Matatā homeowners were offered market value for their properties in a multi-million dollar voluntary buyout funded by local councils and central government. The reaction in Matatā appears to have been mixed, with some not willing to leave and some argument about whether the offers were sufficient. At the time of publication, this process with homeowners was ongoing.<sup>61</sup>

54. Ministry for the Environment, Likely climate change impacts in New Zealand, <https://www.mfe.govt.nz/climate-change/likely-impacts-of-climate-change/likely-climate-change-impacts-new-zealand>

55. NIWA, New reports highlight flood risk under climate change, August 2019, <https://www.niwa.co.nz/news/new-reports-highlight-flood-risk-under-climate-change>

56. Ryan Paulik, Heather Craig & Daniel Collins, NIWA, *New Zealand Fluvial and Pluvial Flood Exposure*, Prepared for The Deep South Challenge, June 2019, [https://www.deepsouthchallenge.co.nz/sites/default/files/2019-08/2019118WN\\_DEPSI18301\\_Flood%20Exposure\\_Final%20%281%29.pdf](https://www.deepsouthchallenge.co.nz/sites/default/files/2019-08/2019118WN_DEPSI18301_Flood%20Exposure_Final%20%281%29.pdf)

57. Bell R, Paulik R, Popovich B, Robinson B, Stephens S & Wadhwa S, NIWA, *Coastal Flooding Exposure Under Future Sea-level Rise for New Zealand*, Prepared for The Deep South Challenge, March 2019, [https://www.deepsouthchallenge.co.nz/sites/default/files/2019-08/2019119WN\\_DEPSI18301\\_Coast\\_Flood\\_Exp\\_under\\_Fut\\_Sealevel\\_rise\\_FINAL%20%281%29\\_0.pdf](https://www.deepsouthchallenge.co.nz/sites/default/files/2019-08/2019119WN_DEPSI18301_Coast_Flood_Exp_under_Fut_Sealevel_rise_FINAL%20%281%29_0.pdf)

58. NIWA, New reports highlight flood risk under climate change, August 2019, <https://www.niwa.co.nz/news/new-reports-highlight-flood-risk-under-climate-change>

59. Royal Society of New Zealand, Climate change implications for New Zealand, Key risks, Coastal change, <https://royalsociety.org.nz/what-we-do/our-expert-advice/all-expert-advice-papers/climate-change-implications-for-new-zealand/key-risks/coastal-change/>

60. GNS Science, The 18 May 2005 Debris-flow Disaster at Matatā, [https://static.geonet.org.nz/info/reports/landslide/Matatā\\_poster.pdf](https://static.geonet.org.nz/info/reports/landslide/Matatā_poster.pdf)

61. Bay of Plenty Regional Council, Awatarariki fanhead, Matatā - Proposed Plan Change 17, June 2018 <https://www.boprc.govt.nz/your-council/plans-and-policies/plans/regional-plans/regional-natural-resources-plan/awatarariki-fanhead-matatā-proposed-plan-change-17/>

The inevitable question is which areas of New Zealand will next face these difficult choices. As sea levels rise and coastlines erode, will those living in exposed coastal settlements be able to get insurance? To what standard and at what cost might this occur? Will some formerly desirable seaside or riverside locations no longer be suitable for housing? And, if there is a managed retreat of whole communities, who will pay? There is an open question here about EQC's part in responding to some of these questions—as an insurer and as an organisation supporting research and educating the public.

There is also a wider issue of what lasting impacts the dismantling and shifting of whole communities will have, an example of which we have already seen in Christchurch's residential red zone where thousands of properties were sold to the Crown and the taxpayer bill was in excess of \$1 billion. Intervention on this scale by the Crown raises the obvious question about what will be affordable into the future as more and more communities face the prospect of retreat or relocation.

## 2.4: Volcanoes and hydrothermal activity

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The volcanoes dotted across the New Zealand landscape have tended to feature less often in our national conversations about natural disasters. That is likely a product of the frequency of eruptions, proximity and our recent history of disasters, where earthquakes and floods have had greater visible impact on people and property.

The loss of life and severe injuries suffered on Whakaari/White Island in December 2019 have, of course, brought into stark contrast the risks posed by volcanic eruption.

History shows volcanoes have had a tremendous impact on our country's landscape. The Taupō Volcano is described as a "supervolcano", and one event called the "Taupō eruption" 1,800 years ago is identified as the most violent eruption known worldwide in the last 5,000 years. It spread at least 1 cm of ash across New Zealand and sent a plume 50km into the air.<sup>62</sup>

New Zealand is described by experts as having "a lot of active volcanoes and a high frequency of eruptions".<sup>63</sup> The volcanoes are also complex, in that they come in various forms and present various hazards, which range from lava and hot gas flows to landslides and ash falls that can reach a long way from the source of eruption.<sup>64</sup>

The volcanic activity features in six distinct areas dotted across the North Island and offshore in the Kermadec Islands and includes "cone volcanoes" such as Taranaki and Tongariro, "calderas" such as Taupō or the Rotorua Basin and "volcanic fields" such as those in Auckland and the Bay of Islands.<sup>65</sup> According to GNS Science, these calderas tend to erupt with great impact, but only once about every 1,000 to 2,000 years and as one-off eruptions in the volcanic fields.

It is New Zealand's cone volcanoes where we need to be wary of more frequent eruptions. This proved to be the case with Whakaari/White Island.

62. GNS Science, New Zealand Volcanoes, Taupo Volcano, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Volcanoes/New-Zealand-Volcanoes/Taupo-Volcano>

63. GNS Science, New Zealand Volcanoes, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Volcanoes/New-Zealand-Volcanoes>

64. GNS Science, Volcanic Hazards, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Volcanoes/Volcanic-Hazards>

65. GNS Science, Types of Volcanoes & Eruptions, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Volcanoes/Types-of-Volcanoes-Eruptions>

Volcanoes considered more likely to erupt in the coming decade include the cone volcanoes in the Tongariro National Park, although the impact is expected to be “minimal or moderate”. Ngauruhoe in the Tongariro National Park—featured in the Lord of the Rings films as “Mount Doom”—has traditionally erupted every nine years, sometimes producing lava blocks as far as 3km away, but has not erupted since 1975.<sup>66</sup> Ruapehu has historically had a major eruption about every 50 years, but minor eruptions have occurred about 60 times since 1945 and in March 2007 a long-predicted dam break lahar (mud or debris flow) occurred.<sup>67</sup>

Another scenario of concern is Mount Taranaki. It is considered a “sleeping” active volcano that is likely to erupt again, with significant potential hazards from lahars, debris avalanches and floods that can cause destruction near the source, as well as ash fall further afield in Waikato or Auckland.<sup>68</sup>

A number of the areas in which volcanoes could cause damage are heavily populated urban centres such as Auckland, which increases the likelihood that widespread damage and destruction of houses will become a major issue for EQC and government, both financially and socially. As with other disaster risks, the research undertaken into volcanoes in New Zealand endeavours to provide advanced warning and enable civil defence preparation. However, advanced warning of volcanic eruption remains challenging. Several life-threatening events have occurred in New Zealand and around the world with no detectable warning signals.

## 2.5: Climate change implications

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The Ministry for the Environment and Statistics New Zealand’s *Environment Aotearoa 2019* report—a stocktake on New Zealand’s environment—states all aspects of life in New Zealand will be impacted by climate change.<sup>69</sup> The report points to significant changes already observed in New Zealand, including sea level rise recorded at New Zealand ports in about the last 100 years and an increase in the rate of rise in recent decades. These coastal changes will have a marked impact on the population and will place pressure on government for assistance not otherwise offered by EQC.

With rising sea levels, we can expect more coastal erosion and flooding, including new risks such as increased liquefaction during earthquakes; greater exposure to inundation from tsunamis; and rising groundwater levels in coastal plains impacting on foundations, infrastructure and agriculture. Other studies have identified climate change as playing a role in some flooding events in New Zealand in the last decade.

The Royal Society says the country is already being affected by climate change and “impacts are set to increase in magnitude and extent over time”.<sup>70</sup> In the absence of significant global action, floods, storms, droughts and fires are expected to become more frequent and extreme sea level events more common.

The Royal Society warns “even small changes in average climate conditions are likely to lead to large changes in the frequency of occurrence of extreme events” and “our societies are not designed to cope with such rapid changes”.<sup>71</sup>

66. GNS Science, New Zealand Volcanoes, Ngauruhoe, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Volcanoes/New-Zealand-Volcanoes/Ngauruhoe>

67. GNS Science, New Zealand Volcanoes, Ruapehu, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Volcanoes/New-Zealand-Volcanoes/Ruapehu>

68. GNS Science, New Zealand Volcanoes, Taranaki/Egmont, <https://www.gns.cri.nz/Home/Learning/Science-Topics/Volcanoes/New-Zealand-Volcanoes/Taranaki-Egmont>

69. Ministry for the Environment & Stats NZ, *New Zealand’s Environmental Reporting Series: Environment Aotearoa 2019*, April 2019 <https://www.mfe.govt.nz/sites/default/files/media/Environmental%20Reporting/environment-aotearoa-2019.pdf>

70. Royal Society of New Zealand, Climate change implications for New Zealand, <https://www.royalsociety.org.nz/what-we-do/our-expert-advice/all-expert-advice-papers/climate-change-implications-for-new-zealand/>

71. Royal Society of New Zealand, Climate change implications for New Zealand, <https://www.royalsociety.org.nz/what-we-do/our-expert-advice/all-expert-advice-papers/climate-change-implications-for-new-zealand/>

The *Environment Aotearoa 2019* report states the longer-term impact on New Zealand is dependent on the concentrations of greenhouse gases in the atmosphere but:

*The uncertainty of the global emissions trajectory makes quantifying and planning for projected impacts difficult.<sup>72</sup>*

The big picture seems clear and planning is underway at many levels, including the political, to try to respond or adapt to this change. Yet in reality we do not yet know how bad things may get.

A 2018 report by global reinsurer Lloyd's of London ranks New Zealand second of 43 countries surveyed for expected insured losses from natural catastrophes as a proportion of GDP (following the Canterbury earthquakes), but does add that its high insurance penetration levels means it remains well protected.<sup>73</sup>

A local report by non-profit economic research institute Motu points out that climate change is making global reinsurers' tail risks "longer and fatter" due to the increasing severity and frequency of events.

*This raises the (albeit remote) possibility of multiple sequential events overwhelming the capital reserves of a global reinsurer.*

*While reinsurance firms seek to diversify their risk across perils and geographies there remains a strong concentration in catastrophe insurance in hurricanes in the United States. Consequently, should an extraordinarily large hurricane occur there at the same time as natural disaster in New Zealand (whether geological or meteorological) this could undermine the solvency of firms that provide reinsurance to New Zealand.<sup>74</sup>*

Financial challenges affecting international reinsurers could lead to greater scrutiny of EQC's exposure to storm surges and flooding and could affect the costs, or even the willingness to reinsure EQC's "untraditional cover for land", the Motu report goes on to say.

## 2.6: Addressing the challenge

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The increasing risk to New Zealand from the natural disasters described in this chapter is a pressing issue not just for EQC and private insurers but for all New Zealanders. As a country we will have to make trade-offs and there will be additional costs borne by all taxpayers.

Whatever the views of the performance of EQC, New Zealand is fortunate to have a natural disaster insurance scheme backed by the Government. It is unique in the world in its levels of coverage. The role EQC plays is crucial. It is there to secure the necessary reinsurance and give confidence to property owners that the coverage will be there when they need it.

Through the course of this Inquiry and in broader commentary, I have heard the anxiety felt by people about how they will obtain or maintain their insurance, how EQC and other government agencies will respond to future disasters and how New Zealand will cope when the next "big one" inevitably strikes. Younger generations clearly recognise the threat of climate change. If we want those young people to have a sense of security in which to raise their families, they will need to know they can insure their homes against the increasing risks.

72. Ministry for the Environment & Stats NZ, *New Zealand's Environmental Reporting Series: Environment Aotearoa 2019*, April 2019 <https://www.mfe.govt.nz/sites/default/files/media/Environmental%20reporting/environment-aotearoa-2019.pdf>

73. Lloyd's, *A world at risk, Closing the insurance gap*, 2018 <https://www.lloyds.com/news-and-risk-insight/risk-reports/library/understanding-risk/a-world-at-risk>

74. Filippova O, James V, Kerr S, Middleton D, Noy I, Salmon R, Storey B, Townsend W, Motu Economic and Public Policy Research, *Insurance, housing and climate adaptation: Current knowledge and future research*, 2017, <https://www.deepsouthchallenge.co.nz/sites/default/files/2017-05/Insurance-Housing-Climate.pdf>

We are already seeing private insurers reconsider the way they insure risk around New Zealand. There is now a growing concern that people in certain areas will not be able to access private insurance for their homes, that premiums and excesses will be too high, or policies on offer will be too restrictive.

At the meetings I have held in some parts of New Zealand, particularly Waimakariri and Wellington, I have noted a palpable and increasing anxiety about natural disaster risk in the community. This concern manifested in an insurance forum in Wellington in mid-2019.

City, district and regional councils are also grappling with climate change implications for their respective areas and what advice they should provide about housing, infrastructure and land use into the future. This challenge to councils has led a number around New Zealand to declare a “climate change emergency”. In November 2019 Parliament passed the Zero Carbon Act, which commits New Zealand to a target of net-zero carbon emissions by 2050. Central governments, now and into the future, will need to think carefully about how they invest and support the generations who will be hardest hit by the impact of climate change and what EQC coverage will look like in the future.

While some aspects of damage caused by changes to the climate (such as coastal inundation) are not currently covered by EQC, it, along with other agencies, must consider the implications as they plan for the scope of potential disasters and how they target their research and education campaigns. Climate change should be addressed as a central issue in EQC’s planning.

EQC invests \$17 million in scientific research each year to help reduce the impact of natural disasters on people and property. While risks associated with climate change, such as coastal inundation, are not currently insurable under the EQC Act, I have been surprised and concerned that EQC has not yet fully grasped the impact it will have on its future work as flooding and tsunami risk increases. Although EQC has advised me that it is involved in a range of climate change initiatives as part of its research function. Its role as an educator should require it to be direct with people about what climate change will mean and how people should prepare. Communities at risk need to know in detail what they face and how they can respond—not only to individual disasters but also to the changing conditions over time.





## **EQC's purpose and functions**





## 3.1: Purpose

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Known commonly as EQC, the Earthquake Commission was established in 1945 as the Earthquake and War Damage Commission following a devastating earthquake in the Wairarapa district in 1942. It was originally structured as a government department, staffed by seconded State Insurance personnel and in 1988 became a State Corporation with the Minister of Finance its sole shareholder. Its name and functions were reviewed in 1993 with the passing of the EQC Act. Some changes were made in 2019 with an Amendment Act of the same name.

The EQC Act does not include any purpose statement. However, it does have a clearly implied public purpose, evident in the debates surrounding the passage of legislation through the House of Representatives—first in 1944 with the Earthquake and War Damage Commission Bill and latterly in 1992-1993 with the Earthquake Commission Bill. Statements made when legislation was first introduced in 1944 indicate that the purpose was to spread any losses from natural disasters across the whole country—“the whole loss is deemed to be a national loss”.<sup>75</sup> The debate in 1993 centred on the humanitarian concern of the Government and the “provision of basic, adequate housing”.<sup>76</sup>

The principles underpinning the EQC Act, although not explicitly stated, reflect both the acknowledgement that New Zealand is susceptible to major natural disasters and the international human rights commitments made when New Zealand ratified the International Covenant on Economic, Social and Cultural Rights<sup>77</sup> in 1978, thereby requiring it to recognise rights of access to adequate housing. Indeed, EQC now identifies its “mission” as being “to reduce the impact on people and property when natural disasters occur”.<sup>78</sup>

In 2015, a Treasury discussion document<sup>79</sup> proposed, among other things, that a purpose statement be added to the EQC Act to provide greater certainty about how its provisions should be interpreted. It proposed 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.*

Proposed amendments to the legislation did not proceed at that time. There would be value in revisiting The Treasury’s proposal with a view to providing greater guidance to EQC about how it should approach its role in managing the Government’s natural disaster insurance scheme.

75. Earthquake and War Damage Bill Second Reading, Hon Walter Nash, 28 September 1944, p619, <https://babel.hathitrust.org/cgi/pt?id=uc1.a0001757640&view=1up&seq=632>

76. Parliamentary Debates (Hansard), Volume 532, Earthquake Commission Bill, 1992, <https://drive.google.com/file/d/OB1lwfv-Mt3CZE8zRDnKt3AwOW8/view>

77. United Nations General Assembly Official Records 21st Session, Resolution 2200A, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

78. EQC Annual Report 2018-19, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

79. The Treasury, Discussion Document: New Zealand’s Future Natural Disaster Insurance Scheme: Proposed Changes to the EQC Act 1993, July 2015 <https://treasury.govt.nz/sites/default/files/2012-09/eqc-rev-discussion-doc.pdf>

A number of people suggested to me that EQC lost sight of part of its fundamental purpose following the Canterbury earthquakes and particularly following February 2011, after which EQC seemed to place insufficient emphasis on the recovery and resilience of communities. Until then, the public had typically seen EQC as a body endorsed by the Government that would step up when a natural disaster occurred and treat people well. For example, EQC's response to earlier events, such as the Inangahua and Edgecumbe earthquakes in 1968 and 1987, had been relatively swift, efficient and geared toward helping the affected communities recover as quickly as possible by making cash payments and, in a small number of cases, helping to reinstate homes. This is what had always happened and continued through the period after the September 2010 Canterbury earthquake. However, this approach appeared to cease after the February 2011 event, due to the complexity and magnitude of the event and was inadvertently at the expense of positive social outcomes.

Including a clear statement of purpose in the legislation would help clarify EQC's purpose and provide a clear signal to EQC and New Zealanders about what policy makers expect of the country's natural disaster insurance scheme. Modern laws are drafted with a statement of principles to guide the discharge of obligations or rights exercised under the legislation and help with judicial interpretation, when needed. There is a need to reframe the EQC Act to include such a statement. Consideration should also be given to including in its statement of purpose EQC's social responsibility to those who find themselves needing to make a claim under the EQC Act. Not only does the principle of caring for those who need assistance following a major natural disaster require articulation, but it also accords with the original intention and historic application of the legislation, EQC's current mission statement and the expectations of the public.

## 3.2: Core functions

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EQC has the following statutory functions, set out in section 5 (1) of the EQC Act:

- (a) *to administer the insurance against natural disaster damage provided under this Act:*
- (b) *to collect premiums payable for the insurance provided under this Act:*
- (c) *to administer the [Natural Disaster] Fund and, so far as is reasonably practicable, protect its value, including by investment held in the Fund:*
- (d) *to obtain reinsurance in respect of the whole or part of the insurance provided under this Act:*
- (e) *to facilitate research and education about matters relevant to natural disaster damage, methods of reducing or preventing natural disaster damage, and the insurance provided under this Act:*
- (f) *such other functions as may be conferred on it by –*
  - i. *this Act or any other Act, or*
  - ii. *the Minister in accordance with section 112 of the Crown Entities Act 2004.<sup>80</sup>*

EQC's administration of the natural disaster insurance scheme is a significant focus of the Inquiry and discussed in some detail later in this report.

80. Earthquake Commission Act 1993, section 5(1), <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM306729.html>

## Extent of EQC cover—the cap

An important purpose of the amending legislation in 1993 was, in the event of a natural disaster, to provide homeowners with replacement of their homes to a maximum of \$100,000 excluding GST (“the cap”). At that time, it was assumed that the new GST inclusive total of \$112,500 “should serve to protect the value of most home improvements”. During the introductory debate on the Bill, it was said that the average cost of a residential building (excluding the cost of land) was approximately \$75,000 and it was noted that this value was likely to be significantly greater in urban areas. Nonetheless, it was believed:

*For many people the changes will do away with any need for top-up insurance cover. For many more people the changes will reduce the level of private insurance that is required for total replacement.<sup>81</sup>*

Today the average cost of building a residential property in New Zealand (excluding the cost of the land on which it is built) is closer to \$400,000.<sup>82</sup> Again, the average cost might not represent the average urban value where the majority of New Zealand homeowners now live. Nor are building costs stable. Pressure on the building industry can come from many directions: government regulations, shortage of trained tradespeople and the cost of importing materials will all have an impact. Relying only on the current EQC insurance maximum, increased to \$150,000 plus GST in the Earthquake Commission Amendment Act 2019, would leave many homeowners unable to fully repair or rebuild their homes.

It would be timely to review the cap on payment to homeowners. As The Treasury noted in 2015, the reduction in the real value of the cap (adjusted for inflation) means that “EQC is carrying less, as a proportion of total residential building exposure, while private insurers are carrying more.”<sup>83</sup>

Moreover, insurance premiums have increased substantially since the Canterbury earthquakes and The Treasury expects that ongoing price increases will lead to lower levels of insurance cover in higher risk areas.

Increasing the cap would shift the balance of EQC and private insurer exposure—and thus the respective risks and liabilities of the Government and private insurer—and could decrease the costs of private insurance, although the EQC component of premiums would increase. Any change in the cap might also have implications for the costs of EQC obtaining reinsurance and the Crown Guarantee.<sup>84</sup>

Importantly for claimants, increasing the cap would reduce the number of over-cap claims. This would thereby reduce the number of people who are required to deal with both EQC and their private insurance company and reduce the delays associated with settling their claims. This has been an area of particular frustration for claimants, although I note that many (but not all) have expressed a preference for dealing with their private insurer rather than with EQC. Most would prefer to deal with only one entity.

Removing the cap altogether (for example to provide natural disaster cover to the dwelling's sum insured) would mean that, in the event of a natural disaster, claimants would deal with only one organisation for damage to housing and the issues and complexities of apportionment (assigning damage across a series of events) would be reduced. EQC has told me that, based on current models, the risk (and hence additional cost and liability) of moving from a \$400,000 cap to an unlimited cap is likely to be insignificant. This would be a fundamental change in New Zealand's residential natural disaster insurance model which would have other implications needing careful consideration.

81. Parliamentary Debates (Hansard), Volume 532, Earthquake Commission Bill, 1992, <https://drive.google.com/file/d/0B1lwfv-Mt3CZE8zRDNkT3AwOW8/view>

82. In 2017, the average construction cost of an 'average house' (comprising a floor area of 210-230m<sup>2</sup>) was \$395,000 in New Zealand (or \$455,000 in Auckland). Johnson A, Howden-Chapman P, Eaqub S, *A Stocktake of New Zealand's Housing*, February 2018, <https://www.beehive.govt.nz/sites/default/files/2018-02/A%20Stocktake%20Of%20New%20Zealand%27s%20Housing.pdf>

83. The Treasury, *Discussion Document: New Zealand's Future Natural Disaster Insurance Scheme*, July 2015 <https://treasury.govt.nz/sites/default/files/2012-09/eqc-rev-discussion-doc.pdf>

84. Section 16 of the EQC Act operates as the Crown Guarantee, noting that if the assets of EQC (including money for the time being in the Natural Disaster Fund) are not sufficient to meet the liabilities of EQC, the Minister shall provide public money to EQC by way of grant or advance to meet the deficiency.

The Wellington Mayor’s Insurance Taskforce has expressed the view that the cap should be revised. The Taskforce considered raising the cap as “an obvious step to contemplate” so that the cap keeps pace with inflation.<sup>85</sup> However, it cautioned that such an adjustment needs to be carried out in parallel with responsible action by private insurers and central and local government. These actions might include looking across the approaches taken to hazard management and land-use planning and better managing the risks of continued occupancy of vulnerable buildings that cannot recover from an earthquake.

The Insurance Council of New Zealand (the Insurance Council)—a member of the Taskforce—is not supportive of increasing the cap significantly, noting that a consequential increase in EQC levies would adversely impact incentives to be resilient and encourage investment in riskier areas. I have also heard that the cost of EQC cover might be higher than that provided by the insurers and that this could penalise those in less risky areas, given that the current EQC regime favours community-based pricing with a common levy rate for all. The Insurance Council has also raised the possibility that EQC assuming greater financial liability would reduce the diversification of reinsurance, as EQC only purchases it for certain risks in New Zealand.

Decisions about the purpose of the cap, its rationale, whether it should be increased and the consequences for premiums and reinsurance are all policy issues. Nonetheless, these are matters that need reflection in the light of the recent experiences in Canterbury (and elsewhere) and in response to private insurance companies’ changing approach to mitigating and managing their risk.

## Extent of EQC cover—legislative clarity

There is also a need for the legislation to provide greater clarity about the extent of EQC cover and, in particular, the standard of reinstatement that EQC is required to meet in settling natural disaster insurance claims. The required reinstatement standard was the cause of much consternation and dispute for many of the Canterbury homeowners from whom I heard. This caused a lot of unnecessary stress for people, not to mention the additional time and expense involved in “fighting” EQC for what people felt was a fair and proper settlement. Providing a clear definition of the reinstatement standard would provide greater certainty for EQC and for claimants.

The Canterbury earthquakes experience also highlighted a need for other key terms and requirements to be addressed in the EQC Act, such as reinstatement of cover and apportionment, which were not matters that EQC and claimants had previously had to deal with. Terms from the EQC Act such as “when new” could be defined more simply in that statute to avoid continuing the current practice of resorting to court action to resolve issues through case law. In my view, a planned review of the EQC Act by The Treasury provides the opportunity to address these issues.

## Collection of premiums

Private insurance companies collect EQC levies on EQC’s behalf. They receive a percentage fee for this service. EQC may provide direct natural disaster cover to those who have been unable to obtain cover via a private insurance policy (that includes fire cover) and thus collect levies directly. However, EQC’s ability to provide direct cover is discretionary and it rarely receives applications for such cover.

<sup>85</sup> Wellington City Council, *Mayor’s Insurance Taskforce: Discussion Document*, November 2019, <https://wellington.govt.nz/~media/your-council/news/files/2019/insurance-taskforce-recommendations.pdf>

## Natural Disaster Fund

EQC levies and other money payable to EQC are paid into the Natural Disaster Fund, which is used to pay for natural disaster insurance claims made to EQC as well as the costs of reinsurance, research funding, public awareness and education campaigns and the staffing and overheads incurred by EQC in performing its functions.<sup>86</sup> Under the Act, EQC pays an annual fee in respect of the Crown Guarantee (currently \$10m per annum). It may also be required to pay other sums including dividends and sums in lieu of tax, although these have not been levied since the mid-1990s.<sup>87</sup> Section 16 of the EQC Act operates as the Crown Guarantee, so that the Government may be called on to meet any deficiency in the Natural Disaster Fund.<sup>88</sup>

Prior to September 2010, managing the Natural Disaster Fund was a primary focus for EQC. Directions from the responsible Minister set the policies, standards and procedures for investment of the Natural Disaster Fund by:

- specifying the financial products that EQC is permitted to invest in;
- establishing processes for the prudent management of investments;
- establishing the risk settings for the Natural Disaster Fund; and
- restricting the ability to hedge currency and interest rate exposures.

The Natural Disaster Fund was valued at around \$6 billion.<sup>89</sup> Since then, EQC has focussed on ensuring it has sufficient resources to meet its cash flow requirements. I am advised by EQC that, following the 2010-2011 earthquakes, it started to sell down its investments to fund the settlement of claims and received a ministerial direction to invest conservatively, while maintaining liquidity to continue to meet claims. EQC is currently calling on the Crown Guarantee, citing \$125 million for the 2018-2019 financial year.<sup>90</sup>

Although the funding structure for EQC is specifically excluded from the Inquiry's Terms of Reference, I received a few submissions on operational practices relating to the Natural Disaster Fund and the Crown Guarantee. Some people suggested that, in administering claims, EQC has a particular focus on constraining settlement payments in order to lessen the call on the Crown Guarantee. This is consistent with general concerns I heard about an undue emphasis on constraining settlement costs following the Canterbury earthquakes. However, I did not see any evidence of a specific focus on avoiding the need to draw on the Crown Guarantee and EQC assures me there was no such focus. Others expressed concern about the potential ability of governments to "plunder" the Natural Disaster Fund by requiring the payment of dividends, sums in lieu of tax and fees.<sup>91</sup> However, as noted above, the Government has not taken a dividend or sum in lieu of tax since the mid-1990s. Under the Public Finance Act 1989 any future attempt to transfer funds from EQC to the Government would have to take place transparently.

86. Earthquake Commission Act 1993, sections 14 and 15, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305968.html>

87. Earthquake Commission Act 1993, sections 9, 10 and 17, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305968.html>

88. Earthquake Commission Act 1993, section 16, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305968.html>

89. EQC Annual Report 2017-2018, November 2018, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

90. EQC Annual Report 2018-19, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

91. Stuff.co.nz, Plunder: How the bill for the Canterbury earthquakes was passed on, 23 February 2019, <https://www.stuff.co.nz/the-press/110674808/plunder-how-the-bill-for-the-canterbury-earthquakes-was-passed-on>

## Reinsurance

Reinsurance is insurance for insurers and enables insurance companies to share risk. Under its current reinsurance programme, EQC must meet the first \$1.75 billion of claims before it can draw on its reinsurance contracts.

EQC was and continues to be successful in securing reinsurance despite New Zealand's seismic risks and the catastrophic events of the past decade. This is due in part to the fact that, aided by the Crown Guarantee, EQC is backed by the Government. It is also partly because of its commitment to research, which has enabled reliable natural hazard risk profiling. EQC has purchased reinsurance to the value of \$6.2 billion for 2019-2020 from international reinsurers.<sup>92</sup>

## Research and education

EQC has a strong history (spanning several decades) of investing in research into New Zealand's seismic environment, natural hazards and risks. In 2001 EQC started to work collaboratively with GNS Science, funding the world-leading geological hazards notification system known as GeoNet. More than 600 sensors across New Zealand were developed to detect, analyse and respond to earthquakes, volcanic activity and other geological hazards. GeoNet data helps EQC assess the risks from natural hazards. Its data is also valuable to many other users, from those directly concerned with EQC's functions such as Tonkin & Taylor and insurers, to power providers, air traffic controllers and forest owners. GeoNet has proved a vital resource, particularly when significant issues regarding the stability of land in Canterbury appeared.

EQC's current annual research investment is around \$17 million. It is allocated flexibly and I understand it takes advantage of opportunities and synergies with other research as they emerge. EQC has developed a strong relationship with the academic and engineering community and associated research programmes. It describes in its *Annual Report 2018-19* the recently developed Resilience Strategy for Natural Hazard Risk Reduction, which will provide the strategic direction for its research investment, loss modelling, public education and engagement.<sup>93</sup>

EQC also has a well-established programme of sponsorship and support for a range of education programmes and exhibitions in different locations and media. This included the flagship *Awesome Forces* exhibition at Te Papa Tongarewa, the national museum. Programmes and exhibits promoted preparedness for natural disasters and a greater understanding about geohazards, such as earthquakes and volcanoes and illustrated the history of natural disasters in New Zealand.<sup>94</sup>

Recently EQC has taken the initiative to visit local councils to share its expertise and information for planning purposes, which supports its objective of "smarter land use [that] avoids the worst risks".<sup>95</sup> The intent is to build understanding among local decision makers about the risks from natural hazards in their communities; encourage economic and social impact analysis and scenario planning; and provide technical guidance about resilient design and land-use planning.

It advances its public education by ensuring New Zealanders understand the importance of having private household fire insurance (as a prerequisite for EQC cover) and are aware of home safety measures and risk mitigation.

92. *EQC Annual Report 2018-19*, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

93. *EQC Annual Report 2018-19*, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

94. *EQC Annual Report 2009-10*, November 2010, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

95. *EQC Resilience Strategy for Natural Hazard Risk Reduction 2019-2029*, November 2019, [https://www.eqc.govt.nz/sites/public\\_files/documents/grants/EQC%20Resilience%20Strategy%202019.pdf](https://www.eqc.govt.nz/sites/public_files/documents/grants/EQC%20Resilience%20Strategy%202019.pdf)



If EQC's research and education capability is to remain respected in New Zealand and internationally, it must retain adequate funding and be able to determine its own priorities by consulting (as appropriate) with interested and relevant arms of government and the scientific and academic community. More importantly, when faced with the biggest natural disaster in New Zealand's modern history, EQC had already commissioned important research that formed the basis for further investigations of the unique characteristics of the Canterbury earthquakes. Its relationships with the practising engineering and academic communities were also crucial. In the absence of these capabilities, the ability to determine the suitability of land for rebuilding or the best methods for repairing properties would have taken much longer and would have been less reliable for the future stability of the housing stock.

## 3.3: Additional functions

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EQC is a Crown entity, which places it under the Crown Entities Act 2004 and empowers the responsible Minister, after consultation, to add to its functions by directing it to perform any additional task that is consistent with its objectives.<sup>96</sup> In the event of a major natural disaster, it is axiomatic that the Government will be closely involved in the recovery of its citizens and their homes. For this reason, EQC will not, as a rule, be entirely autonomous after a major natural disaster.

Since 1 January 1994, under the provisions of the EQC Act, EQC has been directed by Ministers to discharge functions additional to those in its existing legislation. Eighteen ministerial directions were issued for EQC between 1994 and 2018. The majority relate to investment instructions; however, a number of ministerial directions conferred new functions on EQC, including:

- investigating and assessing homes damaged or endangered by the collapse of a goldmine in Waihi on 13 December 2001;
- proposed additional land remediation work in Canterbury in the aftermath of the 4 September 2010 earthquake;
- inspections of and emergency works to repair damage to dangerous or insecure residential premises (insured and uninsured) in the aftermath of the 22 February 2011 Canterbury earthquake; and
- reinstating land in the Edgumbe community (insured and uninsured, residential and non-residential) by removing silt and debris that had inundated the town as a result of storms and floods in April 2017.

Ministerial directions were also used to extend EQC's existing functions. For example, following the Canterbury earthquakes EQC was directed to:

- pay out (or repair) damage relating to "unclaimed for" events where a customer had a valid claim for at least one event in the Canterbury earthquakes; and
- settle drainage claims in some specific scenarios that were not covered by the EQC Act.

<sup>96</sup> Earthquake Commission Act 1993, section 12, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305968.html>;  
Crown Entities Act 2004, section 112, <http://www.legislation.govt.nz/act/public/2004/0115/latest/DLM329631.html>

Surprisingly, a ministerial direction was not issued in relation to EQC’s management of the Canterbury Home Repair Programme, which was the most substantial addition to EQC’s functions. I have inferred that EQC and the Government relied on Schedule 3 of the EQC Act, which enables EQC to “replace or reinstate” property instead of making a cash settlement.<sup>97</sup> I discuss the decision to run a managed repair programme and the operation of that programme later in this report. Insufficient consideration appears to have been given by government to whether EQC had the capacity and capability to take on these additional functions—particularly a large managed repair programme—at a time when it was under pressure to scale up quickly and address a substantial volume of claims. It appears to me that, in the absence of prior planning for such an event, EQC was considered the only available agency to discharge this responsibility.

Clear commissioning of work is an important element for Ministers to consider if or when conferring additional functions on EQC. It seems some of the issues associated with EQC’s extra functions in Canterbury might have been avoided if the time had been taken to clarify the function, purpose, desired outcomes and proposed approach for those functions. While acknowledging the speed with which actions needed to be taken in Canterbury—particularly with respect to emergency repairs and rapid assessments of damaged premises—I suggest that here, as with EQC’s other operational practices, there is a need for more haste and less speed; notably at a point when the immediate emergency is reducing and the longer-term housing recovery is beginning.

More recently, the Government has further added to EQC’s responsibilities. In August 2019, the Government made provision for EQC to make ex-gratia payments to enable the owners of on-sold properties that are over the EQC cap to repair unscoped or missed damage relating to the Canterbury earthquakes. In October 2019, EQC was directed to act as Southern Response’s agent in settling claims for its remaining customers as it winds down its settlement function.

## 3.4: Future role and functions

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In 2009, EQC commissioned a report called *Review of New Zealand Earthquake Commission’s Catastrophe Response Operational Capability* to ascertain if its ongoing Catastrophe Response Programme would enable EQC to meet its statutory obligations to a standard acceptable to the Government and the New Zealand public. The review included some pertinent comments on EQC’s role and functions.

Among the review’s most relevant observations and recommendations it set out:

### *Role expectations*

*Apart from the requirements of the Earthquake Commission Act 1993 (which provide for qualifying claims to be settled by payment, replacement or reinstatement) there is no clear direction to EQC from government about its expectations of the organisation in:*

- *supporting whole-of-government processes of disaster management and recovery*
- *providing support to home owners (in addition to cash settlements) in their replacement or reinstatement of damaged property.*

*EQC’s current assumption, and preference, is that it settles claims in cash.*

*Interviews with stakeholders identified the possibility that EQC might be expected to take a more ‘hands on’ role in support of reconstruction activities following a large-scale event, such as a Wellington earthquake.*

97. Earthquake Commission Act 1993, Schedule 3, clause 9, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305968.html>



*Such a role would mean that, rather than just settling claims in cash, EQC might be expected to actively work with other local and central government agencies and private insurers to provide a coordinated approach to supporting home owners in replacing or reinstating damaged property.*

*Reasons offered for this view included the following:*

- funds for reconstruction work, together with the supply of builders and materials, will likely be scarce*
- government will be under pressure to ensure that available funds are effectively used in support of reconstruction work (and not spent by home owners on other purposes or absorbed by inflated building costs)*
- while private insurers currently ensure their funds are used for reinstatement, in the event of a large scale event they may not have the capacity to do this and may settle claims by cash instead*
- as a Crown owned entity, the government may expect EQC to work with other government agencies and insurance companies to facilitate reconstruction work.*

*Any such expectation would have significant planning, human and other resource implications for EQC, which are not currently factored into the [Catastrophe Response Programme].*

*Any misalignment in role expectations between government and EQC could lead to confusion and friction at both political and operational levels and in the public arena. This is a risk unless alignment is achieved by either greater understanding before an event or by role adaptation by EQC following a large scale event (which it is currently unprepared for). It is important that EQC can clearly articulate its role, both before and during an event, to the public and its various stakeholders.<sup>98</sup>*

All proposals in this 2009 review, including the above, were considered by the EQC board and management and implementation had begun by the time the first major earthquake occurred on 4 September 2010 in Canterbury. While there was insufficient time to act on these recommendations, they remain largely relevant today. Some have been put into operation, at least in part, but all are vital for the planning for the recovery from future major natural disasters.

As events transpired, EQC faced the outcome of the September 2010 and later major earthquakes in Canterbury by relying primarily on its existing Catastrophe Response Programme, which did not incorporate responsibility for a managed repair. It could not have anticipated the scale of the events that followed nor the complexity of the response required and struggled to accommodate the enormous tasks ahead of it, often underperforming or failing.

## Support for EQC

EQC has given thought over time to its future role. In more recent times, it has considered its role in light of a 2018 strategic review of its Kaikōura response model. A key recommendation of the review was that:

*the core role EQC should enhance and elevate during a natural disaster is that of a systems integrator or an organisation that mobilises and activates the “insurance” response.<sup>99</sup>*

98. Review of New Zealand Earthquake Commission's Catastrophe Response Operational Capability, May 2009, [https://www.eqc.govt.nz/sites/public\\_files/WeCan%20-%20Appendices%2056-63.pdf](https://www.eqc.govt.nz/sites/public_files/WeCan%20-%20Appendices%2056-63.pdf)

99. PwC, Strategic Review of the EQC Response Model, November 2018

I understand that EQC is actively pursuing this recommendation with a view to improving residential insurance sector readiness to respond to natural disasters. While it is also striving to remove duplication and inefficiency from the response and recovery process, EQC makes a clear distinction between its anticipated role as “systems integrator” as opposed to the lead agency directing building recovery.<sup>100</sup> These are worthy proposals, which I support. There is clearly room for a more integrated approach with private insurers and across government that fits within the broader remit for leading the recovery that the National Emergency Management Agency will have. (The broader context in which EQC operates and EQC’s key relationships are discussed in later sections of this report).

However, I have reservations about the extent to which EQC was adequately supported by the wider apparatus of government in responding to the insurance and home repair needs of Canterbury homeowners. These reservations underline the conclusion that EQC has reached and which I support that it should be in the role of coordinator rather than housing recovery lead agency. The lack of wider government and agency support for EQC during that period, should it persist in the future, does not bode well for its ability to lead the residential insurance response and consequential housing recovery. Had there been serious thought and government-wide planning given to this, there might have been greater collaboration and sharing of responsibilities and resources among other state entities.

Clearer protocols to establish the respective roles and responsibilities of the Government and EQC would have been useful as EQC planned its land and residential building recovery following the Canterbury earthquakes. While these were negotiated as the Canterbury earthquakes occurred, delays and confusion of responsibilities were inevitable. The consequences of major natural disasters can never be fully understood; it is obvious that they can occur in different areas of New Zealand at unanticipated times and be of unexpected nature and complexity. There are, however, certain issues that will inevitably arise—such as ascertaining the stability of land and the viability of rebuilding in a particular area—that can be anticipated and where protocols can be developed.

I note that the Electoral Act 1993 enables the Electoral Commission, “if it considers that it is necessary for the proper discharge of its functions” to “request advice, assistance and information from any government department or any State enterprise”.<sup>101</sup> It also makes specific provision for the Electoral Commission “to seek assistance from any State sector agency in order to facilitate the effective administration of elections”.<sup>102</sup> Any agency approached is required to “have regard to the public interest in a whole-of-government approach to support the effective administration of elections in considering the assistance it can provide”.<sup>103</sup> There may be value in making robust provision for EQC to seek similar assistance in discharging its functions under the EQC Act.

Short of, or alongside, legislative change to ensure whole-of-government support for EQC to perform its functions, the Government should consider other mechanisms such as Ministerial Letters of Expectation and Cabinet/Cabinet committee decisions to make explicit that key agencies would be expected to provide support for EQC in the event of a natural disaster.

## Test for new functions

As part of its initial considerations for the recent review of the EQC Act, The Treasury proposed that a test be introduced to ensure that any new functions assigned to EQC not unduly detract from its core business in settling residential insurance claims. That proposal did not make it into its 2015 discussion document on proposed changes to the EQC Act nor to subsequent amendments to the EQC Act in 2019. In my view, it would be worth revisiting this proposal, alongside the development of a clear purpose statement for inclusion in the legislation.

100. Office of the Minister Responsible for the Earthquake Commission, Cabinet paper, *EQC’s changing role in a Natural Disaster Response and Recovery*, 7 August 2019, [https://www.eqc.govt.nz/sites/public\\_files/documents/publications/Final-Cabinet-paper\\_DEV-minute\\_70819.pdf](https://www.eqc.govt.nz/sites/public_files/documents/publications/Final-Cabinet-paper_DEV-minute_70819.pdf)

101. Electoral Act 1993, section 6(f), <http://www.legislation.govt.nz/act/public/1993/0087/latest/DLM308109.html>

102. Electoral Act 1993, section 20D(1), <http://www.legislation.govt.nz/act/public/1993/0087/latest/DLM308170.html>

103. Electoral Act 1993, section 20D(2), <http://www.legislation.govt.nz/act/public/1993/0087/latest/DLM308170.html>

## Enhanced role in land-use planning

A specific area where EQC could play a greater role is in contributing its knowledge and expertise to land-use planning around the country. Through its research function, EQC has developed a large body of information about the risk of natural hazards and likely impacts on land and buildings. While EQC is already sharing this information with local authorities, there is scope for it to have a more formal role in residential land-use planning decisions to ensure that decisions are well informed about the nature of future risks and the consequences of building in high-risk areas. This might, for example, involve extending the range of people who may be a party to proceedings before the Environment Court to include EQC. As well as improving the quality of decision making for local communities, this would help guard against the risk of the Natural Disaster Fund being needlessly drawn upon to pay for natural disaster damage that might otherwise have been avoided.

# 3.5: Civil defence emergency management system

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New Zealand's approach to responding to and recovering from, natural disasters is governed by the country's civil defence emergency management framework.

The Ministry of Civil Defence and Emergency Management played a key role in providing advice to the Government, developing the strategic framework and ensuring coordination at local, regional and national levels. The Ministry also had a public awareness function, managed the National Crisis Management Centre and acted as the lead agency for large-scale events that require a central government response.

The Government has established the new National Emergency Management Agency<sup>104</sup> to replace the Ministry of Civil Defence and Emergency Management. Local leadership and organisation is at the heart of management for emergency operations and the new agency will provide stronger oversight of emergency responses and has the ability to set and enforce national standards for local and regional teams. I understand it will also support local and community recovery operations. Nonetheless, there is a need to ensure that the newly formed National Emergency Management Agency and EQC have clear parameters for their respective recovery roles following a natural disaster.

104. National Emergency Management Agency, <https://www.civildefence.govt.nz/about/about-nema/>

## EQC's role in civil defence emergency management

EQC contributes to all four areas of civil defence emergency natural disaster management activity, including:

- **Reduction**—funding research to improve understanding of natural hazards risks and ways to avoid and reduce damage to buildings;
- **Readiness**—undertaking public awareness and education activities in relation to natural hazard risks and preparedness for a natural disaster and activity to improve its own organisational readiness to respond;
- **Response**—providing information and support to assist other agencies and Civil Defence and Emergency Management Groups in assessing damage to residential buildings and the consequential welfare and temporary accommodation needs of the resident populations; and
- **Recovery**—acting as a first loss insurer to support the repair or replacement of people's homes after a natural disaster.<sup>105</sup>

EQC has identified a leading role for itself, in partnership with other agencies, in reducing natural hazard risks in New Zealand. Its *Statement of Intent 2018-22* identifies “EQC is a leader in NZ on natural hazard risk reduction” as one of three strategic intentions for the organisation. Its resilience strategy aims to increase community resilience to natural hazards through investment in science, research and partnerships with other agencies.<sup>106</sup> The high-level strategy was published in November 2019 and EQC advises it is developing an implementation plan.<sup>107</sup>

EQC, among other agencies, contributes to strategic work led by the National Emergency Management Agency. EQC has told me that it is supporting the agency with work to establish a new All-of-Government Recovery Forum to oversee the development of cross-government arrangements for recovery. The National Emergency Management Agency intends to invite EQC to become a member of the forum when it is established. EQC has also been asked to work with the National Emergency Management Agency and other agencies on the principles and criteria to assist all-of-government decision making in relation to recovery options (including a system-led managed repair programme) following a major event.<sup>108</sup> EQC is also looking at other opportunities to improve the information it could gather and share both before and after an event and how this could inform and support “the four Rs” of emergency management. EQC's role in investing in research and education is also intended to help policy makers improve land use, help planners and builders create more resilient developments and help New Zealanders protect their homes in anticipation of natural events.<sup>109</sup>

105. National Civil Defence Emergency Management Plan Order 2015, Part 5, clause 80(6), <http://www.legislation.govt.nz/regulation/public/2015/0140/latest/DLM6486744.html>

106. EQC, *Earthquake Commission's Statement of Intent 2018-22*, 26 June 2018, <https://www.eqc.govt.nz/about-eqc/publications/statements-of-intent>

107. EQC, *Resilience Strategy for Natural Hazard Risk Reduction 2019-2029*, November 2019 [https://www.eqc.govt.nz/sites/public\\_files/documents/grants/EQC%20Resilience%20Strategy%202019.pdf](https://www.eqc.govt.nz/sites/public_files/documents/grants/EQC%20Resilience%20Strategy%202019.pdf)

108. Office of the Minister Responsible for the Earthquake Commission, Cabinet paper, *EQC's changing role in a Natural Disaster Response and Recovery*, 7 August 2019, [https://www.eqc.govt.nz/sites/public\\_files/documents/publications/Final-Cabinet-paper\\_DEV-minute\\_70819.pdf](https://www.eqc.govt.nz/sites/public_files/documents/publications/Final-Cabinet-paper_DEV-minute_70819.pdf)

109. EQC, *Earthquake Commission's Statement of Intent 2018-22*, 26 June 2018, <https://www.eqc.govt.nz/about-eqc/publications/statements-of-intent>







# EQC's key relationships



## 4.1: Importance of building ongoing relationships

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Through its role in the national civil defence emergency management system, EQC has relationships with numerous central and local government agencies and organisations. EQC also holds many relationships as part of its key roles as an insurer, commissioner of research, educator and fund administrator. It is a tall order—for what is normally a relatively small organisation—to maintain effective relationships with the breadth of agencies and organisations with whom it needs to engage, not only as part of normal business practices but also in high-pressure times following a natural disaster.

EQC's relationship with the National Emergency Management Agency was described earlier. Elements of EQC's other key relationships are described in the ensuing sections and comprise relationships with private insurers, central government agencies and Crown Research Institutes, local government and tangata whenua.

EQC told me that prior to the Canterbury earthquakes it had limited relationships with central and local government agencies. Its work with other departments was “generally ad hoc, driven by the need to get things done that you naturally expect in a post-disaster environment and was not considered or planned for ahead of time”. After the September 2010 earthquake, EQC began to broaden its relationships with central and local government. EQC noted in its final submission to the Inquiry that recent events had demonstrated the importance of “active and constructive relationships across a much broader reach” and that it is making progress in this area. EQC has more recently told me it is not as connected as it could be and is concerned about central and local government planning for the recovery phase of a natural disaster beyond the immediate response. It considers that it should be more involved in planning for natural disasters. I would endorse further planning between EQC, private insurers and the Government to resolve this matter.

I commend EQC for the work it is doing to build its relationships with others and hope that it prioritises, in particular, stronger relationships with iwi; local authorities that are responsible for the response to local natural disaster events; and health, wellbeing support and psychosocial agencies—all of whom have demonstrated their integral value and importance in post-disaster communities.

## 4.2: Private insurers

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The operation of the Government's natural disaster insurance scheme relies on effective working relationships between EQC and private insurers. Good communication and efficient processes for sharing information are essential due to (a) the linking of EQC cover to private fire insurance policies and (b) the dual model of insurance for natural disaster damage—with EQC acting as first loss insurer and private insurers topping up any difference where necessary. These features of the scheme mean that, for all claims under the EQC Act, EQC must confirm the claimant holds a current fire insurance policy before it can assess and settle the claim. For claims that are over cap, EQC needs to let private insurers know when the value of a claim exceeds, or is likely to exceed, EQC's maximum payable amount. Private insurers, in turn, need to agree with EQC's assessment of the claim in order to determine their own liability.

In practice, the strength of EQC's relationships with private insurers appears to have been variable.

## Relationships after key events

The response to the Canterbury earthquakes suggests that EQC was constrained by its weak relationships with private insurers, had no ability to share or access information, and until a claim was filed and confirmed by private insurers, had no complete record of the extent of its liability.

On the other hand, private insurers experienced considerable difficulties in obtaining timely information from EQC on claims that were over cap and continue to receive new cases from EQC. There is clearly scope for improving EQC's data systems and processes for sharing information.

Claimants expressed considerable frustration in their submissions to the Inquiry about having to deal with both EQC and private insurers. A number of people felt that communication was poor and that ongoing differences of view between EQC and private insurers on the extent of damage or repair strategies prolonged settlement of their claims. Some told me they felt "stuck" between competing views and considered that EQC and private insurers "passed the buck" to avoid paying out on claims.

Various protocols were developed over the years to improve the handling of over-cap claims, including one known as Protocol 1, in which EQC undertook to complete the repair and recoup the over-cap costs from private insurers later (without involving the property owners) in order to reduce delays. My discussions with private insurance companies indicate, however, that they continue to have concerns about EQC's management of over-cap claims.

EQC participated in other collaborative work with private insurers following the Canterbury earthquakes, including the insurer-led Shared Property Project, which was developed to streamline the repair of multi-unit properties. Private insurers noted that EQC was late to join this process. There were complexities and cost issues that prevented EQC and private insurers from agreeing on a land drilling programme. As a result, EQC and private insurers undertook separate drilling programmes, which private insurers felt unnecessarily duplicated cost and placed a drain on the limited pool of experts.

Following the Kaikōura/Hurunui earthquake, EQC adopted a different response model and developed a memorandum of understanding with private insurers for processing claims, which involved insurance companies acting on EQC's behalf and providing the first point of contact for claimants. This approach is discussed later in my report.

## Current relationships

My discussions with EQC confirm that it is making efforts to improve its relationship with private insurers in order to provide a more integrated approach to managing claims in the future. Both EQC and private insurers told me that EQC is looking to develop an enhanced EQC response model with the insurance sector. The Insurance Council has expressed concern about progress, including a lack of communication and some disquiet about EQC's intention to continue to implement this model. For its part, EQC tells me that it is continuing discussions with private insurers.

It is also clear that EQC's relationship with the insurance sector requires strengthening. An adversarial environment of continuing litigation (or suggestions of this) between private insurers and EQC (such as that over land damage valuation or the monies owed by EQC to private insurers) adds to the complexity of the relationships. In addition, there is still considerable scepticism on the part of private insurers about whether EQC can transform its operational practices.



## 4.3: Other central government agencies

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### The Treasury

The Treasury has responsibility for administering the EQC Act and for monitoring the performance of EQC as a Crown entity. The Treasury's monitoring role is discussed later in this report in relation to EQC's governance arrangements. EQC also works with The Treasury on specific initiatives.

### Canterbury Earthquake Recovery Authority (CERA)

CERA was set up to lead and coordinate the broader recovery effort after the Canterbury earthquakes. Although CERA no longer exists, it is worth mentioning here as it had a relationship with EQC and private insurers and clearly had some influence when it came to insurance matters and related advice to its Minister. However, it seems to me that as a large, well-resourced organisation CERA could have done more to support EQC—especially as it became clear that EQC was struggling to deal with the amount and complexity of claims and the demands of a major managed repair programme. The CERA/EQC relationship was complicated by CERA (and Land Information New Zealand from April 2016) being EQC's largest customer, representing the Crown as the owner of residential properties in the red zone.

There was significant scepticism in Canterbury about CERA's role and functions, arising from a widely held view that it was imposing Wellington solutions on the greater Christchurch community and that it had lured away a number of key employees from other local organisations by offering higher salaries and better work conditions. Intervention by central government to coordinate responses locally will often be needed, but care must be taken that the solutions are collaborative and not apparently imposed.

### Ministry of Business, Innovation and Employment (MBIE)

EQC worked with MBIE on matters relating to building requirements following the Canterbury earthquakes and other recent events. EQC has told me that MBIE provided guidance and advice in relation to the Canterbury Home Repair Programme and the Canterbury Ground Improvement Programme.

MBIE has also picked up work that was initiated by EQC. In November 2010 EQC established an Engineering Advisory Group to develop advice about rebuilding and repairing homes in Canterbury following the September 2010 earthquake. This work was later transferred to the Department of Building and Housing (now part of MBIE), with the resulting advice *Repairing and rebuilding houses affected by the Canterbury earthquakes*, which became known as the MBIE Guidance.<sup>110</sup> This guidance has been the subject of much comment and criticism and is discussed later in my report.

<sup>110</sup> MBIE, *Repairing and rebuilding houses affected by the Canterbury earthquakes*, 2012, <https://www.building.govt.nz/building-code-compliance/canterbury-rebuild/repairing-and-rebuilding-houses-affected-by-the-canterbury-earthquakes/>

The Canterbury Geotechnical Database was developed by CERA, with significant input from EQC, after the earthquakes. It was intended to consolidate the large amount of geotechnical information, enable the most efficient use of limited resources and inform decision making. It is now hosted by MBIE, which has taken over stewardship of the database and has expanded the database to include New Zealand-wide data.<sup>111</sup>

MBIE is the overseer and owner of the building regulatory system. Close collaboration between EQC, MBIE and other relevant agencies in this area will be critical to an effective housing recovery.

Furthermore, the chief executive of MBIE is the functional leader for government procurement and property. This function may have important expertise to offer in the event of a significant natural disaster.

## Crown Research Institutes

As already noted, EQC invests around \$17 million annually to grow New Zealand's knowledge and capacity to monitor and manage hazard risks, including funding the GeoNet project managed by GNS Science. EQC is also developing relationships with MetService and NIWA to strengthen its ability to get early warnings about severe weather events.<sup>112</sup>

## Land Information New Zealand

Land Information New Zealand now manages Crown-owned property in Christchurch's residential red zone following the 2016 disestablishment of CERA. EQC has been working with Land Information New Zealand to resolve outstanding land damage claims. EQC has advised the Inquiry it has paid a significant amount in settlement to date of land damage claims in relation to the approximately 7,100 residential red zone properties where claims were assigned to the Crown.

Land Information New Zealand also captures and provides information relevant to EQC's functions. EQC has long been a user of information held by Land Information New Zealand and it has an established relationship regarding GeoNet (which Land Information New Zealand also part funds) and tsunami monitoring. GNS Science and Land Information New Zealand worked together post-earthquake to look at the impact on the cadastre. A closer relationship was built through the Kaikōura/Hurunui event and continues to strengthen, especially with the research and education part of EQC.

With direction from EQC, Land Information New Zealand's key role in supplying information could be enhanced, particularly in core information for risk modelling. This includes the mapping work it is undertaking to produce unique identifiers for individual properties and, more specifically, buildings on those properties.

## Ministry for the Environment

EQC has also undertaken work with the Ministry for the Environment to consider what national level guidance (statutory or non-statutory) might be required under the Resource Management Act 1991 to better manage risks from natural hazards.<sup>113</sup>

111. EQC, *Briefing to the Incoming Minister Responsible for the Earthquake Commission*, October 2017, <https://www.eqc.govt.nz/about-eqc/people/briefing-minister>

112. EQC, *Annual Report 2017-2018*, November 2018, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

113. EQC, *Briefing to the Incoming Minister Responsible for the Earthquake Commission*, October 2017, <https://www.eqc.govt.nz/about-eqc/people/briefing-minister>

## Ministry of Social Development

The Ministry of Social Development assisted EQC in relation to those in Canterbury who needed access to other support from government. This is described further later in the report in relation to vulnerable claimants.

## 4.4: Tangata whenua

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Iwi are Treaty partners with the Crown and need to be part of the governance arrangements put in place following a natural disaster. In Canterbury, Te Rūnanga o Ngāi Tahu's cooperation and leadership was exemplary and modelled the principle of partnership. The recognition of Ngāi Tahu as a statutory recovery partner in the Canterbury Earthquake Recovery Act 2011 was crucial and worthy of emulating in any similar legislation enacted following a future disaster.<sup>114</sup> Its existing structures and relationships, with Te Puni Kōkiri, local government, CERA and other government agencies enabled it to play a major role in the recovery.

EQC must establish meaningful and enduring relationships with tangata whenua that it can build on following a natural disaster. In my view, there is considerable room for EQC to do more to build relationships with iwi and to better recognise Māori world views and tikanga in its operational practices.

## 4.5: Local authorities

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Local authorities are key sources of local knowledge following a natural disaster and are well placed to provide EQC advice on the specific needs of communities as well as existing avenues of support, assistance and communication that EQC might tap into. Local authorities also play an important role in ensuring that natural hazards are taken into account in land-use planning and in administering the requirements of the Building Act 2004.

EQC has been establishing greater relationships with local authorities. For example, EQC makes use of its early warning systems, including those of NIWA, MetService and GeoNet to proactively contact councils in regions that are likely to be affected by severe weather; the aim is to remind them of EQC's role and establish a line of contact for later understanding what damage has occurred and what response is needed.<sup>115</sup> In 2017, EQC worked closely with Local Government New Zealand on a business case to establish a Local Government Risk Agency to improve risk management in the local government sector.<sup>116</sup>

There may also an opportunity to explore whether local authorities' Land Information Memorandums (LIMs) could be used to record more information about natural disaster risk (such as the additional tsunami evacuation zone information recently added to Christchurch City Council LIMs) and damage from events.

114. Ngāi Tahu was not recognised as a recovery partner in recovery legislation following the Kaikōura/Hurunui earthquake; the legislation called for iwi input but ultimately left input from Māori and its form at the discretion of the Minister.

115. EQC, *Annual Report 2017-2018*, November 2018, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

116. EQC, *Briefing to the Incoming Minister Responsible for the Earthquake Commission*, October 2017, <https://www.eqc.govt.nz/about-eqc/people/briefing-minister>



# **EQC's organisational structure, leadership and culture**



# 5.1: Governance arrangements

As a Crown entity, EQC has a board and chief executive. The board is EQC's governing body and is accountable to the Minister Responsible for the EQC. The role of the board is to:

- *set the strategic direction for EQC;*
- *ensure resources and objectives are aligned;*
- *monitor financial, organisational and management performance;*
- *appoint the chief executive officer; and*
- *ensure that management has complied with the legal obligations of EQC.*<sup>117</sup>

The EQC Act requires that the board has between five and nine members.<sup>118</sup> In late 2019, the board comprised seven members.<sup>119</sup>

## Key accountability documents

The board is guided by the following accountability documents in governing EQC:

- *Statement of Intent*—this statement sets out the board's strategic intentions for EQC over a four-year period and is required by the Crown Entities Act;<sup>120</sup>
- *Statement of Performance Expectations*—this document is also required by the Crown Entities Act and outlines EQC's planned work and financial information for the year ahead; and<sup>121</sup>
- *Letter of Expectations*—this sets out the Minister's expectations for EQC for the year ahead.<sup>122</sup>

*EQC's Statement of Intent 2018-22* highlights its desire to transform the way it operates and identifies three strategic outcomes that it aims to deliver over the next four years:

- *Increase community resilience to natural hazards*
- *New Zealand has an affordable and sustainable natural disaster insurance scheme*
- *Improve customers' recovery from natural disasters.*<sup>123</sup>

117. *EQC Annual Report 2018-19*, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

118. Earthquake Commission Act 1993, section 4(B), <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM306727.html>

119. *EQC Annual Report 2018-19*, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

120. The most recent statement of intent is dated 26 June 2018 and covers the four years to 30 June 2022. [https://www.eqc.govt.nz/sites/public\\_files/documents/publications/EQC-SOI-2018-WEB.pdf](https://www.eqc.govt.nz/sites/public_files/documents/publications/EQC-SOI-2018-WEB.pdf)

121. *EQC Statement of Performance Expectations 2019-20*, 26 June 2018, [https://www.eqc.govt.nz/sites/public\\_files/documents/publications/EQC-SoPE-2019.pdf](https://www.eqc.govt.nz/sites/public_files/documents/publications/EQC-SoPE-2019.pdf)

122. *EQC Annual Report 2018-19*, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

123. EQC, *Earthquake Commission's Statement of Intent 2018-2022*, 26 June 2018, <https://www.eqc.govt.nz/about-eqc/publications/statements-of-intent>

## Composition of the board

It is critical that the board includes a broad range of skills, particularly given the level of transformation EQC aims to achieve in coming years. At the time of writing this report, The Treasury was advertising for new board members. I note that the skill requirements advertised, while important, appear to be weighted toward financial and insurance expertise. The Treasury assures me that a skills matrix, approved by the Minister and taking account of remaining board members' skills and experience, will meet other critical objectives. Business transformation and public sector experiences are identified as being of secondary priority. I would hope that due consideration is given to these skills as well as to ensuring that the board has the benefit of experience relating to health and psychosocial impacts on populations post-disaster; all a vital component of responsible governance oversight, particularly in the light of experience gained during the Canterbury earthquakes.

## 5.2: Monitoring and oversight

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The Minister's role is to oversee the Crown's interests in and relationship with EQC. This includes making appointments to the board, reviewing EQC's operations and performance and participating in the process of setting EQC's strategic direction and performance expectations.<sup>124</sup>

The Treasury is responsible for assisting the Minister with this role. It carries out quarterly monitoring of EQC's performance, focussing in particular on financial risk. It also has policy responsibility for natural disaster insurance and the EQC functions and provides independent policy advice to the Minister of Finance and the Minister Responsible for the EQC. For example, in the aftermath of the Canterbury earthquakes, it provided advice and assessment on the earthquakes' impact on the Crown's fiscal position and advice on the cost-sharing arrangements between central and local government for rebuilding infrastructure.<sup>125</sup>

I have reservations about how well The Treasury performed its monitoring role following the Canterbury earthquakes. Concerns about EQC's performance were being raised publicly from early on in the Canterbury response. While I acknowledge that the role of the monitor was limited, had The Treasury, as the primary monitoring agency, raised the alarm, action may have been taken sooner to address EQC's shortcomings.

A 2018 report by an independent advisor to the Minister responsible for the EQC astutely recommended that "increased focus and resource should be directed to the monitoring function in Treasury related to service delivery".<sup>126</sup> This recognised the importance of service delivery in EQC's operations, reflected in the recent adoption of additional key performance indicators.

124. Crown Entities Act (2004), section 27, <http://www.legislation.govt.nz/act/public/2004/0115/latest/DLM329952.html>

125. Controller and Auditor-General, *Roles, responsibilities and funding of public entities after the Canterbury earthquakes*, October 2012, <https://www.oag.govt.nz/2012/canterbury/docs/canterbury.pdf>

126. Christine Stevenson, *Report of the Independent Ministerial Advisor to the Minister Responsible for the Earthquake Commission*, 26 April 2018, <https://www.beehive.govt.nz/release/wide-range-eqc-reforms-speed-claims>

The report went on to comment on the need for:

*More rounded monitoring of EQC's performance to ensure all of the Crown's objectives are achieved now and into the future. Confidence in the EQC is essential to ensure that it is well prepared for any response to future major natural disasters. More fulsome monitoring of the entity should add to the confidence that New Zealanders have in the EQC to serve them in a natural disaster.<sup>127</sup>*

The Treasury's response noted that it had, for some time, been expanding its role beyond simply monitoring Crown financial risk related to EQC and that:

*Since the Canterbury earthquakes The Treasury has put significant effort into monitoring and reporting to Ministers on service delivery and on policy issues and will continue to do so. We note that relative focus over time is subject to Ministerial preference, which is changeable.<sup>128</sup>*

Following the Independent Ministerial Advisor's report, Cabinet approved funding to enhance The Treasury's monitoring of EQC. Six enhanced monitoring priority areas are:

- Claims Optimisation (National and Canterbury);
- Future Claims Operating Models (overall EQC readiness strategy);
- Enablement (to ensure that EQC has up to date IT systems and analytical functions to support the management of claims and to enable EQC to resolve claims arising from significant natural hazard events);
- Insurer Finalisation;
- Dispute Resolution Strategy; and
- Reinsurance and Risk Financing.

Following the Independent Ministerial Advisor's report, The Treasury also established a dedicated policy team relating to EQC: the Earthquake Commission policy team. The team focusses on two broad areas:

- maintaining oversight and coordination of Canterbury insurance-related work programmes to support the timely, fair and enduring settlement of claims, including regular reporting to the Minister on progress in resolving outstanding claims; and
- providing advice on the development of New Zealand's future natural disaster arrangements, including advice on further review of the EQC Act and policy issues arising from this Inquiry.

127. Christine Stevenson, *Report of the Independent Ministerial Advisor to the Minister Responsible for the Earthquake Commission*, 26 April 2018, <https://www.beehive.govt.nz/release/wide-range-ecq-reforms-speed-claims>

128. The Treasury, *EQC Independent Ministerial Advisor's Report - Treasury Comments*, 1 May 2018.

## 5.3: Management and structure

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EQC's chief executive is accountable to the board. The chief executive is supported by an executive leadership team, which collectively provides leadership to the organisation and implements the strategic direction set by the board. The leadership team is responsible for the organisation's operational policies, practices and processes.

The organisation has undergone considerable change in its structure, skills and staffing levels over the past nine years.

### Pre-2010

Before the first major earthquake struck in September 2010, EQC had a highly skilled and experienced staff of 22, primarily engaged in its insurance, reinsurance, research and disaster modelling operations. EQC lacked human resources staff, in-house legal skills, audit and risk, policy development, fraud prevention or integrity roles and procurement capabilities. It managed around 4,000 to 5,000 claims per annum.<sup>129</sup>

According to EQC, as well as having finance and accounts sections a section handling claims "worked on allocation of claims, management of third-party providers, internal reporting and handling of special and complicated claims that required dedicated case management". Before 2009, the majority of processing of claims was outsourced and used an 0800 number. Gallagher Bassett (formerly Gallagher Bassett Services), a specialist company handling claims based in Australia, administered most claims.

### Following the Canterbury earthquakes

After the first major earthquake on 4 September 2010, EQC mobilised promptly and increased its staff to around 1,000 people, most being employed on a temporary or short-term basis. By late December 2010 EQC had 1,055 full-time equivalent staff based in Christchurch, Wellington, call centres around New Zealand and at Gallagher Bassett in Brisbane.

Following the February 2011 earthquake, EQC increased its call centre capacity and, following a temporary suspension of field work, increased the capacity of its assessment teams. EQC staff numbers peaked in October 2011 at around 1,600, declining again later that year as the first round of assessments was completed.

Staff numbers fluctuated in following years in response to various natural disaster events. EQC increased its staff following the 23 December 2011 earthquake and, in 2012, decided to bring its call centre and processing of Canterbury claims in house. Staff numbers remained relatively stable for the period from 2013 to 2015 and then significantly reduced in late 2016 and 2017 as the volume of Canterbury claims declined.

EQC required only a small increase to its staffing levels following the Kaikōura/Hurunui earthquake due to the different way in which these claims were managed.

Staff numbers and structures continued to change as EQC undertook a number of organisational change processes. While EQC has clearly needed to make changes, it might also reflect further on whether the constant flux in roles and responsibilities could have undermined staff morale and the development and "bedding in" of longer-term planning and business improvement initiatives and resulted in the loss of useful institutional knowledge.

129. EQC Annual Report 2018-19, November 2019, <https://www.eqc.govt.nz/about-etc/publications/annual-reports>



## Current arrangements

EQC's current leadership team comprises the following roles:

- Chief Executive
- Deputy Chief Executive, Readiness and Recovery (responsible for EQC's customer claims, communications and engagement)
- Deputy Chief Executive, Systems Transformation (responsible for information technology, data, analytics and facilities)
- Chief Financial Officer
- Chief People Officer
- Chief Legal Officer.

This structure was implemented from late 2019, following an internal change proposal designed to transform EQC and better position the organisation for the future. As at 30 December 2019, EQC employed 252 people.

# 5.4: Organisational culture

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Many people who participated in the Inquiry drew attention to their experiences of EQC's organisational culture or tone, with particular reference to the period following the Canterbury earthquakes. From the outside, the organisation was seen as being led by managers, some of whom were either incompetent or bullies and who condoned, if not encouraged, an adversarial approach toward claimants. Internally, staff I spoke to also saw an organisation disinterested in continual improvement, partial to favouring some colleagues over others and constantly changing its policies and practices. They also expressed frustration with deficiencies in processes (discussed later in this report), which left them unable to provide the service and assistance to claimants they felt were required.

The Terms of Reference require me to review "the customers' experience of its operational practices and claims outcomes". I have noted in the Findings section of this report and I reiterate here, that the views in this area are therefore subjective, come from a relatively small proportion of the affected population (mainly from Canterbury) and are largely negative. However, they are consistent and were often substantiated by staff that I met.

I have acknowledged, too, the commitment of staff, managers and the board of EQC when faced with such an overwhelming task, but note that claimants bore the burden of insufficiencies in EQC's planning and in the way in which it undertook its operations following the major events. The summaries in this report of the views expressed by EQC claimants and staff should not be taken as findings by the Inquiry about any particular individual in a governance, leadership or any other role in EQC.

## Perceived adversarial approach toward claimants

Managers must take account of the culture of an organisation in discharging their duties. In the case of EQC, historically its purpose had been to provide “first loss” insurance cover for those affected by natural disasters. An added purpose, at least as far as the public is concerned, is to go beyond a strictly corporate model and support the affected and most vulnerable segment of the population in recovering. This element of its culture is not stated in the EQC Act but, as discussed elsewhere, is expected by the community and implicit in the debate surrounding the passing of the legislation.

Following the February 2011 earthquake, I was told that some EQC managers, albeit operating under exceptionally difficult conditions, gave the appearance of discharging a narrow corporate culture, an important element of which was the need to conserve resources. This led to mounting concern by the public and among staff I talked to.

Many members of the public with whom I met felt certain that there was a directive to minimise settlement payments and at times it seemed EQC had a culture that was used to pressure claimants into settling for less than they were entitled to. Submitters told me that dealing with EQC felt like a fight or a battle. There was clearly a requirement to conserve limited financial resources and not to be wasteful—consistent with EQC’s obligations as a Crown entity—but I have not found any overt statement of this objective. Ironically, many of the practices adopted by EQC and implemented through its managers led to the opposite outcome: as discussed later in my report, money was wasted on poor assessments, inadequate scoping of work and poor repairs.

## Staff relationships with managers

As part of my inquiry into processes before and after the Canterbury earthquakes and other natural disasters, I talked with current and former EQC staff members who chose to meet me in Christchurch, Wellington, Auckland and Hamilton. Although views on the efficiency and effectiveness of EQC processes varied, without exception staff spoke first of their commitment and willingness to work hard to meet the challenges of the various natural disasters with which they were concerned. There was a clear indication of the camaraderie of those who worked long hours under stressful conditions. All were motivated by a desire to do the best they could for the claimants. They were loyal and hard-working people who did not meet with me to complain. I appreciate their candour and commitment, given the difficult environment many worked in.

Nonetheless, most EQC staff I heard from felt they had been undermined and were often unappreciated by some managers. They spoke of skilled staff members’ suggested solutions to problems or process improvements being dismissed, met with indifference, or subject to scathing critique by managers. As a result, some staff chose to leave and, on occasion, others received early dismissal from their contracts. Their views of the skills of some managers were not always complimentary, but few were critical of all managers. Many spoke highly of the leadership team and the board, but few thought the chief executive or governing board in place at the time of the Canterbury earthquakes were fully aware of the issues that created so many problems for homeowners.

I heard claims of favouritism, nepotism, sexism and of the overriding need to keep a low profile and not “rock the boat”. I am conscious, however, that a review by KSJ Associates<sup>130</sup> of the 2012 recruitment of staff found no evidence of nepotism, favouritism, or bias in the recruitment process, though the review did not include EQC’s practices for assessing suitability of recruits. The review found “given the environment they were operating in throughout 2011, the processes adopted [were] the logical ones to use. EQC went to some lengths to ensure the processes were as fair as could be. It is our view there are no major causes for concern about the processes used”.

Many of those I met mentioned their dissatisfaction with the way in which employment contracts ended—some were given no notice at all, others were rehired almost immediately and many watched in dismay as experienced (and in their view), competent workers who were not part of the “in-group” were dismissed. The restructuring of the staffing at EQC was frequent—well beyond what might

130. KSJ Associates, *Earthquake Commission, Review Report, Christchurch 2012 Recruitment Processes*, 2012, [https://www.eqc.govt.nz/sites/public\\_files/images/ksj-recruitment-review-report.pdf](https://www.eqc.govt.nz/sites/public_files/images/ksj-recruitment-review-report.pdf)

be expected in a normal working environment—and continues to the present. This has led to an atmosphere of uncertainty and a reluctance to speak openly about how working systems could be improved.

The consistency of the views from staff is such that I have been left with a clear picture of a working environment that was often chaotic and not productive or cooperative at the very time when staff, management and governance should have been working together to achieve good results in exceptional and difficult circumstances.

## Work to improve organisational culture

In its submission to this Inquiry and in its most recent annual report, EQC acknowledges that Canterbury earthquake claimants had poor experiences.<sup>131</sup> Since 2017, EQC has been updating its organisational strategy, which now identifies its mission as being “to reduce the impact on people and property when natural disasters occur”.<sup>132</sup>

To support this mission and its vision of being the “world’s leading national natural disaster insurance scheme”, EQC has been redesigning its operating model to be more “customer-centric”. Changes include a new case management model and a more proactive communications approach and in early 2019, EQC embarked on a transformation programme to better prepare the organisation for the future.<sup>133</sup>

As I have already noted, my discussions with EQC and former and current staff highlighted the atmosphere of uncertainty created by frequent and ongoing restructuring. Nonetheless, there are indications that EQC is cognisant of the need to foster the wellbeing of its staff and improve its internal culture. Wellbeing initiatives were ad hoc until EQC put in place its first wellbeing strategy in 2015. In October 2019, EQC launched a wellbeing programme, which addresses the mental, physical and financial wellbeing of staff and is also looking at work culture.<sup>134</sup> Its 2018 Communications Strategy includes discussion of internal communication and highlights the importance of open and honest communication with its employees, particularly as EQC goes through organisational change processes. EQC has reported that its 2018 and 2019 staff engagement survey results indicate some improvement in organisational climate.<sup>135</sup>

131. EQC Annual Report 2018-19, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

132. EQC Annual Report 2017-18, November 2018, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

133. EQC Annual Report 2018-19, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

134. EQC Annual Report 2018-19, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

135. EQC Annual Report 2018-19, November 2019, <https://www.eqc.govt.nz/about-eqc/publications/annual-reports>

## 5.5: Claimant Reference Group

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Following the Independent Ministerial Advisor's recommendations to the then-Minister Responsible for the EQC about speeding up the resolution of outstanding Canterbury claims, EQC acted on the recommendation to re-establish a Claimant Reference Group. This newly formed group met for the first time in October 2018.

The EQC website notes that the Claimant Reference Group is responsible for:

- *generating ideas about areas EQC can improve;*
- *testing EQC improvements; and*
- *liaising with EQC to monitor and communicate progress.*

The Claimant Reference Group is to ensure that "EQC is actively resolving the most important issues openly and transparently with claimants" so that the EQC experience of current and future claimants might be improved.

The initial term of the appointees to the Claimant Reference Group expired in October 2019 but was extended to 31 March 2020. EQC has been considering the group's future form and function, including whether its scope should extend to the broader insurance industry and whether it should have national representation. This may have been settled by the time of presentation of this report.

The challenge for EQC, as it is for other organisations with such customer advisory or reference groups, is to make sure there is care taken in the selection of members; the Terms of Reference are clear; the group is well supported to provide constructive input; and their advice is genuinely considered. Just having such a group in place is not an end in itself and sets expectations that action will result. EQC should take a leadership role in the Claimant Reference Group to ensure that it provides the advice that is relevant for EQC and becomes a valued consultative body.

## 5.6: Reviews of EQC

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As public criticism of EQC's operational response to the Canterbury earthquakes (and later events) grew, a large number of reviews were commissioned by either the Government or internally by EQC. EQC initially told the Inquiry that there had been 46 reviews carried out between 2010 and 2019 and a few months later identified a further 13—bringing the total to 59. There may well be more.

The 59 identified reviews range in breadth and depth. Among the list are the expected accountability reviews, such as appearances before Parliament's Finance and Expenditure Committee. However, there are also a number of reviews that were commissioned in response to specific issues.

These include the combined Chief Ombudsman and Privacy Commissioner's *Information fault lines* review of 2013, responding to EQC's continuing failure to fulfil its official information obligations. EQC accepted all of its recommendations. The State Services Commission's 2013 *Independent Review of the Earthquake Commission's Customer Satisfaction Survey* addressed concerns that EQC was selectively surveying its more satisfied claimants, but concluded that EQC's surveying processes and results were reliable. Other reviews looked at operational matters such as data, recruitment, procurement and IT capability.

Among those pertinent to this Inquiry are the Chief Ombudsman and Privacy Commissioner's report, which noted EQC's overcomplicated and reactive provision of claims-related information, leading to mounting dissatisfaction among the public and a sharply increased level of disputes; and the Human Rights Commission's report on the human rights aspects of EQC's practices.<sup>136</sup>

A report<sup>137</sup> by consultancy Martin Jenkins, commissioned by EQC in 2012, has many parallels with the present Inquiry. This draft report was not finalised, it appears, because it was thought that the review by The Treasury of the EQC Act would cover the same matters. The Martin Jenkins report was released on EQC's website on 7 October 2013.

The Martin Jenkins report contains many apposite observations and recommendations, including that EQC:

- *broaden its legislative mandate, clarify leadership, and re-order the organisation's priorities so that fund management and insurance processes underpin the overarching role of risk managing recovery from disasters;*
- *reshape its business model to strengthen the central hub's ability to strategically manage its outsourced spokes and modify the just-in-time approach to sustain a reserve capacity at the centre;*
- *escalate preparatory planning beyond events of largely predicted parameters to catastrophes with unknown dimensions, and deepen the layers, reach and skills of the on-call response.*

A 2013 report from the Office of the Auditor-General<sup>138</sup> dealt with many of the problems associated with the Canterbury Home Repair Programme. While noting that one of the programme's objectives—the efficient management of resources in the massive repair programme—was achieved, it commented on dubious repair quality and the absence of a clear timeline for completion. As with other reports, customer complaints were highlighted and the report noted its concern at the lack of a formal mechanism for recording complaints.

Some years later, in 2018, an Independent Ministerial Advisor was asked to prepare a report recommending operational changes to improve handling of remaining Canterbury claims.<sup>139</sup> This report appears to have been more influential in changing processes and improving customer relations than earlier reviews.

Most of the reports, and in particular those that I have referred to specifically above, have made valuable points about EQC's role and functions. Many of the recommendations, with the exception of those from the Ministerial Advisor's review, do not seem to have been acted upon fully. It appears to me that there have been many lessons identified, but not all were learned or put into practice at a time when they might have made a real difference to the outcome for affected members of the public. The board and EQC management endeavoured to see recommendations through where possible, with the Audit and Risk Committee overseeing EQC's response to a review, but EQC has accepted that its ability to respond varied.

136. Human Rights Commission, *Monitoring Human Rights in the Canterbury Earthquake Recovery*, December 2013  
<https://www.hrc.co.nz/files/2114/2427/8929/HRC-Earthquake-Report-2013-final-for-web.pdf>

137. Martin Jenkins, *EQC's Response to Canterbury Events: Lessons Learned*, March 2012  
<https://www.eqc.govt.nz/news/lessons-learnt-a-report-on-eqc%E2%80%99s-response-to-the-canterbury-earthquakes>

138. Contoller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme*, October 2013  
<https://www.oag.govt.nz/2013/eqc/docs/oag-earthquake-commission.pdf>

139. Christine Stevenson, *Report of the Independent Ministerial Advisor to the Minister Responsible for the Earthquake Commission*, 26 April 2018,  
<https://www.beehive.govt.nz/release/wide-range-eqc-reforms-speed-claims>

There may well be good reasons for any failures in this area of EQC's governance and management responsibilities, given, in particular, the number of urgent demands on the organisation at any given time and the volume of recommendations and reviews. For example, the productivity cost of carrying out almost 60 reviews over a nine-year period might have outweighed their value. The time and expertise required from EQC staff, management and its board to engage with and respond to each of the reviews significantly increased the organisation's inability to manage its workload; all at a time when it was carrying the full responsibility of administering the Canterbury Home Repair Programme and the residential recoveries mandated by the serious natural disasters that occurred between 2010 and 2017.

The significant work EQC undertook to inform this Inquiry has demonstrated to me that EQC has accumulated vast quantities of information and experience, not all of which has been readily accessible given its arcane data management processes. During this process, conducted at a time when it was dealing with the last issues arising from its Canterbury Home Repair Programme and also with its usual business, EQC has amassed invaluable material and appears to have understood more fully the reasons for the trenchant criticism of its performance during the most critical years of its operations. EQC has expressed its regrets where its operations have been inadequate along with its determination to improve. It is clear that it has certainly now learned lessons, but it remains to be seen how effectively these will be applied to its future operations.







# Part 2

EQC's operational  
practices—readiness  
and the management  
of claims



# Natural disaster planning and response



# 6.1: Catastrophe Response Programme

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In preparation for more significant natural disasters, EQC had, since 1994, continually updated and trialled its Catastrophe Response Programme. A key document, the *Catastrophe Response Management Manual*, formed part of the induction for both new staff and board members. Training and exercises for staff and external participants were included in planning for major events.

The programme included observations and lessons taken from major external events, such as the magnitude 6.7 earthquake that occurred in Los Angeles in 1994. These provided EQC with valuable material concerning the management of claims arising from a large-scale and expensive event. Ongoing assessment of overseas experiences continued to be valuable in preparing for similar events in New Zealand.

EQC had based its planning for a large-scale event on four assumptions:

- It would be responding to a single event, reflecting the pattern of New Zealand's major earthquakes in the nineteenth and twentieth centuries.
- A major event was most likely to be a Wellington earthquake, an Auckland volcano, or an East Coast tsunami and any of these might result in up to 150,000 claims.
- Cash payment (which incorporated assistance from EQC with project management but provided that the claimant was the principal in the contractual relationship) was EQC's preferred settlement method.
- Settlements would be based on the provisions of the EQC Act, which also anticipated one major event at a time.

The choice to prepare for a single event seems rational to me, given that there were no records from New Zealand or international experience that included a series of major earthquakes in short succession in an urban area. However, with the Canterbury earthquakes, none of the above hypotheses proved reliable. While the assumption was that a large-scale event would involve simply scaling up existing operational practices, albeit with provision to manage up to 150,000 claims, there was a serious lack of planning for more complex occurrences.

Elements of the Catastrophe Response Programme were as follows:

**Offshore management of claims:** As part of the preparation for a large-scale event external advisors, including Gallagher Bassett, were engaged to manage claims. That company was to provide the necessary administrative support for the management of claims and developed a plan to obtain and employ resources of labour and materials to enable it to handle suddenly expanded workloads. It also had the capacity to bring in additional staff from Australia and the United States.

**Contracted loss adjusters:** EQC developed and retained a panel of contracted loss adjusters for deployment following a major event. About 20 loss-adjusting firms across New Zealand and Australia were on annual retainers.

**Geotechnical and other professional services:** EQC had a long-standing relationship with Tonkin & Taylor, an environmental and engineering consultancy, which was consistently endorsed by its ongoing geotechnical services provided to EQC (albeit primarily for smaller-scale events). Legal services, provided externally by Chapman Tripp, were included in planning for significant events.

**Modelling:** Modelling was a key aspect of EQC's planning for natural disasters. A modelling application, "Minerva", was introduced in the early 2000s. By combining geographical information, seismic hazard and financial analysis, it enabled EQC to simulate the predicted number of claims following a particular single event. It proved reliable following the 4 September 2010 earthquake in Canterbury, but was less reliable after the 22 February 2011 earthquake, as previous earthquake damage and liquefaction effects were not adequately modelled. In addition, EQC had a systems dynamics model "Logjam" to guide decisions on the use of resources and identify bottlenecks.

## 6.2: Review of Catastrophe Response Programme

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In 2009, aware that it needed to review its preparations for major natural disasters, the board of EQC commissioned an independent, expert review of its Catastrophe Response Programme.<sup>140</sup> The recommendations of the review proved prescient. Many of them, had there been time for implementation, would have greatly eased the personal, financial and administrative costs of the recovery from the Canterbury earthquakes. In the year between receiving the report and the first Canterbury earthquake, EQC's board and management had begun work in most areas emphasised in the review, but few of the recommendations were fully in place.

The parts of the review most relevant to this report related to:

- the reliability and applicability of EQC's Catastrophe Response Programme and its planning to meet its statutory obligations;
- the adequacy of EQC's internal response arrangements;
- the reliability of preparations for the acquisition, management and control of the resources of labour, equipment and materials needed to meet the objectives of the Catastrophe Response Programme in the event of a major natural disaster;
- the adequacy of the quality control mechanisms and performance measures employed to gauge the extent to which success was achieved; and
- the adequacy, accuracy and utility of documentation and record keeping associated with the Catastrophe Response Programme.

The review noted several strengths of the Catastrophe Response Programme:

- The concept of the programme was sound in recognising that, while EQC's operational requirements in ordinary years were similar to those in a major natural disaster, the scale and urgency would differ greatly.
- The Catastrophe Response Programme sought to identify issues and prepare for an effective response and acknowledged there would be significant pressure on some resources from other sectors in the insurance industry.
- EQC had a small but committed and knowledgeable staff, but EQC was vulnerable in the event of a major natural disaster, should key staff leave.
- EQC had made appropriate connections with companies and with contracted staff who would be called on to provide supplementary services and had kept the Catastrophe Response Programme relevant by reviewing it regularly.

Nonetheless, the review identified some major gaps. Among those was the absence of a clear understanding of what the Government might expect of EQC after a major natural disaster, including expectations of its role, functions and performance (e.g. the optimum time for processing claims). The review found EQC's documentation and systems were difficult to navigate, leading to inefficiencies even at normal times and collaboration with private insurers' systems was minimal. At a wider, systems level, the review identified inefficiencies and duplication of effort in the processing and approval of claims between EQC, private insurers and external providers (such as Gallagher Bassett), with the external providers having limited capacity.

140. *Review of New Zealand Earthquake Commission's Catastrophe Response Operational Capability*, May 2009  
[https://www.eqc.govt.nz/sites/public\\_files/WeCan%20-%20Appendices%2056-63.pdf](https://www.eqc.govt.nz/sites/public_files/WeCan%20-%20Appendices%2056-63.pdf)

## Management of claims

The review recommended that work with the private insurance industry be commissioned to find overall systems options to improve the efficiency and effectiveness of handling and processing claims. This project, between EQC and the private insurance industry, would improve outcomes for claimants. It was recommended that particular consideration be given to the roles of EQC, relative to the private insurers, in initial lodgement and verification of claims. It was also recommended that EQC explore the idea of a single lodgement process and the potential for EQC and private insurers to take a joint approach to the assessment of claims. In addition, the review identified a need to consider the potential for EQC and private insurers to establish an integrated approach to settlement, including the reinstatement of people's homes. Finally, the review recommended that the potential for private insurers to provide EQC with live access to the details of people and properties with EQC cover for EQC-related purposes be explored.

The review made recommendations for EQC's process for managing claims, including:

- sharing of resources with the private insurance industry and trialling this concept in smaller events;
- strengthening EQC's relationship with the large engineering firms to avoid bottlenecks, as far as possible;
- making provision for the acceptance authority for claims to be transferred from Gallagher Bassett to loss adjuster supervisors;
- assessing the viability of recruiting temporary staff in New Zealand to undertake the processing role then carried out by Gallagher Bassett;
- providing for the appointment of one or more contract structural engineers to advise whether a full engineering report or inspection is required;
- including provision for speedy training of recent retirees with non-insurance business experience who, in a large-scale event, could deal with minor damage claims;
- providing a shop front as soon as possible after an event where people could obtain information and lodge claims;
- after setting up field offices, providing for one office manager to cover several field offices; and
- reviewing the audit process to ensure it would not be too invasive and interruptive in a large-scale event.

The review commented generally on the balance EQC must strike between cost and capacity with its catastrophe response planning. It noted:

*In entering into these arrangements EQC makes an important judgment about the cost that it is prepared to pay for capacity versus the likelihood that the capacity will be needed. If too much is contracted for, EQC bears the costs of maintaining arrangements for surplus capacity that it may not need for some considerable period. If too little is contracted for, EQC must arrange for additional capacity after an event occurs or accept delays in processing and settling claims and manage public and stakeholder expectations accordingly. Delays in processing claims and making payments would also be likely to delay private sector insurers' processing of claims above EQC thresholds, leading to further delays to reconstruction efforts.<sup>141</sup>*

<sup>141</sup> Review of New Zealand Earthquake Commission's Catastrophe Response Operational Capability, May 2009 [https://www.eqc.govt.nz/sites/public\\_files/WeCan%20-%20Appendices%2056-63.pdf](https://www.eqc.govt.nz/sites/public_files/WeCan%20-%20Appendices%2056-63.pdf)

## Staffing

**Loss adjusters:** EQC already had contracts with external providers based in Australia who were paid an annual fee for the retention of their services. Nonetheless, the review noted weaknesses in this system and recommended broadening the base for provision of loss adjusting services. This included essential skills such as damage assessment and understanding the cause of the damage, cost assessment and the ability to negotiate the reinstatement of the damaged property with builders and private insurers.

It is clear to me that loss adjusters cannot be trained in a few days if they are to be professional, reliable and trusted by the community. Recognising this, the review recommended that EQC “explore the possibility of tapping the New Zealand retired community for loss adjusters to supplement the staff obtained in Australia by Gallagher Bassett”. Certain other recommendations were directed at enabling greater flexibility in the provision of loss adjustment services.

**Temporary staff:** It is evident that greatly increased numbers of temporary staff will be required in a major event. The review recommended that EQC explore ways to achieve this, including how EQC might recruit temporary staff in New Zealand for processing claims to supplement the offshore services already in place. Again, temporary staff engaged following a major event would not necessarily come already equipped with experience in managing claims. Training would be required and would need to be conducted under urgency. Other skilled staff would also be needed. The review suggested that for a large event, EQC considers contracting staff such as land valuers and additional case managers.

**Provision of personnel:** The review recommended that EQC establish a “permanent, modest cross section of vital skill set personnel” in an operating centre outside Wellington so it could source and engage additional key personnel to assist EQC to respond to an event.

**Engineering expertise:** As well as strengthening EQC’s relationship with Tonkin & Taylor, the review recommended supplementing it by strengthening its relationships with other large engineering firms to avoid potential bottlenecks following a large event. The review also said EQC should make provisions for the appointment of one or more contract structural engineers to advise loss adjusters whether a full engineering inspection report is required.

## EQC response to Catastrophe Response Programme Review

Work began immediately to remedy the issues raised and serious steps were taken by both the board and management to begin the process of implementing the recommendations. Of particular note, however was the absence of any engagement with the Government concerning its expectations of EQC. I was told that over the years EQC had attempted numerous times to engage both the Government and the insurance industry in discussions and plans for the handling of a major disaster with little response. In this Inquiry, a senior EQC manager, who had been delegated to develop contingency plans following the review, described the Government’s expectations of EQC as “ambiguous”. Although the board convened a meeting in mid-2010 with The Treasury to discuss or clarify the Government’s expectations, no progress was made.

Major reorganisation was required to implement all other recommendations in the Catastrophe Response Programme Review and the first of the earthquakes in Canterbury occurred before there was noticeable improvement. Progress on implementing the review recommendations was suspended due to the need to respond to the Canterbury earthquakes. Some of the recommendations in the review, such as those related to the management of claims and EQC’s relationship with private insurers, remain relevant today.

## 6.3: New challenges for managing claims

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As is evident from its catastrophe planning, EQC had assumed that a large-scale event would simply require scaling up business-as-usual processes and it had procedures in place to manage this. The 2009 Catastrophe Response Programme Review identified improvements to how EQC managed its claims, which, if implemented fully, might have changed the picture significantly for Canterbury claimants.

The Canterbury earthquakes also raised new challenges for the process, over and above those identified by the Catastrophe Response Programme Review. There were approximately 460,000 claims made to EQC, which was more than three times what EQC had planned for as a worst-case scenario. Each claim could comprise a number of subclaims for different types of damage, with close to 760,000 subclaims (exposures) in total. These claims also covered new kinds of land damage and might have resulted from damage caused by more than one earthquake.

This was a challenging environment for handling claims. Several fundamental issues underpinned difficulties with the process. EQC identified a number of these and has acknowledged they influenced claimants' experiences. Certainly, I heard much about their impacts through submissions and at public forums.

**EQC did not know who its customers were until claims were made:** This is a significant factor in considering EQC's preparations to deal with a major natural disaster. Unlike a normal insurance business model, EQC held no information on the location of risk or the identity of the claimants. It had to await provision of this information by the private insurer of the residential property. When an individual made a claim to EQC, the private insurer, which had collected the premium on behalf of EQC, had to be contacted to verify it. This resulted in a serious impediment to managing claims, adding significantly to the time taken to begin the process.

**The number and complexity of claims:** Each of the major events (September 2010, February 2011, June 2011 and December 2011) generated a number of claims greater than estimates made or scenarios modelled prior to the events. Moreover, the complexity of the claims, which included widespread and unprecedented land damage and new damage following each event, had neither been anticipated nor planned for.

**Changes to EQC's business processes in an attempt to improve efficiency:** In place of its business-as-usual processing model that relied on a case management approach (allowing the claimant to have a single point of contact), EQC introduced a system that used specialist processing teams for each of the major categories of claim: land, buildings and contents. This resulted in claimants having to contact a variety of EQC personnel when information about progress was sought. Moreover, the assessment process became more complex, involving, on occasion, multiple assessors' visits to the property to assess damage for each category.

**The need to apportion damage to different damage-causing events:** In late 2011 the High Court ruled that EQC cover reinstates to the cap (then \$100,000 plus GST) after each natural disaster event, rather than being limited to an aggregate claim of \$100,000 over the term of the underlying insurance contract. Damage resulting from each earthquake could give rise to a claim. Therefore, it became necessary to determine new or aggravated damage to properties following each event. This became known as "apportionment" and also increased complexity and contributed to delays in the processes for assessment and for managing claims.

While EQC, the Insurance Council, private insurers and the High Court worked hard to ensure the declaratory judgment case on apportionment was ready to be heard within six months of the February 2011 earthquake, the end result was significant delay and frustration for claimants. In large part this was because neither the statute, nor EQC, had anticipated the potential for multiple earthquakes, with the flow-on need to apportion damage and liability.

Although unanticipated, the board determined not to appeal the decision and significant consequences flowed for EQC, its processes and its claimants. From an assessment point of view, it was not always easy to identify whether damage came from one earthquake or another and assessors often disagreed. EQC's software was not set up to deal with damage apportioned across multiple earthquakes. EQC needed to develop "work arounds" that had the effect of increased complexity, risk and delay.

Apportionment between different earthquakes led to a large number of disputes. The financial consequences of apportionment were also significant. For example, a home with \$300,000 of damage led to a \$200,000 liability for a private insurer if all the damage came from one earthquake, but no liability for the private insurer if the damage was spread evenly among four earthquakes. In that example, EQC's liability could change by up to 200 percent depending on the apportionment decisions, each of which was contestable.

**Whether the residential building claim was over or under cap:** Damage to insured residential property can result in two claims: the first \$100,000 (plus GST)<sup>142</sup> was provided through cover from EQC and the balance provided in accordance with the private insurance cover held by the claimant. Thus, the assessment of damage was undertaken first by EQC; if EQC determined the claim was over cap it was passed to the private insurer, which would then begin its own assessment. Minor claims were cash settled.<sup>143</sup>

**Whether the home was repaired through the Canterbury Home Repair Programme:** Property owners, with damage estimated to cost more than \$10,000 but less than the \$100,000 cap to repair, had the default option of having repairs completed using the Canterbury Home Repair Programme, which provided building and repair services by Fletcher under a contract with EQC. The alternative of opting out of the Canterbury Home Repair Programme—leaving property owners to manage the repairs themselves—was viewed by some as an impractical choice.

**The nature and extent of the residential land damage:** Land cover is the responsibility of EQC.<sup>144</sup> Given that land damage was extensive and poorly understood, significant geotechnical research was required before any decisions could be made about the cost of the damage to the homeowner, the type of solution for its repair and/or the design of retaining walls to restore that land.

**Whether the claimants were identified as vulnerable:** EQC established criteria for vulnerability that encompassed dependency, serious health issues, bereavement and age. A further category involved an assessment as to whether a relatively minor repair might significantly improve living conditions.

These factors, identified by EQC, were indeed complicating and clearly resonated with the views of many claimants; they added to the already-major disruption to claimants' lives that resulted from the ongoing earthquakes beginning in 2010. The sheer complexity of the EQC and private insurance response would not have been evident to most claimants, who were rightly focussed on their own recovery and the damage to their homes. From the claimants' perspective, the issues naturally related to the reinstatement of their homes, the health issues arising from living in damaged homes, the safety of their families and communities and how and when life might return to normal.

The response to the Canterbury earthquakes was marked by a strong sense of community support. Neighbours, friends, families and extended communities helped each other. However, after the initial emergency response, there were growing feelings of abandonment by agencies that people expected to help them and desperation about longer-term recovery. While, to some degree, people have moved on—particularly those whose claims have been adequately resolved—it is clear to me that many still feel stuck and have lost trust in EQC, the Government and private insurers.

Homeowners I heard from had high expectations of the support they would receive, founded in experiences of earlier, less complex events (that had been largely resolved by way of cash settlement) and in EQC's assumed public purpose. Many people thought that EQC was a body endorsed by the Government and would step up when a natural disaster occurred. Various theories developed as the public of Canterbury tried to make sense of the perceived change in EQC's approach. These homeowners felt they were receiving less support and that EQC mistrusted them.

142. \$100,000 plus GST at the then rate of 12.5%

143. Initially claims under \$10,000, later increased to \$15,000

144. Earthquake Commission Act 1993, section 2(1), section 19, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305968.html>



## 6.4: Approach to handling claims

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EQC abandoned its usual practice of assigning a case manager to each claim after the September 2010 earthquake on the basis that there were too many unusual elements to the claims and that specialisation was needed (e.g. teams were set up to deal with specific issues such as drainage claims). Additionally, EQC considered that thousands more staff would be needed to manage cases individually. This was based on the assumption that 50 cases per case manager is the optimum.

EQC has told me that some cases were straightforward. Hence, I am puzzled that EQC did not maintain the case management approach, at least for those claims. The approach adopted was seen by many claimants as arms-length and anonymous and appears to have resulted in rework and significant claimant dissatisfaction. I have consistently heard from claimants that having to repeat their story a number of times to different staff was a major source of frustration.

Staff time was not, therefore, being used efficiently or for specialised purposes. I question the apparent assumption that the wider deployment of case management was not manageable. EQC has recently acknowledged that a case management approach based on the claimant would have been more customer-centric and, given recent experience, would likely have led to an increase in claimant and staff satisfaction.

However, it is not possible to say how successful a case-managed approach would have been in alleviating the complexities that arose from the number of earthquakes, apportionment issues, new land damage categories, IT systems problems and other unforeseen complications.

Essentially, case management is a people-focussed approach rather than being step or process driven. It makes sense of multi-faceted processes by bringing them all together under the umbrella of a case that relates to a home and a homeowner. In short, I see this as a claimant having a known and single point of contact in EQC who has some familiarity with their claims, can respond to queries and can collate the required information. These contacts are not experts and are supported by those with specialist knowledge. Taking this approach would have made it much easier for claimants to understand the complexities of their claims—for example, understanding where damage was attributed to different events and when and how they might have exceeded the EQC cap and needed to move to dealing with their private insurers.

EQC was under intense pressure to settle claims. I was told by some staff that many claims were closed when there was a hiatus in activity and reopened when new action was required. This was interpreted as a means of improving reporting statistics. According to EQC, however, this was a standard administrative process in the insurance industry that would generally occur when, for a variety of reasons, a claim could not be progressed. These claims could be reopened at any time. EQC clearly had a responsibility to measure and report on progress on completing stages within the overall process and publish closure statistics, but this alienated some claimants who did not understand the reasons for closing cases before they had been fully resolved; many felt let down.

Other key issues for claimants related to data and information management, assessment and home repairs, are described later in this report.

Unfortunately, the way in which EQC managed the process in Canterbury resulted in the trust it had once enjoyed evaporating in the region.



# Data and information management



# 7.1: Technology and systems

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Dissatisfaction with EQC's data and information collection, storage and sharing practices was one of the most common matters I heard about, not only from claimants and advocates but also from current and former EQC staff, contractors working on managed repairs and private insurers. Comments centred on the outdated or incompatible technology and systems, poor data handling practices, EQC's difficulties in accessing the data it needs to perform its functions and the challenges claimants faced accessing information about their properties.

From 1993, EQC explored setting up and running information systems. This included a computerised system for managing claims, which, in the first instance, attempted an ultimately unsuccessful collaboration with private insurers in Australia and New Zealand. EQC had used a number of digital information systems since the late 1990s.

Upgrades in ensuing years sought to keep up with rapidly changing technology. In a 2005 strategic review of its information and technology systems (one of several preceding the 2010 events), EQC noted its increasing dependence on technology for handling claims, investment and administration. It emphasised that its *Integrated Systems Strategic Plan*, produced some years earlier to address specific functions, was found to be inadequate because it resulted in a divergence of programmes that significantly limited its usefulness.

Prior to the Canterbury earthquakes beginning in 2010 and given that information technology was a fast-moving area, EQC undertook "near-constant upgrades of technology and infrastructure". At the time of the Canterbury earthquakes, it had introduced a system for managing claims, "ClaimCenter", customised to store and handle data for between 150,000 and 200,000 claims.

EQC was on the cusp of migrating from version 4 to an enhanced version 6 of ClaimCenter when the September 2010 earthquake occurred. Only the month before, the EQC board had approved the upgrade. However, EQC's data and information systems and processes were put under huge pressure by the number of claims coming in following the Canterbury earthquakes. In March 2011 the decision to upgrade the system was revoked in order to focus on the immediate issues. The decision to delay the upgrade was pragmatic, but it did demand changes to version 4 to try to improve functionality and increase capability. I understand this caused frustration for some staff, who were well aware of ClaimCenter 4's shortcomings and described the changes being made in an environment of "flying the plane whilst still building it".

Although EQC began a process of upgrading its systems immediately after the September 2010 earthquake, appointing a large technology team and a chief information officer and working closely with IBM developers based in-house, it continued to struggle with meeting the new challenges of project management and ensuring access to data for the Canterbury Home Repair Programme teams, increased EQC staff and office sites.

Soon after the February 2011 earthquake, large numbers of additional staff needed access to the system and administrative functions such as email addresses required set-up. A flood of paper-based assessments data required manual entry, which caused delays and errors and was resource hungry in terms of staff time.

EQC acknowledges that its failure to ensure integration among its differing systems became a major issue from 2011. The systems proved inadequate, leading to a multitude of problems as EQC moved into the handling of a major event. A lack of sufficient focus by EQC's leadership on improving its data management systems by implementing planned (compared with ad hoc) system upgrades and innovations was apparent. This left EQC ill-equipped to manage the onslaught of claims-related information that it had to deal with from September 2010 onward.

By the end of 2013 there was renewed interest in progressing the stalled upgrade of ClaimCenter and by mid-2017 ClaimCenter version 8 was being used for entering new claims outside Canterbury. As a consequence of earlier custom changes to version 4 that were not carried through to version 8, damage could not be apportioned automatically across different events and historic data relating to Canterbury claims remains in a separate system. Financial information not directly relating to claims payments is not able to be stored in version 8 of ClaimCenter.

In addition, I am told by EQC staff that the new version of ClaimCenter is not being used consistently across the organisation; past data has not been migrated across and Canterbury data is not being added. In May 2018 EQC realised that almost 1,000 claims were sitting in the upgraded system but had not been included in accountability reporting; this did little to reassure claimants that their claims were in competent hands.

These examples serve to illustrate the complexity of system issues that still need to be addressed to ensure that EQC is well prepared for future events. There must also be compatibility between EQC systems, private insurers' systems and the systems of other relevant parties. As well as planning for disasters, EQC needs an "eye to the horizon" in terms of technological change so that it can embrace change and implement enhancements to its systems and processes. With greater access to technology, claimants have higher expectations of information technology now than they did ten years ago and expect more of the companies they do business with. EQC must be able to provide claimants with confidence that their information is being stored securely and fully and can be made available to them readily and in a useful format. Having accurate data is fundamental to satisfactory settlement of claims and is important for informing forecasts of likely impacts and quantum of claims that might be anticipated following future events.

## New technologies

The problem of paper-based assessment information was thought to be mitigated by the introduction of iPads for assessors' use. Though only one small technical device, the problems associated with them were symptomatic of EQC's wider problems with managing data. EQC invested in over 500 iPads for assessors' use onsite at claimants' homes, initially when carrying out rapid assessments following the February 2011 Canterbury earthquake. The iPads were rolled out very quickly and were widely used. Their introduction required additional software to be developed to achieve compatibility with the ClaimCenter system. Following the High Court declaratory judgment in September 2011, ruling that EQC's insurance cover reinstated after each natural disaster event, the software was modified again so assessors could apportion damage to each earthquake event. However, there were still problems as newly apportioned assessment data for a property could not be integrated with earlier data, thus requiring laborious manual inputting into ClaimCenter. This issue frustrated EQC staff enormously. Many told me that it could have been overcome relatively quickly, but the organisation seemed unwilling to make a swift decision to rectify the problem. It is apparent that EQC worked closely with IBM at all stages, but found no quick or easy solutions to enable the system to deal with apportionment.

Overall, the iPads were useful and liked by assessors, but their usage was not straightforward and risked loss of data. Due to ongoing difficulties, I am told the iPads were abandoned, with a reversion to paper-based recording of onsite assessment information.

## 7.2: Fletcher data issues

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System compatibility issues also emerged once Fletcher was engaged to manage the Canterbury Home Repair Programme. As it would not have been straightforward to adopt EQC's existing systems, Fletcher used its own custom-built system for information on claims so that it could track the number of properties that were being repaired (separate to EQC's view of such data). This required development of a technical interface to transfer this data to EQC's system. Though helpful, there remained "glitches" between EQC and Canterbury Home Repair Programme data. Respective data about claims and measurement of the status of claims differed, resulting in variance between records of completed repairs. The only recourse was, at times, manual counts by EQC and the Canterbury Home Repair Programme of data to reconcile differences.

## 7.3: Understanding risk through data

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EQC, through commissioned research and work done by partners such as Tonkin & Taylor, understands much about natural disasters and their impacts. However, it seems to have little detailed information about the specific risks it covers (e.g. which properties are covered and where they are located). At the time of the September 2010 earthquake, EQC had no external information sharing systems and processes, so it could not access necessary information from private insurers without their consent. This is fundamental to understanding some of the issues with information management and processes for managing claims faced by EQC.

Information could be provided to EQC by the private insurers, who hold it through collecting the EQC levies on EQC's behalf. Those I have spoken to have acknowledged the value of EQC collating such information but have variously expressed concerns about privacy, governance, ownership of the data, or the ability of systems to share the information, which would need to be addressed.

There would be benefits to EQC (and potentially to broader government) in understanding its potential claimant base and the distribution of risk and consequent exposure across New Zealand. Reinsurers value certainty, which this information would contribute to. It would assist readiness planning and, additionally, could lead to a better understanding of the number and distribution of uninsured properties, about which little is currently known.

## 7.4: Data handling and quality

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I heard numerous examples from claimants of mishandling of information and files by EQC. A great number of these complaints and experiences referred to—and indeed were caused by—issues associated with inconsistent data, inadequate records and poor practices of information management and availability. These issues have also frustrated EQC staff over the years. The quantum of data relating to claims since 2010 exacerbated existing capacity and functionality problems. Staff have felt their concerns and suggestions for improvements have been ignored or unheeded. Often cited and ongoing problems include:

- the lack of single source, quality data;
- lost, misfiled, missing and incomplete or incorrect data;
- incompatible, inconsistent and inadequate data from private insurers;
- delays and difficulties in verifying claimants' insurance coverage with private insurers; and
- an inability to organise collated data in a meaningful way for staff or the public to use and understand.

After the September 2010 Canterbury earthquake, EQC provided private insurers with expanded access to ClaimCenter to speed up processing. This allowed checks of whether claimants had a valid fire insurance policy at the time of the earthquake and also enabled access to other records. It worked relatively well until there were a number of privacy breaches in 2012, followed by a significant breach in 2013.

The 2013 breach was triggered by human error and resulted in information relating to 83,000 Canterbury dwelling claims being mistakenly sent to an incorrect, external email address. Initially, the seriousness of the breach was not well understood and a small team was established to investigate its cause and identify mitigation measures. However, it was soon evident that there was additional data hidden in the document and, one week later, a further breach was identified. This elevated the response considerably, with the then-Minister Responsible for the EQC immediately requiring EQC to shut down all publicly facing systems and external access until the system could be securely restored. EQC staff then had to get two-stage sign off on all external emails—causing further frustrations and delays both internally and with claimants. Limited external access to ClaimCenter was later restored to enable validation of insurance policies. An implementation group worked for several months, with mixed results, on a programme to strengthen risk identification and mitigation measures and improvements to information management practices.

In a 2013 review of the data breach, KPMG made the pertinent observation that EQC had operated in an environment where a sense of urgency prevailed in claimant interactions. Claimants wanted prompt resolution of their claims and staff worked to internal pressures to achieve settlements and reduce the number of active claims. They observed that this sense of urgency was reflected in some, (not all) processes not being entirely robust when put in place. This is a theme that carries through many of EQC's operational practices since the Canterbury earthquakes began in 2010.

Other reviews in recent years have identified a need for greater organisational capability in data and information management. Assessment of the maturity or robustness of EQC's systems and practices relating to data protection describes them as “developing”, reactive and with limited leadership oversight of practices and risks. As recently as 2018, its information technology capability was characterised as uncoordinated; risk averse, with a “can't do” rather than a “can do” culture; dependent on the institutional knowledge of a few; and lacking forward planning and focus on overall business improvement.

In 2015 the Auditor-General<sup>145</sup> vindicated EQC's perseverance with outdated systems as a risk-averse and pragmatic decision given the large quantum of claims EQC was dealing with in the aftermath of the Canterbury earthquakes. However, it could equally be said that the constantly changing, ad hoc work processes and what staff saw as management failure to embrace suggested improvements by staff meant that information systems were not optimal for reliable, efficient and safe information management. What have been described to me as constant, "in-flight" fixes to the data systems, in the longer term, created more problems than solutions.

Perhaps the key point from this discourse is to emphasise the importance of EQC taking the opportunity now, while the flow of incoming and active claims is relatively low, to address systemic data and information management issues to improve its readiness and connectivity with other systems.

I note EQC has told me that, in late 2018, as part of its current transformation programme it began working on a new information and analytics model that includes a central data hub. This scalable model is expected to enable sharing of data with external parties, including private insurers, through secure data exchange facility and provide a single, consistent source of and greater access to, reliable information. I fully support the need for urgent investment and continual progress in this area but urge EQC to be explicit in prioritising how it meets its claimants' needs for comprehensive and reliable information.

A feature of the many reviews of EQC has been the inconsistent data held by it. The 2018 Independent Ministerial Advisor's Report<sup>146</sup> noted the absence of good quality data, which led to an inability to provide reliable information about timelines for resolution of claims, the cost of re-repairs and even the number and status of claims remaining at the date of the report. I agree, adding my own concern at what has, at times, looked like selection and presentation of data about claim settlements in order to convey positive progress. Standardisation of terminology describing key performance statistics—both EQC's and that of private insurers—must surely be possible and certainly would instil greater public confidence that the sector "knows where it is at".

The Insurance Council has emphasised its relevant experience in this area. It would be a valuable partner to EQC as it improves the quality of its data.

145. Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme—follow-up audit*, November 2015, <https://www.oag.govt.nz/2015/eqc-follow-up/docs/summary.pdf/view>

146. Christine Stevenson, *Report of the Independent Ministerial Advisor to the Minister Responsible for the Earthquake Commission*, 26 April 2018, <https://www.beehive.govt.nz/release/wide-range-eqc-reforms-speed-claims>

## 7.5: Information access and privacy concerns

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The Official Information Act 1982 is based on the principle of availability; namely, that information held by a government department or public organisation shall be made available unless there is good reason for withholding it. The Privacy Act 1993 covers how personal information should be collected, used, disclosed and securely stored as well as how access is given to personal information. It protects and promotes individuals' privacy.

Together, the two laws provide citizens with rights and protection in how they can access information relating to them and assurance that the information is being held and used securely. In the years following the Canterbury earthquakes, EQC's practices in collecting, storing and making available information on claims resulted in it failing to meet its statutory obligations. This caused widespread anger, frustration and time delays for claimants trying to understand, progress and settle their claims.

### Requests for information

At times following the Canterbury earthquakes, EQC seriously failed to meet its information obligations under the Official Information Act, Privacy Act, EQC Act and Crown Entities Act.

As home assessments and repairs got underway following the 2010 and 2011 earthquakes, so too did claimants' requests for the information held by EQC about their claims. Call centre staff, despite their best intentions, were often unable to respond to these requests. This was the case because the information was not readily available, required sign-off before release, or it was difficult to find complete information in the absence of a single source of data. Many people felt their only recourse was to request this information formally under the Official Information Act—often without knowing what information EQC held on their property, making it hard for people to be sure whether they were being sent the full records.

EQC was overwhelmed and had inadequate resourcing and systems to deal with the volume of requests. By early 2013, EQC was routinely breaching its obligations under the Official Information Act to supply information within the legislated timeframes. By mid-2013 it was advising requestors of a six-to-seven month delay in responding to requests. EQC staff explained that the systems were designed for the processing and settling of claims, not for extraction and collation of information. EQC acknowledged that the information claimants were sent was often technical and difficult for non-experts to understand. This caused great frustration for claimants and contributed to further delays for settlement of claims and progress with home repairs.

Between January 2010 and the end of May 2019 EQC received more than 51,000 complaints (relating to 34,000 unique properties). The great majority (96 percent) of these related to Canterbury earthquake claims. Due to changing reporting tools and processes, complaints data kept by EQC does not identify the nature of the complaints made. However, in submissions and at public forums I heard about people's inability to get complete information relating to their claims from EQC and the lack of a single repository where all information on claims was stored and readily accessible. EQC has conceded that many disputes resulted from claimants' difficulties obtaining information and documents.

Claimants' frustrations prompted a 2013 joint investigation by the Chief Ombudsman and the Privacy Commissioner into EQC's handling of information requests.<sup>147</sup> They were cognisant of the onslaught of claims and consequential vast body of information that EQC had amassed post-2010 and 2011. However, the joint report emphasised the importance of timely, full, clear and accurate information

147. Chief Ombudsman and the Privacy Commissioner, *Information fault lines: Accessing EQC information in Canterbury*, December 2013 <https://www.ombudsman.parliament.nz/sites/default/files/2019-03/Information%20fault%20lines%20-%20accessing%20EQC%20information%20in%20Canterbury.pdf>



to support homeowners and community recovery post-disaster. The report was firm that EQC must amend its practices, which it described as overly complicated, risk averse and reactive rather than proactive. Recommendations included:

- streamlining processes for dealing with requests for information;
- ensuring better quality information was collected by EQC;
- providing training and guidance for public-facing EQC staff about compliance with the Official Information Act and the Privacy Act; and
- taking a proactive approach to providing information (e.g. assessments reports) to claimants directly and via its website.

EQC agreed to all the recommendations made by the Chief Ombudsman and Privacy Commissioner and set about implementing them. Staffing to deal with information requests was promptly increased and EQC reported that by April 2014 requests were being dealt with within statutory timeframes and overdue requests had been cleared.

EQC has reported to me that for the 2018-2019 financial year more than 95 percent of its over 7,000 Official Information Act requests were responded to within 20 working days by providing the requested information. EQC has also advised that it implemented a process for a faster, five-day turnaround of claim information and scopes of works requested by people buying or selling properties.

It is clear there are still challenges related to how EQC provides information. A 2019 assessment of EQC's external affairs function (which includes responding to Official Information Act requests), identified the lack of document management systems and inability to support customer requests as a critical risk requiring immediate attention. The report described key parts of the function of EQC as being unable to perform its roles effectively because of poor information and data, with a lack of equipment also inhibiting role delivery.

## 7.6: Improvements in information sharing

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In the past 18 months, two milestones have contributed significantly to greater information sharing between EQC and private insurers and are of benefit to claimants who have signed up to work with the Greater Christchurch Claims Resolution Service. These are the Memorandum of Understanding between MBIE, EQC and Southern Response and changes to the EQC Act.

### MoU for information sharing

The aforementioned Memorandum of Understanding, signed in 2018, aids collaborative resolution of outstanding Canterbury claims.

Information sharing is laid out in schedule 2 of the Memorandum of Understanding. Its principles regarding information sharing involve each party complying with all applicable laws, including the Privacy Act, the Official Information Act and the Public Records Act.

It negates the need for homeowners to individually request claim information through the formal Official Information Act process. It means that, once authorised by the claimant, EQC and Southern Response provide the Greater Christchurch Claims Resolution Service with a range of reports and documents pertinent to the claim's settlement. These might include engineering, geotechnical, building, costings and statement of works reports and variations; consenting documentation; and settlement documents. The Greater Christchurch Claims Resolution Service can request further documents or information if required.<sup>148</sup>

It means that homeowners have greater visibility of their information and claim progress by accessing the Greater Christchurch Claims Resolution Service's homeowners' portal. Once homeowners have registered with the Greater Christchurch Claims Resolution Service, their technical reports and other relevant information are uploaded to the portal. For EQC claims, the claims being facilitated by the Greater Christchurch Claims Resolution Service are all reopened claims and are tracked through EQC's claim numbers.

The Memorandum of Understanding heralds a positive approach to making information more readily available to claimants and helps facilitate settlement of outstanding claims. I hope that thought is being given to how the principles and model that the Memorandum of Understanding follows are able to be applied more widely for the benefit of the processes for managing and settling claims in the future.

148. Memorandum of Understanding between the Ministry of Business, Innovation and Employment and the Earthquake Commission and Southern Response Earthquake Services Limited, signed 25/26 September 2018  
<https://www.gccrs.govt.nz/assets/documents/GCCRS-SignedMOU.pdf>

## Changes to the EQC Act

Changes to the EQC Act, effective from 1 July 2019, give EQC a clear mandate to share information for appropriate purposes. Section 31A of the amended EQC Act states:

1. *The Commission may collect information for any of the following purposes:*
  - (a) *administering this Act;*
  - (b) *performing its functions;*
  - (c) *facilitating natural disaster preparedness, response, or recovery (including settlement of insurance claims by insurance companies).*
2. *Information collected by the Commission for any of the purposes referred to in subsection (1) is taken to have been collected—*
  - (a) *for all of those purposes; and*
  - (b) *if it is property-related information, for the purpose of making the information available (including to the public).<sup>149</sup>*

The changes take into account a submission from the Privacy Commissioner to the Earthquake Commission Amendment Bill and enable the information EQC collects for assessing and settling a claim to be disclosed to the private insurer without infringing the Privacy Act.<sup>150</sup>

This legislative amendment is positive for claimants. With the enactment of the Earthquake Commission Amendment Act 2019, homeowners and prospective buyers can now access information from EQC about claims without the need for a deed of assignment from the former owner.<sup>151</sup> It is also an important step forward for EQC's relationships with private insurers and should assist in practical process improvements, should private insurers manage EQC claims on behalf of EQC again.

While the recent changes have assisted EQC's ability to collect and disclose information to private insurers and new owners, EQC recently suggested to me that the intent was to ensure that information would be shared for safety and security purposes. However, it is now taking steps to develop an information-sharing regime. Within this, it should consider how the legislative changes might be used to advance the collection and sharing of data to improve operational practice and future preparedness. There is still important work for the organisation to ensure consistent compliance with statutory requirements and improve its ability to meet claimant and private insurer expectations and needs.

<sup>149</sup> Earthquake Commission Amendment Act 2019, <http://www.legislation.govt.nz/act/public/2019/0001/latest/whole.html>

<sup>150</sup> Earthquake Commission Act 1993, section 31A, <http://www.legislation.govt.nz/act/public/1993/0084/latest/LMS159178.html>

<sup>151</sup> Minister Responsible for the Earthquake Commission, More EQC info now available to homeowners, 13 February 2019, <https://www.beehive.govt.nz/release/more-eqc-info-now-available-homeowners>

## Other residential property information

Property information is of high interest not only to claimants but also to all property owners, potential buyers, insurers and underwriters. Indeed, it is imperative that prospective homeowners in Canterbury exercise their own due diligence in checking the status of a property with regard to prior claims and settlement for damages. This will be particularly important once the Government's once-only offer of an ex-gratia payment to purchasers of on-sold properties expires in mid-August 2020. Fortunately, aside from information held by EQC and private insurers, there is a range of other residential property information available to homeowners, the insurance industry, local and central government and professional bodies. These are described below:

The **Insurance Claims Register** provides a record of all claims lodged with participating insurance companies and enables them to access their history "for the specific purpose of checking for fraud". Access is limited to members of the Insurance Council.

**Land Information New Zealand's data service** provides freely accessible information including topographic data and maps; hydrographic data and charts; property data, such as boundaries and land ownership; place names, street addresses and road data; Crown land and property data; and aerial imagery.

There is also a project underway with **Land Information New Zealand to assign individual buildings with a unique identifier**. Work is almost complete on this project, which will help overcome a real issue with accurately identifying properties.

**Environment Canterbury Property Information Register** provides freely available access to EQC claim numbers, among other things. The access to claim numbers, in turn, helps people to make requests to EQC for information about the claims.

The **NZ Geotechnical Database** is used by professional geotechnical and structural engineers to access geotechnical data shared by other engineers and their clients and to share their own data in return. Access is restricted to professionals, local and central government and some institutions.

**Land Information Memorandum (LIM)** reports are available from local authorities for a fee. They contain information about building consents, activity licences, land and property-related information and services.

**Project Information Memorandum (PIM)** reports are also available from local authorities for a fee. They include specific property information relevant to a building project, such as authorisations, drainage and land information (including any special features or conditions of the ground as well as any information on the heritage status of the property).

**RiskScope**, developed and used by EQC, is a modular framework to estimate impacts and losses for assets exposed to natural hazards. The software combines hazard, asset and vulnerability layers through a data selection process to quantify a range of economic and social consequences. This helps practitioners make informed decisions on natural hazard management activities.

These data sources do have some limitations. They are not all publicly accessible, some come with a fee and each needs to be accessed separately—a daunting prospect for those who want to find out more about individual properties. Looking to a future where there will undoubtedly be a growing need to know and understand the risks associated with land and properties, there might be opportunity to leverage existing data sources. This could be done to gain greater alignment and information sharing between various data holders and ensure the public is aware of the services available and has ready access to them.





# Staff recruitment and training



## 8.1: Staffing

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With some exceptions, it is unnecessary for this report to examine in detail the staffing issues encountered by EQC following the September 2010 earthquake. It is clear from the various reviews of its performance in this area that it has learned some vital lessons in recruiting, managing and training staff while operating in a volatile situation. Some staffing and operational issues, however, do require emphasis.

EQC mobilised quickly after the September 2010 and subsequent Canterbury earthquakes and significantly increased its staffing. The challenge of abrupt staffing increases is illustrated by the fact that within one day of the September event, EQC had three call centres with 90 staff operating, four personnel on the ground in Christchurch and 12 staff processing claims at Gallagher Bassett in Brisbane. Within two weeks, there were 300 staff on the ground, a total of 259 call centre staff and 50 staff with Gallagher Bassett. By Christmas 2010, there were 1,055 (full-time equivalent) staff with over 60 percent located in Christchurch and the rest in Wellington, Brisbane and other call centres across New Zealand. There is no doubt that recruiting skills were effectively deployed during this initial crisis.

EQC told me that prior to the Canterbury earthquakes, the small size of EQC did not necessitate a comprehensive set of corporate policies (including matters such as integrity and conduct, human resources delegations and health and safety and wellbeing), but this changed quickly once staff numbers rapidly increased.

According to the numerous internal and external reviews undertaken about staffing policies, competencies and management, staffing levels and capabilities were managed adequately throughout the increasingly difficult period of the Canterbury earthquakes, the Seddon/Cook Strait and Kaikōura/Hurunui earthquakes and the Edgecumbe floods. Nonetheless, I have been asked to comment on claimants' experiences of operational practices, which includes perceptions of staffing competence and responsiveness.

## 8.2: Training

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As will always be the case for EQC when there is a major natural disaster, it was essential to recruit large numbers of semi-trained or inexperienced new staff in the wake of the earthquakes beginning in 2010. There were, however, some fundamental problems from the outset.

The existing EQC staff was small and experienced only in the insurance process, managing claims, reinsurance, research and some financial management. EQC realised it would need to recruit large numbers of additional staff with experience in assessment of damage, management of claims and project management. It also became apparent that there was an insufficient number of trained personnel to undertake the sharply increased workload. It became clear that EQC would need to train personnel to undertake the work it required. However, its training of these new staff members or independent contractors was vestigial.

Training of new recruits or independent contractors was perceived to be inadequate from the beginning. This perception has been referred to in submissions to, or meetings with, the Inquiry and many of the reviews conducted on EQC's performance following the first major earthquake. While it is understandable that pressures on EQC to begin discharging its responsibilities resulted in placing emphasis on recruiting as many people as possible, the lack of training resulted in poor quality work and a breakdown of trust and communication between EQC and claimants.

## 8.3: Recruitment of the wrong skills

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Many people with whom I have spoken (who range from those who know little about the insurance process to those who are familiar with it or who have gained a great deal of experience with it) referred, often bitterly, to the perceived incompetence of the assessors, in particular.

While I assumed at the outset that the “Queensland Police Officer” assessor would be apocryphal, it transpired that, in fact, an unknown but seemingly significant number of retired police officers had been engaged to assess damaged homes. EQC was assured that this was an appropriate recruitment decision. This was common practice in the insurance industry, based on the belief that this group would have the skills needed to deal with traumatised people.

I disagree. The claimants’ perception was that they were mistrusted by EQC and that retired police officers were macho in their dealings with claimants. I am unconvinced that the training offered was adequate to ensure all new staff had the skills to perform the role. Moreover, recruiting them from Australia, where the policing culture is distinctively different from New Zealand’s, was a fundamental error. There was a widespread negative perception of their people skills and also a view that other assessment staff were drawn from equally unsuitable backgrounds. This is not to suggest that these categories of potential recruits should be excluded from future urgent recruitment procedures. However, a careful evaluation of the perception created, and whether there should be a significant proportion of one professional group represented, should be considered when recruiting.

## 8.4: Contracting professional services

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The established relationship with Tonkin & Taylor enabled its services to be used promptly to assess the extent of land damage. This relationship proved vital in the recovery period when it became obvious that extensive evaluation of land in many parts of Christchurch and Canterbury was required before rebuilding or repairs could begin. For example, although land liquefaction was a known hazard in Christchurch and noted on many LIM reports, the public and authorities had not viewed it as a serious issue and engineering knowledge about the phenomenon was limited until the Canterbury earthquakes provided an opportunity to examine it more fully. Tonkin & Taylor’s work during and following the Canterbury earthquakes contributed to decisions about what land was safe to rebuild on or how to rebuild on damaged land.







# Assessment



# 9.1: Identifying damage

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I heard a great deal about EQC's assessment practices, especially in the context of the Canterbury earthquakes; these assessments had fundamental impacts on subsequent processes for repair and settlement.

Under the EQC Act, claimants are responsible for identifying and submitting a claim for natural disaster damage to their dwellings or land and providing the necessary proof to support the claim. Clause 7 of Schedule 3 sets out notification requirements for a claim. It requires that a claimant notify EQC of natural disaster damage within a specified timeframe and must provide EQC with supporting documentation at their own expense, including "such documents, proof and information... as may be reasonably required by the Commission".<sup>152</sup>

Although not expressly stated as such in the EQC Act, the court has accepted that the EQC Act puts the responsibility on the claimant to prove their claims on the balance of probabilities. This reflects the general principle of insurance law that a claimant ought to prove that there has been a loss and that the loss was proximately caused by an insured peril.

It is apparent from the submissions made to the Inquiry that claimants did not fully appreciate that they were responsible for proving the damage that occurred in their homes. This was not helped by EQC assessors apparently identifying damage on behalf of homeowners.

Many homeowners did not understand the nature of the damage to their homes, were not well equipped to gather information about the earthquake-related damage and were unable to detect it. This is entirely understandable. Most homeowners would not have had the technical building and renovation skills to know where to begin, irrespective of the fact that they would not have been aware that the responsibility was on them to identify and prove the damage to their homes.

Furthermore, the High Court declaratory judgment in September 2011 that concluded that EQC cover should be restored after each event, and was applied retrospectively, added to the complexity and difficulty of identifying damage and apportioning it to the event from which it occurred. Apportionment led to increased debate and disagreement between EQC, private insurers and homeowners as the respective EQC and private insurer liabilities were determined; this complicated and delayed both the assessment and settlement processes.

<sup>152</sup>. Earthquake Commission Act 1993, clause 7(3), <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM307146.html>.

## 9.2: Recruiting and training assessors

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In a traditional insurance setting, a loss adjuster or an assessor is often the person who will be the independent appraiser of the damage suffered. Loss adjusters are responsible for examining the damage to determine if it is damage resulting from an earthquake or other natural disaster and making an assessment of the cost of repair.

While EQC called on third-party providers of loss adjusting or assessment services to supplement its in-house staff, there were simply not enough trained, experienced and professionally qualified loss adjusters in New Zealand to provide the resource required by the insurance industry for such a major series of events.

By the end of 2010, in response to the scarcity of available trained professionals, EQC had started training in-house loss adjusters. These people were generally former professionals from the public service, police, military and real estate industry (which is a usual practice in the insurance sector). They were given up to a week of training by EQC, followed by training on the job, but were not formally qualified loss adjusters.

Due to the volume of assessments required, the pressure of deadlines to complete assessments and the shortage of loss adjusters, EQC decided to establish assessment teams comprising two people—an assessor and an estimator—to work together to inspect properties and document the damage. Assessors were the main liaisons with the claimants, while estimators (often qualified builders) determined the likely settlement value of the claim. It is not clear to me what each of the two people in a team were expected to do specifically and from what I have heard, the roles of the team members varied a great deal depending on the individuals involved.

It seems that the intent was that together these teams provided the expertise and services of “loss adjusting”. Estimators and assessors received two days’ training. Initially, about 500 teams were deployed with numbers growing after 22 February 2011.<sup>153</sup> Training increased to six days, which included additional training on working with people who were experiencing ongoing stress.

A former builder in an estimator role might need training only in interpreting insurance contracts, which is in itself a skilled area of work, but a recruit from the professions targeted by EQC with non-relevant prior experience would need a more extended training period. Earthquake assessors require competencies similar to loss adjusters but directed more toward identifying whether damage to the home had been caused by an earthquake. This is skilled work. Even the engineering profession had not been experienced in this type of assessment. Consequently, the brief training offered by EQC was unlikely to be sufficient for the complexity of the tasks required of the earthquake assessors. To add to the problem, following the September 2011 declaratory judgment that EQC’s insurance cover reinstated after each earthquake event, homes had to be assessed for new or aggravated damage. A refined assessment was needed to distinguish between pre-existing damage (e.g. by gradual, non-earthquake-related land subsidence) and the damage caused by each earthquake.

This initiative was good in theory but, given the widespread criticism I have heard concerning competence and attitude toward homeowners, it appears to have been inappropriate in practice.

<sup>153</sup> Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme*, October 2013, <https://www.oag.govt.nz/2013/eqc/docs/oag-earthquake-commission.pdf/view>

## 9.3: Changing assessment approach

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I have heard very few concerns about the purpose and quality of assessments in the period between the time the first major earthquake struck on 4 September 2010 and 22 February 2011. Homeowners were generally satisfied with the examination of damage and it appears that the assessment process was well managed at this point. However, the situation changed after the February 2011 earthquake.

Even without the vast, additional responsibilities associated with the imposition of a managed repair programme and the unexpected complication arising from sequential earthquakes (resulting in ongoing assessable damage), the pressure on EQC to assess and begin the repair programme resulted in fundamental process errors.

EQC itself has told me the process for assessing damage following the Canterbury earthquakes “was the source of confusion and frustration for some customers”. It also told Parliament in late 2012 that the initial (rapid) assessments were not always accurate.

The various types of assessments EQC carried out are described below.

## 9.4: Types of assessment

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### Rapid assessments

Soon after the February 2011 earthquake, EQC developed a rapid assessment process to triage properties into groups quickly (no structural damage, minor structural damage, or severe structural damage), so that full assessments of the most damaged properties could be prioritised. As part of that process, assessment teams also identified vulnerable households and those who had lost their sole source of heating. EQC admits that these rapid assessments were quick and superficial—at times done without the homeowner present. This programme was completed by mid-April 2011.

Following a ministerial direction based on the need for expediency, EQC’s rapid assessment approach included properties where the owner had no cover under the EQC Act.<sup>154</sup> Taking the initiative in assessing residential properties, even where not covered by EQC, was an assumption of responsibility that may well have been questionable. Nonetheless, it is an indication of the Government’s readiness to assist at a time of major natural disaster that may well be repeated in future major events.

### Full assessments

A full assessment programme then ensued and prioritised those homes identified in the rapid assessment as having severe structural damage. In parallel, land assessments were also being undertaken.

154. Ministerial Direction to the Earthquake Commission, 14 April 2011, <https://gazette.govt.nz/notice/id/2011-go2390>

## Additional assessments for emergency repairs and home heating

In March 2011, with its new priorities and in accordance with a retrospective ministerial direction,<sup>155</sup> EQC changed its post-September 2010 practices to include assessments for emergency repairs and the winter heating programme. Simply adding these two functions to EQC's responsibilities created the need to undertake significantly more assessments; they were necessary to ascertain which homes required emergency repairs or inclusion in the winter heating programme before any assessments for less urgent earthquake damage were undertaken. These additional assessments triggered the need for properties to be reassessed, complicating matters further and ultimately slowing the process down.

## 9.5: Difference between assessment and scoping

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There has been confusion concerning the terms “assessment” and “scoping”, as they have been used interchangeably both by EQC and claimants. Assessment refers to the process undertaken by EQC to ascertain if there was, in fact, earthquake-related damage to a residential property.

There were two broad types of assessment: residential building and land. Each was undertaken through separate processes (although sometimes in parallel). The buildings were assessed by EQC personnel while major land damage was generally assessed by Tonkin & Taylor or its agents on EQC's behalf. The assessments that identified the house repair work to be done were supposed to be jointly agreed with the homeowner.

Following an assessment, EQC scoped the reported damage and repairs required, costed them and sent the Scope of Works report to Fletcher—the project manager—which assigned the work to accredited contractors.

## 9.6: Assessment process

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### Number of assessments

It was inevitable that multiple assessments would be required as soon as additional functions were assigned to EQC and as more earthquakes occurred. An example assessment scenario for homes with claims from the Canterbury earthquakes might be:

- one or more visits (or inspections at a distance) to undertake the initial rapid assessment and to identify vulnerable residents, a dangerous building, or winter home heating requirements (marked by the need for a chimney repair);

<sup>155</sup> Ministerial Direction to the Earthquake Commission, 14 April 2011, <https://gazette.govt.nz/notice/id/2011-go2390>

- a visit where land damage was likely to have occurred;
- a visit to examine and record the existence or extent of earthquake damage to the home;
- a repeat visit when a new claim was filed following further earthquakes;
- one or more visits if the homeowner disputed the extent of damage recorded, disagreed with the plan for repair, or was of the view that the damage placed the repair over the EQC cap of \$100,000 plus GST;
- a visit if a file was lost and the damage needed to be assessed de novo (starting anew); and
- a visit by the private insurer to undertake an assessment if the damage was over cap.

## Quality of assessment

One of the most common comments I have received from homeowners and those with technical or legal backgrounds is that after February 2011, assessments quickly became superficial and unreliable as a means of measuring the extent of earthquake-related damage, developing the repair plan or costing the repair. The last is an important factor in an assessment; if the estimated cost of repair was close to or over the then-\$100,000 (plus GST) cap for which EQC is responsible, the claim should have been transferred to the private insurer immediately. This would have relieved EQC of the need to place the repair in the Canterbury Home Repair Programme and would have left the homeowner free to negotiate only with the private insurer.

## Speed of assessment

I heard from several parties about political pressure to speed up assessments, resulting in assessors having to increase the number of assessments undertaken each day from two to six or seven. In the view of one professionally qualified person who responded to the Inquiry, it was impossible to assess this number of homes adequately. More than one person, one of whom was a project manager, spoke to me of “drive-by” assessments. EQC has confirmed that this did occur (with the caveat that this took place during the rapid assessment phase in suburbs where there were fewer visible signs of severe damage).

A great deal of the public anxiety about EQC’s management of claims is the result of inadequate initial assessment of damage and poor communication about EQC’s processes. Some submitters told me they received what they would regard as a cursory assessment. Lack of explanation to claimants about their rights and obligations to identify damage also heightened anxiety, as did a perceived absence of planning for the enormous task that was ahead for EQC.

For a number of reasons, including safety concerns, likely delays to timeframes, additional cost and possible disruption to homeowners EQC decided against the use of invasive assessments, such as lifting floor boards and coverings, opening wall cavities, or going under floor.

The lack of invasive assessments, combined with the enormous pressure put on assessors to speed up the process, likely resulted in many homes not being comprehensively and professionally assessed for earthquake damage. EQC will always have to make a judgement about the use of invasive assessments, but new technologies will allow more thorough damage assessment in future.

## Information about assessment

For the homeowner, assessment became a major issue. Most of those the Inquiry heard from had to arrange for someone to be home at an appointed time and were frustrated by the variation in information given by the assessors. They also experienced considerable frustration and even anger, with the difficulties they experienced in acquiring assessment-related paperwork from EQC.

## Disputed assessments

I am satisfied that, on occasion, a careless or thoughtless comment by an assessor led to increasing problems in settling the claim. For example, an assessor might remark that the house looked as if it would need to be rebuilt when the damage was subsequently assessed to be significantly less. Another might suggest that damage was pre-existing, causing anguish to the homeowner who believed, rightly or wrongly, that it was earthquake-related damage.

Repeated assessments left the homeowner with widely differing estimates of the nature of the damage, its repair cost, or plan for repair. A significant number with whom I have spoken mentioned their frustration and distress at being told repeatedly that it was a repair when it was patently obvious that the house would need to be rebuilt and that the claim should be transferred to the private insurer.

I heard of agreed assessments between the first assessor and the homeowner that turned into a significantly reduced damage assessment after review by EQC. No amount of discussion or attempts to ascertain why changes had been made resulted in an agreed outcome, even when homeowners engaged their own experts to review the assessment.

Many were convinced that there was a hidden agenda for the repeated assessments, including discrimination against particular homeowners. EQC told me there was no such agenda. A number of people were convinced that Fletcher had an incentive to keep a home repair under the EQC cap, as Fletcher was guaranteed a proportion of work as part of its contract with EQC. (As an aside, I have established there was no such direct incentive in the contract between EQC and Fletcher.) Others considered that EQC was operating to reduce the overall cost of the recovery. EQC advised me that there was no directive of this nature.

Many instances were mentioned to me of depreciation or dismissal of claimants' concerns about assessments, minimisation of scope of claims and disregard for reports obtained by claimants at great expense (for which they were often not reimbursed) from engineers or other experts setting out damage or scope of the claim.

# 9.7: Pre-existing damage

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Pre-existing and consequential damage led to further challenges for EQC assessments and repair strategies, resulting in disputes between EQC and claimants.

A simplified example of the differences between pre-existing, earthquake and consequential damage might be:

- **Pre-existing damage:** A leaking roof, possibly due to its age, materials used, or a lack of maintenance
- **Damage as the consequence of a natural disaster:** A leaking roof, where roofing materials or structures might have been damaged by an earthquake
- **Consequential damage:** Water damage caused to internal structures and ceilings, attributable to the leaking roof damaged in the earthquake.



Under its policy with the homeowner, EQC was limited to repairing damage that resulted from a natural disaster. There was no consistent mechanism in place and the perception was there was no willingness to concurrently address the repairs (such as those to pre-existing damage) for which the homeowner might be responsible and prepared to pay for.

Furthermore, often damage identified by the homeowner or their advisors as earthquake related was dismissed by the EQC assessors as being the result of age or poor maintenance. Given that homeowners often disagreed, this led to significant frustration and distress.

Many of the concerns mentioned by homeowners who were included in the Canterbury Home Repair Programme focussed not only on poorly completed repairs but also on shortcomings in the assessment phase prior to the repairs being completed. These shortcomings included the omission of earthquake-related damage from the repair programme and EQC's refusal to accept that damage was, in fact, earthquake related.

## 9.8: Accessing expert advice

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There was some unease expressed by legal professionals that there was an imbalance between EQC and homeowners regarding the ability to access relevant expert advice and investigations. Although this comment was made specifically about assessing land damage, I consider it has bearing on the wider issue of assessments.

It was evident to me that failure of adequate communication with the homeowner inevitably led to many misunderstandings, disputes and mistrust of EQC. People responded by seeking their own independent, expert advice and footing the associated bills for this advice with little or no hope of reimbursement. In some cases, seeking expert opinions helped homeowners progress their claims, but for others it resulted in a stalemate. I heard of cases where EQC did not accept findings from experts engaged by homeowners. Objectively, this may well have been reasonable on EQC's part due to its much broader knowledge of the geotechnical issues; but the personal and financial distress it caused could have been avoided by better sharing of information, communication and, as appropriate, reimbursement of fees incurred by the homeowner.

There is a need for much better coordination with those homeowners who lack the knowledge, expertise or funds to review expert information either from, or supplied to, EQC on their behalf.



# Reinstatement standards



# 10.1: EQC's legal obligations

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Many of the issues about EQC's assessment (and scoping) practices relate to confusion about the reinstatement standards under the EQC Act.

EQC sought advice from an early stage, although there were some inconsistencies in the way individual personnel and contractors applied EQC's interpretation of the Act. To some extent the uncertainty reflected a lack of clarity within the Act itself—in particular between the explicit reinstatement standard in clause 9 of schedule 3:

*the Commission shall not be bound to replace or reinstate exactly or completely, but only as circumstances permit and in a reasonably sufficient manner*

and the definition of replacement value in section 2:

**replacement value**, in relation to a residential building, means any costs which would be reasonably incurred in respect of—

...

- (ii) *replacing or reinstating the building to a condition substantially the same as but not better or more extensive than its condition when new, modified as necessary to comply with any applicable laws*

It was not until mid-2013 that clarity about repair standards was disseminated and reinforced within EQC, meaning that there were some earlier unfortunate misunderstandings of the legal obligation within EQC and, therefore, for the public. For example, in May 2013 a board paper<sup>156</sup> set out quality objectives for the Canterbury Home Repair Programme including:

*All repairs are to result in no less (and no more) than the legal standard EQC is obliged to reach i.e. that the homeowner is restored to the position that existed **before the event** (emphasis added).*

This directly contradicted the earlier staff advice that buildings were to be reinstated to a condition “substantially the same as, but not better or more extensive than, the condition of the building **when new** (emphasis added)”.

Private insurers also faced disputes over similar terms in insurance contracts, including the obligation to reinstate to a condition “as new” or “when new”.

A succession of High Court judgments clarified and reinforced aspects of these clauses but litigation over their precise meaning continued for many years. From 2013, however, EQC's understanding of its repair standard obligations improved, staff and contractors were given accurate and consistent training which reflected those judgments as they were decided.

Many submissions commented on the reinstatement standard under the EQC Act. A number of submissions described the difference between the replacement standard of their private insurance policies and what they believed to be the EQC standard of “like-for-like” or repairing to pre-earthquake condition. Many submitters felt EQC should have been required to repair to an “as new” standard and described their fight to have this recognised in their claims. Several people told the Inquiry that EQC staff appeared to be unaware or were untrained in their obligations under the EQC Act to repair to a “when new” standard.

<sup>156</sup> Russell McVeagh, *Development and Role of the MBIE Guidance Document on House Repairs and Reconstruction Following the Canterbury Earthquake*, 2019

# 10.2: MBIE Guidance

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## Intent of MBIE Guidance

In October 2010, shortly after the first major Canterbury earthquake, EQC decided to investigate how residential buildings responded to liquefaction effects in Canterbury. It initiated and funded a working group, the Engineering Advisory Group, to carry out the research on its behalf and in compliance with its broadly stated obligation under the EQC Act to facilitate research and education about matters relevant to natural disaster damage.

The Engineering Advisory Group was transferred into the stewardship of the then-Department of Building and Housing (now absorbed into the Ministry of Business, Innovation and Employment (MBIE)) shortly after it was established, as expert advice on foundation repair and rebuild solutions for houses affected by liquefaction was within its expertise. EQC retained two representatives on the Group.

In December 2010, the Engineering Advisory Group prepared and published the first version of what became the MBIE Guidance document.<sup>157</sup> This version clearly intended that the document be used as a general guideline and as a “summary of geotechnical and structural engineering recommendations to guide house repairs and reconstruction”. The document’s purpose was:

*...to encourage consistency of approach and to avoid unnecessary and costly investigations and design for each property. It takes a prudent approach that is mindful of costs and risks. It provides solutions and construction methods that will meet the requirements of the Building Act and Building Code while avoiding ‘over-design’ and ‘over investigation’ where this is not warranted.*

The following caveat was added:

*Following the methods or solutions proposed in the document is not mandatory. Different and improved details and methods may well be developed as the recovery proceeds. The earthquake and its effects are complex. Investigations into the full picture on how residential structures responded to liquefaction effects are ongoing. It may well be that some aspects of the recommendations in the document are added to or changed over time.*

I understand that the MBIE Guidance was produced for two primary reasons:

- To enable the sharing of information about the impact of the September 2010 earthquake, including the sharing of repair and reconstruction methodologies, within the engineering (and related) sectors; and
- To provide guidance (under the Building Act 2004) to the relevant territorial authorities and other affected stakeholders as to repair options.<sup>158</sup>

The MBIE Guidance went through a number of amended versions as a better understanding of the nature of the earthquake damage emerged.

<sup>157</sup> Department of Building and Housing, *Guidance on house repairs and reconstruction following the Canterbury earthquake*, 2010, [https://www.eqc.govt.nz/sites/public\\_files/380-Guidance--house-repairs-reconstruction-Canty-eq.pdf](https://www.eqc.govt.nz/sites/public_files/380-Guidance--house-repairs-reconstruction-Canty-eq.pdf)

<sup>158</sup> Russell McVeagh, *Development and Role of the MBIE Guidance Document on House Repairs and Reconstruction Following the Canterbury Earthquake*, 2019

## Perceptions of MBIE Guidance

I heard concerns that the MBIE Guidance was developed by EQC to limit its obligations to its claimants, which were founded on the fact that EQC funded the Engineering Advisory Group and had two staff in its membership. I understand EQC did not provide input into the engineering standards that informed the guidance, nor otherwise controlled the outcomes of the Engineering Advisory Group's work.

Although the MBIE Guidance was developed to provide a degree of engineering and geotechnical assistance for home repairs on land that had been damaged in new ways, the standard of repair for each house was not prescribed in them. It is clear that there was some confusion among EQC staff about the reinstatement obligations under the EQC Act and it is possible that, in the climate of uncertainty, the MBIE Guidance took on greater significance than it otherwise should have.

Members of the public have frequently expressed scepticism to me about the genesis of the MBIE Guidance, with suspicions widely held that it was to be used in some way to manipulate repair standards and reduce homeowners' legal entitlements.

Scepticism about the use of the MBIE Guidance persists today and there remains considerable misunderstanding about the difference between its purpose and the separate, albeit related, issue of EQC's repair standards under the EQC Act. Scepticism may well be justified in some instances. My understanding of the genesis of the MBIE Guidance is that it was intended to provide technical solutions for rebuilding, taking into account the specific features of the Canterbury earthquake land damage. Yet I have had reports that the MBIE Guidance was applied in Kaikōura/Hurunui, where its relevance was more limited. Moreover, the advice regarding releveling of floors has led to the MBIE Guidance being used, in some instances, as the prescription for repair when clearly that was never intended and may have been inappropriate.

## Use of MBIE Guidance

The MBIE Guidance was used to assist in the scoping and repairing of earthquake damage. It was not intended to be used as a repair “standard” or by personnel associated with assessing claims and it is not clear that EQC used the document for those purposes. However, this was not well understood.

Three unexpected issues arose as the MBIE Guidance became generally used throughout Canterbury:

- The MBIE Guidance was seen to be inconsistent with the statutory repair standards under the EQC Act.
- The public had a limited understanding of the purpose of and use to which the MBIE Guidance was put.
- The MBIE Guidance became regarded as an acceptable alternative solution under the Building Code, with the erroneous assumption that work carried out in accordance with the MBIE Guidance was exempt from requiring a building consent.

Frequently reference has been made to the first version of the MBIE Guidance that provided approaches for relevening floors based on the extent to which the floor sloped or settled differentially. Although this initial version had more onerous slope and differential settlement criteria that were later relaxed, people felt that it was used as a yardstick for assessing properties, with debate centring on calculating the slope or settlement, rather than assessing the actual earthquake damage.

It is clear there have been different views on the use of the MBIE Guidance since it was first published in 2010. There were numerous attempts to clarify the intent of the MBIE Guidance and to specify its use. As early as 2012, members of the Engineering Advisory Group were aware of the public’s negative views of how the MBIE Guidance was used and accordingly revised the document to make it clear that the document was “issued as guidance”, as the language in the document had always stated and was not a template for individual home repairs.<sup>159</sup> A joint statement between the EQC Action Group (a group of owners of earthquake damaged homes) and EQC was released in 2016, which further clarified the MBIE Guidance’s status and use with special reference to floor levels.<sup>160</sup> Also in 2016, EQC introduced further training for staff to ensure there was greater clarity about the purpose of the MBIE Guidance. A 2019 Russell McVeagh report, commissioned by EQC to consider the development and implementation of the MBIE Guidance, concludes that the proposals for floor relevening were not intended to be, nor applied as, prescriptive.<sup>161</sup>

The early decision to draw together experts into an Engineering Advisory Group to provide practical information and advice was clearly an ideal model; it helped people deal with the uncertainty about the impact that previously poorly understood land damage phenomena would have for residential homeowners. It was not for those experts to manage the explanation of their purpose beyond the clear statement in the original MBIE Guidance. EQC had the responsibility to ensure that homeowners understood the application of the MBIE Guidance. It also had particular responsibility to help the public gain a better understanding of the separate issue of the appropriate application of repair standards under the EQC Act. The fact that EQC continued for a period to be confused about repair standards did not help its staff explain to claimants what their entitlements were.

159. MBIE, *Revised issue of Repairing and rebuilding houses affected by the Canterbury earthquakes*, December 2012, <https://www.building.govt.nz/building-code-compliance/canterbury-rebuild/repairing-and-rebuilding-houses-affected-by-the-canterbury-earthquakes/>

160. EQC, Joint statement between EQC Action Group and the Earthquake Commission, April 2016, <https://www.eqc.govt.nz/canterbury-earthquakes/home-repairs/how-eqc-settles-claims/joint-statement>

161. Russell McVeagh, *Development and Role of the MBIE Guidance Document on House Repairs and Reconstruction Following the Canterbury Earthquake*, 17 July 2019





# Canterbury Home Repair Programme





# 11.1: Planning for managed repairs

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Although cash settlement of claims was, and remains, EQC's preferred practice, Schedule 3 clause 9 of the EQC Act provides:

## **9 Replacement of property**

- (1) *The Commission may at its option replace or reinstate any property that suffers natural disaster damage, or any part thereof, instead of paying the amount of the damage, but –*
  - (a) *the Commission shall not be bound to replace or reinstate exactly or completely, but only as circumstances permit and in a reasonably sufficient manner; and*
  - (b) *to the extent that the damage is to residential land and consists of or results from ground-forming materials or other debris on the land (including as a consequence of a natural landslide), the Commission shall not be bound to replace or reinstate other than by removal of the debris.*
- (2) *If the Commission elects to replace or reinstate any property or wishes to consider whether it shall so elect, the insured person shall furnish the Commission with such plans, specifications, measurements, quantities, and other particulars as the Commission may require. No acts done or caused to be done by the Commission with a view to replacement or reinstatement shall be deemed to be an election by the Commission to replace or reinstate.<sup>162</sup>*

Consideration had previously been given to handling a large number of claims arising from one event by means other than cash settlement. I heard from a former EQC chief executive that a 2003 paper to the board had suggested:

*a pre-selected construction project management company oversee the repair work of a small number of large repair companies, allocating costed scopes of works issued by EQC and co-ordinating available labour and material resources... The recommendation to add to the [Catastrophe Response Programme] a plan to completely manage the claim process using a large-scale project management approach in the event of a widespread disaster was rejected by the Board on the grounds that such an arrangement would be outside the scope of the Act and, furthermore, could be viewed as anti-competitive.<sup>163</sup>*

Later, as part of the Catastrophe Response Programme, EQC undertook a small-scale trial of a managed repair programme with building company Mainzeal following the 2003 Fiordland/Te Anau earthquake.<sup>164</sup> In its review of the trial, EQC rejected the notion of using a head contractor such as Mainzeal to employ subcontractors, preferring a model that engaged a building company either as the lead contractor or an independent project manager providing quality assurance and coordinating all parties involved.

However, by 2010 EQC's position not to undertake managed repairs was subsumed by the magnitude of the damage sustained in the September earthquake.

<sup>162</sup> Earthquake Commission Act 1993, schedule 3, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM307146.html>

<sup>163</sup> David Middleton, *Case Study – the New Zealand Earthquake Commission*, September 2014, with permission from Aon

<sup>164</sup> Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme*, October 2013, <https://www.oag.govt.nz/2013/eqc/docs/oag-earthquake-commission.pdf/view>

## 11.2: Decision to manage a repair programme

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There is no documented decision that lays out the rationale for establishing and developing the repair programme to be managed by EQC. Replacing or reinstating residential property is clearly within the discretionary powers of EQC under the EQC Act, albeit not in terms that suggest a major programme. For that reason, it may not have been considered necessary to issue a formal ministerial direction under the Crown Entities Act when the scale of damage to housing became apparent following the September 2010 earthquake. While there was no formal ministerial direction, clearly there were time-pressured discussions between the then-Minister Responsible for the EQC and the board of EQC that led to an agreement to develop a managed repair programme. However, while there are Cabinet papers that discuss the proposed operation of land remediation and house repair, I have not found any Cabinet paper or other record of taking the decision itself nor of the discussion and analysis supporting it. Moreover, it does not appear from the material available to me that these agreements were revisited following the February 2011 earthquake or subsequent events.

It appears that Cabinet gave important, early strategic direction:

*In November 2010 the Government set out its main requirements for the earthquake recovery as:*

- *Maintenance or improvement of building standards*
- *Availability and control of labour, materials and equipment*
- *Public confidence in the rebuild with minimal risk of people abandoning their properties*
- *Land remediation measures that ensured continued viability for building*
- *Continuation of affordable insurance for homes and businesses*

*To support the first three items EQC, in consultation with its Minister, decided to replace or reinstate property rather than settle by cash payment.<sup>165</sup>*

Following discussions with a Cabinet committee, the EQC board was briefed that the “establishment of a project management office to facilitate these repairs [of damage between \$10,000 and \$100,000] would produce a better likelihood of the work being done expeditiously and to a consistent standard”. The board’s role in deciding whether to exercise the option to manage repairs appears to have been pre-empted by confirmation by the EQC board Chair to the Minister of Finance that EQC would accept responsibility, as required by the Government, for such a project. Although the board discussed and noted the inherent risks in the role it was assuming, it appears to have had limited discretion in the decision.

On the recommendation of The Treasury, the Minister of Finance signed a letter dated 10 December 2010 to the Chair of EQC’s board in which it is noted:

*I am conscious that in addition to dealing with over 159,000 claims... EQC has also been asked to take on significant additional responsibilities including the project management office with Fletcher Construction and the additional land remediation work.*

<sup>165</sup> David Middleton, *Case Study – the New Zealand Earthquake Commission*, September 2014, with permission from Aon

In EQC's *Annual Report 2010-2011*, the Chairman's Report states:

*EQC is geared to settling claims in cash. But tens of thousands of Canterbury homeowners, each with an EQC cheque and each trying to find a builder, would be a recipe for repair cost inflation and variable quality of repairs. The search for contractors to carry out repairs, and managing a contract once secured, would also have been an intolerable burden for many distressed Canterbury residents. **For these reasons and soon after the 4 September earthquake, the Government requested that EQC take direct responsibility for the repair of claimants' houses** (emphasis added) where the cost fell within the EQC "cap" of \$100,000 (plus GST).<sup>166</sup>*

The Chairman's Report goes on:

*Neither the repair of damaged houses through the contract with Fletcher Construction, nor the design and oversight of land remediation works to a standard above EQC's statutory liability, was "core business" for EQC. But as a result of the structural changes in the state sector in the late 1980s and early 1990s, the New Zealand Government no longer has a public works department. In the circumstances it was right for EQC to take on these roles and put in place the capability to discharge them. Whether the Government should in future retain this capacity, in some form, is a question beyond my mandate. It is a question which will, no doubt, be addressed elsewhere in due course. But if EQC is to take on this role in any future event, we will need to be apprised of that expectation and plan to meet it.<sup>167</sup>*

Reflecting these comments, in the 2010-2011 report of Parliament's Finance and Expenditure Committee, it was noted that:

*Under its legislation, EQC has been geared to making cash payments for natural disaster claims. However, **Government decisions** (emphasis added) in response to the earthquakes have called on it to carry out several other functions [including] managing a substantial part of the repair and rebuilding through a contract with Fletcher Construction...<sup>168</sup>*

The EQC board Chair also told the Finance and Expenditure Committee hearing that:

*We had not planned for taking responsibility for one of the largest construction projects in New Zealand's history... that having been said, by the end of November 2010 we had the contract with Fletcher's in place **under the wishes and the instruction of the Government** (emphasis added).<sup>169</sup>*

166. EQC, *Annual Report 2010-2011*, [https://www.eqc.govt.nz/sites/public\\_files/eqc-annual-report-2010-11.pdf](https://www.eqc.govt.nz/sites/public_files/eqc-annual-report-2010-11.pdf)

167. EQC, *Annual Report 2010-2011*, [https://www.eqc.govt.nz/sites/public\\_files/eqc-annual-report-2010-11.pdf](https://www.eqc.govt.nz/sites/public_files/eqc-annual-report-2010-11.pdf)

168. 2010-2011 Financial Review of CERA and EQC, Report of the Finance and Expenditure Committee, [https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH\\_SCR5412\\_1/201011-financial-review-of-the-canterbury-earthquake-recovery](https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH_SCR5412_1/201011-financial-review-of-the-canterbury-earthquake-recovery)

169. 2010-2011 Financial Review of CERA and EQC, Report of the Finance and Expenditure Committee, [https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH\\_SCR5412\\_1/201011-financial-review-of-the-canterbury-earthquake-recovery](https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH_SCR5412_1/201011-financial-review-of-the-canterbury-earthquake-recovery)

In its briefing to the incoming Minister in 2011, EQC noted that, rather than determining whether a managed repair programme should be introduced and managed by EQC, it had determined and the Minister had agreed:

*...that a Project Management Office (PMO) for residential repairs between \$10,000 and EQC's cap was the best way to manage building repairs to ensure quality, mitigate inflation and facilitate equitable access to qualified labour.*

I am left, on balance, with a view that the Government directed EQC to undertake a managed repair programme; that it did not provide EQC with a ministerial direction under the Crown Entities Act to that effect; and that EQC accepted this responsibility, exercising its discretion under Schedule 3 of the EQC Act to “replace or reinstate any property that suffers natural disaster damage, or any part thereof, instead of paying the amount of the damage”.

Nonetheless, it is not difficult to conclude that the unprecedented scale of damage to housing, land and supporting infrastructure led to a decision that the best way to restore homes, contain building cost inflation, ensure equitable access to builders and help affected homeowners manage their recovery was to centralise and manage the process. This is a predictable response to an event of the size and complexity of the September 2010 earthquake and a decision that is likely to be repeated following future similar major natural disasters.

In a paper prepared by EQC for Cabinet in 2019, EQC acknowledges this by stating:

*The response to, and ongoing recovery from, the Canterbury earthquakes has shown that following a major natural disaster event:*

- a) Greater demands are placed on scarce resources;*
- b) The impact on individuals, families and communities is generally greater across social, cultural, natural, built environments;*
- c) Organisations may be severely hindered or unable to carry out their expected functions;*
- d) There may be gaps in response and recovery efforts due to unanticipated events or consequences and that the Government may look to undertake activities to address these gaps; and*
- e) The likelihood and impact of certain risks increase such as the increased risk of mental health issues due to increased stress.<sup>170</sup>*

The reasons for undertaking a managed repair programme and the subsidiary activities were appropriate in a circumstance where thousands of homes had been damaged and there was a need to centralise and coordinate repairs and land remediation. Given the Government's responsibilities to its citizens, in similar events, such unexpected, added responsibilities will always be a possibility.

170. Office of the Minister Responsible for the Earthquake Commission, Cabinet paper, *EQC's changing role in a Natural Disaster Response and Recovery*, 7 August 2019, [https://www.eqc.govt.nz/sites/public\\_files/documents/publications/Final-Cabinet-paper\\_DEV-minute\\_70819.pdf](https://www.eqc.govt.nz/sites/public_files/documents/publications/Final-Cabinet-paper_DEV-minute_70819.pdf)

# 11.3: Readiness to manage Canterbury Home Repair Programme

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To examine more closely whether EQC was best placed to undertake this work would have been prudent. The Chair of the board of EQC and The Treasury provided commentary and advice on the risks inherent in EQC undertaking a managed repair programme following the September 2010 earthquake. In the absence of advance planning for such a major event these consultations were undertaken as a matter of urgency and lacked the time for investigation and reflection that was needed. EQC had limited experience in the field of repairing homes. It had directly managed the repair of only 71 of 13,500 claims from 2008 until the first Canterbury earthquake in September 2010 and it preferred to settle claims by cash payment. EQC's reasons for not undertaking managed repairs were:

- it was essentially a Crown financial institution and staffing was directed to this function;
- it was concerned that the financial liabilities associated with undertaking a managed repair programme would be “inconsistent with responsibly managing the Crown’s financial risk”, which was a view supported until this point by successive responsible Ministers and by The Treasury; and
- it placed emphasis on the discretionary nature of the provision in Schedule 3 of the EQC Act.

I fully acknowledge the crisis that the Government and EQC were facing following the Canterbury earthquakes. The sequence of Canterbury earthquakes is arguably the biggest peacetime catastrophe New Zealand has had to contend with. However, EQC had very little experience in managing a repair programme. As mentioned previously, EQC had run a trial managed repair programme in 2003 with Mainzeal for certain claimants in response to the Fiordland/Te Anau earthquake. Within its able-but-small workforce it had no staff with building or project management experience. Its board did not have the structure or sufficient expertise to accommodate a project of this size and nature.

Moreover, even before the next major earthquakes occurred in 2011, the repair programme initiated after the September 2010 earthquake was one of the biggest construction projects New Zealand had ever confronted. Yet it lacked the design, planning and supervision that would normally be associated with such undertakings. Other infrastructure developments in the twentieth century (such as the building of major dams, mass state housing, or more recent transport projects such as the Waterview Tunnel in Auckland) were years in the planning and high-level, consistent project management was a vital component.

In their paper “Planning for Loss or Complexity?”<sup>171</sup> the authors (a group of former/current EQC staff), after a brief discussion of the “tension between fast and simple settlement by cash and the potential negative effects for cost inflation and quality or completeness of repair”, somewhat laconically note:

*A challenge for future leaders of community and commercial sectors is to forecast the scale of impact at which normative behaviours and processes should be set aside in favour of unique arrangements for priority setting, information sharing, decision-making and cost allocation.*

In Canterbury, even with an acknowledgement that the earthquakes created a climate of crisis, there was very little time taken for reflection, planning, or project development.

171. Cowan H, Dunne B, Griffiths A, Conorsegueros, Number 05, *Planning for Loss or Complexity? New Zealand's Earthquake Commission - The Story So Far*, October 2016, <http://www.conorseguerosdigital.com/en/numero-05/front-page/planning-for-loss-or-complexity-new-zealandandacute-s-earthquake-commission-the-story-so-far>

Although it seems to have been concluded that there was no other alternative, nonetheless, assigning overall responsibility for the Canterbury Home Repair Programme to EQC was a mistake. EQC was obliged, as a result, to:

- recruit personnel who had assessment and building project oversight experience;
- scale up from a small staff to a very large one;
- plan the repair programme in consultation with the project managers of the Canterbury Home Repair Programme;
- manage the substantial financial resources and contracts associated with the programme;
- communicate with the Canterbury population about the programme and its plan;
- deal with emerging complex and difficult legal issues; and
- collaborate with private insurers to a greater degree than otherwise would have been required.

All the while, EQC had to manage the complications of ongoing earthquakes and process other claims from events in other parts of New Zealand.

The main issue for the future is whether EQC can be adequately prepared and sufficiently flexible to undertake all unforeseen work in relation to residential building recovery or whether other mechanisms should be developed.

## 11.4: Contract with Fletcher Construction Company Limited

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### Procurement process

At the time of the September 2010 earthquake, many Cantabrians were facing major disruption to their lives and serious damage to their homes. Fletcher Construction Company Limited (Fletcher) made it clear that it was willing to assist in the residential building recovery, following discussions with other industry participants.

With the decision to undertake a managed repair evident late in September 2010, EQC began the process of seeking proposals from organisations identified as being able to meet the requirements of managing a home repair programme. EQC undertook an emergency procurement process (consistent with the MBIE procurement guidelines of that time) and issued a request for proposal on 27 September 2010. A number of companies submitted proposals, including Fletcher. Although EQC offered tenderers the choice of a project management or head contractor model, all of the proposals received were based on a project management model, with no liability on the project manager for defective repairs. EQC was responsible for assessing the earthquake damage and determining the scope of work and the repair strategy.

An external report commissioned by EQC on the procurement process concluded, in December 2010, that the process was “carried out in accordance with good practice in public sector procurement and with due regard to probity principles”.<sup>172</sup> In 2013 the Office of the Auditor-General also found that EQC planned and carried out the procurement process well.<sup>173</sup>

## Memorandum of Understanding

Fletcher was the successful tenderer and signed a memorandum of understanding dated 22 October 2010. Fletcher was appointed to provide Project Management Office services and it was confirmed that EQC and Fletcher would work together in an open, transparent and collaborative way in a programme that would become known as the Canterbury Home Repair Programme.

The memorandum of understanding anticipated that a contract would be signed between the parties as soon as practicable, but reinstatement works should “commence and [be] seen to be underway as soon as possible”. EQC was to reimburse Fletcher for direct project costs (with a margin) and pay a minimum fee or a percentage of the repair costs paid by EQC for reinstatement works managed by Fletcher. Direct project costs, which EQC would reimburse Fletcher for, included costs and expenses relating to any third party claims against Fletcher in connection with Fletcher carrying out reinstatement works; this would include those claims resulting from negligence of any contractor, consultant, or supplier to EQC. The minimum fee ensured Fletcher could engage staff and scale up for the projects in the absence of certainty over the work that would be referred to it to manage.

EQC was responsible for assessing earthquake damage, determining the scope of work to be undertaken and the repair strategy. Fletcher was clearly to be EQC’s agent in engaging contractors and suppliers but, as project manager, Fletcher was not responsible for the design or construction of any works or for the work of any other contractor, consultant, or supplier to EQC.

## Project Management Office Services Agreement

A Project Management Office Services Agreement, the detailed contract that had been contemplated by the Memorandum of Understanding, was entered into on 6 July 2011 and replaced the Memorandum of Understanding. This Services Agreement included much more detail as to how the project management process would work, reflecting the changing scale of the project as a result of subsequent earthquakes. In essence, EQC appointed (or affirmed the appointment of) Fletcher as its agent to provide the services under the agreement. These included:

- Fletcher entering into agreements with contractors (generally builders) and consultants (architects, engineers, surveyors and the like) to undertake reinstatement works on behalf of EQC and as its agent;
- EQC referring claims from the Canterbury earthquakes to Fletcher for reinstatement or replacement;
- EQC referring emergency works, or works under the chimney replacement and winter heating programmes, along with anything else they might agree; and
- Fletcher developing accreditation and pricing mechanisms for contractors and builders’ merchants.

172. McHale Group Ltd, *Retrospective Assurance over the Probity of the Emergency Procurement Tender Process for the Provision of Reinstatement Project Management Services*, 2010, [https://www.eqc.govt.nz/sites/public\\_files/WeCan%20-%20Appendices%201%20-%204.pdf](https://www.eqc.govt.nz/sites/public_files/WeCan%20-%20Appendices%201%20-%204.pdf)

173. Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme*, October 2013, <https://www.oag.govt.nz/2013/eqc/docs/oag-earthquake-commission.pdf/view>

The agreement stated that EQC would undertake the initial assessment of each claim to determine the scope of works and estimate of costs before referring it to Fletcher (unless EQC instructed Fletcher to do this or elected to settle the claim). There are a number of other clauses that address the processes to apply between the two parties, including Fletcher setting up an accreditation process for contractors and suppliers, and its coordination of design works and requisite consents.

As well as the accreditation process for contractors and suppliers, Fletcher was required to develop pricing mechanisms to reflect EQC's maximum payment levels and operational protocols. All of these required approval by EQC before they could be implemented. By 2013, there were 1,300 accredited contractors employed for the Canterbury Home Repair Programme.

None of the companies EQC received proposals from during its "request for proposal" process agreed to assume liability for defective repairs. The only warranty given by Fletcher was that it would carry out the Project Management Office Services with "the degree of skill, care and diligence reasonably expected of a professional service provider providing services similar to the Project Management Office Services in similar circumstances to those arising from the earthquake events in Canterbury".

Similar to the terms of the original Memorandum of Understanding, under the Project Management Office Services Agreement Fletcher was not responsible for the design or construction of any works, nor for the work of any contractor or consultant or any goods or services supplied by a builders' merchant. The contract went on to provide an indemnity from EQC to Fletcher for claims made against Fletcher in connection with the services it provided under the contract.

In practice, Fletcher and EQC's respective roles in the implementation and monitoring of the Canterbury Home Repair Programme were not completely clear and were, therefore, flawed. A 2013 Office of the Auditor-General report on the programme identified that while EQC had by then implemented four streams of work related to quality assurance of repairs, there was still a need for improvement and increased resourcing in this area.

As to what Fletcher would be paid, the Services Agreement refers to reimbursement by EQC of direct costs incurred by Fletcher, along with an additional 3.5 percent of the amount paid by EQC to contractors where Fletcher was managing the relevant project (subject to a minimum fee). The minimum fee in the Memorandum of Understanding was increased in the Services Agreement. This reflected the additional scale of work that would be required as a result of the subsequent earthquakes. Fletcher advised the Inquiry that despite there being a minimum fee in the contractual arrangements, the work undertaken exceeded that minimum sum during the early years.

Fletcher's contract with EQC was managed by a Project Control Group with representation from both organisations. The contract was subsequently varied three times. The first variation, in September 2011, provided that Fletcher could employ engineers, designers and providers of building consenting services and could add those costs to the direct costs incurred, for which they would be reimbursed. The second variation was dated 18 May 2015 and it changed the pricing in the Project Management Office Services Agreement. The Agreement had originally anticipated a variation once 95 percent of work on claims expected to be referred was completed. The new minimum fee structure was intended to provide Fletcher with a minimum fee for projects completed (in addition to reimbursement of direct costs), regardless of whether:

- Fletcher managed the repair; or
- Fletcher priced the repair for cash settlement; or
- the claim was over cap.

Fletcher was also to be paid according to a formula calculated to incentivise time, cost, quality and safety.

Lastly, in August 2017 a variation seeking to incentivise completion of the Canterbury Home Repair Programme was signed to support additional or remedial underfloor repairs identified in an EQC review. The contract was formally closed off in January 2018.

During the Inquiry it was suggested to me that Fletcher had been promised a certain amount of work by EQC under the contract between them. It was also alleged that the provision in the contract by which Fletcher "clipped the ticket" on all repairs meant that Fletcher had an incentive to keep home repairs under the \$100,000 (plus GST) cap. Once the repair was assessed as being over cap, the claim would be referred to the private insurer and Fletcher would play no further role; it would, therefore, not receive its margin for project managing the repairs.



However, the Project Management Office Services Agreement guaranteed Fletcher a minimum fee, irrespective of the number of repairs it project managed. Therefore Fletcher would, arguably, have been commercially incentivised to declare as many claims as possible over cap so that it would have retained its minimum fee but would not have been responsible for project managing repairs. I am not, therefore, satisfied that there is any basis to find that Fletcher was incentivised in the manner suggested to me.

Moreover, when the fee structure was revised after the Project Management Office Services Agreement was amended for the second time in May 2015, Fletcher was to be specifically remunerated for work undertaken on a claim even if that claim was later declared over cap.

From a commercial perspective, it was reasonable for Fletcher to expect a return from the investment it made in setting up the project management office in Christchurch. Whilst the Office of the Auditor-General's report suggests that "project management costs... have been at the higher end of what we consider to be reasonable in the circumstances",<sup>174</sup> the report does not suggest that Fletcher's returns were in any way unreasonable. Fletcher told me that although no direct project costs were charged, "there was no corporate overhead charge and no charges of the attendances of the Auckland-based senior executive team or access by staff to the underlying corporate systems and processes necessary to administer a project of this sort, which were heavily drawn on in developing the systems required to respond to the disaster".

I am told that this contrasts with the usual approach to pricing in the construction sector, where charges would normally be included for all these offsite overheads.

Fletcher said that reinsurers indicated they were impressed with its operations, which Fletcher summarised as managing 68,000 repairs over five years with an average 88 percent customer satisfaction rate. The company told me that after reflection on its experience and subject to the nature and extent of a future project it would "do it again".

## 11.5: Implementation of Canterbury Home Repair Programme

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Even the first major earthquake in September 2010 meant that EQC was faced with carrying out one of the largest building projects ever conducted in New Zealand. Original estimates for the Canterbury Home Repair Programme indicated 50,000 residential repairs with a repair value of \$1.25 billion plus GST. EQC was advised that under normal circumstances a building project of this size and scale would take almost six years. EQC aimed to complete repairs within two years. However, these estimates became irrelevant after the February 2011 and ensuing earthquakes.

The Government was closely involved in the planning process and worked to reassure Cantabrians that they would not be forgotten. Even after the February and June 2011 earthquakes, it confirmed that assessments should be completed by the end of that year.<sup>175</sup> I comment on the value of such communications later in this report. As the Canterbury earthquakes continued, some 67,700 homes required repair.

174. Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme*, October 2013, <https://www.oag.govt.nz/2013/eqc/docs/oag-earthquake-commission.pdf>

175. Minister for Canterbury Earthquake Recovery, EQC passes \$1 billion mark, 5 July 2011, <https://www.beehive.govt.nz/release/eqc-passes-1-billion-mark>

## Hubs and project management

Fletcher established project management offices and operated a central office managing a hub structure. Within the hub structure, contracts supervisors were appointed with responsibility for managing repairs and verifying the completion of the work. Some EQC staff were also based in these hubs.

Eventually there were 21 hubs and six “super hubs” operating across Canterbury. They were situated in communities where repairs were taking place, with the intent that they would be accessible for homeowners as a place they could meet with Fletcher/EQC to discuss their home repairs. However, from 2013, security concerns arose in response to threatening behaviours from a small number of claimants and the hub model was changed as a result. Security measures were implemented and the likelihood of homeowners being able to meet Fletcher/EQC at the hubs diminished. Submitters told me about not being able to access their local hubs—some not even knowing where their local hub was located. Although these changes were warranted, in terms of staff and contractors’ health and safety, they seem to me to have negated the purpose of locating these hubs among local communities.

## Emergency repairs

The first repair work to be undertaken was in response to the ministerial direction issued in March 2011 to carry out emergency repairs. An original estimate for emergency repairs was 29,946 homes, but this ended up doubling in number. Emergency repairs were eventually carried out for 59,800 properties through the Canterbury Home Repair Programme.

As the next major earthquake hit Canterbury in June 2011, there was increasing urgency to stabilise homes and ensure that those homes could withstand the colder winter temperatures that were expected.

A programme for installing heating was established, run first by the Energy Efficiency and Conservation Authority and then passed to EQC to administer. Attempts were made to triage the work by ensuring that vulnerable people were prioritised.

## Scoping process

Scoping differed from assessing. For claims managed as part of the Canterbury Home Repair Programme, it was expected that before repairs began, an EQC assessor, along with the Fletcher contract supervisor and the contractor, would make a site visit. This should have led to the joint development of a scope of works confirming the damage and the strategy for repairs, from which the repairs would be priced and a contract let to do the work. Claimants have told me that this process was not necessarily what they experienced and the Office of the Auditor-General’s report notes that that this joint scoping process was not always followed.

It was the view of a former Fletcher manager, corroborated by others, that the scoping process “was a huge part of the problem”. At first scoping worked well but problems began when the timeframes for completing the scoping became unrealistically tight. Initially, when contractors put prices in, EQC would consider changes suggested by Fletcher or the contractor. However, as a result of pressure to complete scoping, the quality of the assessments deteriorated along with the scoping of work. Fletcher was obliged to carry out only the work assigned to it by EQC and according to some submitters, proposals for change were no longer accepted. As an example of the dangers of limiting contractors to completing only the work specified in EQC’s scope of work, the former Fletcher manager referred to the example of a replacement of brick cladding without proper supporting foundation and waterproof membrane. He added that good assessors, builders and other employees were unwilling to do what they considered to be inadequate work and began to leave or were forced out of the Canterbury Home Repair Programme—a view also shared by some submitters to the Inquiry. Finally, after about three years, in an attempt to rationalise and improve the assessment and scoping process, agreement was reached that EQC, Fletcher and the homeowner together would confirm the scope of work.

## 11.6: Quality of repairs

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The quality of the repairs carried out under the Canterbury Home Repair Programme was variable. Many people told me through the Inquiry's submission process that they were satisfied with the quality of the overall repairs or aspects of the repairs at their properties. However, many others told me about what they saw as poor quality repairs. Repairs were variously described as being shoddy, substandard, rushed, incompetent, sloppy, or dangerous.

### “Botched” repairs

I have a number of observations on the matter of inadequate repairs (which have become known publicly as “botched repairs”) based on the interviews I conducted and the experiences of individual homeowners I met.

It was inevitable that a degree of remedial repairs or re-repairs would be required. In a normal construction environment, this is often a factor during a building contract. Fletcher assessed the percentage of defective repairs (because of poor workmanship) at four percent of the Canterbury Home Repair Programme; a figure it considered to be on par with the rate in a normal building operation.

However, as well as issues with work quality (where repairs were not of an acceptable standard), EQC has identified other factors that contributed to the need for remedial repairs:

- Missed scope—damage not included in the original scope of works
- Scope not completed—damage included in the original scope of works that had not been repaired
- New earthquake damage occurring after completion of repairs
- Incorrect or failed repair strategies

While all these factors appear, at first sight, to be obvious in the circumstances, they may have arisen because of issues with the processes and delivery of the Canterbury Home Repair Programme.

### Inadequate assessments or “missed scope”

By far the most distress caused to homeowners was due to inadequate assessment and scoping practices. The ongoing seismic risk, along with health and safety requirements, made it initially impractical for assessors to undertake invasive assessments of building foundations or inside roof spaces. Time pressure and concerns about further damaging properties and incurring additional expense have also been mentioned as grounds for not undertaking in-depth assessments that included, for example, lifting floor coverings. For whatever reason, it was always going to be unsatisfactory to conduct non-invasive assessments or scopes. EQC's data confirms “... the single largest cause of remedial repairs from the Canterbury Home Repair Programme was missed scope, accounting for 49 percent of EQC's expenditure on remedial repairs”. I understand that this refers to inadequate assessment, but it is unclear where EQC restrictions to the scope of works following an assessment that were subsequently agreed to be repaired are accounted for.

## Incomplete repairs

I have heard of cases where scoped repair work was not completed, including a number of instances and possibly more yet to be identified, where work had ostensibly been undertaken, signed off and presumably paid for, but the homeowner had later discovered that no repairs or more limited repairs than contracted for had been completed. At best, this could be attributed to oversight or negligence on the part of the contractor, but at worst it will, in many instances, be fraudulent. Although I heard some instances of this activity occurring, the Terms of Reference for the Inquiry, in accordance with section 11 of the Inquiries Act 2013, exclude questions of civil, criminal, or disciplinary liability and I have not, therefore, taken time to identify specific examples.

## Disputed or inappropriate repair strategies

Most often, I heard about inappropriate repair strategies in relation to foundations, but it was not limited to this. There has been dissent, for example, over cosmetic repairs to wall linings where the damage was related to the structural integrity of the dwelling.

Many homes in Christchurch had foundations commonly called “rubble foundations”: a type of perimeter foundation used for many decades. These were constructed in various forms, typically with unreinforced concrete. This was often mixed with fragmented material, such as stone or rock (often river stone or even bricks and other masonry). EQC told me that it assessed concrete perimeter foundations on a case-by-case basis, applying valid and reasonable repair strategies relevant to the circumstances. EQC maintains that it is possible to repair foundations in a way that is consistent with building and EQC legislation and the MBIE Guidance.

Some homeowners saw the repair strategies as having been largely focussed on cosmetic repairs or driven by the MBIE Guidance. They considered these repair strategies did not address the more serious, less visible damage or the foundation’s performance as a whole.

The cost and delays associated with a complete foundation replacement may have been excessive for older and often already damaged foundations and arguably beyond the reinstatement provisions of clause 9 of schedule 3 to the EQC Act. There were added complexities due to the widely differing interpretations of section 17 of the Building Act.<sup>176</sup> This provision contributed to the significantly differing views of how older foundations should be repaired. Some interpreted section 17 as meaning that any repair to a foundation must bring the whole foundation to a code compliant state, whereas the Act’s requirement is that the specified work must comply only “to the extent required by this Act”. EQC attempted to repair some rubble foundations on a case-by-case basis with some disputed results. Disagreement with this approach has led to the dissatisfaction expressed by many homeowners who found themselves in this situation.

In the public’s mind, “jacking and packing” was another controversial repair strategy. In 2015, MBIE undertook a survey<sup>177</sup> of homes that had structural work completed. It found that 32 of the 90 homes surveyed failed to comply with the Building Code. Of these, 30 had been repaired inappropriately using a “jack and pack” method for floor releveling. This survey led to EQC and Fletcher reviewing repairs for 2,325 similar properties that had underfloor repairs. I found the results of this review remarkable. Of the 2,325 properties reviewed, 1,005 were found to have compliance issues of varying degrees:

- 335 properties with minor compliance issues, rectified by Fletcher
- 580 properties with moderate compliance issues, requiring approximately \$25,000-\$50,000 worth of work, rectified through either managed repair or cash settlement
- 90 properties with complex compliance issues, requiring more than \$50,000 of rectifying work. EQC covered repairs up to the cost of the \$100,000 cap and transferred it to the private insurer if the claim exceeded this.

176. S17 provides that “All building work must comply with the Building code to the extent required by this Act” <http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306338.html>

177. MBIE, *Earthquake Repairs to Canterbury Homes: Home Inspection Survey Report*, August 2015 <https://www.mbie.govt.nz/assets/9993cf73bd/home-inspection-survey-report.pdf>



A further 700 properties were identified where an incorrect repair strategy had been applied/and or earthquake damage had been missed. EQC covered the re-repair or made a cash settlement in these cases.

EQC has told me that it has reviewed its assessment practices and particularly its underfloor scoping practices, in response to the 2015 MBIE review and its own subsequent review. It also made changes to its pre-sign-off inspection and quality assurance processes, described below.

## 11.7: Quality assurance

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### Fletcher's quality assurance role

Few concerns were expressed to me about Fletcher's own personnel, although a number of homeowners expressed their bitter disappointment over the quality of the repairs done by contractors engaged by Fletcher on EQC's behalf. While concern was expressed to me about the perceived abdication of Fletcher's role in ensuring the quality of repairs, there was widespread misunderstanding of the limits of their project management role.

Fletcher was the project manager and amongst other things under the contract was responsible for sourcing and managing contractors, monitoring their performance, being reasonably satisfied that the work was being performed in accordance with the contract documents and to the required quality, monitoring the rectification of defects and ensuring operational protocols were met.

It had two formal quality control mechanisms; the accreditation of contractors and, on completion of a project, confirmation of practical completion and a defects liability period as well as retaining a portion of payment in cases of poor or incomplete work. These were standard quality control mechanisms in the building industry. However, as noted in the Office of the Auditor-General's 2013 report, the operational quality assurance processes developed over time and once developed were not always followed consistently.

Insofar as the many assertions of inadequate or substandard work were concerned, gradually it became clear that the Fletcher accreditation and sign-off processes by contract supervisors were inadequate to ensure the extent or quality of the work.

The Office of the Auditor-General's 2013 report attributed one of the reasons for revisiting repairs to the way in which EQC managed the quality of assessments. It considered that EQC had failed to implement and embed important controls, but acknowledged that EQC has introduced regular auditing. It appears that EQC had not at first considered this element to be part of its responsibilities, believing that the appointment of an experienced project management company would ensure reasonable building standards. By 2013 EQC had begun active monitoring and management of the programme. For example, mechanisms to improve quality assurance were progressively developed and involved closer oversight of contractors by Fletcher and review and audit by EQC. Two years later, however, these measures were still considered inadequate after review by MBIE.<sup>178</sup> This issue remained significant and in late 2016 further procedures were evaluated and implemented by EQC in an attempt to deal with the remaining work under the Canterbury Home Repair Programme, most of which comprised re-repairs.<sup>179</sup>

178. MBIE, *Earthquake Repairs to Canterbury Homes: Home Inspection Survey Report*, August 2015 <https://www.mbie.govt.nz/assets/9993cf73bd/home-inspection-survey-report.pdf>

179. MBIE, *Earthquake Repairs to Canterbury Homes: Home Inspection Survey Report*, August 2015 <https://www.mbie.govt.nz/assets/9993cf73bd/home-inspection-survey-report.pdf>

## Building consents as quality assurance

In defining the replacement value of residential buildings, the EQC Act says this means any costs that would be reasonably incurred in respect of “replacing or reinstating the building to a condition substantially the same as but not better or more extensive than its condition when new, modified **as necessary to comply with any applicable laws** (emphasis added)<sup>180</sup> –the primary applicable law being the Building Act 2004.

The Building Act is not prescriptive of the process by which a decision is taken to obtain a building consent. In general, a consent is not required for the repair, maintenance and replacement of any component provided that comparable materials are used (although this is not supposed to apply to complete or substantial replacement). Additionally, the Building Act provides for the use of “acceptable solutions” as demonstrating compliance with the Building Code. This leaves significant areas of subjective assessment. Where the line is blurred, a decision will often be taken to minimise any extra work by forgoing a building consent, thereby reducing time and money spent. However, the building consent process, with its progressive inspections and code of compliance requirements, plays an important role for quality assurance. These inspections and code of compliance necessities are not required when exemptions are used.

I heard that in Christchurch City, the exemption provisions were overused. Given the MBIE Guidance seemed to have been deemed an “acceptable solution” and the exemption provision for repairs was perhaps deployed liberally, many repairs were undertaken without a building consent. This reduced the requirement for council oversight of the quality of the repairs. As a substantial number of homes had to be repaired, special arrangements would have had to be made to ensure there were sufficient building consent officers and inspectors available. This in itself would have taken time to arrange.

I also heard criticism that, alongside the absence of independent verification (such as the consent compliance process), Fletcher/EQC formal quality control mechanisms were weak, mainly relying on those detailed above, a record of work (with no quality dimension) and, as required, having a licensed building practitioner (who was not required to be onsite) supervising all restricted work.

## Changes to quality assurance practices

EQC told me the 2015 MBIE review of properties with underfloor repairs and EQC’s subsequent review led to changes for EQC’s quality assurance practices. These changes included continuity of personnel involved; improved sign-off processes (including producer statements from technical experts); and an internal technical specialist (not previously involved with the claim) inspecting the property to provide additional assurance.

180. Earthquake Commission Act, section 2 (1), <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305973.html>

# 11.8: Fletcher's experience of Canterbury Home Repair Programme

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Fletcher staff spoke generally about the management and coordination of Fletcher's relationship with EQC during the Canterbury Home Repair Programme. Although trust between EQC, a public sector organisation, and Fletcher, a market-oriented business, took a while to build, the degree of collaboration was good. The hub structure and governance provisions were in place but there were aspects of the arrangements that caused Fletcher concern. From the outset there was frustration at the lack of clarity about respective roles, responsibilities and processes as well as at EQC's apparent difficulty in making decisions at times. To some degree, Fletcher attributed this issue to having what was essentially a "Wellington based" organisation conducting its operations in Christchurch. It also had concerns with the apparent lack of cooperation with EQC by private insurers. There were proposals for a joint EQC/private insurer assessment so that projects close to or clearly over the EQC cap could be assigned to the relevant private insurer. This was agreed to be a sensible idea and individual insurers conducted a significant number of joint assessments with EQC, but it did not result in a formal arrangement. A much better collaboration would have been preferable and with hindsight, would have saved time, resources and distress for homeowners.

A significant factor for Fletcher was the absence of a coordinated "customer relationship". The company introduced a community liaison who could keep communication channels open and help prioritise work. This was useful, but EQC's efforts in this area were not coordinated with those of Fletcher. Prioritising repairs for vulnerable people was difficult. Apart from the information provided by its community liaison personnel, Fletcher was obliged to rely on information from contractors who tried to influence the prioritisation of work when they observed issues. While this hands-on approach is useful, both EQC and Fletcher consider that there should have been a single, coordinated customer relationship.

Other concerns about the overall coordination of the Canterbury Home Repair Programme were expressed by Fletcher and resonated with other comments I heard. Some of these related to areas where much greater coordination could have been achieved:

- Through data sharing—Tonkin & Taylor's investigations into land damage could be matched with street map and claim number. This would have enabled geotechnical information to be matched with built environment and claim information.
- There was often a misalignment of objectives with many "spruikers"<sup>181</sup> putting forward ideas that had to be assessed. Other difficulties were created by "squeaky wheels" who tried for and often achieved, priority.
- Clear identification of and strict compliance with the objectives and priorities following a major natural disaster would avert many of these problems and possible inequities.
- The scale of the disaster led to people working hard for long periods, causing stress and an impact on wellbeing.

Fletcher suggested to me that for the future, should a similar home repair programme operate, much greater emphasis would be needed on the sharing of data, care of the individual customer, co-location of services, alignment of objectives for the building recovery, health and safety and staff wellbeing. More focus is also needed on having strong systems in place for quality assurance around repairs.

Fletcher supported the concept of a managed repair, which, theoretically, should avert problems associated with inflation; allow for control of quality or safety of the building work; and avoid problems aligning objectives, prioritisation of work and access to resources.

181. A person who tries to persuade people to undertake something, often in an exaggerated way.



# Land damage





# 12.1: Cover for land damage under the EQC Act

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EQC provides residential land cover under the EQC Act. Section 19 of the EQC Act sets out the extent of cover:

*Subject to any regulations made under this Act and to Schedule 3, where a residential building is deemed to be insured under this Act against natural disaster damage, the residential land on which that building is situated shall, while that insurance of the residential building is in force, be deemed to be insured under this Act against natural disaster damage to the amount (exclusive of goods and services tax) which is the sum of, in the case of any particular damage,—*

- (a) *the value, at the site of the damage, of—*
  - (i) *if there is a district plan operative in respect of the residential land, an area of land equal to the minimum area allowable under the district plan for land used for the same purpose that the residential land was being used at the time of the damage; or*
  - (ii) *an area of land of 4,000 square metres; or*
  - (iii) *the area of land that is actually lost or damaged—**whichever is the smallest; and*
- (b) *the indemnity value of any property referred to in paragraphs (d) and (e) of the definition of the term residential land in section 2(1) that is lost or damaged.*

The EQC Act defines “residential land” as:

**residential land** means, in relation to any residential building, the following property situated within the land holding on which the residential building is lawfully situated:

- (a) *the land on which the building is situated; and*
- (b) *all land within 8 metres in a horizontal line of the building; and*
- (c) *that part of the land holding which —*
  - (i) *is within 60 metres, in a horizontal line, of the building; and*
  - (ii) *constitutes the main access way or part of the main access way to the building from the boundary of the land holding or is land supporting such access way or part; and*
- (d) *all bridges and culverts situated within any area specified in paragraphs (a) to (c); and*
- (e) *all retaining walls and their support systems within 60 metres, in a horizontal line, of the building which are necessary for the support or protection of the boundary or of any property referred to in any of paragraphs (a) to (c).<sup>182</sup>*

182. Earthquake Commission Act 1993, section 2, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305973.html>

These provisions are somewhat complex but, in effect, mean that:

- EQC only covers land on which a residential building is built—vacant residential land cannot be insured;
- EQC does not cover the entire land holding—cover is limited to the areas specified by the Act (land under the house, within eight metres of it and the main access way); and
- EQC also covers some infrastructure—that is, bridges, culverts and retaining walls located in the residential land area.

As with damage to buildings, the cover is for physical loss or damage and the loss or damage must be the direct result of a natural disaster or any imminent risk of such physical loss or damage. Unlike cover for damage to a residential building, there is no set “cap” on the value of the relevant land lost or damaged as the result of a natural disaster. Instead, the maximum level of cover is specified as the smaller of the value of the damaged land or the value of 4,000 square metres or the value of the minimum lot size allowed by the district plan in that area, plus the indemnity value of any damaged bridges, culverts and retaining walls.

Land cover is unique to EQC; it is not offered by private insurers, nor is it offered in any other country. Clearly, the legislative intent is to ensure that when the reinstatement of a home is dependent on the stability of the land on which it is constructed, ensuring the strength of the land will form part of the Government’s responsibility. Thus, when it was evident in late 2010 that there was widespread land damage in housing areas in Canterbury, it became essential to conduct the necessary investigations before repairs or rebuilding could begin.

## 12.2: Nature of land damage in Canterbury

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The September 2010 Canterbury earthquake and the three major earthquakes occurring in February, June and December 2011 and their aftershocks all resulted in extensive land damage. Notably, this included liquefaction damage in areas throughout greater Christchurch and subsidence affecting 85 percent of residential properties. According to EQC, the extent of liquefaction damage was “the most ever witnessed worldwide in an urban setting”.

EQC advises that 50,000 residential properties were affected throughout the Christchurch area. Ultimately it dealt with approximately 154,000 residential land exposures (subclaims) arising from the Canterbury earthquakes.

### Assessment of land damage

Given the widespread nature of the land damage and the fact that it might not be readily detectable to landowners, EQC proactively assessed damage to land if any claim (i.e. a home or contents claim) had been made under the EQC Act. Tonkin & Taylor provided overall leadership and coordination of EQC’s land damage assessments, ultimately arranging for a number of other firms to undertake assessments. EQC commissioned the types of information that were gathered based on its historic work with Tonkin & Taylor. The information was not only useful for EQC’s settlement of claims—it was also used by others as part of the Government’s response to the earthquakes. This reinforced the value of the extensive research commissioned by EQC over its lifetime.

Tonkin & Taylor's work identified that in the lower lying areas of Christchurch there were issues of cracking and undulation caused by lateral spreading, as well as liquefaction and changes in ground levels. In the elevated parts of Christchurch such as the Port Hills, residents experienced damage or threat of damage from rock fall and cliff collapse.

In addition, some land was found to have increased vulnerability to future damage, whether from further seismic activity or floods following a severe weather event. According to a 2014 report prepared by Tonkin & Taylor, Christchurch's geological setting makes it vulnerable to flooding with a history of flooding occurring prior to the Canterbury earthquakes. This is due to its proximity to rivers, estuaries, lagoons and swamps and to the eastern coast of the South Island. The changes in the ground level as a result of the Canterbury earthquakes "had the effect of changing flood depths and changing overland flood paths. In addition, lateral spreading has the effect of narrowing watercourses and in some cases uplifting the beds".<sup>183</sup> Overall, Tonkin & Taylor concluded that these geological processes caused increased flooding vulnerability (IFV).

The significance of these geological changes is clearly that the IFV and/or the existence of increased liquefaction vulnerability (ILV) alters the value of some residential land and may mean that it is no longer suitable for residential use. At the least, land damage might have to be repaired to ensure the stability of the home built on it.

In response to these issues resulting from earthquake induced changes to ground levels in several areas and government changes to certain provisions affecting foundation design, the local authority (Christchurch City Council) amended some of its building requirements to comply.

Some homes, although undamaged, became the subject of Council notices prohibiting occupation because of the risk to life due to potential rock fall, identified by Council's geotechnical consultants.

## 12.3: Early approaches to remediating land

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Following the earthquake of 4 September 2010, Tonkin & Taylor prepared a series of geotechnical reports for EQC that provided land damage assessment of individual properties and an assessment on a community/suburb-wide basis. *The Stage 1 Report* set out the damage categorisation, mapping methodology, information and results up to 1 October 2010. *The Stage 2 Report* (published November 2010) presented details and indicative maps on land remediation options. The report identified three recovery areas, one of which (Zone C) was identified as land that had suffered very severe or major land damage and required significant and coordinated land remediation before homes could be repaired or rebuilt.

The work required in Zone C was beyond the scope of EQC's statutory land cover obligations. Two ministerial directions were issued. The first of these, issued on 14 December 2010, directed EQC to undertake four land remediation projects in the Canterbury area and was supported by additional government funding. The proposed land remediation was for perimeter treatment works in areas around the Avon River and Kaiapoi River. The works were designed to reduce the risk of severe lateral spreading so houses in Zone C could be safely repaired or rebuilt. The second direction was issued on 18 April 2011 and related to proposed remediation work in the Waimakariri district.

<sup>183</sup> Tonkin & Taylor, *Increased Flood Vulnerability: Geological Processes Causing Increased Flood Vulnerability*, August 2014. [https://www.eqc.govt.nz/sites/public\\_files/file\\_attach/Geological%20Processes%20Causing%20Increased%20Flood%20Vulnerability%20August%202014%20Report.pdf](https://www.eqc.govt.nz/sites/public_files/file_attach/Geological%20Processes%20Causing%20Increased%20Flood%20Vulnerability%20August%202014%20Report.pdf)

## Cash settlements for specific properties

A small number of Zone C properties fell outside the planned perimeter works. Some of these were later able to be accommodated but this left five properties (four in Fendalton and one in Kaiapoi) where it was determined to be uneconomic to undertake perimeter treatment works. The Government decided instead to make cash settlements for these five remaining properties. The payments were made via a specific government decision and appropriation rather than under the EQC Act. These payments were later the subject of public criticism (with reference to the “Fendalton Four”) in light of what was seen as a much less generous approach to other properties following extensive land damage in the February 2011 earthquake. There is no information to suggest that these properties were deliberately afforded preferential treatment.

## 12.4: Change in approach following February 2011

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The collaborative approach between EQC and the Government became more pointed in 2011 when the ensuing three major earthquakes and their aftershocks began. The Government reconsidered its initial area-wide land remediation plans and developed policy for the worst-affected areas in the flat land, where the extent of the land damage meant that area-wide solutions would be required to address the land damage before it could be rebuilt on. These policy decisions were outside EQC’s ambit. As part of this policy, the Government made offers to purchase properties in areas designated as the residential red zone. The term “red zone” then entered the New Zealand lexicon.

With one exception, where the project was developed as a pilot, the area-wide land remediation works planned before the February 2011 earthquakes were abandoned. EQC funding for land projects continued where the claims qualified under its legislation.

## 12.5: Settlement of land claims

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As Tonkin & Taylor’s investigations of land damage continued during and following the four major earthquakes in 2010 and 2011, nine categories of insured flat land damage were established by EQC for meeting its insurance obligations to affected homeowners. Many thousands of residential properties fell into one or more of these categories. The categories included visible land damage on the flat land, such as cracking or local ponding and non-visible damage, including IFV and ILV on the flat land. For land damage in the Port Hills, three types of insured land damage were identified: rock fall and cliff collapse; large scale movement; and small scale movement and retaining wall failure.

It is worth noting here that IFV and ILV were novel and complex categories that required new approaches to settlement. Both forms of damage involved engineering and valuation assessments that had not been carried out before in New Zealand or elsewhere in the world for insurance settlement purposes.

## Increased flooding vulnerability and increased liquefaction vulnerability

EQC identified about 13,500 properties in Canterbury with potential for IFV. During the process for determining land damage and assessing EQC's responsibility for compensating residential landowners, complex legal issues arose. In 2014, EQC took a proactive stance in seeking a declaration from a full bench of the High Court. This was done, as far as was possible in the increasingly contentious situation in Canterbury, to determine its liability where properties had been affected by IFV. Various interested parties (including the Christchurch City Council, Southern Response and the Insurance Council) joined or otherwise participated in the proceedings at different stages.

The judgment clarified some difficult issues, including the idea that IFV is a form of natural disaster damage to residential land for the purposes of the EQC Act and therefore payment of claims based on this damage is lawful under the Act. The judgment related solely to land damage; damage to residential buildings was excluded, apart from one narrow point. The High Court also confirmed EQC's proposed method of settling land damage claims affected by IFV, using diminution of value as the measure.

Prior to the Canterbury earthquakes, EQC had settled land damage on the basis of the lesser of the cost to repair the damaged land or the value of the damaged land, capped by the minimum lot size valuation. After ILV and IFV were identified as forms of land damage (as a result of the 2010–2011 Canterbury earthquakes), I understand that EQC intended to settle that type of land damage in the same way. For the majority of properties with IFV land damage, the entire land area was involved, meaning that the only way to repair the IFV land damage was to raise the land. However, it was considered unlikely that resource consents would be granted by the Christchurch City Council for the required work because of the adverse effects on neighbours. Therefore, for most properties with IFV land damage, there was no acceptable, consentable repair option. Settlement amounts in most cases would have been the minimum lot size valuation, but prior to the 2010–2011 Canterbury earthquakes these were typically only paid when the entire property was destroyed and could not be rebuilt upon. I was told that in the case of IFV land damage, settling on the basis of a minimum lot size valuation would have been completely disproportionate, because the land was still there and could still be built upon. As a result, diminution of value was developed by EQC to better reflect the loss for IFV land damage.

Importantly, the High Court ruled that EQC was entitled to adopt a policy setting out its approach to the settlement of the relevant claims but must act in good faith; not apply the policy mechanically; include consideration of factors relevant to a particular case; and not prevent claimants from challenging a decision in a court. Furthermore, the High Court granted the Insurance Council's declaration that ILV was a form of natural disaster damage and that EQC was entitled to have a policy in relation to the settlement of those claims. Clarification of the lawfulness and policy regarding IFV (and ILV) cleared the way for many homeowners to settle with EQC. Detailed engineering advice and planning were required, however, to determine the extent and nature of affected land. The issues for EQC had become complicated. Decisions based on diminution of the value of the land; whether the land should be remediated; whether the house should be removed; the nature of repairs; and what would happen if the house and land were sold to a new owner all created complexities and potential for disputes between EQC and its claimants.

Tonkin & Taylor developed and tested its engineering methodology for assessing IFV and EQC instructed three professional valuers to have primary responsibility for assessment of the diminution of the value by assessing:

- Whether the identified increase in flooding vulnerability attributable to a physical change to the land had caused a loss of use and amenity to the property; and
- If so, the diminution of value to the insured property arising from IFV.

The methodology for assessment of diminution of value had been peer reviewed and trialled in a pilot project in 2013 and was subsequently endorsed by members of a Diminution of Value Expert Valuation Panel.

As part of the process, EQC informed claimants when, in its opinion, their land might have IFV and following an assessment, if the land qualified for this status and payment of the claim.

In my discussions, Tonkin & Taylor noted that it was initially sceptical of the methodology for assessing diminution of value (for both IFV and ILV) if the value was to be derived from engineering information only rather than by involving valuers. It advised EQC on the downsides of changing the approach to land damage valuation from the cost of repair to diminution of value. The process to achieve acceptable valuations was also fraught with difficulty and included issues over adequate communication and how the settlement proposal was reached. The diminution in value methodology was subsequently developed by an expert valuation panel, based on detailed advice from Tonkin & Taylor and was approved by the High Court.

As with IFV, individual homeowners were unlikely to be able to identify ILV on their properties. Consequently, EQC again sought to identify ILV on individual properties, working with Tonkin & Taylor to develop engineering assessment methods, with their expert valuers and legal advisors to develop valuation methods and advising claimants if their land was affected (and if so, the settlement proposal). Once again, this was not a straightforward process. Prior to the Canterbury earthquakes, liquefaction was not a common land damage phenomenon, so Tonkin & Taylor developed new methodologies to measure the levels and increases in vulnerability. A process was undertaken that was similar to the one used when assessing, valuing and settling claims of IFV. EQC's preferred settlement approach was cash rather than reinstatement of the land and again the amount to be paid to the landowner was calculated by assessing the land's reduction or diminution of value while ensuring that the owner retained the right to challenge the settlement decision.

There is ongoing litigation between some private insurance companies and EQC concerning ILV, pointing to the fact that this is an area where greater clarity in the EQC Act would be of advantage.

## Settlement of land claims in residential red zone

Further complications for settling land claims arose following the Government's decision to zone a swathe of over 8,000 residential properties red, with approximately 7,400 of those in the flat lands of Christchurch and Waimakariri and about 700 of those in the Port Hills.<sup>184</sup> Once the decision to "red zone" had been made, owners were presented with an offer by the Government based on the property's 2007-2008 rateable valuation. If accepted, the ownership of those properties transferred to the Government. That land was initially administered by CERA and then by Land Information New Zealand. EQC met its obligations for compensation for land damage by paying Land Information New Zealand a sum calculated to represent the reduced land value, albeit constrained by less-detailed assessments than for the individually settled properties in other parts of Christchurch.

<sup>184</sup> CERA, *Land Zoning Policy and the Residential Red Zone: Responding to land damage and risk to life*, 18 April 2016, <https://www.eqrecoverylearning.org/assets/downloads/res0052-land-zoning-policy-and-the-residential-red-zone2.pdf>

## 12.6: Interplay between flat land and home assessments

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Tonkin & Taylor's unprecedented geotechnical investigations of the flat land in Canterbury were an essential first step in determining damage to residential properties. Until fundamental information about the land was collected, it was not possible to scope fully the required land and building repairs, determine any reduction in value and finalising claims for compensation under EQC and private insurance policies could not be achieved.

Adding to the complexity, decisions needed to be made about whether to repair the land or enhance the building foundations to deal with the compromised or damaged land and, relatedly, who would "foot the bill".

While the expertise and expedition with which this part of the damage assessment was undertaken was exceptional, nonetheless, it led to extended delays in beginning the process of assessment for houses affected by IFV or ILV. Tonkin & Taylor has also indicated to me that it found the process to be disjointed, with EQC under apparent pressure to begin home repairs while Tonkin & Taylor was still completing its engineering assessments of land damage. In Tonkin & Taylor's opinion, supported by a senior EQC staff member, this inevitably would have resulted in inappropriate building work being undertaken (e.g. on foundations) before the true quality of the land was understood and remediation completed. Some homeowners who made submissions to the Inquiry noted that there were plans to rebuild houses on unrepaired, earthquake-damaged land.

The compulsion to repair homes was real and understandable. However, the cost and burden on EQC and on already-stressed homeowners that occurred if or when they found out there was a need for new work after the land assessment had been completed are factors that should have been more carefully considered.

## 12.7: Claimants' experiences of land claims

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### **Poor communications**

In spite of the time and resource devoted to understanding and resolving claims for damage to land and EQC's efforts to improve its communication, there remain areas of confusion and disagreement. These related to the quantum of payments to claimants and the repeatedly stated concern that homeowners did not understand how their compensation amounts had been calculated—especially once the diminution of value approach was implemented. This was also the case with settlements for damage to people's homes where cheques or payments were "arriving unexpectedly". In a few cases, where payments were made to bank accounts, the owners were unaware of the credit and the bank used the sum paid in reduction of an overdraft or mortgage before the account holder could consider other options, such as using the funds for repairs.

## Implications of cash settlement

A number of submitters to the Inquiry made observations about the responsibility to repair land in response to EQC's cash settlement approach. They noted that there was no obligation on homeowners, presumably where their claims had been cash settled, to mitigate the risk of future damage by repairing land damage. They felt this could heighten future risk of land damage and create possible implications for the future insurability of those properties.

## Future insurability

When it came to IFV (and in particular in the susceptible South Brighton/Southshore area), there were fears expressed that the extent of land cover under the EQC Act was inadequate for the cost to repair some properties to current consent standards. This could result in some houses in the area becoming uninsurable, a fear exacerbated by climate change issues.

# 12.8: Future considerations

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## Land cover

Unquestionably, it was necessary to take time to assess the nature and extent of such unprecedented land damage. This would have been required, particularly in urban areas, even if EQC had no obligation to cover land damage following a natural disaster. In the absence of this scientific information, many, if not most, homeowners would, on a case-by-case basis, have borne the full cost of investigating phenomena that were relatively unknown before the Canterbury earthquakes. They also might have left their residential land unrepaired or have been unaware that there was an impending problem. There is, therefore, a justifiable reason for providing EQC land damage cover and for it to take a holistic approach to land damage investigation. It is also important for EQC to be closely connected—through its research programme and relationship with a skilled geotechnical engineering company—to emerging scientific knowledge and developments.

It is, however, an area of the EQC Act that might be reviewed and clarified for the future. There are a number of issues and anomalies regarding EQC cover for land damage. The fact that land damage cover was designed following the failures in addressing the 1979 Abbotsford landslips limits focus on the new problems, such as liquefaction, that EQC and the Government had to confront after the Canterbury earthquakes.



## Understanding and planning for future risk

There is a pressing need for increased research into prospective land damage where the natural disaster might not be earthquake related, such as volcanic eruption. Land-use planning is also a matter of real urgency given increasing knowledge of the areas of risk for natural disaster where land will be affected. Danger of land damage and potential loss of a home or land due to the risk of rock fall or cliff collapse is an example that arose during the Canterbury earthquakes. Property owners were unable to live in, or even access, their undamaged properties due to the risk but were ineligible for insurance compensation. Another example is the issue of areas where housing has been built on flood plains or low-lying land that is susceptible to floods or liquefaction.

## Assessing and responding to land damage

Currently, after a major natural disaster, EQC has only limited powers to consider area-wide remediation and private insurers have none (and no reason to do so). However, the EQC Act does have current provision to limit its liability in certain circumstances. Where EQC considers that any property is in imminent danger of suffering natural disaster damage, it can limit its liability for any damage that might occur to the amount the property is insured for under the EQC Act at the time EQC gives notice to the property owner. Whether the current provisions are fit for purpose is something that might be considered in a future review of the EQC Act.

Land damage assessment is needed to ensure that there is stable land on which to repair or rebuild a home. Left to individual owners working with their individual insurers, there would likely be no area-wide or detailed, scientific geotechnical work done before a home was repaired or rebuilt. Moreover, the cost of this investigative work would be the responsibility of the homeowner with likely abandonment of, or failure to repair, the home for economic reasons. Insurers who had settled with the proviso that land remediation be undertaken would be reluctant to reinsure if that work was not done. The economic and social advantages of an inclusive approach to geotechnical investigation are invaluable for the health and wellbeing of a community, particularly when there is a major natural disaster on the scale of the Canterbury earthquakes.



# Multi-unit and mixed-use buildings



# 13.1: Challenges of specific housing

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Modern cities, including Christchurch and Wellington, have growing numbers of buildings that are designed or restored to provide accommodation for a number of people or are mixed-use structures providing both commercial and residential spaces. Both forms of residential accommodation presented EQC and the owners (predominately in Christchurch and Wellington) with major problems following the Canterbury earthquakes, the 2013 Seddon/Cook Strait earthquakes and the 2016 Kaikōura/Hurunui earthquake.

# 13.2: EQC's approach to claims for cross leases

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Many of the multi-unit buildings that suffered damage in the Canterbury earthquakes were built on cross-leased land. Owners of cross-leased land have an undivided share of the land and defined rights of use, such as common access to a parking area. In these land ownership regimes, each residential owner has leased their building from the joint owners of the land, has the exclusive right to it and has rights and obligations in respect of common areas. A memorandum of lease sets out specific arrangements concerning the use of the land, often including a requirement to hold insurance and consult on and complete repairs. This form of land ownership has been used for smaller units such as flats or townhouses, which will often be owned by those who are older or have limited finances. It is a decreasing form of ownership for newly constructed residential accommodation.

A feature of many of the homes built on cross-leased land is that they often share a party wall or foundation. It is not uncommon for owners to hold insurance policies from different insurers and, on occasion, hold no private insurance, thereby having no EQC cover at all. There were, therefore, two issues for EQC and the owners of these properties:

- If, for example, a shared foundation had been damaged in an earthquake, then several or all units built on that site could be involved, even if there was no actual damage under one of the dwellings. All owners were required to be consulted and to cooperate in the plan for repair or rebuild. If one owner had no private insurance then it was necessary to have their cooperation and financial contribution before a repair could proceed.
- If the cost of repairing damage exceeded the EQC cap and private insurance became relevant, then the owners might be faced with difficulties coordinating differing policies. Complications also arose in situations where property owners were underinsured or uninsured and not covered by EQC.

## 13.3: Unit Titles Act properties

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Increasingly, newly constructed residential buildings are specifically designed to accommodate greater numbers of occupants than has been traditional with cross-leased properties. These will almost always be registered under the Unit Titles Act 2010, which requires the creation of a body corporate. Under section 135 of this Act, the body corporate has defined powers and obligations, including its obligation to insure.<sup>185</sup>

According to some owners of units in multi-unit buildings with whom I met, the duty to insure has created anomalies for body corporates that have had difficulty in obtaining insurance, raising questions about liability. This may be an increasing issue as the private insurance industry reviews its market (and if it increases premiums sharply) or declines to insure in areas it considers to be at significant risk. The private insurers note that the current provisions lack flexibility and they would support a review.

A further problem arises where newly constructed multi-use buildings advertise, as has occurred in Wellington, the “advantage” that the property will not be registered under the Unit Titles Act 2010. While, undoubtedly, arrangements are made within the ownership of the building for use and maintenance of common areas, there is potential for each residential unit to have different insurance or none at all. In the event of a major natural disaster, similar but greatly enhanced problems to those already experienced by owners of usually much smaller crossed-lease units will unquestionably arise.

## 13.4: Cover for mixed-use and multi-unit buildings

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Mixed-use buildings have increasingly been favoured by urban planners and encouraged by central and local government as a way of using otherwise underused commercial buildings and promoting central city vibrancy. Frequently these buildings are used by commercial and residential owners or occupiers. They are likely to have been registered under the Unit Titles Act 2010, in which case there is a body corporate that is responsible for, among other duties, insuring the building.

A residential building<sup>186</sup> is defined in the EQC Act as:

**residential building** means—

- (a) any building, or part of a building, or other structure (whether or not fixed to land or to another building, part, or structure) in New Zealand which comprises or includes 1 or more dwellings, if the area of the dwelling or dwellings constitutes 50% or more of the total area of the building, part, or structure:
- (b) any building or part of a building (whether or not fixed to land, or to another building, part, or structure) in New Zealand which provides long-term accommodation for the elderly, if the area of the building which provides long-term accommodation for the elderly constitutes 50% or more of the total area of the building, part, or structure:
- (c) every building or structure appurtenant to a dwelling referred to in paragraph (a), or a building or part of a building referred to in paragraph (b), and that is used for the purposes of the household of the occupier of the dwelling or for the purposes of the residents of the building or part:

<sup>185</sup> Unit Titles Act 2010, section 135 (1), <http://www.legislation.govt.nz/act/public/2010/0022/latest/DLM1160728.html>

<sup>186</sup> Earthquake Commission Act 1993, section 2, <http://www.legislation.govt.nz/act/public/1993/0084/latest/DLM305973.html>

*(d) all water supply, drainage, sewerage, gas, electrical, and telephone services and structures appurtenant thereto—*

*(i) serving a dwelling referred to in paragraph (a), or a building or part of a building referred to in paragraph (b), or surrounding land; and*

*(ii) situated within 60 metres, in a horizontal line, of the dwelling or building or part; and*

*(iii) owned by the owner of the dwelling or building or part, or by the owner of the land on which the dwelling or building or part is situated.*

I heard from few owners or occupants of mixed-use buildings, but I did interview a number of Wellington property owners for whom the manner in which EQC calculated the proportion of their multi-unit and mixed-use building as residential was contentious. Although EQC settled claims for one particular building in Wellington after the 2013 Seddon/Cook Strait earthquakes, it determined in 2016, after the Kaikōura/Hurunui earthquake, that the earlier claim had been wrongly settled through human error in misinterpreting the Act; it was established that the building did not meet the 50 percent residential floor space threshold for EQC cover. In making its calculation, EQC excluded shared spaces, including residents' courtyards, stairwells and lifts, even where the apartment itself could not be physically reached except by these means. This is another area where clarification in the EQC legislation may be advisable in order to ensure that owners of mixed use buildings have adequate and reliable information concerning the status of cover.

Further, these non-dwelling, non-commercial spaces on the site are not covered by private insurance until the EQC cap and insurance excess are exceeded. This requires the unit owners to meet any shortfall in repair costs.

The issue has far-reaching implications for EQC regarding future cover for similar buildings, but also for owners who now have sharply increased insurance costs or the future risk of underinsurance or no insurance cover at all. Insuring this type of building with both commercial and residential uses and the need for dedicated access to the residential parts, could become more acute problems in future, leaving residents in a precarious financial situation and giving rise to court-based action.

It is not unreasonable to expect that EQC might provide owners of such buildings with some certainty about the classification of those buildings. Insurance companies, as EQC's agents, should also be in a position to make clear to the building owner what is covered by EQC and what is not.

## 13.5: Challenges for repair and settlement

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If EQC's initial assessment showed that repairs could proceed independently of the other units then the standard claim process was followed. Different approaches were required if there was what EQC called a "repair dependency" where there was damage that affected more than one unit or a mix of over- and under-cap repair costs. The absence of a coherent strategy for dealing with the more complex units resulted in significant delays, with some people waiting longer than the average for repairs to be completed. In 2015 EQC announced that repairs to multi-unit buildings were continuing and likely to extend into 2016. However, this proved overly optimistic. EQC informed me that, as at 9 January 2020, there remain 235 open Canterbury claims for multi-unit buildings. This included claims related to cross leases, as well as body corporates, mixed-use premises and rest homes.

While it is evident that multi-unit buildings comprised a complex part of EQC's work during and after the Canterbury earthquakes, the information provided publicly is confused and at times contradictory, with differing numbers of units yet to be repaired or settled reported in successive annual reports.

Through the submissions I heard from individuals, private insurers and body corporate representatives with specific or general concerns in relation to multi-unit or mixed-use properties. In an acknowledgement of the difficulties EQC and private insurers encountered in assessing and planning for the repair or rebuild of these properties, one private insurer submitted that the management of shared property claims were the most complex of all Canterbury claims dealt with by insurers due to the multiplicity of parties involved in all aspects of the process. Generally, individual submissions were critical of EQC's apparent lack of a plan for the repair process; they expressed concerns that significant delays were experienced in finalising plans for multi-use buildings owned by the less affluent, more vulnerable, or older owners and many commented on the number of assessments and differing solutions for units within a multi-use building.

Representatives of body corporates spoke of the onerous and often complex workload that fell on them, acting in a voluntary capacity, to liaise with their fellow unit owners, EQC, individual owners' private insurers and assessment and building specialists to try to reach consensus on settling claims. Given that property owners in multi-unit buildings are sometimes older people who have downsized in retirement and/or people living alone without support, the onus of being embroiled in a complex process made it additionally difficult for some to deal with.

### **Private insurers' Shared Property Project**

Private insurance companies, faced with similar issues with multi-unit buildings when repairs or rebuilds exceeded the then-cap of \$100,000 plus GST, developed and piloted a "Shared Property Project" during 2013-2015. This culminated in a contract between EQC and private insurers, signed in August 2015. The scheme meant that a single lead insurer coordinated the repair or rebuild of a qualifying multi-unit building, with other insurers contributing their share of the overall settlement (including EQC). EQC cited the project as a "good example of collaboration and communication between EQC and private insurers to achieve settlement for complex building claims".

## 13.6: Future considerations

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Many of the concerns raised with me reflect a lack of foresight by EQC (e.g. preparedness for dealing with multi-use properties was not identified in its Catastrophe Response Programme) or a lack of understanding by EQC of the nature and likely complexity that claims relating to multi-unit dwellings could present to them, private insurers and the individual property owners and their representatives.

Given the appeal and growing use of multi-unit buildings as a means to achieve higher-density living in central city locations, a review of the EQC Act definitions and provisions relating to the determination of residential living areas in multi-unit buildings would be useful. The relevant provisions need to be fit for purpose across EQC and private insurers' processes for managing claims.

In November 2019, The Treasury informed me that it had started looking at how the EQC Act's treatment of public residential spaces might be better aligned with private residential dwelling spaces. At that time they were focussing on a possible amendment to the definition of a "residential building", with a view to potentially introducing an amendment to the EQC Act mid-2020 if Cabinet accepts the proposals.







# Part 3

EQC's operational practices—communications, claimants' rights and dispute resolution



# Communications



# 14.1: Shortcomings in EQC's communications

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Effective communications are an important component of the process for managing claims and especially so for claimants. Following the 4 September 2010 earthquake, it appears EQC followed the broad guidance of its Catastrophe Response Programme, using a range of communications to inform claimants and other audiences. These included messaging through mainstream media such as newspapers and radio; social media channels such as Facebook; newsletters or personalised material to claimants; and the community via EQC leadership/staff appearances at public meetings, forums, community hubs, or mobile offices.

In spite of these efforts and the complexities and obstacles faced by EQC after the February 2011 Christchurch earthquake, the content of the communications frequently came to be viewed as misleading, unhelpful, or self-serving. As the pressures on the organisation grew, along with its failure to meet deadlines and claimant dissatisfaction, people increasingly lost trust in what they were hearing from EQC or ignored it altogether.

EQC's approach to communicating with claimants and other audiences could be better characterised in some instances as a "public relations" effort, in that it appeared focussed on shaping and upholding the image of the organisation. This was typified in the view of the affected public by an apparent preoccupation with the production of statistics (required of EQC as a Crown entity) designed to show progress that, while providing information for external parties such as politicians, reinsurers and others, was at odds with the experience of many claimants. It is clear to me that what Canterbury earthquake claimants needed most were realistic timeframes they could plan their lives around and trustworthy guidance on the insurance process as well as their rights and obligations as they related to their claims. EQC recognised that it did not communicate to a standard Canterbury residents expected and people did not always get the timely and easily understood information they needed.

After the February 2011 earthquake, EQC revisited its communications approach and identified its claimants, staff, media and other groups, such as iwi and government agencies, as its key audiences. Its intention was to proactively provide these audiences with the information they required when they required it. In reality, EQC was always on the back foot following the February earthquake, having to react to a barrage of criticism in mainstream and social media and defend its performance in areas such as the management of claims and assessments.

The need for the creation and distribution of a brochure in September 2011 entitled "Who does what?" suggests there was also widespread confusion among EQC's audiences about the process after the February 2011 earthquake and EQC's role in the broader earthquake recovery. Clearly communicated roles will become even more important in future events with the new organisation, the National Emergency Management Agency, overseeing the system that responds to disasters.

EQC accepts it did not communicate well to claimants in periods of uncertainty. It cites the period following the September 2011 declaratory judgment about the apportionment of damage to different earthquake events, where its failure to explain the associated delays led to claimant frustration and confusion. There was strong community pushback against EQC's reporting of statistics suggesting positive progress in the settlement of claims, which was perceived as EQC pushing a false narrative when many claimants and communities felt trapped, out of options, unable to make progress with their claims, or even get basic acknowledgement from EQC.

A perceived preoccupation with progress statistics fuelled the belief that claimants were being treated only as a number or that their circumstances as one of the "unresolved" were being overlooked. I have heard from some submitters of a practice of EQC, when challenged, to present "spin" about settlement progress to protect its image outside Canterbury. In the view of one group working with claimants, this fed into a perception that progress in resolving claims was better than it was and that Canterbury claimants were "greedy".

## Unmet expectations

Communications regarding unmet expectations or timelines also clearly contributed to a loss of trust in what people were hearing from EQC. As an example, in September 2013, EQC made a public commitment that by the end of 2014 it would have settled all remaining land claims, repaired all remaining homes through the Canterbury Home Repair Programme and resolved all outstanding multi-unit building claims and other cash settlements. EQC failed to meet these timelines.

I have heard from organisations supporting claimants that the failure to follow through on publicly stated commitments and targets added to the difficulties claimants were already facing. The Canterbury District Health Board told me that raising unrealistic expectations would have exacerbated feelings of being out of control and organisations saying “I don’t know” is better for people than providing inaccurate information. The Canterbury Wellbeing Survey shows that through 2013 and 2014, EQC’s communications and information about earthquake recovery decisions (among people who had received information) was ranked second lowest of the agencies involved in the Canterbury earthquake response (including private insurers), at between 25 to 35 percent satisfaction.<sup>187</sup>

EQC has made several points about the challenges it faced regarding the volume of claimants it needed to communicate with, the diversity of audiences, the quantity of material it needed to communicate and the fact it does not know who its audience is until an event happens. It also pointed out that it is a small organisation in “peacetime”; it employed only a single communications manager with the on-call assistance of a Wellington communications agency. It says it was hamstrung to some extent by problems accessing information (such as the poor alignment between its own system and that of Fletcher) and getting sign off on communications material through the different departments within EQC.

While all of these might be legitimate challenges, the onus is on EQC to have adequate systems and policies in place in advance of large events, including information management systems designed to cope with large quantities of complex information and a strategy for scaling up, training and supporting a suitable communications workforce.

EQC also faced criticism for not communicating well with audiences that were vulnerable or had specific needs (e.g. disability or language barriers). The Canterbury District Health Board told me EQC failed to provide accessible information for those with disabilities, despite these forms of communication being requested repeatedly. Egregious examples include key information being provided over the telephone to members of the deaf community and those with visual impairment or learning difficulties receiving only written information that was difficult to read and/or interpret. The Canterbury District Health Board also referred to an example of a planned television advertisement that included sound effects that, in its opinion, would have retraumatised Canterbury homeowners had it not intervened.

It is evident that EQC’s general failure to provide the expected level of personalised service to people (via assessment, call centre interactions, requests for scopes of work, etc.) bled into broader communications and the effectiveness of them. People were unwilling to listen to public or targeted messaging if they felt they could not even get basic access to their files or speak to someone with knowledge of their claims. EQC said it found people were “coloured heavily by how they felt they were dealt with by EQC”. Those who felt well treated were more open to the information they were provided with; conversely, those with negative experiences of dealing with EQC highlighted communication as a problem.

Criticism of EQC’s communications also came from beyond Canterbury in instances where EQC has needed to communicate with people affected by other disasters on a smaller scale. Some parties that worked with EQC in responding to events criticised the quality of EQC communications in their respective regions, suggesting it failed to meet the needs of audiences. Officials in some of the smaller regions that suffered from other recent disasters commented to me that communications in those areas were at times lacking or were generic and failed to address the needs of local people.

187. Canterbury Wellbeing Surveys, <https://www.cph.co.nz/your-health/wellbeing-survey/>

## 14.2: Government communications

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It is evident EQC was placed under almost impossible political and public pressure to undertake its role in assessing damage and beginning the settlement of claims. Almost immediately after the devastating event of February 2011, messaging from politicians to Cantabrians was about bouncing back and support being made available to begin the recovery.

While it was important to reassure people in times of crisis, well-intentioned messages were sometimes misinterpreted and public expectations clearly raised to a point where it was always going to be difficult to match the rhetoric with action and timeliness on a scale that people envisaged.

## 14.3: Mainstream media interactions

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Mainstream media (defined for the purposes of this report as conventional media organisations working across channels such as online, newspapers, radio stations and television) is naturally drawn to conflict as a point of interest. Hence, there was a preoccupation with stories where claimants were in conflict with agencies such as EQC or private insurers. There is an inherent risk that media coverage can skew the audiences' view of a situation, making it appear the proportion of disaffected claimants in conflict with EQC, or with unresolved claims, is greater than it is.

In the case of the Canterbury earthquakes, the reporting appears to have reflected the depth and breadth of the concern that was prevalent at the time and the media's role often became one of advocating for individual claimants who felt unable to progress their own situations. While it could be argued that some of this reporting unfairly presented EQC as uncaring or incompetent, or elevated one claimant's issue over others, it is a legitimate role of journalists to reflect the honestly held concerns of the communities they serve and hold those in authority to account.

Claimants and advocates can also argue fairly that some of EQC's shortcomings might never have been identified without dogged and determined media interventions. EQC itself said that, in many cases, it was aware of issues only once they were reported in the media. There is, of course, a risk in the aftermath of a significant disaster that victims of it (particularly the vulnerable) could be exploited by media or put in situations that exacerbate their struggles. As the former Prime Minister's Chief Science Advisor Sir Peter Gluckman stated in relation to the Canterbury earthquake recovery, there is a danger that externalities such as the media can aggravate the normal responses from people to a disaster:

*Hopefully these external agencies understand the need to act in a way that does not impede the recovery process. It should be understood that local representatives of the media will themselves be personally affected and going through the recovery process, potentially challenging their professional objectivity.<sup>188</sup>*

188. Professor Sir Peter Gluckman, *The psychosocial consequences of the Canterbury earthquakes*, 10 May 2011, <https://www.pmsca.org.nz/wp-content/uploads/Christchurch-Earthquake-Briefing-Psychosocial-Effects-10May11.pdf>

Journalists are expected to provide balance and it is clear that EQC was often hamstrung in its ability to respond in a reasonable way to claimant concerns or issues raised in the media due to privacy constraints, inadequate data, or matters being before the courts. EQC faced criticism for being slow to respond and defensive in its responses to media. It says these responses often involved “internal liaison, discussions with other agencies and Ministers’ offices”—all of which are legitimate challenges. This, however, is the reality for any agency or department of government.

EQC described the quantity of media requests it was receiving after the February 2011 earthquake as “often overwhelming”, with requests occurring on a daily basis and staff “unable to respond in a timely manner due to capacity”. While accepting that many of these media requests came with complexity, on the face of it, the number of requests (peaking at close to 600 in 2013, according to EQC) should have been manageable with an appropriately staffed team in place.

EQC noted that its first media statement was not issued until a week after the September 2010 earthquake and that there is nothing on the record to explain this delay. While radio, print and Internet advertising started earlier than this, the failure to formally engage sooner via a statement to journalists, as a conduit to the public, is—on the face of it—a serious shortcoming.

## 14.4: Social media

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After the September 2010 earthquake, EQC initially made use of social media channels such as Facebook, Twitter and YouTube as a way to inform and interact with its claimants and audiences. A communications advisor was tasked with monitoring and responding to comments made on these channels. However, after an initial period of personalised dialogue with individual users on these channels, the volume of claims, queries and demands on staff became such that EQC moved to a policy of answering only generic questions online and pointing any claim-specific queries to the EQC call centre or email channel. This clearly was a source of frustration to people. I heard significant feedback that although individual operators were considered to be doing their best, the call centre was seen as unable to assist people. Calls and messages would go unanswered or not be returned and people felt stonewalled when it came to getting information about the progress of their claims.

## 14.5: Public meetings

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EQC has estimated its staff attended upward of 300 public meetings between September 2010 and December 2013. Its role ranged from providing an overview of the process for claims to addressing specific themes or issues affecting specific suburbs. Attending these meetings was a critical communications task for EQC. It is particularly important in post-disaster scenarios to be “fronting up”; taking every opportunity to present information and listen, even it means absorbing sometimes-intense criticism. Where the personal safety of staff is brought into question, judgements must, of course, be made by EQC about where attendance is not advisable and whether the security in place is adequate.

Numerous former EQC staff observed how difficult it was to get their message across at meetings attended by unreceptive or hostile audiences. They are to be commended for their efforts. There can be no excuse for abusive or threatening behaviour, but no doubt for many anxious and frustrated claimants, these meetings would have been viewed as a rare opportunity to be heard.

## 14.6: Public education campaigns

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Through television, print and social media messaging, EQC strove to raise public understanding of the organisation's role following a disaster; it sought to manage expectations of what could reasonably be delivered and timeframes for processing of claims. In briefing its responsible minister in 2008, EQC showed foresight in noting the need for balance between the speed of a claim's settlement and its quality. It also acknowledged the challenge of the trade-off between responding quickly to a claimant's distress and exercising prudence in the expenditure of public money.

Between 2011 and 2016, EQC launched a range of public campaigns or initiatives ranging from property-specific issues about liquefaction or IFV through to general issues, such as winter heating support or fixing and fastening items in the home. While I heard that some of these campaigns were well received, it is difficult to gauge their effectiveness in the context of the wider recovery from the Canterbury earthquakes.

## 14.7: Future considerations

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The shortcomings outlined above have been well identified and there are signs in material I have seen that EQC is making some effort to address the underlying problems in how it communicates after a disaster.

### Communications principles

The following are key principles of practice I have identified from the commentary and feedback I have received on the EQC's performance in communications, focussing on how it can best serve its claimants and others in future events:

**Honesty and transparency:** It is critical that EQC and the Government are open and honest with claimants and other audiences about the scale of the challenges they face and set realistic expectations and timeframes in communications from the outset. This means being upfront about how long the process might take and providing regular updates on progress and new issues as they become apparent.

Transparency also requires EQC to consistently make its people available to mainstream media and other opportunities to clearly inform and interact with claimants and other audiences. Formal requests under the Official Information Act should only be necessary in exceptional circumstances.

In its 2018 communications strategy EQC states it had "started taking a proactive, open and transparent approach to communications" and it has acknowledged its approach in response to media after the Canterbury earthquakes was slow and defensive. In 2019 EQC developed a revised approach to internal and external communications to provide for greater fairness and openness. A siege mentality is counterproductive and presenting with an openness and a willingness to listen, learn and improve is always better received.

**Empathy:** A lack of empathy from EQC for claimants and others in post-disaster situations has emerged as one of the key concerns I have heard. EQC's communications need to be framed and delivered in a way that demonstrates it understands what people are going through, whether it be loss of loved ones, damage to homes, ongoing trauma, or loss of normality.

Communications need to be calm and measured, acknowledging people's challenges without being condescending. Practical advice is important, as is encouraging genuine dialogue with people.

The vulnerability of people also needs to be considered in how people are communicated with; this might include assessing where an option such as a personalised, face-to-face meeting in a supportive environment is preferable to a letter or phone call.

**Simplicity:** As evidenced by some of the feedback I have received, there was clearly confusion as it related to the process regarding management of claims, assessment and settlement. This also included matters such as the onus for identifying and proving damage, claimant entitlements and the avenues open for disputes.

When people are dealing with the impacts of a disaster and are at their most vulnerable, it is clear that communications can easily be misinterpreted, misunderstood, or missed altogether. Sometimes the messages will need repeating several times so that people can absorb them.

People should expect to receive practical communications from EQC that are presented as simply as possible, avoiding use of jargon, legalistic or complex language, or statistics. They also need to hear where and how they can get the help or independent advice they need.

**Accessibility:** In a post-disaster scenario, there is always the risk that people lose access to the services and channels they rely on. Communications from EQC must be far reaching and accessible to all, whether it be through individual contact or mass communications via mainstream or social digital media. EQC should be available consistently to people at public meetings/neighbourhood meetings/advocate gatherings to address the issues of concern to people.

In the event of essential services such as electricity being unavailable due to a disaster, EQC should plan to have systems and non-electronic channels to reach people, which may include door-to-door checks or information delivery for individual claimants, letter drops, or clearly identified hubs/meeting/drop-in places for people to seek information or support.

**Inclusivity:** Beyond working with the likes of private insurers and government agencies, it is incumbent on EQC to reach out and partner with iwi, local councils and communities of all stripes to better communicate. Genuine partnerships built on trust enable information to reach those who need it—regardless of location, age, gender, ethnicity, language, religious affiliation, political beliefs, sexual orientation, socioeconomic status, or disability. Word of mouth is an important means of communicating, particularly in rural areas, and local leaders must be empowered with accurate information.

EQC needs to work with communities and advocacy groups to tailor communications (i.e. to suit language or custom) to suitable communication channels that may include non-traditional outlets.

**Agility:** Just as disasters force homeowners and communities to adapt to a “new normal”, so must EQC adapt in how it communicates. This means being flexible in the nature of communications and being prepared to adjust quickly to meet the audience needs and resonate with people. In the noise and stress of a post-disaster phase, people might need to hear things more than once and have them presented in different forms for the messages to register. If audiences or partners with superior local knowledge give feedback that communications are not working, or the presentation or channels are wrong, this needs to be heard and acted on.

EQC has told me that it has begun the process of improving its communications to better reflect these principles and that this recently refreshed approach endeavours to reflect the broad principles above. With new channels constantly emerging in digital media, EQC needs to stay up to date with and test these new channels for communicating with people, particularly younger audiences. Regular and honest review of communication performance will lead to better results.







# Claimants' rights and support



## 15.1: Treatment of claimants

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It seems that most of EQC's preparedness planning for recovery from a major natural disaster focused on readying its operational practices and anticipating the financial liability (related to settling claims). It showed less regard for considering the impacts and outcomes that its operational practices might impose on claimants and communities' health and wellbeing.

To understand experiences and impacts, it was necessary for me to meet as many affected members of the public as possible, as well as those who were involved in assisting the management of the recovery, including home repairs. These meetings have spanned vastly differing interests and experiences. I heard from some people who have been affected physically, mentally or financially; while others I met with had a health, support services or advocacy perspective of the way the EQC aspect of the recovery was organised and carried out.

This emphasis on the personal experiences of those caught up in these major natural disasters is a reminder that the consequences are not simply the financial costs to home and business owners and to the Government. The consequences extend—as the submissions, forums and interviews have demonstrated—even more compellingly to citizens' rights to be treated with dignity and respect, have access to safe and secure housing and their reasonable expectations for assistance from their leaders in times of high need.

## 15.2: Social responsibility

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The EQC scheme originated after the Government saw the suffering of its people following a devastating earthquake in the Wairarapa. The provision for paying a modest annual premium to cover serious damage to a home after a major natural disaster has proved to be a good one and successive governments have continued to support it. Rather than be forced unexpectedly to find vast sums of money to help a community repair its housing, the Government has been able to rely, at least in part, on the amounts accumulated by EQC from levies paid on insurance premiums during more stable seismic periods. Without this scheme, nor would the Government have had ready access to reinsurance funds secured by EQC as part of its responsibilities as an insurer. The value of the scheme was proved when the Canterbury earthquakes began and later as the subsequent major events occurred in what seemed like swift succession.

Underpinning the EQC scheme is the obligation that New Zealand accepted when it ratified the International Covenant on Economic, Social and Cultural Rights in 1978.<sup>189</sup> New Zealand has always supported and tried to adopt and apply international human rights standards developed to improve the lot of the world's people. It has a fine international reputation in this area; this is the case particularly in relation to political and civil rights, although New Zealand is perhaps less admired in its commitment to or achievement of social rights (e.g. health, housing, work and access to justice).

189. Ministry of Justice, *International Covenant on Economic, Social and Cultural Rights*, <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/international-covenant-on-economic-social-and-cultural-rights/>

## 15.3: Human rights

Following the Canterbury earthquakes, some focus has been placed on the attainment of human rights standards in the area of housing<sup>190</sup> and access to information about claims. Of the former, in 2013, the New Zealand Human Rights Commission produced a comprehensive report on the human rights aspects of the Canterbury earthquakes.<sup>191</sup> It noted that these events “have created human rights challenges on a scale seldom seen in New Zealand, particularly in relation to the right to adequate housing”. The Commission advocated that a “people-centred earthquake recovery process, one that involves people affected by the earthquakes in problem identification, solution design and decision-making, will lead to better outcomes, including human rights outcomes in Canterbury”.<sup>192</sup> The Commission’s emphasis on a people-centred approach to the recovery also reflects the Canterbury District Health Board’s view that the failure to support the community fully has led to negative impacts on people’s mental health and wellbeing.

Other human rights issues were raised at an international level following the Canterbury earthquakes. In 2014, a submission<sup>193</sup> jointly prepared by a large number of local or representative non-governmental and advocacy organisations was presented to the United Nations Human Rights Council, voicing concerns at the human rights impacts of the Canterbury earthquakes, including housing. In response, the Human Rights Council made several recommendations—one of which was to speed up rebuilding and compensation processes.<sup>194</sup> Further, in 2016 the United Nations Committee on Economic, Social and Cultural Rights received a report from the New Zealand Human Rights Commission that noted “despite the continuing efforts of government—both central and local—many people remain in inadequate housing which is having a significant impact on their mental health and wellbeing”.<sup>195</sup>

More recently, in 2018 the Committee on Economic, Social and Cultural Rights, in its concluding observations<sup>196</sup> on New Zealand’s periodic report to the committee, noted its concern about “the slow pace of processing claims arising from the Canterbury earthquakes, including concerning access to adequate housing”. The Committee went on to recommend that the Government “strengthen its efforts to swiftly process the outstanding claims arising from the Canterbury earthquakes, including by establishing a well-equipped specialised tribunal”. Rightly, the Committee on Economic, Social and Cultural Rights has attributed housing as being more than simply a place to shelter.<sup>197</sup> It is the right to “live somewhere in security, peace and dignity” and has several components, including specific reference to the victims of natural disasters as among those disadvantaged groups that “should be ensured some degree of priority consideration in the housing sphere”.

190. Natalie Baird, *Housing in Post-Quake Canterbury: Human Rights Fault Lines*, 2017, 15 NZJPL

191. Human Rights Commission, *Monitoring Human Rights in the Canterbury Earthquake Recovery*, December 2013, <https://www.hrc.co.nz/files/6414/2428/1599/HRC-Earthquake-Report-2013-final-for-web.pdf>

192. Human Rights Commission, *Monitoring Human Rights in the Canterbury Earthquake Recovery*, December 2013, <https://www.hrc.co.nz/files/6414/2428/1599/HRC-Earthquake-Report-2013-final-for-web.pdf>

193. *Joint stakeholder submission: The human rights impacts of the Canterbury earthquakes. For the Universal Periodic Review of New Zealand*, submitted to the 18th session of the Human Rights Council, January 2014. [https://www.canterbury.ac.nz/media/documents/research/joint\\_submission\\_eq\\_impacts\\_17\\_-june\\_final.pdf](https://www.canterbury.ac.nz/media/documents/research/joint_submission_eq_impacts_17_-june_final.pdf)

194. Human Rights Council, *Recommendations made to New Zealand during its second Universal Periodic Review*, January 2014, <https://www.hrc.co.nz/files/5514/2406/1354/List-of-UPR-recommendations-made-to-New-Zealand.pdf>

195. Submission of the New Zealand Human Rights Commission to the Committee on Economic, Social and Cultural Rights, January 2016, [https://www.hrc.co.nz/files/6714/6881/3796/HRC\\_submissionICESCR\\_2016.pdf](https://www.hrc.co.nz/files/6714/6881/3796/HRC_submissionICESCR_2016.pdf)

196. United Nations Committee on Economic, Social and Cultural Rights, *Concluding observations on the fourth periodic report of New Zealand*, 1 May 2018, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fNZL%2fCO%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fNZL%2fCO%2f4&Lang=en)

197. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4, The Right to Adequate Housing, (Art 11 (1) of the Covenant), December 1991, <https://www.refworld.org/pdfid/47a7079a1.pdf>

## 15.4: Vulnerability

The problem of ill mental health and community stress was obvious to me as I met many people in Canterbury and elsewhere who had experienced personal loss and natural disaster damage to homes. The fact that it was advisable to have professional wellbeing support available to assist some of those who attended meetings with me—years after the major events had ceased—indicates that many homeowners, who normally would not be seen or see themselves as vulnerable, were experiencing unexpectedly high levels of stress and for much longer or more often than anticipated.

In the Human Rights Commission's guidelines for the insurance industry for prioritising vulnerable people, particular emphasis was placed on the rights of vulnerable people in a natural disaster:

*the same factors can impact people differently, meaning that situations which negatively impact some people may not negatively impact others and vice versa. Secondly, people can be exposed to multiple factors of vulnerability at the same time. Further vulnerability is not something that is fixed. It changes over time and depending on people's circumstances, meaning that people can move in and out of vulnerability and between different kinds of vulnerability.<sup>198</sup>*

For EQC, there is the acknowledged difficulty in defining or attributing vulnerability. The Canterbury District Health Board emphasised this issue, pointing out that obvious markers of vulnerability such as advanced age, number of young children or physical or mental illness are not necessarily definitive. By way of example, it noted that some of those least able to manage after the Canterbury earthquakes were people who, in normal times, were in control of and made decisions about their lives and had infrequent interactions with government agencies, but were disconcerted and discomforted by the shocks and stresses that a natural disaster brought to everyday living, including interaction with EQC and insurance processes.

In submissions and at public forums, it was saddening to hear that often-compounding life events culminated in people's increased vulnerability and inability to cope. The challenges associated with dealing with family illness or death, personal ill health, a job change and living in an unrepaired cold or damp home were exacerbated when there were also difficulties dealing with an EQC claim or being subjected to inflexible timing of repairs, among other pressures. Prolonged settlement processes were viewed by some people as increasing the likelihood of other unfortunate life events occurring along the way.

Until the Canterbury earthquakes, EQC had recognised in its system for managing claims small numbers of vulnerable claimants who had health issues or were elderly and it monitored the progress of their claims. Following the September 2010 earthquake, EQC tried a number of ways to identify and prioritise vulnerable claimants.

In November 2012, EQC confirmed its vulnerability criteria, which assessed across two dimensions (health and age) and further categorised into three levels of priority determined by contributing factors, such as dependency on a caregiver, diagnosis of a terminal illness, ongoing medical condition requiring management with medication or recent admissions to hospital.<sup>199</sup>

198. Dr Margaret MacDonald and Dr Sally Carlton, Human Rights Commission, *Best Practice guidelines for the prioritisation of vulnerable customers*, 2016 <https://www.eqrecoverylearning.org/assets/downloads/res2066-best-practice-guidelines-for-the-prioritisation-of-vulnerable-customers.pdf>

199. EQC, *Vulnerable Customers*, 2013 [https://www.eqc.govt.nz/sites/public\\_files/WeCan%20-%20Appendices%2027-46.pdf](https://www.eqc.govt.nz/sites/public_files/WeCan%20-%20Appendices%2027-46.pdf)

Vulnerability sat within a set of wider “sensitive claims” criteria, which were designed to include people who were experiencing financial hardship or those for whom English was a second language. Sensitive claims also covered those that might have warranted a higher level of scrutiny or care, such as claims where fraudulent activity was suspected or where threats had been made; cases that had received some media attention and/or where the claimants had some sort of media profile; and staff claims.<sup>200</sup>

EQC’s intent in identifying sensitive claims was to make sure claimants were treated with the “appropriate level of additional care and consideration required and can be monitored throughout the process”.<sup>201</sup> EQC’s process instructions do not specifically state that sensitive claims will be given priority and in relation to high-profile people, such as politicians, sports stars and television personalities, the instructions note that the information is collected for reporting purposes only, not for prioritisation unless used in conjunction with other sensitive criteria. However the inclusion of this group of people in a sensitive category appears, not unexpectedly, to have given the perception they were prioritised. EQC’s approach was not clear to some members of the public, who saw it demonstrating unfairness and bestowal of ill-deserved priority or special treatment.

## Identifying vulnerable claimants

Between September 2010 and February 2011, EQC identified vulnerable claimants (referred to by EQC as “vulnerable customers”) through multiple sources—public meetings, information able to be shared by the Ministry of Social Development, an EQC assessment programme completed in the worst affected areas and referrals from Members of Parliament. A dedicated team dealt with urgent claims, including those associated with vulnerable claimants.

Following the February 2011 earthquakes, EQC worked with the Police to identify claims associated with bereaved families or those with missing family members. Those identified were designated a caseworker to prioritise the claim and resolve it as quickly as possible.

Soon after the 22 February 2011 earthquake the Government directed EQC to undertake inspections of all residential premises, whether insured or not, and carry out emergency repairs where homes were dangerous or not secure. EQC developed a rapid assessment programme to triage properties quickly so that full assessments of the most damaged properties could be prioritised. As part of that process EQC assessors were also tasked with identifying vulnerable claimants. While there were no formal criteria at that time for establishing vulnerability, those identified at that stage included people who were considered broadly vulnerable due to age and/or health and those who self-identified as vulnerable.

From late September 2011, EQC established a Community Contact Team to facilitate face-to-face contact with EQC representatives, providing a single point of contact for vulnerable claimants, particularly the elderly. EQC also set up a Customer Advocates Group and provided staff resource for an Elderly Persons Forum and CERA’s Avondale Support Hub.

Work continued in 2012 on criteria and methods for further identifying vulnerable people. The cross-agency Canterbury Vulnerable Peoples Forum was set up and in August 2012 a memorandum of understanding was signed between EQC and the Ministry of Social Development to enable information sharing to assist in prioritising vulnerable claimants’ claims; this was later extended to data-sharing agreements with some other government agencies. This allowed for some alignment of the people regarded as vulnerable between EQC and other organisations and enabled sharing of information regarding timeframes for repairs.

In a 2013 report by the Chief Ombudsman and Privacy Commissioner, EQC was reported to be providing a case management system for vulnerable customers; at that time managing over 600 customers and seeing around 300 customers per week face to face.<sup>202</sup>

200. EQC, *Vulnerable Customers* 2013, [https://www.eqc.govt.nz/sites/public\\_files/WeCan%20-%20Appendices%2027-46.pdf](https://www.eqc.govt.nz/sites/public_files/WeCan%20-%20Appendices%2027-46.pdf)

201. EQC, *Vulnerable Customers* 2013, [https://www.eqc.govt.nz/sites/public\\_files/WeCan%20-%20Appendices%2027-46.pdf](https://www.eqc.govt.nz/sites/public_files/WeCan%20-%20Appendices%2027-46.pdf)

202. Chief Ombudsman and the Privacy Commissioner, *Information fault, lines: Accessing EQC information in Canterbury*, December 2013 <https://www.ombudsman.parliament.nz/sites/default/files/2019-03/Information%20fault%20lines%20-%20accessing%20EQC%20information%20in%20Canterbury.pdf>



It is worth noting that most vulnerable customers were not identified through the rapid assessment process but instead were identified between August 2013 and May 2014, with numbers increasing from 5,300 to 27,681 in this period.

## Effectiveness of vulnerability criteria

Despite the multiple avenues EQC told me it took to identify and respond to vulnerable claimants in an empathetic, respectful and appropriate way, I heard mixed views as to whether this had any tangible effect on the treatment of vulnerable people.

For example, although the rapid assessment programme was in part designed to help EQC identify vulnerable claimants, no formal action was taken to prioritise repair slots (in the Canterbury Home Repair Programme) for vulnerable claimants until November 2012, when EQC started working with the Ministry of Social Development on formalising vulnerability criteria. Under the process that was developed, when EQC deemed a claimant “vulnerable”, they received a carefully managed experience with EQC; they were flagged in the customer management system and a case worker was assigned as a regular, single point of contact.

There are also mixed views about how effective EQC was in prioritising vulnerable claimants' repairs. In briefing the incoming Minister Responsible for the EQC in 2014, EQC noted that, on average, repairs for prioritised claimants commenced 25 percent faster than for others.<sup>203</sup> However, the Office of the Auditor-General commented twice in reviews of EQC's management of the Canterbury Home Repair Programme about the treatment that vulnerable claimants received. In 2013, it found EQC was too late in setting up dedicated repair slots for vulnerable people and in 2015 it noted that repairs were not completed significantly faster than for other claimants.<sup>204</sup>

Through submissions to the Inquiry, people told me that being classified as vulnerable made no difference to their claim experiences and a few people suggested that they felt being identified as vulnerable sometimes put claimants at a disadvantage.

# 15.5: Inclusion

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Failure to uphold claimants' rights to readily access all the information pertinent to their claims that was held by EQC seriously detracted from EQC's relationship with its claimants, incurred breaches of legislative obligations and earned EQC significant criticism from the Chief Ombudsman and the Privacy Commissioner. I discussed the impacts of EQC's poor data and information systems earlier in my report. However, there are several other ways in which EQC's operational practices failed to respect claimants' rights to know and understand the processes relating to claims.

203. EQC, *Briefing to the Incoming Minister Responsible for the Earthquake Commission*, 2014  
[https://www.eqc.govt.nz/sites/public\\_files/Minister-briefing-14.pdf](https://www.eqc.govt.nz/sites/public_files/Minister-briefing-14.pdf)

204. Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme*, October 2013, <https://www.oag.govt.nz/2013/eqc/docs/oag-earthquake-commission.pdf/view>;  
 Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme—follow-up audit*, November 2015, <https://www.oag.govt.nz/2015/eqc-follow-up/docs/summary.pdf/view>

## Meeting differing needs

As noted in the communications chapter, a lack of information via accessible channels made dealing with EQC difficult for some people with vision or hearing difficulties. In research into post-2010-2011 experiences of Canterbury people with disabilities, EQC was consistently singled out for not offering accessible information. The research sensibly recommended that customer support staff in organisations such as EQC should integrate disability awareness into regular training and that key organisations be supported in developing nationwide, consistent information after a disaster event that is available in formats accessible for people with disabilities.<sup>205</sup>

## Respecting tikanga

From what I have heard, EQC's operational practices leave room for improvement in embodying cultural awareness. EQC staff requires knowledge of tikanga and needs to improve practices to recognise that for Māori, land, home and possessions are taonga.

Tangata whenua responsibilities to look after and stay on the land and remain in a whānau home also need to be taken into consideration in EQC's processes. EQC and other agencies must understand that decisions about home and land owned by Māori (e.g. in papakāinga housing areas) are often made by whānau, rather than an individual property owner and could require more time for information sharing and consultation prior to decisions being made.

Māori—like other claimants—spoke of the need for all recovery agencies to prioritise the needs of kaumātua, the elderly and vulnerable people. I was reminded that for many elderly people “what they have is what they have” and they cannot be expected to recoup losses to home and land over time.

## Language barriers

I was grateful to hear the experiences that members of the refugee and migrant community in greater Christchurch shared with the Inquiry. They made practical suggestions for ways that agencies, including EQC, can provide more inclusive and accessible information and interaction for culturally and linguistically diverse residents and claimants. The engagement of earthquake support coordinators by the local resettlement service, as interpreters and advocates for these claimants, was very helpful. A local community radio station's voluntary dissemination of recovery information in a range of languages helped redress a paucity of such material by government agencies. I heard that receiving information in one's first language is reassuring in times of stress and upholds the human right to be treated fairly and equally.

205. Good G, Phibbs S, Williamson K & Woodbury E, *Issues experienced by disabled people following the 2010-2011 Canterbury earthquake series: evidence based analysis to inform future planning and best practice guidelines for better emergency preparedness*. GNS Science Report 2012(40), 2012 <https://www.gns.cri.nz/static/pubs/2012/SR%202012-040.pdf>



## Tenants' rights

Tenants, as a group, experienced a number of breaches to their rights to adequate housing, as often they lacked the legal, financial or social standing to advocate for themselves. Impacts on their right to adequate housing included:

- a lack of information about whether the house they were renting was safe to remain in—any information from EQC went to the owner of the property;
- a lack of certainty about when and if the repairs would be done—unless the landlord kept in touch, the tenant was not informed. This led to situations where the tenant would be given very short notice to vacate so repairs could be done;
- being left in a clearly unsafe house—with issues such as leaking sewage or holes in walls or the roof; and
- a lack of available and/or affordable housing.

# 15.6: Community-based support

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EQC's responsibility to its claimants extended beyond simply ensuring home repairs were done as quickly as possible. Many claimants would not have seen themselves as vulnerable, but still had a need for some assistance or advocacy to help get through the processes. Some clearly gained great value from having an advocate or a knowledgeable person to walk alongside them or be on hand when needed, provide advice, help make connections with appropriate agencies and generally help "make sense" of complex processes. Commonly, this role was carried out by earthquake support navigators or coordinators. The roles were based on lessons learned from the 2009 bushfires in Victoria, Australia and adopted the collective impact model of pooling resources toward a shared goal of easing navigation across agencies and processes. I heard about navigators/coordinators providing support following the earthquakes in Canterbury, Kaikōura/Hurunui and Seddon/Cook Strait and after the Edgecumbe floods.

Navigators/coordinators provided people with free, trustworthy information, connected them with services and facilitated meetings with relevant experts.

Following the 2010–2011 Canterbury earthquakes, the Ministry of Social Development led, funded and operated the Earthquake Support Coordination Service.<sup>206</sup> From late 2015 these responsibilities shifted to the Ministry of Health (under the National Civil Defence Emergency Management Plan Order). The Ministry's new responsibilities were first tested following the November 2016 Kaikōura/Hurunui earthquake. Earthquake navigation services were set up to support affected communities in Kaikōura, Hurunui and Marlborough. Some of these roles were funded through the Ministry of Health by district health boards or public health organisations with delegated responsibility. Surprisingly, Lottery grants were also a prominent funding source, sometimes going directly to non-governmental organisations with coordinators/navigators or to local councils.

Following the Edgecumbe floods in 2017, the Whakatāne District Council established and oversaw a small team of navigators. Again, funding came through a mix of government and regional sources, and grants.

206. Department of the Prime Minister and Cabinet, *Whole of Government Report: Lessons from the Canterbury earthquake sequence*, 2017, <https://dpmc.govt.nz/sites/default/files/2017-07/whole-of-government-report-lessons-from-the-canterbury-earthquake-sequence.pdf>

Through Te Puni Kōkiri and local Māori leadership, Māori organisations seem to have implemented relatively cohesive earthquake support coordination/navigation services for Māori, particularly in the South Island. I was impressed by the ready mobilisation and effectiveness of Māori earthquake support coordinators and navigators in Canterbury and elsewhere. Though these roles were not solely focussed on assisting people with their EQC claims and processes, a large part of their work clearly evolved from a deficit in customer information, assistance and empathy by EQC in engaging with claimants and people's difficulty in navigating claim and repair processes.

I understand that sourcing funding for navigation/coordination services has been difficult and time consuming following some disaster events. Sources of funding have changed over time and have been different for different areas and events. This has been a source of frustration for some.

In 2018, a Ministry of Civil Defence and Emergency Management commissioned review of recoveries found that navigators played a valuable role in recovery, but there was concern about a lack of a reliable funding source.<sup>207</sup> Collaboration and recognition by all recovery agencies of the benefits of getting this kind of “on the ground” assistance underway promptly and with secured funding should be considered so that navigators can become a fixed part of the response to future events.

## 15.7: Iwi leadership

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In the early days of the emergency response in Canterbury, marae immediately offered accommodation, food and hospitality to any residents in need, which extended not only to their own whānau, hapū and iwi but also to the wider community. I heard of the same generosity, leadership and manaakitanga elsewhere following natural disasters, such as in Kaikōura/Hurunui and Edgecumbe. Marae can often accommodate and cater for large numbers of people, which is invaluable following a natural disaster where homes and food supplies have been displaced.

In many areas, the involvement of local iwi, (in Canterbury, Te Rūnanga o Ngāi Tahu) and nationally based organisations such as Te Puni Kōkiri were pivotal in all phases of the aftermath of these devastating events. Māori and the Government worked together in a real-time demonstration of partnership under Te Tiriti o Waitangi. The knowledge and experience gained by local iwi and regional and national agencies should be transmitted to iwi in other parts of New Zealand so they can prepare for helping their communities in times of natural disaster. The contribution of Māori through its organisations, provision of navigators and hospitality has been significant and should not be taken for granted.

Ngāi Tahu clearly had invaluable information at its fingertips about its community, including where people live, who might be vulnerable and what their needs might be.

Of course this is not unique to Ngāi Tahu. In every place that I visited, community leaders reiterated the value and strength of local knowledge and trusted relationships in post-disaster communities. Especially in smaller and rural communities, people spoke about the “down to earth” pragmatism, kindness, generosity and stoicism that they shared with whānau, neighbours, older people and those who were known locally to “need a hand” in the aftermath of disaster.

The collaborative approach taken by the *Waimakariri District's Integrated, Community-Based Recovery Framework*<sup>208</sup> was an outstanding example of how community, local and central agencies work best in collaboration.

207. David Smol, *Review of Recoveries: A report to the Ministry of Civil Defence & Emergency Management*, December 2018, <https://www.civildefence.govt.nz/assets/Uploads/review-of-recoveries-2019.pdf>

208. Dr S Vallance, *Waimakariri District Council's Integrated, Community-Based Recovery Framework*, May 2013, <https://www.eqrecoverylearning.org/assets/downloads/2013-05-01-res2020-wdc-intergrated-community-based-recovery-framework.pdf>

Such community capability is vital following a major natural disaster and should be taken into account in EQC's planning for future readiness. Having relationships with local communities in place is something that can help greatly post-disaster—disseminating information, building trust and confidence, harnessing local leadership as conduits between agencies and homeowners, protecting people's rights and recognising vulnerability.

## 15.8: Future considerations

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EQC's statutory roles focus on insurance, reinsurance, collecting levies, managing the Natural Disaster Fund, and research and education. The experiences of the major and very complex earthquake and flood events between 2010 and 2017 have now demonstrated that a narrow interpretation of these functions is insufficient if the human rights approach of ensuring that New Zealanders can live somewhere in "security, peace and dignity"<sup>209</sup> is upheld following a major natural disaster. One of EQC's immediate priorities should be to gather the information it has accumulated following the natural disasters throughout New Zealand in the past decade and commission research on their social impacts with a view to preparing for a people-centred approach in future similar events.

A first lesson is that EQC is not best equipped to identify and manage the housing repair needs or settlement of claims for vulnerable people without much greater support from social agencies with the skills and resources to undertake this work. The re-traumatisation of people who are already suffering as the result of inadequate communication, poorly scoped or undertaken repairs should not be repeated.

209. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4, The Right to Adequate Housing, (Art 11 (1) of the Covenant), December 1991, <https://www.refworld.org/pdfid/47a7079a1.pdf>



# Resolution of disputes



# 16.1: EQC's complaints processes

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One of the consequences of the extensive damage suffered as the result of the Canterbury earthquakes and communication failures was the number and complexity of disputes relating to EQC claims that arose. The size and repetition of earthquakes, the introduction of a managed repair programme and the large numbers of inexperienced and undertrained staff no doubt led to the great increase in the number of complaints made to EQC. From January 2010 to 31 May 2019, EQC received 51,638 complaints relating to 34,734 unique properties. Of these, 96 percent were related to Canterbury earthquake claims. It can be assumed that future natural disasters will also produce a large number of disputes.

Prior to the first Canterbury earthquake, EQC had little experience of disputes given the much lower volumes of claims. There were also limited avenues for bringing complaints and EQC had no formal process for managing them.

Resolution of disputes had not been identified as a discrete area as part of planning for a major natural disaster. EQC was totally unprepared for the number of claims and resulting complaints from the Canterbury earthquakes, possibly due to the unexpected addition of a managed repair programme to its workload.

EQC has provided the Inquiry with an analysis of the types of complaints it received following the September 2010 earthquake and subsequent events. Complaints fell broadly into six categories:

- Difficulties in obtaining information and documents from EQC
- Disagreement about the damage caused by the earthquakes
- Disagreement about the strategy and cost of repairs
- Quality of repairs
- Complaints about the time taken to settle claims and complete repairs
- Complaints about claims for consequential loss (for example temporary accommodation)

The operational practices that led to these specific complaint types are traversed in earlier sections of this report. However, I feel it important to note here that claimants feeling their position had been unheard or unheeded by EQC seems common to the six types of complaints EQC has identified.

A review of these principal complaints categories indicates that most issues might have been resolved by negotiation and mediation rather than by recourse to a formal court process. This formal process is useful primarily for settling legal issues, finalising intractable disputes where other means have been tried, or where significant factual matters require adjudication. In a briefing for the Inquiry, EQC stated "success in resolving customer complaints early is key to minimising disputes". This statement, although a truism, is one EQC has taken on board in efforts to improve its dispute resolution practices.

In a similar vein, Nina Khouri, a specialist in the field of dispute resolution, noted that for cases on the High Court's Earthquake List, pre-trial conferences enabled claimants and EQC/insurers to make significant progress in resolving disputes merely by meeting face to face and each explaining their objectives for litigation.<sup>210</sup>

210. Nina Khouri, *Civil Justice Responses to Natural Disaster: New Zealand's Christchurch High Court Earthquake List*, 2017

EQC has acknowledged that although, at first, complaints came in slowly, its internal systems and processes did not cope. As complaints grew, internal issues that limited adaptation of systems, together with capacity issues and the effect of the 2013 privacy breach, led to the number of disputes rising to 1,750 in a six-month period. This resulted in the resolution of complaints or disputes becoming unmanageable from around 2014.

A number of initiatives for settling disputes with claimants or insurers were considered by EQC but rejected for various reasons. In 2011, EQC established an in-house complaints team, with systems that matured progressively over time. A dispute resolution manager was appointed in March 2012. At the same time, alternative dispute resolution options were developed, including the establishment of an in-house complaints team and an independent mediation service provided through an agreement with the Arbitrators' and Mediators' Institute of New Zealand (AMINZ). Although very few disputes were referred to this mediation service, EQC has continued to renew its contract with AMINZ to ensure there remains an independent and professional service for its claimants.

Separately, I heard about "mediation training" that was provided in-house by EQC.<sup>211</sup> This training was clearly inappropriate, at least according to some staff members who were trained in this process. I was told that the training involved making subjective assessments of claimants' homes, cars or appearances, which would inform the team's settlement approach—and amount—based on the implication that less "well-off" claimants would accept lower settlement amounts. Even accepting that such comment might have been intended as a jest, this in-house service seems to have been unprofessional and should not be reinstated.

An internal team was also established to deal with complex claims, classified by EQC as distinct from disputes.

From 4 September 2010, the inability to resort to the Disputes Tribunal and the absence of an in-house capability for mediating complaints led to the courts being the main avenue for resolving disputes. Although EQC staff made attempts to ensure that the Disputes Tribunal was aware of the limits to its jurisdiction, the lack of access to the Tribunal was not well known among potential claimants and led to unnecessary claims being accepted for filing there.<sup>212</sup> The then-three month time limit for lodging claims in court seems also to have resulted in claims being filed to protect the claimant's position.

Given EQC lacked experience in handling complex disputes and complaints, its approach appeared to favour the traditional resort to the courts.

EQC acknowledges that too many claimants were forced to take expensive and slow court action for disputes that might have been able to be settled less formally. Since 2011, approximately 830 court cases have been brought against EQC with 310 in mid-2019 still to be resolved.

The emphasis on court-based claims was not obvious at the outset, indicating that claimants were attempting to resolve their issues with EQC by direct communication and advocacy. Furthermore, claimants whose claims were processed after the September 2010 earthquake had fewer concerns about the quality and speed of settlement. Good progress had been made before the end of 2010 and there was the usual consultation and communication that the public had come to expect from dealings with EQC. It was not until 2013 that there was an increase in court action. There was, therefore, an opportunity before this date to create alternative means for resolution of disputes.

211. Although EQC confirms that there was no mediation service provided in-house, this was a term used by a number of former EQC staff members.

212. In 1997, the High Court in *Earthquake Commission v Disputes Tribunal* [1997] confirmed that the Disputes Tribunal has no jurisdiction over disputes about how EQC has settled an EQC claim. The Disputes Tribunal can hear and has heard other disputes relating to EQC, such as claims from contractors.

# 16.2: Court proceedings

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## District Courts

Some recourse has been had to the District Courts in litigation between EQC and individual homeowners. The District Courts have a limited financial jurisdiction of \$350,000, increased from \$200,000 in 2017. To date there have been approximately 200 District Court proceedings against EQC, most filed since the increase in jurisdiction in 2017. As at May 2019, half remained outstanding and are managed under EQC's new Settlement Specialist procedure, where external contractors have been brought in with the aim of settling outstanding claims. I have no information about special case management procedures in the District Courts for these cases, but special procedures to accommodate a sudden increase in cases should be a routine part of the plan for the future for the District Courts. The less expensive procedures available in the District Courts might be a useful path for court-based resolution of future disputes where disputed facts or legal issues require judicial determination.

## High Court and Court of Appeal

As it became apparent that proceedings in the High Court and Court of Appeal were building to a critical mass, the President of the Court of Appeal and the Chief High Court Judge began developing a special judicial resource, which endures to the present, for dealing with earthquake-related cases. An Earthquake List was established in May 2012 to provide case management procedures designed specifically for these disputes. Proactive steps to manage litigation resulting from the Canterbury earthquakes were established and precedent cases that created a degree of certainty and enabled settlement of like disputes were prioritised. According to the High Court, 1,279 earthquake-related cases had been filed and included on the List by September 2019. Of these, EQC noted that it was involved in 830, three-quarters of which also involved a private insurer or Southern Response. It also acknowledged that only four proceedings from the High Court list with EQC as defendant have been sent to trial. Of the cases that were settled before going to trial, almost all were resolved with some movement on both sides of the dispute.

The Earthquake List has been viewed as a successful innovation with efforts to manage cases intensively and to create systems and procedures that will ensure that cases do not languish if counsel or the parties are not active in pursuing them. Ensuring cases that will or may result in the creation of precedents benefiting other claimants are dealt with as quickly as possible is also sensible. It has required the application of time and attention from the judiciary and the Ministry of Justice, but is an example of a system that has been proved "...fit for purpose: an innovative civil justice process that responds to the extraordinary need of the post-earthquakes Canterbury community while still upholding the rule of law".<sup>213</sup>

Other claims brought to the High Court have largely been the result of dissatisfaction with settlement or assessment of claims by EQC or simply because claimants were unable to access anyone in EQC equipped or mandated to settle disputes. Many have been unsuccessful; a situation that could be the result of the number of litigation advocates who set up in Canterbury and established contacts with concerned claimants.

EQC became concerned that its strategy for dealing with disputes required examination and commenced a review process. In 2019 EQC concluded its broader approach to managing claims, combined with an overly rigid approach to litigation, was not serving its customers well. The vast majority of claims being dealt with through the courts should not have been there at all as they were often technical rather than legal disputes. EQC's approach to managing claims was likely contributing to perverse outcomes by creating an environment where claimants felt they had little option but to engage with litigation funders.

213. Nina Khouri, *Civil Justice Responses to Natural Disaster: New Zealand's Christchurch High Court Earthquake List*, 2017

Litigation is a costly, stressful and slow way to resolve disputes. While there is value in establishing precedents (and Community Law Canterbury and submitters have suggested that clarifying some key interpretations of law early through the use of declaratory judgments would be useful) many proceedings will resolve only a particular dispute between particular parties with unique factual or contractual matrices. There is also the real issue of fairness between parties with uneven resources—both financial and technical—and litigation is generally an option only for the wealthier citizen. It plays an important part in dispute resolution but should be used rarely.

## The court's role in interpreting the EQC Act

Some key determinations have been issued from litigation before the High Court and on appeal to the Court of Appeal. EQC filed a number of declaratory judgment proceedings seeking a determination of aspects of cover under its legislation. On occasion, it was joined by individual private insurance companies or the Insurance Council.

The most significant determination for claimants has been the High Court's decision that insurance was available for each occurrence of natural disaster damage. As discussed elsewhere, this reinstatement of cover led to apportionment of damage to different events. Apportionment caused frustration and uncertainty for insurance companies but also provided some limited benefit, given they had no liability until each claim for damage reached the cap of \$100,000 plus GST.

In *Earthquake Commission v Insurance Council of New Zealand Inc.*, EQC successfully sought a judgment confirming its approach under the EQC Act to assessing and settling claims for IFV damage to residential land.

The declaratory judgments on reinstatement of cover (apportionment) and IFV and ILV enabled EQC to act with some decisiveness and progress previously stalled claims. For future events, in order to clarify legal issues, EQC should again use the declaratory judgment procedure as soon as significant issues are identified. This will help increase claimants' understanding and speed up claims processing.



# 16.3: External dispute resolution and advocacy

As EQC was seen to be struggling to manage the sharply increasing numbers of disputes, central and local government provided other external dispute resolution services through the Residential Advisory Service and the Greater Christchurch Claims Resolution Service, which still operate.

## Residential Advisory Service

The Residential Advisory Service was established in 2013 by CERA, in consultation with Insurance Council members and the Christchurch City Council and was later joined by EQC.<sup>214</sup> Its role is to provide free, independent advice on a range of repair and rebuild issues. This includes interpretation of insurance contracts; legal advice; assessment of individual repair and rebuild solutions by an independent technical panel; mediation for multiparty issues holding up repairs or rebuild; and referrals to financial or other support services.

The Residential Advisory Service has been a successful model for a variety of reasons. It offers vital technical advice and focusses on claimants and their needs, including psychosocial issues. It is not an advocacy service; its main value has been in helping people understand all the factors that might be puzzling them or impeding their repairs and rebuilds. It offers a practical, people-centred solution. Acknowledging its value, the Residential Advisory Service has become a fully-funded service operated by MBIE and, as at June 2018, had helped resolve 4,000 claims.<sup>215</sup> It is now limited to resolving natural disaster claims outside Canterbury, with its Canterbury claims workload assumed by the Greater Christchurch Claims Resolution Service.

## Greater Christchurch Claims Resolution Service

There are disputes that cannot be resolved by mediation and provision of technical advice and assistance. Traditionally, these are the claims that are determined by court proceedings. It was increasingly recognised that the courts were becoming overloaded with such disputes and that a simpler, dedicated service was appropriate, one that would “more quickly reach fair, fast and enduring settlements of outstanding claims”.<sup>216</sup> In fulfilment of the recommendations from the Independent Ministerial Advisor’s Report, the Greater Christchurch Claims Resolution Service was established in October 2018 by MBIE after consultation with, and the agreement of, EQC and Southern Response and built on the Residential Advisory Service model. Mediation and binding determination by arbitration where mediation has failed to resolve part or all of the dispute are included in the service. Although reluctant at first, other major insurers agreed within a few months to participate in the Greater Christchurch Claims Resolution Service scheme, ensuring that claimants now have the opportunity to finalise claims with most insurers, including EQC.

The Greater Christchurch Claims Resolution Service notes that, about nine years after the first event, there are still approximately 100 new cases being filed with it each month.<sup>217</sup> There are a steady number being finalised, including some that were initially court filings. As of March 2020, the Greater Christchurch Claims Resolution Service had assisted 1,893 homeowners and resolved 1,007 insurance and EQC claims.

214. CERA, *Understanding Social Recovery*, April 2016, <https://www.eqcrecoverylearning.org/assets/downloads/res101-understanding-social-recovery.pdf>

215. Office of the Minister Responsible for the Earthquake Commission, *Wide range of EQC reforms to speed up claims*, 6 June 2018, <https://www.beehive.govt.nz/release/wide-range-eqc-reforms-speed-claims>

216. Office of the Minister Responsible for the Earthquake Commission & Office of the Minister for Greater Christchurch Regeneration, *Canterbury Insurance: Next Steps*, 2 August 2018, <https://eqcinquiry.govt.nz/assets/Establishment-Documents/222815d1f3/cabinet-paper-canterbury-insurance-next-steps-dev-18-sub-0150.pdf>

217. As at August 2019: <https://www.gccrs.govt.nz/assets/documents/gccrs-advisory-committee-minutes-9-august-2019.pdf>

As well as its facilitation and determination services, the Greater Christchurch Claims Resolution Service has a deliberate focus on the provision of information and technical assistance. Engineering New Zealand has been contracted by the Greater Christchurch Claims Resolution Service to deliver engineering services that might include a peer review “on the papers” of an engineering report (with a site visit if needed) and facilitation to reconcile differing engineering views of the homeowner and the other party—EQC or the private insurer. The Greater Christchurch Claims Resolution Service also provides homeowners with information about other dispute resolution services as well as an online portal for claim information that both property owners and insurers can access.

Critics publicly raised doubts about whether the Greater Christchurch Claims Resolution Service could be impartial when it was established in 2018. These are similar to criticisms that the Residential Advisory Service faced and I have heard the same sentiment from some who participated in this Inquiry. There have been concerns raised that centred on the funding sources; the fact that it had recruited from staff who had worked at EQC and private insurance companies; and that it is serviced and based within MBIE, which is itself the subject of trenchant public criticism about the use of its guidance on repair procedures. More recently, concerns about the Greater Christchurch Claims Resolution Service’s independence appear to have reduced, primarily, in the view of the Director, due to the assistance given to the service by its advisory committee. This committee brings together the views, advice and experience of a range of participants including homeowners and legal, engineering and wellbeing advisors (via four separate advisory groups). As well as a reduction in apprehension about the independence of the Greater Christchurch Claims Resolution Service, there has been a marked increase in word-of-mouth referrals to the service, indicating a more positive attitude toward it.

The Greater Christchurch Claims Resolution Service is more focussed on solutions to repair and rebuild problems. It sits between the advisory service offered by the Residential Advisory Service and the formality of tribunal or court proceedings. Its value lies in its ability to offer information, technical support, mediation and binding determination in a far less costly and a more relaxed setting than a court. One of its greatest strengths may well lie in the advice it receives from each of its advisory groups, which is an initiative that should be replicated in any services similar to the Greater Christchurch Claims Resolution Service that are established in future.

When established, the Residential Advisory Service and the Greater Christchurch Claims Resolution Service were dependent on year-by-year funding. However, the Greater Christchurch Claims Resolution Service has funding from MBIE until 2021. The Residential Advisory Service has been fully funded by MBIE since July 2017; prior to this, funding came from the Government, EQC, members of the Insurance Council and the Christchurch City Council. The original temporary nature of their respective funding reflected the Residential Advisory Service’s anticipated short-term role advising on claims management and the Greater Christchurch Claims Resolution Service’s assistance with resolving more complex or difficult claims. Their proven success has justified continued funding.

## Canterbury Earthquakes Insurance Tribunal

Legislation establishing The Canterbury Earthquakes Insurance Tribunal was enacted in May 2019 and was supported by EQC. It provides a mediation service and fair, speedy, flexible and cost-effective services for resolving disputes about insurance claims for physical loss or damage to residential buildings, property and land arising from the Canterbury earthquakes. The Canterbury Earthquakes Insurance Tribunal is a specialist dispute resolution body that will take an inquisitorial approach<sup>218</sup> to proceedings before it. There appears to be an emphasis on case management and sharing of expertise, and parties are encouraged to work together to minimise costs. Although the establishment legislation does not specify an end date for the Tribunal, the intent is that it will have an “urgent and potentially short lifespan”.<sup>219</sup>

218. Canterbury Insurance Tribunal Act 2019, <http://www.legislation.govt.nz/act/public/2019/0021/latest/whole.html#LMS35758>

219. Ministry of Justice, *Regulatory Impact Statement: Canterbury Earthquakes Insurance Tribunal*, <https://treasury.govt.nz/sites/default/files/2018-08/ria-justice-ceit-aug18.pdf>



Mediation and negotiation of disputes are well-used parts of the service offered by the Greater Christchurch Claims Resolution Service. However, arbitration, which provides a binding decision that cannot be appealed, has not been well received by private insurers. Before the Canterbury Earthquakes Insurance Tribunal was established, insurers were expressing a clear preference for resolving disputes by court proceedings (where negotiation and mediation failed); however, this was unacceptable to homeowners. It appears that the ability for the Tribunal to determine disputes with appeal rights makes it a more useful model by giving participants the right to go to the next step when negotiation or mediation fails. To a degree, this difficulty has been overcome and such cases can now be referred to the Canterbury Earthquakes Insurance Tribunal.

It will be important to reduce any confusion for homeowners about the respective roles and functions of the Greater Christchurch Claims Resolution Service and the Canterbury Earthquakes Insurance Tribunal.

This Tribunal was introduced as a “circuit breaker”<sup>220</sup> for earthquake claims with no clear pathway to settlement and is modelled on the Weathertight Homes Tribunal, which also takes a mediation approach and uses independent experts. Members of the Weathertight Homes Tribunal have been assisting the Canterbury Earthquakes Insurance Tribunal in its establishment phase.

To date, disputes before the Tribunal have been proceeding smoothly but one issue is of concern. There is, so far, no clarity concerning when the time within which to lodge proceedings begins under the Canterbury Earthquakes Insurance Tribunal Act 2019. As a result, private insurer litigants have been reserving their rights to invoke a Limitation Act defence. The outcome for those engaged with the Tribunal is that real limitation complications might arise and proceedings might be determined on that “technicality” rather than on the merits. Some disputes are still filed in court to protect the claimant against time running out under the limitation periods. These are withdrawn once settled or determined by the Tribunal. The amendment of the Canterbury Earthquakes Insurance Tribunal Act 2019 to include a provision similar to section 37 of the Weathertight Homes Resolution Services Act 2006<sup>221</sup> would immediately clarify this issue and avoid unnecessary court filings.

## Claimant advocates and litigation funders

A feature of the processes that emerged for dealing with complaints and disputes in Canterbury following the earthquakes was the rise of the litigation funder and private dispute resolution services (often referred to as “advocates”). Funders offered their services on a “no win, no fee” basis. The emergence of a “claimant industry” had a noticeable, detrimental impact on private insurance providers, EQC and claimants. From May 2016, there were several spikes in litigation after widespread advertising offering “free” reviews of EQC-completed repairs. Litigation funders’ overarching drivers are to achieve the highest possible settlement; their fee being a percentage of the final pay out (typically charging 20 percent).

The private litigation funders or advocates were not necessarily legally qualified or experienced in the field where they offered their assistance. Some are currently being sued in the High Court in Christchurch with allegations that they misrepresented services, costs and the qualifications and independence of their technical experts. Some are apparently taking action, over unpaid fees, against claimants who have settled their disputes.

220. Office of the Minister of Justice and Minister for Courts, Cabinet paper, *Establishment of Canterbury Earthquake Insurance Tribunal*, February 2018, <https://www.justice.govt.nz/assets/Documents/Publications/canterbury-earthquakes-insurance-tribunal-28-february-2018.pdf>

221. Weathertight Homes Resolution Services Act 2006, section 37, <http://www.legislation.govt.nz/act/public/2006/0084/latest/DLM403970.html>  
For the purposes of the Limitation Act 2010 (and any other enactment that imposes a limitation period), the making of an application under section 32(1) has effect as if it were the filing of proceedings in a court.

It is a matter of real concern that claimants have resorted to such apparently unqualified or unscrupulous representation. The Greater Christchurch Claims Resolution Service's advisory committee, and in particular its Homeowner Advisory Group, has suggested that steps be taken so that following future major natural disasters, such services are registered and regulated. In order for homeowners to get sound and ethical advice, I would endorse that suggestion. The appearance of these services, however, is, at least in part, a direct result of EQC's failure to engage with its claimants, to provide information and to provide a sensible and realistic method of settling claims, avoiding formal litigation wherever possible.

It is also disappointing that the Insurance and Financial Services Ombudsman considered only 198 formal complaints (of 2,001 complaint enquiries) between 2010 and 2017, presumably because its jurisdiction is limited to \$200,000.<sup>222</sup> Those operating in the financial services industry, including insurance companies (but excluding EQC), must be a member of an approved external dispute resolution scheme<sup>223</sup> and most insurance companies are members of the Insurance and Financial Services Ombudsman scheme. This service provides a free (to consumers) dispute resolution service where complaints have not been able to be resolved between a consumer and insurance company, providing a good alternative to legal proceedings.

For the future, consideration should be given to reviewing the reasons for the low uptake of the Insurance and Financial Services Ombudsman's services, as well as mechanisms to moderate advocates' roles following a natural disaster. In addition, the New Zealand Law Society, which worked to support and assist the legal profession in Canterbury, should ensure it continues to provide high-level assistance to the local profession, including Community Law organisations, following a natural disaster. It should do so to ensure that legal and other appropriate representation is quickly available to claimants following a major natural disaster. While Community Law organisations provide an invaluable service and in the case of the Canterbury earthquakes have developed considerable skill and experience, they are often poorly funded and find it hard to build and retain expertise. Emergency funding could be a useful step to ensure viability during the time of greatest pressure on legal services in the affected community. The legal profession has a duty to assist where there is a serious emergency affecting a wide range of citizens, particularly those who are unaccustomed to seeking legal advice or who lack the means to do so.

## 16.4: EQC's role in resolving disputes and complaints

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In material provided to the Inquiry, EQC has readily acknowledged its failures in resolving disputes and complaints. It had never needed such high-level technical solutions previously, in part because it had concentrated on ensuring that it had a close, collaborative and helpful attitude toward its claimants in prior, much smaller natural disasters. The majority of the disputes could have been efficiently and effectively dealt with using less formal processes than litigation and EQC's claim management practices should have prioritised this. Its operational practices also contributed to the number of complaints raised. The lack of a case management procedure meant that EQC's claimants found it extremely difficult to find out what was happening to their claims. The staff approach also seemed, at times, to be far from conciliatory.

222. However, Southern Response agreed to extend the Insurance and Financial Services Ombudsman Scheme's jurisdiction (and remove the cap).

223. Financial Service Providers (Registration and Dispute Resolution) Act 2008, <http://www.legislation.govt.nz/act/public/2008/0097/latest/DLM1109427.html>



EQC has also acknowledged that it must develop a dispute resolution service that will be available when a major natural disaster occurs. Such a facility may well require legislative change and be designed to ensure there is a primary focus on providing information, technical assistance and advice. Adjudication must be the last resort, used only in the instances where legislative or other interpretation is needed or where there is a set of disputed facts or law that is genuinely unsolvable without judicial assistance.

In 2018, the Government Centre for Dispute Resolution, hosted by MBIE, produced a report<sup>224</sup> that examined approaches used in New Zealand (primarily following the Canterbury earthquakes) and approaches used overseas to resolve disputes. It recommended that New Zealand prepares a framework and dispute resolution scheme to be used in a natural disaster comprising:

- a central organisation to oversee the dispute resolution scheme;
- a mediation programme;
- a Tribunal; and
- a specialist court list.

These are realistic options for dispute resolution for future natural disasters.

224. MBIE's Government Centre for Dispute Resolution, *Dispute resolution following natural disasters: An examination of approaches used in New Zealand and overseas to resolve disputes after a natural disaster*, 2018 <https://www.mbie.govt.nz/assets/f4f8a74157/post-natural-disaster-dispute-resolution-august-2018.pdf>



# Part 4

Comparative  
experiences



# Changing approaches to events





# 17.1: Other events under the Inquiry Terms of Reference

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While the Canterbury earthquakes have collectively become the most significant natural disaster for New Zealand, resulting in land and building damage as well as deaths and injuries, other events have been significant to the communities affected and have also meant personal trauma and widespread property damage for those affected.

As well as the Canterbury earthquakes, EQC was required to manage:

- the 2013 earthquakes in Seddon/Cook Strait;
- the Eketāhuna earthquake in 2014;
- the November 2016 earthquake in the Kaikōura/Hurunui region; and
- the Edgecumbe floods in 2017.

This chapter considers how EQC's operational practices and claimants' experiences of these practices differed from event to event.

In all instances, EQC's responsibility was limited to what is specified in the EQC Act: providing insurance in the event of a natural disaster for damage to residential properties, land damage as the result of natural landslips, residential land that is related to a residential building, natural disaster fires and personal property, also known as contents (now revoked).

## Seddon/Cook Strait earthquakes

The Seddon/Cook Strait earthquakes were significant events producing what was, at that time, the second highest number of insurance claims after the Canterbury earthquakes. The impact was spread beyond the immediate vicinity of the earthquakes to Wellington where 6,099 of the approximately 12,000 claims arose. The worst impact was localised in and around Seddon in the South Island, leading to 15 over-cap claims being lodged from that sparsely populated area. Moreover, EQC was continuing to work through its claims from the Canterbury earthquakes and its workload was, consequently, greatly expanded.

Applying lessons it had learned from managing claims in the Canterbury earthquakes, EQC undertook assessment for land, home and contents damage as far as possible in one visit and claims were cash settled.

Seddon is a small, rural area. The comments about EQC from Inquiry participants in that area were largely neutral, although private insurers for the few over-cap claims were criticised for perceived unfairness in the treatment of claimants. Responding to claims for damage in rural areas requires a different approach to that in urban areas. On occasion, claimants can be difficult to reach or contact and the lack of alternative housing, such as an existing rental stock, is a serious problem. As with many rural communities, there was a strong instinct in Seddon and nearby communities to look after neighbours and to be as self-sufficient as possible. However, damage to electricity lines and an inability to access the internet made the recovery very difficult for many in this area and no doubt delayed prompt EQC and private insurer responses.

Wellington had a completely different experience. The affected housing, particularly in the central business district, was often multi-unit and there were also issues with landslips and failed retaining walls. The claims were much more complex and there was a palpable sense of frustration directed toward EQC and private insurers—along with anxiety about the future—among the residents I met. The fact that the glass and masonry façades of some high-rise commercial buildings failed in the earthquakes made that sense of apprehension for personal safety and house stability much more acute.

## Eketāhuna earthquake

Following the Eketāhuna earthquake in the lower North Island, EQC received more than 5,000 claims related to the event and undertook cash settlements, completing the majority within 18 months.

During a meeting in Eketāhuna, it was again evident that this was a close-knit community with local authority and neighbourly assistance readily available. The town is at the centre of a much larger rural area where the farmers demonstrated they could be self-sufficient. Those I heard from were, however, somewhat sceptical of EQC's expertise in assessing damage and there was acute criticism of the assessment of dangerous chimneys, in particular. By and large, however, the level of dissatisfaction with EQC was significantly more muted than in Canterbury.

## Valentine's Day earthquake, Canterbury

About 14,000 claims were received after the two earthquakes on 14 February 2016. EQC, building on its earlier Canterbury experience, created a separate response team with rapid assessments emphasised. Claimants were contacted by telephone and many were able to complete the process in this way. Onsite assessments were conducted where there was extensive damage, the claim was complex or where personal circumstances required such an assessment.

These events enabled EQC to trial a settlement process, later expanded for use following the Kaikōura/Hurunui earthquake, whereby Vero Insurance New Zealand Limited (Vero) led the assessment for a group of 343 Vero/AA Insurance customers and provided EQC with settlement recommendations. Settlements were by cash except where an earlier claim remained open, in which case EQC worked to combine them. Vero told the Inquiry that the trial was successful and demonstrated that insurers could carry out assessments that met EQC's requirements. I did not get a sense from submitters whether they thought the trialled approach was successful or otherwise.

## Edgecumbe floods

On 6 April 2017, after heavy rain following ex-tropical Cyclone Debbie, the stopbank protecting Edgecumbe from the Rangitaiki River breached and the town flooded rapidly. A total of 272 land claims were lodged with EQC. Several hundred flood-damaged homes were affected with silt and debris, which needed to be removed before building and contents damage could be assessed by private insurers (whose liability is limited to home and contents damage).

Despite the limited scope of EQC's responsibilities under its legislation, on the assumption that a collective action would be the most cost-effective response, a ministerial direction was issued requiring EQC to reinstate damaged land and support the clean-up effort. EQC engaged local contractors for this work, which extended beyond the residential properties and land for which EQC was responsible, to include public facilities and uninsured properties. A subsequent survey indicated that the level of insurance cover for Edgecumbe was very high (at 97 percent) from which an inference can be drawn that the collective clean-up, regardless of insurance cover, was the most efficient decision in the circumstances. A cost-sharing agreement was reached with the Whakatāne District Council and government departments.

Edgecumbe is a small town with a broad, rural hinterland. It has a strong sense of community and a council that did its best to alleviate the impacts of what was a devastating flood. The fact that 12 homes (at the point where the Rangitaiki River breached) were inundated and ultimately removed was a major event for the town. The floods were serious and life-threatening. The community worked with emergency services and the local marae provided shelter and hospitality for the people affected.

The local people had little to discuss with me about EQC's response. They had also suffered an equally destructive earthquake in 1987 and did not applaud or criticise EQC for its response in their community to either event. Generally, Edgecumbe was well served by EQC.



# **Kaikōura/ Hurunui experiences**



# 18.1: Kaikōura/Hurunui earthquake

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The Kaikōura/Hurunui event was the second largest in EQC's history in terms of the number of claims received. Just under 40,000 residential claims were received by EQC in relation to the Kaikōura/Hurunui event, compared with 460,000 claims filed with EQC in response to the Canterbury earthquakes. EQC notes that the Kaikōura/Hurunui event resulted in the most geographically dispersed claims ever, spanning Whangarei to Invercargill, with the majority of claims located in Canterbury, North Canterbury, Marlborough and Wellington. While the population of the affected Kaikōura and Hurunui districts is much smaller than Canterbury's, proportionately the number of claims was especially significant and had a major impact for the people of these areas.

Although damage to residential buildings was notable, comprising about 71 percent of claims, land damage was also a major factor, giving rise to 10 percent of the claims received. Land damage differed from that sustained in Canterbury due to the mountainous and isolated nature of the Kaikōura and Hurunui districts. Access to Kaikōura and Waiau was completely cut off for two weeks and continued to be compromised for a long while after the event with State Highway 1 north and south of Kaikōura finally opening almost a year after the event. The lack of reliable access to these rural areas posed real difficulties for emergency management and later planning and carrying out repairs.

# 18.2: Implementation of the Kaikōura model

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Following the February 2016 Valentine's Day earthquake EQC trialled a pilot "agency" arrangement with Vero where it, acting on EQC's behalf, assessed a number of claims for residential damage arising from that earthquake.

When the Kaikōura/Hurunui earthquake struck nine months later, the decision was taken by EQC to extend the trial and, after discussions between EQC and the Insurance Council, agreement in principle was reached to develop a wider agency model (commonly referred to as the Kaikōura model).

A memorandum of understanding, facilitated by the Insurance Council, was agreed and authorised by the board of EQC less than two weeks after the event, on 29 November 2016. Ultimately eight insurance companies joined, with three private insurers deciding not to participate. After some negotiation, EQC accepted the private insurers' position that they would not accept liability for wrongful payment nor over payment of EQC claims. EQC negotiated with each insurer directly to ensure competitive pricing in compliance with the Commerce Act 1986.

# 18.3: How the Kaikōura model worked

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## Processing of claims

Affected homeowners were encouraged to lodge claims directly with their insurers, who acted as EQC's agent in receiving, assessing and settling claims. Claims lodged directly with EQC were also assigned to the relevant private insurer. Land claims were retained by EQC, as were those where the private insurer was not a participant in the agency agreement. EQC provided private insurers with research, technical expertise and training in its procedures for settling claims under the EQC Act.

There were significant differences in the nature, extent and amount of cover under the EQC Act when compared with private insurance policies. Private insurers acting as EQC's agents were required to ensure that they complied with EQC's policies. There were also differences between private insurers' approaches to settling claims—either on behalf of EQC for under-cap claims or on their own accord for over-cap claims. Their differences in approach perplexed some people in reasonably close-knit communities who, despite experiencing the same event and suffering comparable damage, did not consider they were treated equally. There were also differing approaches taken to identifying the vulnerable and most affected claimants, pointing to a need to establish clear guidelines for future events.

There was occasional confusion between EQC and private insurers about who was responsible for the claims. In the month between the earthquake occurring and the start of the arrangement with private insurers, nearly 17,000 claims had already been lodged with EQC, leading to duplication of claims that could not be reconciled by EQC and the private insurers' separate data systems. There were also difficulties posed by payment of expenses for handling claims and invoicing, due largely to the differences between data sharing capability, EQC policy provisions and the varying practices of private insurers.

Speed and quality of settlements are important factors for homeowners following a major natural disaster. The Kaikōura model—although a final analysis is premature—compared well to earlier responses. There may well be a number of factors that prevented an even swifter resolution of claims from the Kaikōura/Hurunui earthquake, including the time taken to establish the Memorandum of Understanding with private insurers and the inaccessibility of some areas immediately following the earthquake. For the future, with advance planning, any delay could be minimised by:

- reaching an agreed memorandum of understanding setting out the respective operations, practices and policies of the parties; and
- having in place a developed practice for sharing information on customers with fire insurance policies between EQC and private insurers.

The number of claims from the Kaikōura/Hurunui event that have been reopened to date is relatively small and EQC's expenses for handling claims are broadly comparable to managed repair models. However, an independent project management and repair scoping company in Kaikōura, working for homeowners to assess the scope of repair work independently of EQC or the private insurer, has warned that in its experience "the scopes... are consistently light, missing huge areas and/or grossly underestimating costs". A major local building firm has made similar comment, reporting that "scopes are short by \$20k up to \$200k". So far, the re-open rate of Kaikōura claims is relatively low. However, if these views prove reliable then there are serious issues to be addressed to ensure the security and quality of the settlements from the Kaikōura/Hurunui event.

## Training for insurers

EQC instituted training for private insurers to ensure that its particular requirements were understood. The training was generally well received (although some acknowledged it was delayed) and useful as an aid to smooth the settlement of claims. However, its success might be related, as were other aspects of the response to the Kaikōura/Hurunui earthquake, to the availability of both EQC and private insurance staff who were already experienced following the Canterbury events. The issue is that this available experience will not always be present for future major disasters.

As part of the provision of information initiated by EQC, it developed and circulated a useful, comprehensive insurer manual,<sup>225</sup> although it was unclear to EQC how widely this was used by the insurers, possibly because it was not finalised for some months. One of the positive outcomes, apart from allowing EQC's agents to understand its policies, was to highlight for EQC areas where policy could be upgraded. The manual was, and continues to be, updated regularly in the response to the Kaikōura/Hurunui earthquake. Its effectiveness is demonstrated by the fact that it remains on the EQC website.

## Information and data

Data exchange was the primary obstacle to the smooth operation of the agency model in Kaikōura/Hurunui. The four major issues identified led to significant delays and difficulties in the management of claims. These issues were:

- There were eight private insurers who needed to exchange information on customer claims with EQC, some with multiple data systems.
- Information exchange was inconsistent and sometimes required labour-intensive manual intervention.
- There was no mechanism to identify claimants between the private insurers and EQC.
- It took time to conclude a workable arrangement to manage privacy issues so that information could be shared by EQC with the private insurer.

Aside from the immediate data challenges identified above, there are legacy issues for EQC in relation to data and information from the use of the Kaikōura model. For example, EQC required data for its purposes that private insurers did not necessarily normally collect. EQC identified five key sets of data that it required from private insurers to complete the process for managing claims (relating to lodgement, assessment, validation, closure and payment). A lack of data compatibility between EQC's system and respective private insurers meant that the associated regular exchange of data was a primary obstacle to the smooth operation of the Kaikōura model.

A consequence of the difficulties with data was that EQC holds less information about Kaikōura/Hurunui claims than it would typically hold post-event. This has affected its ability to model the overall claims cost of a natural disaster event. It also left EQC with less understanding of its own—and private insurers'—future liabilities for under-cap and over-cap claims. This kind of business knowledge is important for retaining the strong confidence of reinsurers.

EQC has acknowledged that there is still a need to clarify data requirements and enable appropriate transfer of formats and information across the insurance industry and that this work is a priority in preparing for future events. EQC is implementing a data hub that will include the ability to share information with third parties securely, once agreement has been reached on the nature and form of the data that will be of use.

225. EQC, *EQC Claims Manual for Insurers*, updated September 2017, [https://www.eqc.govt.nz/sites/public\\_files/images/Insurer%20manual%20-%201%2C3%2C4%2C5%2C6%2C7%2C8%2C9%2C10%20and%20Appendix%201%2029092017\\_0.pdf](https://www.eqc.govt.nz/sites/public_files/images/Insurer%20manual%20-%201%2C3%2C4%2C5%2C6%2C7%2C8%2C9%2C10%20and%20Appendix%201%2029092017_0.pdf)

## Resolution of disputes

It took a long time to settle on a pragmatic approach to resolve complaints about procedures or other disputes. It was finally agreed that factual issues would be reviewed by the private insurer's external dispute resolution scheme and points of interpretation or law would be referred to the Office of the Ombudsman. Very few claims have, in fact, been pursued through this mechanism. It is possibly too soon to conclude that there were proportionately fewer issues resulting from the Kaikōura/Hurunui event than from the Canterbury earthquakes. There is also some concern that the cash settlements may have been more generous under the Kaikōura model, therefore being less likely to generate complaints.

## Community engagement

One area where there was praise for EQC's work was its community engagement in Kaikōura. Regular meetings attended by homeowners and council staff were held and issues raised were dealt with in an acceptable way. It is clear that EQC had taken seriously the many public criticisms of its communication with the community in Canterbury and worked hard to improve this part of its responsibilities. Kaikōura District Council made a point of praising the proactive dialogue taken by EQC.

## Governance

The governance arrangements established under the Memorandum of Understanding were effective, even if not entirely followed in practice.

Under the Memorandum of Understanding, EQC and private insurers established a steering group. This group, comprising senior executives from EQC and each insurance company, was intended to provide oversight of all aspects of the process and identify and resolve problems as quickly as possible. One review noted that over time, the steering group's role became more of a safety valve/review rather than a governance role, as the Kaikōura Operations Group (a cross-agency group of recovery managers) took on more of the decision making and implementation.

While some reservations have been expressed about the steering group's change in focus and the absence of a strategy to manage relationships between EQC and individual insurers, the operations group has been positively described, considered to be very effective and enjoyed a high level of trust.

## Reporting on the Kaikōura model

As expected of a Crown entity and as per the terms of the Memorandum of Understanding, EQC attempted to evaluate the success of the model developed in conjunction with the private insurers. Indeed, EQC's interest in the model and the enthusiasm of the private insurance sector for its implementation made that an important initiative.

Unfortunately, due, in the Insurance Council's view, to EQC's initial failure to consult fully with the sector, private insurers lacked the relevant data or were slow to comply. Moreover, it took some time for EQC and private insurers to reach agreement on the scope of the evaluation and the final evaluation measures agreed on were relatively unhelpful for future use. For example, agreed performance targets were anodyne and did not include consequences for breach of the targets or, for that matter, tangible encouragement to exceed them. Basic performance measures were therefore secured by relying on the private insurers' commercial need to satisfy their customers' requirements; they were of little objective assistance to EQC in planning for a future similar model. EQC acknowledges that there were challenges with data, but took action through the insurance process to test insurers' ability to settle claims in accordance with the EQC Act.



# 18.4: Outcomes from the Kaikōura model

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EQC commissioned two reviews of the Kaikōura model—an operational review (by Acuo in 2017)<sup>226</sup> and a strategic review (by PwC in 2018)<sup>227</sup>—as it worked to evaluate its advantages and disadvantages. The results indicated that the agency model had worked relatively well and that, economically and operationally, it was a sensible approach to apply following future natural disasters.

The external evaluations commissioned by EQC pointed to a number of potential risks that, in general, related to the conflict between an industry that is commonly motivated by commercial factors and an agency such as EQC, which has a public interest imperative. Possible issues might arise if EQC effectively places control of settlement of natural disaster damage into the hands of an entity over which it has little jurisdiction. Prospective qualms include: insurers settling claims more generously than is justified to increase their appeal in a competitive insurance environment; insurers shifting costs among multiple events to maximise the proportion of coverage borne by EQC; and insurers using EQC information for their own commercial purposes, such as in the area of underwriting or in interactions with claimants.

The Insurance Council considers the Kaikōura model worked well because private insurers already hold information on homes so they are a logical first point for contact, the approach avoids duplication of efforts and the industry has greater access to loss adjusters and more capacity to scale up.

While there have been mixed views of the Kaikōura model, there were certainly advantages for the affected public. They saw their claims settled in cash more quickly than greater Christchurch claimants, whose many problems were well known beyond that city. At first sight, the Kaikōura model was advantageous both to EQC and to the private insurers involved. EQC was relieved of the onerous responsibility of managing a repair programme and greater commercial certainty was achieved more quickly than the two-tier approach taken for assessment and then repair, in Canterbury.

There are, however, a number of concerns that require more careful evaluation and planning. The Kaikōura model was a much more limited trial than the Canterbury Home Repair Programme. Although a very large earthquake by usual standards, the affected housing stock in the Kaikōura and Hurunui districts was relatively small, making it too early to judge whether this model may be effectively used in larger and more complex events.

226. Acuo, *External Review of Response to the Kaikoura November 2016 Earthquake*, 2017

227. PwC, *Strategic Review of the EQC Response Model*, November 2018

## 18.5: Cash settlement

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The Kaikōura model relied on a cash settlement approach rather than the managed repair approach (through the Canterbury Home Repair Programme) undertaken in response to the Canterbury earthquakes.

As part of its evaluation of the Kaikōura model, the Insurance Council noted several advantages of a cash settlement approach: cash settlements can be adjusted if missed damage is found or costs are inaccurate; claimants are provided with a fully documented account of what is required of the builder; and settlements can be concluded faster than a managed repair, which is advantageous to the insurer (who can settle much more quickly). Cash settlements are also reassuring for the reinsurance industry. In addition, cash settlements inject funds into the community more quickly, allowing for a faster local recovery.

Cash settlements, as the norm, had been rejected in Canterbury for a number of valid reasons, including the potential for pressure on resources and the need to assess and repair large swathes of land damage. It is worth emphasising at this point that other than for major natural disasters, cash settlement is appropriate and will no doubt continue to be the preferred model for EQC and its claimants.

An as yet unmeasured risk is that cash settlements might not translate to repaired houses. There is vestigial evidence of this occurring in the Kaikōura and Hurunui districts. Calculating the expected number of building consents that might have been anticipated led to a conclusion in the Acuo review that of a possible 500 to 600 building consent applications only approximately 140 were estimated to be earthquake related. The study estimated that about 400 to 500, or the majority of repairs, had not been undertaken by the end of the review period in December 2017. Although a number of people mentioned to me that some homeowners had settled their claims with cash and decided not to spend it on repairs, this too is yet to be validated. There may be other reasons for failing to undertake repairs, including pressure on local contractors or the homeowner's lack of confidence to manage a repair. This assessment, carried out only a year after the event, might have been premature and more repairs may well have been done by now. Certainly, Kaikōura District Council representatives expressed concern to me, but it is not possible to make a confident determination that repairs have been left uncompleted or ignored and that the quality of the housing stock has been affected.

Ensuring cash settlements are used for repairs is a difficult proposition. While mechanisms such as recording the damage and the proposed repair will enable insurers to decline renewal of a policy when repairs are not completed, a sophisticated information system that extends beyond the private insurance industry would have to be set up. If the purpose of the system was to ensure the quality of the housing stock, then it would require mechanisms to ensure: that an unrepaired home could not be on sold to an unsuspecting purchaser; unsafe or unhealthy unrepaired houses are not let to tenants who have limited ability to influence the quality of their housing; and properties that remain uninsured are captured.

Finally, as the Insurance Council reported to me, a managed repair programme places the liabilities for missed repairs or inappropriate repair strategies on EQC. By contrast, cash settlements place the responsibility for repairs on the homeowner, who would also carry the risks associated with engaging a contractor to carry out the repair work correctly and within budget. The individual homeowner, not necessarily experienced in building, could find it difficult to access independent advice on repairs, giving rise to delayed challenges to the accuracy of the assessment or cynicism about the Government's willingness to care for its people. Compared with a managed repair programme, there will be fewer liabilities and disputes with EQC, which will not be liable for substandard or defective repair work.





# Appendices

# Appendix 1

## Inquiry process

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### Purpose and scope of this Inquiry

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The purpose of this Inquiry is set out in the Terms of Reference (reproduced in Attachment A).

In brief, the Inquiry was established in late 2018 under the Inquiries Act 2013, by an Order in Council,<sup>228</sup> to “investigate and report on the lessons that can be learned from the application of [EQC’s] operational practices and [EQC’s] approaches to claims outcomes in relation to the [2010 and 2011] Canterbury earthquake events and subsequent events”. The Terms of Reference (contained in the Order in Council) refer to a number of specific events, noting that EQC’s practices have evolved in response to each of these.

The Inquiry’s purpose is to ensure that lessons are learned from these past experiences and that EQC has the appropriate policies and operating structures in place for improved operational practices in the future. The Inquiry is expected to “make recommendations to improve the Commission’s readiness to respond to future events”.

The focus of the Inquiry is on EQC’s operational practices as they relate to Canterbury events. The Terms of Reference outline the Inquiry’s scope; in particular specifying Canterbury operational experiences, comparative experiences and future strategies. A number of exclusions are also spelled out, largely related to individual claims, liability and structural arrangements.

### How this Inquiry differs from earlier reviews of EQC

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Since 2010, there have been many reviews into various aspects of EQC’s response to the Canterbury earthquakes and subsequent events. These reviews have been commissioned by different parts of government or by EQC itself. Some were accountability reviews that are regularly undertaken by all public agencies. Others related to a specific operational issue, such as asbestos management, data management, or a particular procurement or recruitment process. The Independent Ministerial Advisor’s review reported in April 2018 focussed on advice to speed up the resolution of outstanding EQC claims from the Canterbury earthquake sequence.

This Inquiry is different from earlier reviews in that it is independent of Ministers and the Government, has a wide scope and has a strong focus on improving EQC’s readiness to respond to future natural disasters. A vital part of the Inquiry was hearing from the many New Zealanders who have had experience with EQC’s operational practices. They included claimants, community organisations, iwi, staff, private insurers and those providing services to claimants or to EQC.

228. Inquiries (Public Inquiry into Earthquake Commission) Order 2018, <http://legislation.govt.nz/regulation/public/2018/0225/latest/LMS117293.html?src=qs>



## Membership and timing

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The Inquiry commenced in November 2018 under the leadership of Dame Silvia Cartwright as the Inquiry Chair and sole member.

The Inquiry was supported by a small secretariat, based in Christchurch and a legal counsel appointed to assist the Inquiry.

The Terms of Reference originally envisaged the Inquiry would report its findings and recommendations by 30 June 2019, although at the time of commencement it was publicly acknowledged that any report at this time would be of an interim nature only. The report date was extended to 31 March 2020 in light of the later-than-expected start to the Inquiry and the significant information gathering required.

## How the Inquiry was conducted

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This Inquiry is the first *public* inquiry undertaken under the Inquiries Act 2013. Public inquiries are established by the Governor-General at the direction of the Government “for the purpose of inquiring into, and reporting on, any matter of public importance”.<sup>229</sup> They have a wide range of powers to receive evidence, obtain information, summon witnesses and make orders relating to the disclosure of evidence.

The Inquiries Act 2013 enables an inquiry to “conduct its inquiry as it considers appropriate” unless otherwise specified in the Act or the inquiry’s terms of reference.<sup>230</sup> A key legislative requirement is that “In exercising its powers and performing its duties under this Act, an inquiry and each of its members must act independently, impartially and fairly”.<sup>231</sup> An inquiry must also comply with the principles of natural justice and “have regard to the need to avoid unnecessary delay or cost in relation to public funds, witnesses, or other persons participating in the inquiry”.<sup>232</sup>

The Terms of Reference for this Inquiry are silent on how the Inquiry was to be conducted.

229. Inquiries Act 2013, s6(2) <http://www.legislation.govt.nz/act/public/2013/0060/48.0/DLM1566136.html>

230. Inquiries Act 2013, s14 <http://www.legislation.govt.nz/act/public/2013/0060/48.0/DLM1566148.html>

231. Inquiries Act 2013, s10 <http://www.legislation.govt.nz/act/public/2013/0060/48.0/DLM1566142.html>

232. Inquiries Act 2013, s14 <http://www.legislation.govt.nz/act/public/2013/0060/48.0/DLM1566148.html>

## Inquisitorial approach

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The Inquiry's scope included examining "the [Earthquake] Commission's customers' experiences of its operational practices and claims outcomes". The Inquiry Chair therefore decided to take an inquisitorial, rather than adversarial, approach to the Inquiry. Meeting with people to discuss their experiences and perspectives, rather than holding formal public hearings in a courtroom-like setting, was considered the best way to generate the information needed to address the Terms of Reference. It was also considered an appropriate way to encourage a wide range of people, including those from throughout the parts of New Zealand other than Canterbury where communities had engaged with EQC following recent natural disasters, to participate in the Inquiry. The approach enabled the Inquiry to obtain relevant information from many people within a relatively short timeframe.

It has not been the purpose of the Inquiry to apportion blame (although the Inquiry may have chosen to find fault) but to identify lessons for the future.

There are some issues that might be given thought if a future inquiry considers taking an inquisitorial approach. This method of conducting an inquiry will be appropriate only for those instances where it is not intended to attribute blame for any set of circumstances under investigation. An inquisitorial approach will usually not require adversarial practices such as the formal calling of evidence and cross examination of witnesses, although that is not excluded. It follows that the designation of core participants as provided under the Inquiries Act will not be a prominent feature of such an inquiry.

The Chair (and or members) of an inquiry conducted in this manner takes full responsibility for questioning those who participate although Counsel Assisting and senior secretariat members will also play a major part. Significant preparation for interviews is therefore required.

Given that individuals do not have an opportunity to test or challenge information gathered by the inquiry and that those who participate are not invited to take an oath of declaration, the Chair and Counsel Assisting have an added responsibility to ensure that the principles of natural justice are fully observed.

The method used in the present instance was time intensive and required a great deal of travel throughout the affected parts of New Zealand to conduct interviews and public forums. This process required a high level of efficiency and flexibility. The inquisitorial method may be seen as quicker than court-based processes and more cost efficient. This is not necessarily the case. Effective professional and administrative support is an essential part of the process.

## Procedural Minutes of the Inquiry

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The Inquiry published five Minutes setting out the Inquiry's process for gathering information and conducting the Inquiry (reproduced in Attachment B). In brief, these provide for:

- actively seeking information held by organisations and individuals, relevant to the Terms of Reference, including through meetings with the Inquiry Chair and staff;
- holding formal interviews with those who, in the Chair's view, were able to provide information or comment to assist her to answer the Terms of Reference;
- seeking written submissions;
- holding a series of public forums; and
- certain consequential matters.

Although Minute 1 contemplated individuals or organisations potentially being designated as Core Participants under section 17 of the Inquiries Act 2013, no person was so designated.



In accordance with the procedures outlined in these Minutes and as provided for in the Inquiries Act 2013, the Chair has issued a small number of non-publication orders to protect the confidentiality and/or privacy of some information and submitters.<sup>233</sup>

The Inquiry has ensured that all material subject to the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987 before it was provided to the Inquiry remains as such in the hands of the relevant agency. Inquiry records become public records and are subject to the Official Information Act and Local Government Official Information and Meetings Act when the Inquiry reports, unless non-publication orders are in place or other particular provisions of the Inquiries Act 2013 are met.<sup>234</sup>

## Community Reference Group

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An advisory group, the Community Reference Group, was established to help ensure that the Inquiry's process was accessible and worked well for all who wished to participate. The group comprised a range of community leaders, advocates and EQC/insurance claimants with an understanding of people's experiences and how people would want to engage and be informed. The Community Reference Group was Christchurch based, as that was where most interest in the Inquiry was expected to come from.

A list of members and the terms of reference for the group are set out in Attachment C.

## Meetings and interviews

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The Inquiry process provided for the Inquiry Chair to request a formal meeting or interview with anyone she felt had specific insights or information relevant to the purpose of the Inquiry. Members of the public could also request a meeting with the Inquiry Chair or the team supporting her. Any requests for meetings were accommodated where possible.

The Inquiry Chair met with more than 100 organisations, groups and individuals—sometimes on several occasions—including EQC, Fletcher, engineering and other professionals, private insurers, Māori leaders, local councils, industry groups, support groups and claimants.

### Staff forums

The Inquiry Chair also met with current and former EQC staff at forums held in Christchurch, Wellington, Hamilton and Auckland. Current staff were invited to participate in the Inquiry through a letter from the Inquiry team, and shared internally by EQC. EQC also passed on an Inquiry invitation to its former staff, where it had contacts for those people. The invitations to participate asked the current or former EQC staff to contact the Inquiry directly if they wished to take part, provided general information about the Inquiry and encouraged them to share the invitation to others.

233. Inquiries Act 2013, s15 <http://www.legislation.govt.nz/act/public/2013/0060/48.0/DLM1566150.html>

234. Inquiries Act 2013 s32 and s33 <http://www.legislation.govt.nz/act/public/2013/0060/48.0/DLM1566180.html> & <http://www.legislation.govt.nz/act/public/2013/0060/48.0/DLM2555201.html>

## Public engagement process

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The inquisitorial approach to the Inquiry provided the opportunity to engage in people-friendly ways with citizens, claimants, groups, communities of interest and organisations. The Inquiry wanted anyone who wished to participate to feel comfortable and able to take part in the Inquiry's engagement activities.

The Community Reference Group provided regular advice and feedback to the Inquiry Chair on effective ways to reach people and encourage public participation in the Inquiry. The Inquiry also talked with local councils and support agencies outside Christchurch to hear how local people might want to participate.

### Reaching people

The Inquiry publicised the opportunity to participate via the Inquiry website ([eqcinquiry.govt.nz](http://eqcinquiry.govt.nz)), online and radio advertising, advertisements in print newspapers and on social media.

Additionally, the Inquiry made contact with close to 1,000 individuals and groups identified as having a potential interest in the Inquiry and invited local leaders, community groups, and Facebook groups to share news about forthcoming visits and opportunities to participate.

Opportunities to register for public forums, or make a written submission, were promoted on the Inquiry's own Facebook and Twitter pages and published on a range of other community Facebook pages. Organisations such as local and district councils also published information about opportunities to engage with the Inquiry on their websites and social media accounts.

The Inquiry directed people to its website where they could participate by making an online submission, registering for a group discussion, or finding out who the Inquiry had met with, or learning more about the scope and purpose of the Inquiry.

### Ways of participating

The Inquiry undertook its public engagement process from April 2019 to early July 2019. The Inquiry invited people to share their experiences and tell the Inquiry what went well, what didn't go well and what changes they thought were required to EQC's operations and service.

The public could participate in any one or more of the following ways:

- by making a written submission;
- by attending a public forum discussion led by the Inquiry Chair;
- by dropping in at public forums to share "sticky note" comments or talk to members of the Inquiry team;
- by requesting a meeting with the Inquiry Chair or her team; and
- by making a comment on the Inquiry's Facebook posts.

### Submissions

Written submissions to the Inquiry could be made using an online form or paper form. The Inquiry also received free-form submissions via email and by post. A few people chose to make their submissions by talking with an Inquiry team member on the phone.

To assist people, the submission form prompted submitters to tell the Inquiry about their experiences with EQC, what went well, what did not go well and what suggestions they had to make EQC more effective in future.

The submissions period formally ran from 10 April 2019 to 26 May 2019, but the Inquiry accepted late submissions over the following weeks. In total, the Inquiry received 973 written submissions: 926 from individuals and 47 from groups or organisations.

## Public forums

Eighteen public forums were held around New Zealand in locations at or near where natural disaster events (named in the Inquiry's Terms of Reference) occurred. They provided opportunities for people to speak directly to the Inquiry Chair or her team.

The public forums included facilitated group discussions with the Inquiry Chair and/or informal, public drop-in sessions that usually ran over several hours. Forums were held in well-frequented community venues.

Public forums and/or drop-in sessions were held in Christchurch, Kaiapoi, West Melton, Cheviot, Waiiau, Kaikōura, Seddon, Ward, Wellington, Eketāhuna and Edgecumbe.

## Social media

People also shared their views and experiences through comments on the Inquiry's Facebook page.

The Inquiry advertised the submissions process and public forums on Facebook from April 2019 to June 2019. A total of 417 comments were written on the Inquiry's Facebook posts during this period.

## Keeping people informed

The Inquiry published monthly updates about its work on its website, as well as videos and regular electronic newsletters.

## Summary of what the Inquiry heard

The Inquiry has prepared a companion report, *What we heard: Summary of feedback from the Inquiry's public engagement*, which summarises what people told the Inquiry in the public engagement. The document focusses primarily on what the Inquiry heard in written submissions, at public forums and through comments on the Inquiry's Facebook posts. However, for additional context, it includes an overview of the main topics of discussion during the Inquiry's meetings and interviews.

# Research and briefing material

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The Inquiry received and considered a large volume of written material during the course of the Inquiry, including research reports, government documents, previous reviews of EQC, news articles, other publications and briefings prepared specifically for the Inquiry. This information was provided in or following meetings, attached to submissions, sent to the Inquiry separately, sourced by secretariat staff or requested by the Inquiry of specific organisations or individuals.

EQC itself provided the Inquiry with a comprehensive set of briefing papers (listed in Attachment D) and supporting documentation.

## Preparation of this report

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The findings and conclusions of this report are informed by what the Inquiry learned across its interactions via meetings and interviews, the public engagement process and the research and briefing material provided by EQC and others.

The secretariat assisted the Inquiry Chair to consider the large volume of material by distilling and summarising the key facts, issues, views and experiences from across the different sources of information.

The final report was prepared iteratively, with the Chair drafting the content, which was reviewed for accuracy and had its findings tested against the evidence gathered.

Mindful of natural justice considerations, portions of the report were circulated in draft form to key bodies or personnel who had provided the Inquiry with information and who been interviewed by the Chair. In particular, the Inquiry provided EQC and its relevant former board Chairs and Chief Executive with a draft version of the report (excluding recommendations).

This provided an opportunity for any factual errors about EQC's operational practices to be corrected before the report was finalised as well as to meet the principles of natural justice.

Comments and additional information provided by those with whom the Inquiry consulted were carefully considered with amendments being made to the draft report where appropriate.

The Future Natural Disaster Risk chapter was reviewed by GNS Science to ensure that it was factually accurate and reflected the latest available information.

The Counsel Assisting the Inquiry provided a legal review and particular attention has been paid to ensuring the Inquiry has conformed to the requirements of the Inquiries Act.

# Attachment A

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## Terms of Reference: Public Inquiry into the Earthquake Commission

12 November 2018 (amended to update the Inquiry reporting date on 5 July 2019).

### **Background and status as a ‘matter of public importance’**

The Commission is a Crown entity established under the Earthquake Commission Act 1993 (the Act). Originally established in 1945 as the Earthquake and War Damages Commission following the 1942 Wairarapa earthquake, the Commission’s role has changed significantly over time.

The Commission’s statutory functions are set out in section 5 of the Act. It –

- provides natural disaster insurance for residential property (contents, dwellings and some coverage of land)
- administers the Natural Disaster Fund, including its investments and reinsurance
- funds research and education on natural disasters and ways of reducing their impact.

During 2010 and 2011, New Zealand experienced its most significant earthquake event sequence in recent times in the Canterbury region. This resulted in over 583,000 claims to the Commission for damage to approximately 168,000 residential dwellings. While the majority of claims have been addressed, multiple issues have arisen in relation to the Commission’s operational practices.

There are still approximately 3,000 unresolved residential property claims. These mainly relate to land claims or remedial repair claims, such as repair claims that have been reopened due to poor workmanship, incomplete repair scope, or damage not identified in initial assessments. These unresolved claims have a significant impact on affected Canterbury residents as well as on continued confidence, including of the global insurance market, in New Zealand’s ability to respond quickly and comprehensively to future natural disaster events.

Since the Canterbury earthquake events, the Commission has had to deal with a number of other events. These include –

- the 2013 earthquakes in Seddon and the Cook Strait
- the Eketāhuna earthquake in 2014
- the Edgecumbe flooding in 2017
- the November 2016 earthquake in the Kaikoura region.

The Commission’s practices have evolved in response to each of these events, with a significantly different approach taken in responding to the Kaikoura event. This saw a Memorandum of Understanding signed with insurers allowing them to act as the Commission’s agents in settling most building and contents claims. This different approach will provide a reference point for the inquiry, with its overall effectiveness not yet fully known.

Insurance, both public and private, makes a major contribution to the economic and social recovery from a natural disaster. The Commission plays a critical role in underpinning the New Zealand residential dwellings insurance market. As a result, the public needs to be confident that the Commission has the capability and systems to meet its key responsibilities. It is a matter of public importance that the Commission, the wider industry and the Government learn from the experience of dealing with claims from the Canterbury earthquake events to help ensure that the Commission is well placed to deliver in the future.

### **Order of reference**

The inquiry will investigate and report on the lessons that can be learned from the application of the Commission's operational practices and the Commission's approaches to claims outcomes in relation to the Canterbury earthquake events and subsequent events. It will make recommendations to improve the Commission's readiness to respond to future events.

The inquiry's purpose is to ensure that lessons are learnt from these past experiences and that the Commission has the appropriate policies and operating structures in place for improved operational practices in the future.

The inquiry's scope includes the following:

### **Canterbury operational practice experiences**

- the Commission's operational practices both before and after the Canterbury earthquake events, including the Commission's performance in scaling up appropriate resourcing to deal with these significant events
- the Commission's customers' experience of its operational practices and claims outcomes
- the interplay between the Commission and the other insurers with regard to operational practices including, as relevant to the performance of the Commission, the experiences of those other insurers.

### **Comparative experiences**

- the benefits and shortcomings of the Commission's different approaches to claims outcomes such as cash settlement versus repair and rebuild
- the Commission's application of learnings from its Canterbury experience to subsequent events
- the key process differences between the operational processes used in Canterbury and the Kaikoura pilot approach, taking into account the different economic impact of the events.

### **Future strategies**

- operational practices that have now been put in place by the Commission, or which are being implemented, to help ensure improved experiences and outcomes:
- any further improvements that can be made for any future events.

## **Inquiry matters requiring recommendations**

The inquiry will make recommendations on –

- lessons that can be learned from the Canterbury earthquake events and subsequent events relating to the management of operational practices. This should include contingency planning, preparedness and the Commission's responsiveness (and, as relevant to the Commission's performance, the responsiveness of other insurers)
- any changes or additions to operational practices as a result
- any other matter which the inquiry believes may promote improved operational practices for future events and/or minimise the recurrence of any inadequacies in claims handling identified by the inquiry.

## **Exclusions from the inquiry**

The inquiry is not to investigate, determine, or report on, in an interim or final way, or otherwise prejudice, any of the following matters:

- in accordance with section 11 of the Inquiries Act 2013, questions of civil, criminal, or disciplinary liability
- the structural arrangements for central or local government
- the Commission's funding structure (including levies)
- the resolution of actual claims that remain unresolved
- specific cases that are subject to current mediation, litigation, or arbitration proceedings
- the reopening of settled claims
- legal precedents (with regard to actual insurance claims) that have been established by the courts
- issues relating to insurance contract law, the Limitation Act 1950, the Limitation Act 2010, the Earthquake Commission Act 1993, other insurers, and reinsurers that are unrelated to the Commission's claims management operational practices and claims outcomes.

## **Consideration of other investigations by the inquiry**

The inquiry may take account of the outcome of any other investigations into related matters (including, for example, the Ministry of Business, Innovation and Employment's review of insurance contract law, which is considering whether there is a need for greater regulation of insurers' conduct including claims management and handling and the report of the Independent Ministerial Advisor to the Minister Responsible for the Earthquake Commission).

However, the inquiry is not bound in any way by the conclusions or recommendations of any such investigation.

## **Timing**

The inquiry is to report its findings and recommendations by ~~30 June 2019~~ 31 March 2020\*.

\*Amended by Order in Council on 28 June 2019.

# Attachment B

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## Minutes of the Inquiry

### Minute 1: Process for gathering information

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#### Introduction

1. The Public Inquiry into the Earthquake Commission (the Inquiry) was established on 16 November 2018, pursuant to the Inquiries Act 2013 ("the Act").
2. Terms of reference can be found here:  
<https://eqcinquiry.govt.nz/about-the-inquiry/terms-of-reference>
3. The Inquiry is to investigate and report on the lessons that can be learned from the application of the Commission's operational practices and the Commission's approaches to claims outcomes in relation to the Canterbury earthquake events and subsequent events. It will make recommendations to improve the Commission's readiness to respond to future events.
4. In particular, it will look at:
  - EQC's operational practices and approaches to claims outcomes;
  - EQC customers' practical experiences of these;
  - The interplay between EQC and other insurers;
  - Pros and cons of different approaches to claims settlement such as cash settlement versus repair and rebuild;
  - The application by EQC of lessons learned to subsequent events; and
  - Other improvements to operational practices to improve claims outcomes.
5. The Act permits the determination of appropriate procedures for each Inquiry.
6. The Inquiry initially will actively seek information held by many organisations and individuals, which is relevant to the Terms of Reference. Formal interviews and a series of public forums will then be held and written submissions will be invited.
7. In order to ensure an efficient and comprehensive process, this initial minute sets out the preliminary approach to procedures. These will be amended or augmented as the Inquiry proceeds.



### **Initial meetings convened to collate information**

8. Initial meetings arranged by the Chair and Inquiry staff have begun. Those invited to meet the Chair may be asked to provide specified material in advance of the meeting
9. Meetings sought by other individuals or organisations
  - (a) Any person or organisation who has information, material or comment that is relevant to the Terms of Reference may seek an initial meeting with the Chair, who will determine whether meetings will be arranged.
  - (b) The opportunity to attend meetings with the Chair will be advertised and may be arranged by accessing the Inquiry staff direct, or through the website. Guidance will be given on the website to ensure that those seeking initial meetings are able to provide information or material that is relevant to the Terms of Reference

### **Formal interviews**

10. The Chair will then conduct formal interviews with those who in her view are able to provide information or comment that will assist her to answer the Terms of Reference.

### **Public forums**

11. The final phase will consist of a series of public forums at which the views and experiences of the public generally will be sought and considered by the Chair.

### **Procedure for interviews and public forums**

12. At all formal interviews and public forums, the Chair will be accompanied by Counsel Assisting and/or members of the Inquiry staff. Provided notice is given in advance, any person or representative of a body or organisation may be accompanied at an interview by counsel or a support person.
13. The Chair in addition, may request or require others to attend interviews, as she considers appropriate and may convene further interviews or seek information at any time.

### **Times for interviews and forums**

14. In consultation with Inquiry staff, all initial meetings and formal interviews will be arranged as far as possible at dates, times and venues that accommodate the needs of those attending.
15. Public forums, their dates, times and venues will be advertised widely.

### **Core participants**

16. The Inquiry may designate individuals or organisations as Core Participants as provided in s17 of the Act. An individual or organisation may, by application in writing addressing the applicable grounds under s17 of the Act, seek designation as a Core Participant.

### **Community Reference Group**

17. The Chair will establish a Community Reference Group to advise and assist her in ensuring that a wide range of views and experiences are communicated to her.
18. The Community Reference Group will be advisory only and will have no decision-making powers. To ensure that it is of manageable size, it is unlikely to be a fully representative group.
19. Although the Chair will not be confining her enquiries to the Christchurch region, the Community Reference Group is likely to be formed solely from members of that community.
20. The terms of reference for a Community reference Group will be published on the website.

### **Media**

21. Subject to the powers contained in s15 of the Act, media will be entitled to attend all public forums.<sup>1</sup>

### **Inquiry records**

22. A separate minute relating to Inquiry Records will be issued.

### **Public Inquiry into the Earthquake Commission**

First issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 28/01/2019.

Re-issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 16/05/2019, to update links and to add footnote 1.

1. Media should note that this is subject to paragraphs [12 – 15] of Minute 3.

## Minute 2: Inquiry records

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### Introduction

1. This Minute addresses the status of documents and material supplied to and generated by, the Public Inquiry into the Earthquake Commission (“**Inquiry records**”). It also makes non-publication orders under section 15(1)(a) of the Inquiries Act 2013 (“**the Act**”) and orders restricting public access under section 15(1)(b) of the Act.

### Progress of the Inquiry and Inquiry records

2. During the course of the Inquiry, it is expected that the Inquiry will receive and generate a significant amount of information. The Inquiry has already issued Minute 1 which outlines the expected process the Inquiry will follow to gather that information.
3. The Inquiry now considers that it would be useful for submitters and others from whom information is sought or received, or who attend public forums, or meetings or interviews that are requested or required, to understand the Inquiry’s expected approach to publication and disclosure of the Inquiry records.
4. After the Inquiry has reported, under s32 of the Act the Inquiry records will be subject to the Official Information Act 1982 (OIA), with two exceptions:
  - (a) material over which the Inquiry has made non-publication orders under s15(1)(a) of the Act; and
  - (b) documents that relate to the internal deliberations of the Inquiry.
5. The Inquiry has considered the nature of the Inquiry records it is likely to hold and has also taken into account the criteria contained in s15(2) of the Act, which are:
  - (c) the benefits of observing the principle of open justice;
  - (d) the risk of prejudice to public confidence in the proceedings of the Inquiry;
  - (e) the need for the Inquiry to ascertain facts properly;
  - (f) the extent to which public proceedings may prejudice the security, defence, or economic interests of New Zealand;
  - (g) the privacy interests of any individual;
  - (h) whether it would interfere with the administration of justice, including any person’s right to a fair trial, if an order were not made under s15(1) of the Act; and
  - (i) any other countervailing interests.

### **Non-publication orders under section 15(1)(a)**

6. The Inquiry is proceeding on the presumption that as much information as possible will be made publicly available at the conclusion of the Inquiry and after it has reported. However, the Inquiry is mindful of privacy, confidentiality and natural justice considerations. Having considered the matters set out in s15(2) of the Act the Inquiry makes orders prohibiting publication of the following material, subject to paragraphs [7] – [10] below, in whatever format, including electronic, digital or hard copy:
- (a) all material in written submissions received from individuals that identifies individuals or discloses other confidential information or raises natural justice concerns, to ensure maximum privacy protection, confidentiality and observance of natural justice;
  - (b) all written submissions received from individuals where confidentiality has been requested and granted or that have been received under an obligation of confidence (express or implied);
  - (c) notes or minutes taken at meetings, interviews and public forums to ensure that free and frank views are provided to the Inquiry and that confidentiality and the observance of natural justice is maintained;
  - (d) those parts of written submissions or documents received from organisations where the organisation requested confidentiality for those parts and that request was granted by the Chair;
  - (e) any other communications or material provided to, sent or created by the Inquiry (including transcripts or videos of public forums or extracts thereof) in respect of which requests for confidentiality have been made and promised, or which if publicly released, could prejudice the maintenance of the law, or material that the Inquiry considers contains:
    - personal information that is sensitive or private and restriction is necessary to protect the privacy of natural persons, including deceased natural persons;
    - criticisms of persons or organisations who have not had the opportunity to provide comment. Principles of natural justice therefore have not been satisfied and public release would be unfair and contrary to the interests of justice; and
    - commercially sensitive information, publication of which could unreasonably prejudice or disadvantage the provider of the material.

### **Submissions from individuals**

7. Notwithstanding the non-publication orders made in paragraphs 6(a) and (b) above:
- the Inquiry expects to release themes or a summary of themes from individual submissions received by it without the inclusion of any confidential information or the names of individuals and may publish unattributed quotes;
  - the Inquiry may also make submissions publicly available where those submissions have been redacted to remove any confidential information or the names of individuals; and
  - it is open to individuals to publish any written submission that they might have made to the Inquiry. The Inquiry takes no responsibility for any such publication, which will be purely at the option and responsibility of the relevant individual.

### **Notes of meetings, interviews and public forums**

8. Notwithstanding the non-publication order made in paragraph 6(c) above the Inquiry may publish generic information about those with whom the Inquiry has met, or themes from those meetings, interviews or public forums along with unattributed quotes (subject to verifying their accuracy and complying with natural justice requirements). The Inquiry expects that unless confidentiality has been requested and granted, it will publish the names of those with whom the Inquiry has met. However, it does not expect to publish names of individuals who have attended public forums.

## Submissions from organisations

9. An organisation that wishes part of its written submissions or material or documents to be kept confidential should identify the parts of the submission, material or document that it considers sensitive and request confidentiality for those parts, identifying the grounds on which confidentiality should be granted as well as providing a redacted version of the submission, material or document. If confidentiality is granted on the basis of the grounds identified, an agreed redacted version will form part of the public record (and will not be subject to the non-publication orders in this Minute 2).
10. Notwithstanding the non-publication order made in paragraph 6(d) above, the Inquiry may publish themes arising from written submissions, material or documents received from organisations and expects to publish the names of organisational submitters.

## “Release”, “publication” and “official information”

11. All references above to the release of information or the publication of information by the Inquiry include releases made to, or publication made on the Inquiry website and in the Inquiry’s final report.
12. None of the above s15(1)(a) orders prohibit the Inquiry from discussing the material in its final report. The Inquiry considers that the principles of open justice and the need for public confidence will also be met by the release of its final report, one or more summaries of submissions and open access to group or organisation submissions where they can appropriately be released.
13. For the avoidance of doubt, the Inquiry’s orders attach only to release of the material held in the Inquiry’s own records and do not apply to copies of the same material independently held by individuals or organisations submitting such material.<sup>1</sup>
14. Accordingly, in making the above s15(1)(a) orders, the Inquiry does not intend that any information received by it from an agency subject to the Official Information Act 1982 (“OIA”) or the Local Government Official Information and Meetings Act 1987 (“LGOIMA”) should cease to be “official information” within the meaning of the OIA or LGOIMA in the hands of that agency.<sup>1</sup>

## Orders restricting access (Section 15(1)(b) Inquiries Act 2013)

15. For the avoidance of doubt, the material covered by the s15(1)(a) orders is also subject to orders pursuant to s15(1)(b) of the Act, restricting public access to that material.
16. In addition, for the avoidance of doubt, other than public forums, the procedure for which will be outlined on the Inquiry website or in a further Minute in due course, the Inquiry restricts public access to any other meetings or interviews to be convened or held by the Inquiry Chair for the purposes of the Inquiry.

## Public Inquiry into the Earthquake Commission

First issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 4/03/2019.

Re-issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 16/05/2019 to delete paragraphs 13 and 14 and update links.

Re-issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 19/02/2020 to reinstate and amend paragraphs 13 and 14.

<sup>1</sup> These paragraphs were deleted by paragraph 18 of Minute 3 and then reinstated and amended by paragraph 5 of Minute 5.

## Minute 3: Public forums

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### Introduction

1. This Minute addresses the processes and procedures the Public Inquiry into the Earthquake Commission (“Inquiry”) expects to take in relation to public forums. Public forums are being held so that the views and experiences of the public can be considered by the Inquiry.
2. The format for public forums has been informed by meetings the Inquiry Chair has held with the Community Reference Group, the minutes for which can be found on the Inquiry’s website.
3. This Minute does not address processes and procedures for meetings or private interviews that the Inquiry Chair might arrange. Nor does it apply to meetings which will be held with current or former EQC staff members, to which public access will be restricted in accordance with paragraph 16 of Minute 2.

### Attendance and registration

4. The dates, times and locations of public forums can be found under the “have your say” tab of the Inquiry’s website referred to above. Public forums in Christchurch will be held at Turanga Central library. The location of public forums at other places will be notified on the website.
5. As described on the website, the forums will be open for people to drop-in to talk to the Inquiry face-to-face and share views through a range of options that could include video, orally or in writing by writing short “post-it” views and suggestions on an interactive “ideas wall”. No registration is required for attendance at a public forum. The Inquiry Chair will not necessarily be in attendance at all times.
6. The Inquiry Chair will however attend group discussions at the times listed on the website and, as referred to in paragraph 12 of Minute 1, will be accompanied by counsel assisting and/or members of the Inquiry staff. Group discussions will on most occasions be led by an independent facilitator, supporting the Inquiry Chair and helping to ensure that all participants have a fair opportunity to share their views.
7. The Inquiry expects that there may be significant numbers of individuals or groups who wish to attend the group discussions. Participants are therefore requested to register for those group discussions through an online registration system that is accessible from the website and promoted on social media, emailing the Inquiry or calling the Inquiry’s free phone. Subject to the number of pre-registrations and available seating space, participants may be able to choose to attend a group discussion on-the-day.
8. Pre-registrants will be asked to supply their name as part of registering, but this and any other personal identifying information will not be collected or retained by the Inquiry except for the purpose of managing the registration process.

## Publication and disclosure of information

9. Minute 2 addresses the Inquiry's expected approach to publication and disclosure of the material submitted to the Inquiry. Please advise the Inquiry Chair and/or members of the Inquiry staff if you require confidentiality for any of your comments or other material provided to the public forum which may be confidential, sensitive or private. That information may become subject to nonpublication orders under section 15(1)(a) of the Inquiries Act 2013 in accordance with paragraph 6 of Minute 2.
10. The Inquiry does not expect attendees to use the public forums to publicly name or criticise individuals. If any attendee seeks to do this, the Inquiry Chair is likely to issue an immediate suppression order and advise media (if any) accordingly.

## Notes from public forums

11. The Inquiry may publish generic information about public forums, including themes arising from them. However, as noted above in paragraph 8, the Inquiry will not publish names of individuals who attend these forums or group discussions. Neither will the Inquiry make public any videos, notes, submissions or similar material that attendees may make at, or provide to, the public forums<sup>1</sup> without the consent of the relevant attendee.

## Media

12. As noted in paragraph 21 of Minute 1, media are entitled to attend all public forums. However, this is on the proviso that they identify themselves to the Inquiry staff on or before their arrival.
13. Attendees at the public forums must be given the opportunity to refuse to allow media to film, photograph or interview them.
14. Media will only be entitled to attend group discussions with the permission of the Inquiry Chair. The Inquiry Chair will take into account the views of attendees before making a decision whether to allow media to attend that group discussion and whether to allow media to film, photograph, record or take notes at that group discussion.
15. Paragraph 21 of Minute 1 is to be read subject to the above.

## Previous Minutes

16. To the extent that anything in this Minute as it relates to public forums contradicts, or is in conflict with anything contained in Minute 1 or 2, this Minute prevails.

## Official Information Act and Minute 2

17. The Inquiry may make a non-publication order under section 15(1)(a) of the Inquiries Act 2013 in respect of information received by it which at that point is "official information" within the meaning of the Official Information Act 1982 ("OIA"). Information subject to any such non-publication order will cease to be "official information" under section 2(1)(ha)(i).
18. Accordingly, if the Inquiry makes such an order in accordance with the provisions of Minute 2, that information will cease to be "official information". Having considered this matter further, the Inquiry believes paragraphs 13 and 14 of Minute 2 are incorrect and by virtue of issuing this Minute 3 are deleted.

## Public Inquiry into the Earthquake Commission

Issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 16 May 2019.

<sup>1</sup> Note that although the Inquiry will not be publishing this information, to the extent that it is provided to the Inquiry in a public forum or at a group discussion where other members of the public may see or hear it, it is unlikely to be completely confidential.

## Minute 4: Procedural matters for the conduct of the Inquiry

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### Introduction

1. This Minute clarifies certain procedural matters for the conduct of the Public Inquiry into the Earthquake Commission (“Inquiry”).

### Inquisitorial process

2. The Inquiry Chair intends to conduct an inquisitorial, rather than adversarial, inquiry. This is reflected in Minute 1, which identifies the process for gathering information.
3. In accordance with section 14 of the Inquiries Act 2013 (the “Act”), the Inquiry may conduct its inquiry as it considers appropriate. In making a decision as to the procedure it will adopt, the Inquiry must comply with the principles of natural justice and have regard to the need to avoid unnecessary delay or cost.
4. Section 14(4) provides that “an Inquiry may determine matters such as:
  - a) whether to conduct interviews and if so who to interview;
  - b) whether to call witnesses and if so, who to call;
  - c) whether to hold hearings in the course of its inquiry and if so, when and where hearings are to be held;
  - d) whether to receive evidence or submissions from or on behalf of any person participating in the inquiry;
  - e) whether to receive oral or written evidence or submissions and the manner and form of the evidence or submissions;
  - f) whether to allow or restrict cross-examination of witnesses.”
5. As anticipated in Minute 1, the Inquiry Chair has requested meetings with certain parties, held meetings sought by individuals or organisations and conducted formal interviews and public forums. These are still ongoing.
6. In addition, written online and paper submissions have been received. The written submission period has now closed.
7. The Inquiry’s approach to the Inquiry records is detailed in Minute 2.

### No hearings or cross-examination

8. As an inquiry and not a court proceeding, the Inquiry is not currently anticipating that “hearings” (as might be understood in a formal court-like process) will be held, nor therefore, that persons will be called to give evidence in such a forum.





9. Attendees at any public forums, or at meetings or formal interviews conducted by the Inquiry Chair, may be asked questions by the Inquiry Chair or counsel assisting. Counsel for, or representatives of, other interested parties, will not be entitled to attend those meetings or interviews (and, accordingly, will not be entitled to ask questions of attendees at those meetings or interviews). In addition, it is not anticipated that anyone other than the Inquiry Chair or counsel assisting will be entitled to ask questions of attendees at public forums. (This paragraph does not in any way preclude a person with whom the Inquiry Chair is meeting, or who the Inquiry Chair is interviewing, being accompanied by counsel or a support person, as anticipated by paragraph 12 of Minute 1).
10. The Inquiry is fully entitled to hold the inquiry, or any part of it, in private (see section 15(1)(c)). Public access to meetings or interviews to be convened or held by the Inquiry is restricted in accordance with paragraph 16 of Minute 2.
11. In deciding to hold parts of the Inquiry in private and restrict public access to the Inquiry, the Inquiry has taken into account the criteria outlined in section 15(2) of the Act which are:
  - a) the benefits of observing the principle of open justice;
  - b) the risk of prejudice to public confidence in the proceedings of the Inquiry;
  - c) the need for the Inquiry to ascertain facts properly;
  - d) the extent to which public proceedings may prejudice the security, defence or economic interests of New Zealand;
  - e) the privacy interests of any individual;
  - f) whether it would interfere with the administration of justice, including any person's right to a fair trial, if an order were not made under section 15(1) of the Act; and
  - g) any other countervailing interests.

### **Applications for legal assistance**

12. The Inquiry Chair does not anticipate that any person meeting with, or being interviewed by, the Inquiry Chair will require any form of legal assistance. Therefore, it is unlikely that reimbursement of legal costs will be needed.
13. Nonetheless, if any person wishes to request that the Inquiry make a recommendation to the Chief Executive of DPMC that funding be granted for the purpose of providing legal assistance to a person under section 18 of the Act, the Inquiry expects the following matters to be addressed in any request:
  - a) the likelihood of hardship to a person if legal assistance is declined;
  - b) the reason why legal assistance is considered necessary and why the applicant cannot reasonably be expected to pay for that assistance;
  - c) the amount sought, the seniority of the relevant lawyer, the number of hours anticipated and the hourly rate;
  - d) the nature and significance of the contribution that the person will, or is likely to, make to the Inquiry;
  - e) the extent to which legal assistance is, or is likely to be, required to enable the Inquiry to fulfil its purpose; and
  - f) any other matters relating to the public interest which the Inquiry may request.

### **Public Inquiry into the Earthquake Commission**

Issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 17 June 2019.

# Minute 5: Clarification on application of Official Information Act and Local Government Official Information and Meetings Act

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## Introduction

1. This Minute reinstates a procedural matter relating to the application of the Official Information Act and the Local Government Official Information and Meetings Act relating to the conduct of the Public Inquiry into the Earthquake Commission (“**Inquiry**”).

## Official Information Act and Minute 2

2. When issued, paragraphs 13 and 14 of Minute 2 provided as follows:

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*13. For the avoidance of doubt, the Inquiry’s [non-publication] orders attach only to release of the material held in the Inquiry’s own records and do not apply to copies of the same material independently held by individuals or organisations submitting such material.*

*14. Accordingly, in making the above s15(1)(a) orders, the Inquiry does not intend that any information received by it from an agency subject to the Official Information Act 1982 (“OIA”) should cease to be “official information” within the meaning of the OIA in the hands of that agency.*

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3. The Inquiry was initially concerned that these paragraphs would not be effective to enable the Inquiry to make qualified non-publication orders over material received from organisations subject to the OIA with the consequence that such non-publication orders would make certain information cease to be “official information”. Accordingly, the Inquiry deleted paragraphs 13 and 14 of Minute 2.
4. Having reconsidered the matter, the Inquiry believes that its initial approach was correct so that the Inquiry may make a non-publication order over certain material held by the Inquiry and may clarify that information will not cease to be “official information” in the hands of the originating agency. In addition, the Inquiry believes the relevant paragraphs should be extended to the Local Government Official Information and Meetings Act 1987.

5. Accordingly, paragraphs 13 and 14 are to be reinstated and amended into Minute 2 as follows:

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*13. For the avoidance of doubt, the Inquiry's orders attach only to release of the material held in the Inquiry's own records and do not apply to copies of the same material independently held by individuals or organisations submitting such material.*

*14. Accordingly, in making the above s15(1)(a) orders, the Inquiry does not intend that any information received by it from an agency subject to the Official Information Act 1982 ("OIA") or the Local Government Official Information and Meetings Act 1987 ("LGOIMA") should cease to be "official information" within the meaning of the OIA or LGOIMA in the hands of that agency.*

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### **Public Inquiry into the Earthquake Commission**

Issued under the authority of the Inquiry Chair, Dame Silvia Cartwright, on 19 February 2020.

# Attachment C

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## Community Reference Group membership and Terms of Reference

### Community Reference Group members

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- Peter Beck
- Mel Bourke
- Leanne Curtis
- Dr Lucy D'Aeth
- Ali Jones
- Tom McBrearty
- Garry Moore
- John Patterson
- Ken Pope
- Cam Preston
- Evan Smith
- Deon Swiggs

### Terms of Reference for a Community Reference Group, to support the Inquiry into the EQC

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#### Introduction

The Government has established a public inquiry into the Earthquake Commission's (EQC) approach to the land and residential claims management process and the related outcomes for the Canterbury earthquake events.

Dame Silvia Cartwright is leading the Inquiry. She is a former Governor General and High Court judge and has wide experience with other national and international inquiries.

Dame Silvia wants to hear from as wide a range of people and organisations as possible, to understand what parts of the process and systems in place worked well, what didn't work well and what improvements could be made to ensure EQC is able to respond effectively and positively in the next event of this nature.

There is strong feeling from some residents in the greater Christchurch community that the voices of individuals and local communities have not been listened to sufficiently in post-earthquake recovery and regeneration responses.



This Inquiry is an opportunity to make sure that all claimants interested parties have the chance to take part in the process and share their views. These views will shape the recommendations for changes and improvements that Dame Silvia Cartwright will make to the Government in mid-2019.

A Community Reference Group of wise advisors, who are knowledgeable about community sentiment and experiences in dealing with EQC, can act as a valuable input to and check of the engagement and communications processes that the Inquiry follow.

## **Purpose**

A Community Reference Group will help make sure the Inquiry process builds in appropriate, accessible and equitable opportunities for anyone who wants to take part in the Inquiry to do so. The Reference Group will not be a representative group of all communities of interest or viewpoints. It will comprise of a range of claimants or citizens and interested parties from greater Christchurch who have a strong understanding and knowledge of the experiences and viewpoints that are likely to be expressed and the ways in which most people will feel comfortable finding out about and contributing to the Inquiry.

## **Scope**

The Community Reference Group will provide advice and feedback on matters relating to the Inquiry process that are pertinent to claimants and interested parties in the community.

The Community Reference Group is an advisory group and has no decision-making powers. The Inquiry needs to meet the provisions of the Inquiries Act (2013). The Inquiry's scope is defined in the Terms of Reference, announced in November 2018.

## **Role**

The Community Reference Group may be asked, to:

1. Provide input into the design of the methods of engaging with claimants and interested parties, so that they can take part in the Inquiry in way/s that respect and reflect the importance of public participation in democratic processes;
2. Assist in identifying gaps in reaching communities of interest, population groups or individuals whom the Inquiry needs to hear from;
3. Provide feedback on the effectiveness of communications channels used and messages delivered throughout the Inquiry process, to support wide dissemination of information and encourage participation;
4. At the end of the submission and hearings process, provide feedback on the extent to which the Inquiry has heard from a fair and reasonable range of views and if there are outstanding communities of interest or points of view that have not been heard from;
5. Provide feedback on early thinking from the Inquiry about the key findings being considered, from the perspective of the extent to which it reflects matters raised by claimants and interested parties;
6. Provide feedback on the interim report from the Inquiry from the perspective of the extent to which it reflects matters raised by claimants and interested parties;
7. Throughout the Inquiry process, offer practical assistance or guidance to the Inquiry Member, Head of Secretariat and wider team, on any emerging issues relating to the engagement and communications activities.

## Members

The Community Reference Group is not a representative group, in that its membership does not aim to include all or any particular communities of interests or perspectives. However, the intention is for it to comprise of claimants and interested parties from greater Christchurch who have a strong understanding and knowledge of the experiences and viewpoints that claimants and interested parties are likely to want to express and the ways in which most people will feel comfortable contributing to the Inquiry.

Given the relatively tight timeframe for the Inquiry, possible members will be invited to participate on the Community Reference Group. (A call for nomination of members is likely to take too long to process and will constrain the opportunity for the Group to have input into the engagement plan's design).

The size of the Community Reference Group can be flexible. It needs to reflect a range of local knowledge and understanding. However, for practicality (meeting logistics and efficiency) it should comprise no more than 12-15 members.

The Community Reference Group cannot make a collective submission but members can submit individually or on behalf of a community of interest or organisation that they represent.

## Remuneration

Members to receive a gift of money in recognition of their contribution of advice and meeting participation.

## Meetings' programme

Meetings' frequency, duration and location will be decided by mutual agreement at its first meeting. Likely programme:

Meeting 1: (Mid February) Introduction to Group's role, outline of Inquiry process, discussion and input into planning community engagement and opportunities for participation through the inquiry process and communication channels; discussion and input into the questions to be asked on the submission form.

Meeting 2: (April - indicative) Feedback on community engagement progress and activities, with regard to the matters within the group's terms of reference.

Meeting 3: (Late May - indicative) Provide feedback on Inquiry's initial thinking following submissions and forums, with regard to the matters within the group's terms of reference.

## Term of appointment

Commence in February 2019 and end its functions later in 2019.

# Attachment D

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## Briefing reports prepared for the Inquiry by EQC

- History of the Earthquake Commission
- External reviews of the Earthquake Commission since 2010
- Catastrophe Response Programme 2009/10
- Ministerial Directions since 1 January 1994
- Earthquake Commission Data
- Canterbury Land Programme
- Canterbury Home Repair Programme
- Information Management and Technology
- Community Engagement and Communications
- Managing Risk – Premiums, Reinsurance and the Natural Disaster Fund
- The Kaikōura Earthquake
- Research and Education
- Estimating EQC's financial liabilities
- Customers' Experience of the Earthquake Commission's Claims Management Processes
- Resolving disputes with customers arising from the Canterbury earthquakes
- EQC and the private insurer interface
- People and Capabilities
- EQC's submission to the Public Inquiry into the Earthquake Commission

The Inquiry also received a wide range of other relevant documents and information from EQC.

# Appendix 2

## History of EQC 1929–2018\*

### 1920s

1929

**Murchison earthquake**  
17 June - 7.3 magnitude.

### 1930s

1931

**Hawkes Bay earthquake**  
3 February - 7.8 magnitude.

### 1940s

1942

**Wairarapa earthquakes**  
24 June - 7.2 magnitude.

2 August - 6.8 magnitude.

1944

Earthquake and War Damage Act 1944. War Damage Commission renamed Earthquake and War Damage Commission (EWDC).

### 1960s

1968

**Inangahua earthquake**  
24 May - 7.1 magnitude.  
10,500 EQC claims.

### 1970s

1979

**Abbotsford landslide**  
8 August.

### 1980s

1984

Earthquake and War Damage (Land Cover) Regulations 1984.

1988

EWDC becomes a statutory corporation. State Insurance Office privatised. Previously seconded State staff become EWDC employees.

1989

White Paper (May 1989).

### 1990s

1992

Earthquake Commission Bill introduced.

1994

Earthquake Commission Act 1993 and Earthquake Commission Regulations 1993 come into force.

### 2000s

2003

**Te Anau earthquake**  
22 August - 7.2 magnitude.  
EQC trials project manager to oversee repair work.

2005

Crown Entities Act 2004 comes into force.

2007

**Gisborne earthquake**  
20 December - 6.7 magnitude.

2009

External review of EQC Catastrophe Response Programme (CRP).

### 2010

**March** - Ian Simpson appointed Chief Executive of EQC.

**Darfield earthquake**

4 September - 7.1 magnitude.

**October** - EQC conducts tender process and appoints Fletcher Construction to manage Canterbury residential building repairs.

**October** - Earthquake Commission Amendment Regulations 2010 extend time period to notify claims to 3 months.

### 2011

**Cyclone Wilma**

29 January - Largest natural landslide event EQC had handled to date.

**22 February 2011 earthquake (Christchurch)** - 6.3 magnitude at 12.51pm.

**March** - Canterbury Earthquake Recovery Authority (CERA) established. After the 13 June earthquake CERA commenced zoning process and making of Crown offers for Residential Red Zone land.

**March** - Ministerial Direction to EQC to carry out emergency repairs (insured and uninsured properties).

**13 June 2011 earthquakes (Christchurch)** - 5.7 magnitude at 1.20pm; 6 magnitude at 2.20pm.

**September** - High Court declaratory judgment - EQC's cover reinstates after each natural disaster event.

**October** - Technical Categories announced (TC1, TC2, TC3).

**November** - Protocol 1 entered into between EQC and private insurers.

**23 December 2011 earthquakes (Christchurch)** - 5.8 magnitude at 1.58pm; 5.9 magnitude at 3.18pm.





## 2012

**February** – EQC premiums increase.

**April** - Canterbury Earthquake (Earthquake Commission Act) Order 2012 exempting EQC from statutory deadline.

**October** - Royal Commission of Inquiry (into building failure caused by Canterbury earthquakes) reports on EQC-specific issues.

**December** - Ministerial Direction - unclaimed damage to residential buildings.

**December** - Nelson floods

## 2013

**March** - EQC privacy breach

**May** - Launch of Residential Advisory Service (RAS).

**June** - New Chair of EQC – Sir Maarten Wevers.

### Seddon earthquakes

**19 July** - 5.7 magnitude.

**21 July** - 6.5 magnitude.

**16 August** - 6.6 magnitude.

**October** - Auditor-General report on managing the Canterbury Home Repair Programme (CHRP).

**December** - Joint Report of Chief Ombudsman and Privacy Commissioner on EQC's handling of information requests.

**December** - State Services Commission Report on EQC's Customer Satisfaction Survey.

**December** - Human Rights Commission Report – human rights aspects of Canterbury recovery.

## 2014

### Eketāhuna earthquake

**January** - 6.2 magnitude.

**October** - “In the Know” land hub established.

**December** - Declaratory Judgment - Increased Flooding Vulnerability (IFV) land damage.

## 2015

**July** - Treasury discussion document issued on proposed changes to EQC Act.

**August** - MBIE Report – “Earthquake Repairs to Canterbury Homes”.

**November** - Auditor-General report – follow-up to October 2013 report.

## 2016

### February 2016 earthquakes

**(Christchurch)** - 5.7 magnitude on 14 February 2016; 4.3 magnitude on 29 February 2016

**April** - EQC Action Group litigation settled. Joint Statement issued.

**August** - Ministerial Direction to EQC re certain storm water and sewerage services and structures.

### Kaikoura earthquake

**14 November** - 7.8 magnitude.

**December** - Kaikoura Memorandum of Understanding signed by EQC and private insurers.

## 2017

**January** - IAG and Tower commence High Court proceedings against EQC re its Increased Liquefaction Vulnerability (ILV) policy.

**February** - Sid Miller appointed Chief Executive of EQC.

**April** - **Edgumbe flood** - Ministerial Direction to EQC to support clean-up process (insured and uninsured properties).

**May** - Memorandum of Understanding signed by EQC and Southern Response (SR) re SR customer claims likely to go over cap.

**July** - High Court decisions reaffirm EQC's approach for assessing and settling claims.

## 2018

**January** - EQC settlements with Crown re Residential Red Zone properties are materially complete.

**February** - Canterbury Business Unit (CBU) announced, and established in March.

**February** - EQC Board Chair, Sir Maarten Wevers resigns; Dame Annette King appointed Chair of EQC.

**March** - Minister's letter to EQC setting out expectations for 2018/19.

**March** - Earthquake Commission Amendment Bill introduced.

**June** - Independent Ministerial Advisor Report issued.

**August** - Canterbury Earthquakes Tribunal Bill introduced.

**October** - Greater Christchurch Claims Resolution Service announced.

**November** - New EQC Chair – Sir Michael Cullen.

# Appendix 3

## Glossary

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**Agency model**—A model for handling claims where claims are predominantly managed by private insurers or other third parties as agents for EQC. An agency model (known as the Kaikōura model) was used to deal with almost 40,000 claims for the 2016 Kaikōura/Hurunui earthquake.

**As is, where is**—A term used to describe a property for sale that has not been returned to its same condition prior to the natural disaster event (typically with earthquake damage).

**Building Act 2004**—The Act provides for the regulation of building work, the establishment of a licensing regime for building practitioners and the setting of performance standards for buildings (the Building Code). It also promotes the accountability of owners, designers, builders and building consent authorities who have responsibilities for ensuring that building work complies with the Building Code.

**Building Code**—The Code is contained in regulations issued under the Building Act 2004. It sets the performance standards, such as fire safety, access and structural stability, to which building work must be completed, even if a building consent is not required.

**Canterbury Home Repair Programme**—The Earthquake Commission's managed repair programme for Canterbury homes with damage between \$15,000 and \$100,000 (plus GST) per claim. The programme was project managed by Fletcher, on behalf of EQC.

**Cash settlement**—The payment of a monetary sum to the insured property owner in settlement of a claim.

**Cross-lease titles**—A cross lease is where a number of people own an undivided share in a piece of land and the homes that they build on the land are leased from the other land owners. Properties on cross-lease titles may have different insurers.

**Crown Guarantee**—Section 16 of the EQC Act operates as the Crown Guarantee, noting that if the assets of EQC (including the money for the time being in the Natural Disaster Fund) are not sufficient to meet the liabilities of EQC, the Minister shall provide public money to EQC by way of grant or advance to meet the deficiency.

**Declaratory judgment**—A declaratory judgment is a statement of the court's opinion on a question of law or the rights of the parties involved.

**Diminution of value**—A method for calculating the reduction in value in land-damage settlements for properties in Canterbury.

**Greater Christchurch**—The geographical area encompassing Waimakariri District Council, Selwyn District Council and Christchurch City Council boundaries, as defined in the Canterbury Earthquake Recovery Act 2011. The area was redefined in the Greater Christchurch Regeneration Act 2016 to include only areas where rebuild and regeneration activities were ongoing.

**Increased Flooding Vulnerability**—A type of land damage recognised by EQC where properties are now vulnerable to flooding where previously they were not, or are more likely to experience a greater depth and/or frequency of flooding.

**Increased Liquefaction Vulnerability**—A type of land damage recognised by EQC where properties are now more vulnerable to liquefaction damage, or are now more likely to experience more severe liquefaction damage in future earthquakes.

**Insurance Council of New Zealand**—A representative body of fire and general insurance companies that works with stakeholders and consumers to help people understand and manage their risks and promotes a strong and sustainable insurance industry.

**Insurance premiums**—The amount paid for an insurance policy. In New Zealand, people who hold a private home insurance policy that includes fire insurance automatically have EQC cover. Depending on the type of cover held, insurance premiums are usually comprised of the insurance company's premium, the EQC levy, the Fire Service levy and GST.

**Lateral spreading**—A horizontal ground movement toward a free face such as a river, stream, channel or dip where the land is not physically constrained.

**Liquefaction**—A process where soil behaves more like a liquid than a solid due to earthquake shaking.

**Ministerial directions**—Government Ministers can give formal direction to a Crown entity on government policy, following procedures set out in section 115 of the Crown Entities Act 2004.

**Multi-unit dwellings**—Properties that share common structural parts, such as foundations, party walls, or a roof. Most dwellings in multi-unit buildings have different owners and often have separate insurers.

**Natural Disaster Fund**—The Fund is administered by EQC and is used, amongst other things, to settle claims resulting from a natural disaster.

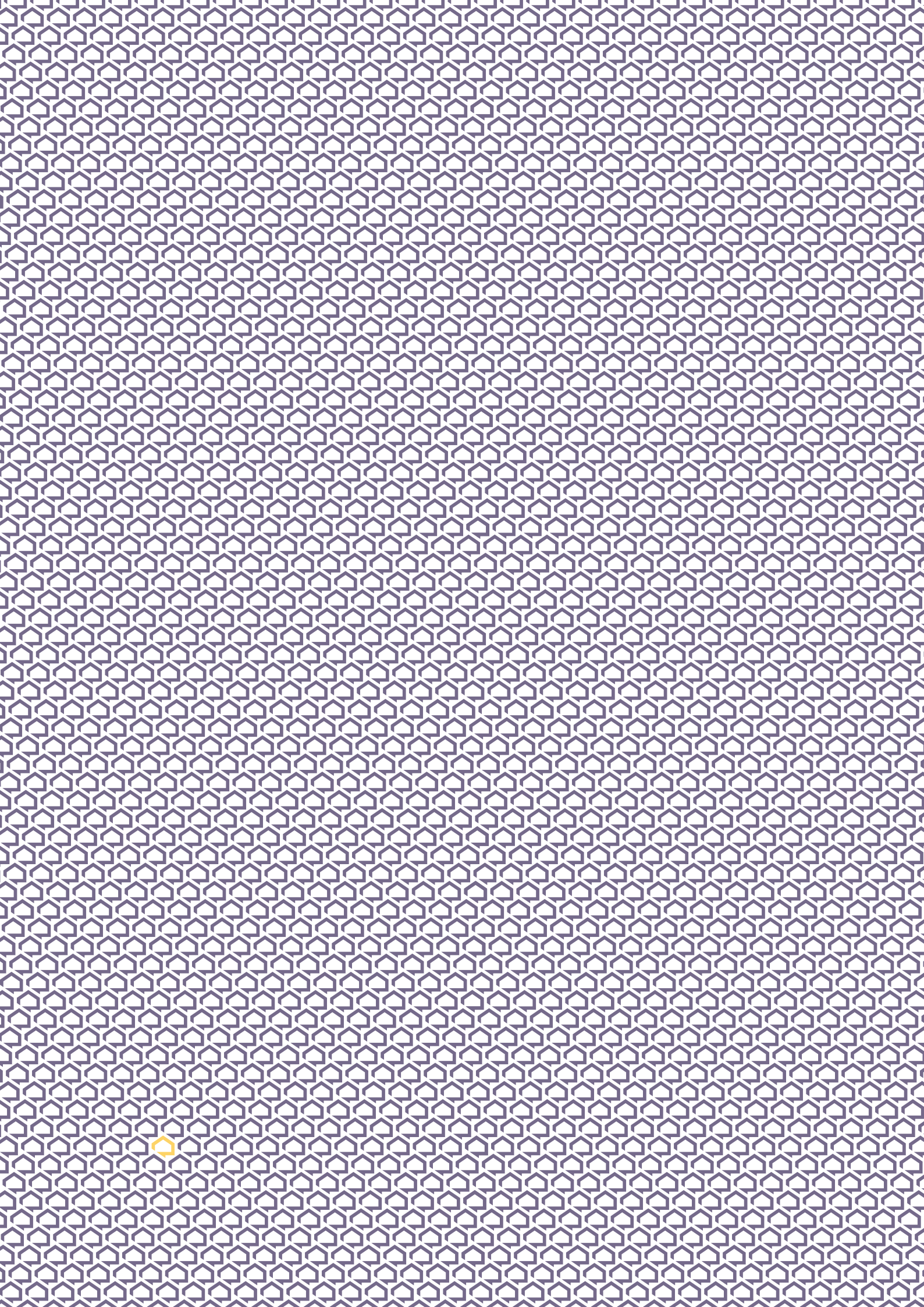
**On-sold properties**—A term used to refer to properties that have been bought or sold since the Canterbury earthquakes where there may be outstanding claims or unresolved damage.

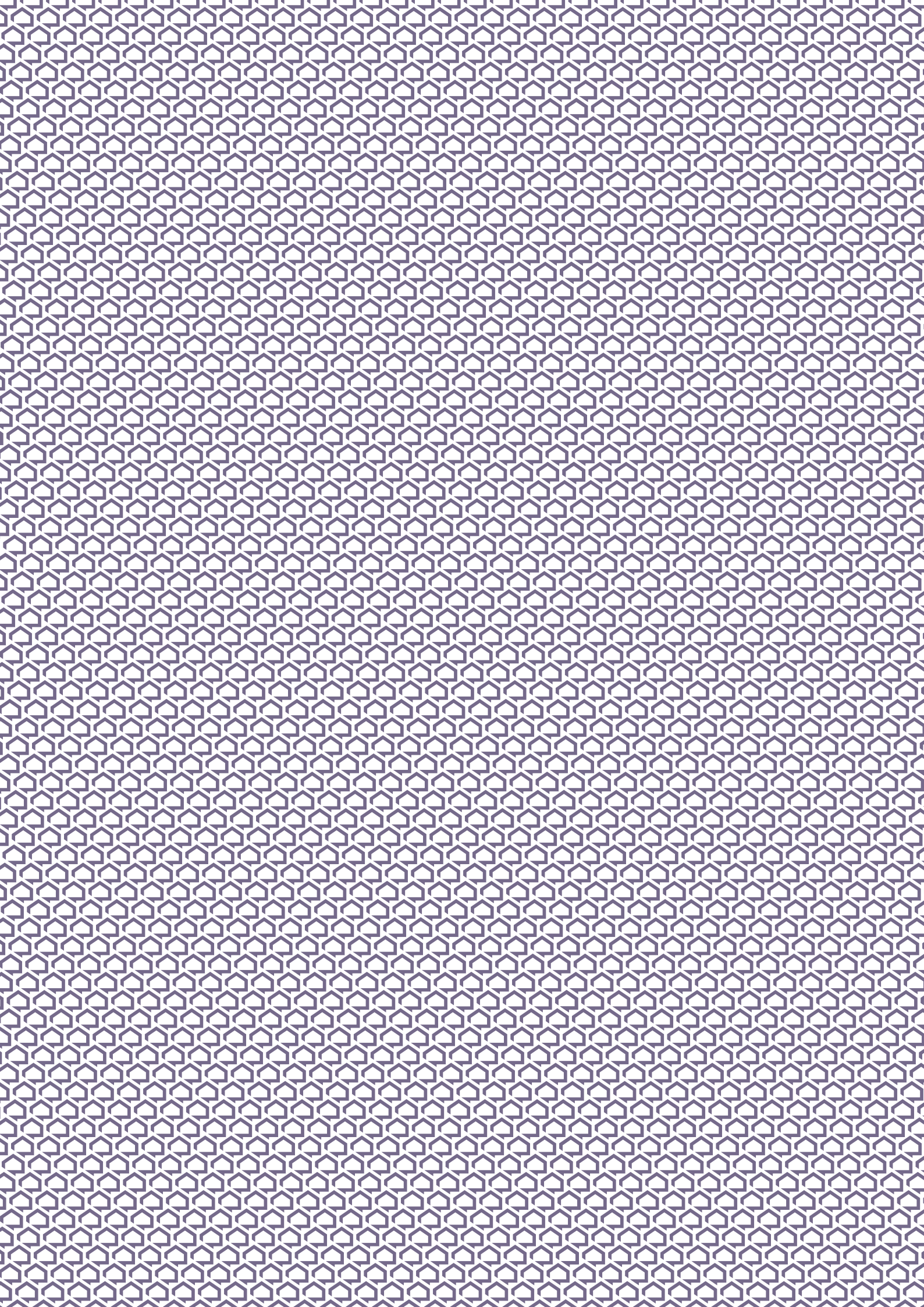
**Over-cap claims**—Over-cap claims are where a claim exceeds EQC's limit (was \$100,000 plus GST, \$150,000 plus GST from 1 July 2019) and the management of the claim is transferred to the homeowner's private insurer.

**Reinsurance**—Reinsurance is a form of insurance purchased by EQC and insurance companies in order to mitigate risk.

**Residential red zone**—In Canterbury, this refers to areas where it is unlikely that the land can be built on over the short-to-medium term and where area-wide solutions may be required. The Crown offered to purchase properties in these areas.

**Under-cap claims**—These are dwelling claims where the damage is assessed as costing less than \$100,000 plus GST or \$150,000 plus GST from 1 July 2019. The settlement of these claims is managed by EQC.







**Public Inquiry into  
the Earthquake  
Commission**

*Uiuinga Tūmatanui ki te Kōmihana Rūwhenua*

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