

Canterbury Earthquakes Insurance Tribunal Bill

Government Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Canterbury Earthquakes Insurance Tribunal Bill and recommends that it be passed with the amendments shown.

Introduction

The purpose of this bill is to establish the Canterbury Earthquakes Insurance Tribunal. The aim of the tribunal is to provide speedy, flexible, and cost-effective services to those involved in insurance disputes following the Canterbury earthquakes of 2010 and 2011. It is intended that the tribunal would be an independent judicial body as an alternative route for resolving insurance disputes.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Introductory clauses

Commencement date

Clause 2 is the commencement clause. We recommend amending subclause (1) so the sections listed would enter into force 28 days after the date of Royal assent. We also recommend amending subclause (2) because Royal assent is unlikely to occur before 25 March 2019, as envisioned by the bill as introduced. This would allow the tribunal to be set up following Royal assent, and to become fully operational 28 days later.

Purpose statement

Clause 3 sets out the purpose of the bill and the tribunal. We recommend including the word “fair” as part of the purpose statement. This would reflect the requirement on the tribunal to provide fair services and to comply with natural justice. This would also entail some consequential amendments in other relevant clauses.

We also recommend rewording clause 30(1), which deals with mediation services, to ensure it is consistent with the purpose of the bill.

Defining which earthquakes would be covered by the tribunal

Clause 5 sets out the various definitions used throughout the bill. As introduced, the definition of “Canterbury earthquakes” is limited to earthquakes and any aftershocks occurring up until 31 July 2011. We recommend extending the date to 31 December 2011. This would account for the earthquake that occurred on 23 December 2011 and would ensure that another approximately 49,000 claims were included in the jurisdiction of the tribunal.

Other amendments to definitions

We also recommend amending the definitions of residential building and residential property under clause 8(4) to capture all similar terms that may be used in insurance contracts, for example the term “home”.

Application of the Act

Clause 8 of the bill sets out when the Act would apply to an insurance dispute. We recommend inserting new clauses 8(2A) and 8(6) to allow the tribunal to decide liability for damage from earthquakes and aftershocks that occurred after 31 December 2011 in certain circumstances. This would only apply if at least some of the earthquake damage included in the claim occurred during the Canterbury earthquakes as defined in the bill, and the later damage is to the same residential building, property, or land. This would allow parties to amalgamate their disputes relating to the same building, property, or land and avoid having to go through separate processes for pre- and post-December 2011 earthquake damage. It would also minimise disputes over which damage occurred on what date.

Eligibility criteria

Clause 9 sets out the eligibility criteria to bring a claim before the tribunal. We recommend inserting new clause 9(2) to clarify that the chairperson or a Judge would not be required to form a view on any question of law or assess the likelihood of success of a claim when determining whether the eligibility criteria have been met.

Form of response

Clause 15 sets out how a respondent may file response documentation with the tribunal. We recommend inserting new clause 15(1A) to allow the tribunal to prescribe the form of the response to be filed.

Transferring proceedings from court to the tribunal

Clause 16 would allow policyholders or insured persons who have current court proceedings relating to their insurance claim to apply for their claim to be transferred from the court to the tribunal. Although the plaintiff would not need the consent of the other parties (such as insurers) to transfer the proceedings, we recommend inserting subclause (2)(ab) to allow other parties a reasonable opportunity to comment on the application for transfer.

We also recommend amending clause 16 to allow applications to be made where there are more than two parties (such as multiple plaintiffs or defendants), but this would not extend to class actions.

Transferring proceedings from the tribunal to court

Clause 28 of the bill would do the opposite of clause 16, allowing claims from the tribunal to be transferred to court in certain circumstances. As with clause 16, we recommend amending clause 28 by inserting new subclause (1A) to allow the parties a reasonable opportunity to comment on the transfer before it takes place.

Referring questions of law to the High Court

Clause 51 would allow the tribunal to refer questions of law to the High Court for the Court to provide its opinion. We recommend inserting new clause 51(1A) to ensure the tribunal provides a reasonable opportunity for the parties to comment before any question is referred to the High Court.

We also recommend amending subclause (1) to specify that a question of law could be referred at any point in the process before the claim was determined, as opposed to only when preparing for, or during, the hearing of a claim.

Considerations before striking out a claim

Clause 9 of Schedule 2 would give the tribunal the power to strike out, decide on, or adjourn a claim based on certain criteria as set out in the clause (such as the claim no longer being eligible). To ensure the tribunal upholds its purpose of flexibility, we recommend inserting new clause 9(4) in Schedule 2. This would require the tribunal to consider whether a claim can be transferred to a court instead of striking it out. The transfer would then only take place with the agreement of all parties. This would ensure that claims are not struck out without alternative options being considered.

Case management

Use of experts in the tribunal

Subpart 4 of Part 1 of the bill deals with case management. Clause 20(4) in particular deals with managing the use of experts in claims. This clause as introduced would let the tribunal decide when to allow the use of experts by parties based on necessity. We recommend reversing the presumption and lowering the threshold in this clause to allow parties to use experts except where the tribunal deems it unnecessary. Reversing

this presumption would uphold the principle of fairness for policyholders while ensuring that the tribunal retained the power to prevent unnecessary use of experts in the interests of fair, speedy, and cost-effective resolutions.

Combining expert evidence

We recommend inserting clause 41A. This clause would allow the tribunal to order that technical evidence on subject matter relevant to more than one claim could be heard at a special hearing with all affected parties present. This would be in the interests of efficiency and would only occur if all parties to any claim agreed.

Power of tribunal to inspect

Clause 24 sets out actions the tribunal may undertake during the first case management conference. We recommend adding another matter (new subclause (1)(ga)) to give the tribunal the power to inspect a dwelling house, property, or land earlier in the process, as this may help with faster resolutions. The tribunal would already have this power under clause 39(1)(i) but only in relation to the hearing stage of a claim.

Enforcement

Clause 35 relates to the enforcement of mediated settlements through the tribunal. We recommend rewording clause 35 to make it clear that all agreed terms of settlement reached through mediation would be recorded as a decision of the tribunal.

We also recommend that the tribunal be required to ensure all parties understand the effect of clause 35 before they enter into mediation. To do this, we recommend inserting new clauses 27(6), 24(4A), and 39(1A).

Adjudication of claims

Clause 37 sets out requirements on the tribunal when managing the adjudication of claims. Clause 37(3) states that the tribunal must comply with the principles of natural justice. However clause 37(4) states that despite this the tribunal does not have to permit cross-examination or allow the use of experts. We recommend removing the reference to “absolute discretion” from clause 37(4)(a), as it implies that the decision is not judicially reviewable and that is not the intent of the bill. We also recommend amending clause 37(4)(b) to allow the use of experts unless the tribunal considers it unnecessary. This would ensure that the provision was consistent with clause 20 (which relates to the case management phase) as discussed above.

Decisions of the tribunal

Tribunal jurisdiction

Clause 43 sets out the matters the tribunal may make decisions on. We recommend amending this clause to ensure the limits of the tribunal’s jurisdiction are clear and not wider than intended.

Substance of tribunal decisions

Clause 44 sets out factors that the tribunal could consider when making a decision on a claim. We recommend amending clause 44(1) to make it clear that the terms of the insurance contract and the general law of New Zealand would always be a relevant consideration for the tribunal when deciding a claim. We recommend achieving this by making those two factors compulsory considerations, rather than optional.

Clause 44(3) as introduced would allow the tribunal to require the payment of general damages (for example, mental distress). We recommend amending this clause to clarify that the intention of this legislation is to give the tribunal the power to award a remedy that a court could award in accordance with the general law of New Zealand. This amendment would ensure the clause is not interpreted more widely than intended.

We also recommend amending clause 44(7) to make it clear that the policyholder could ask the tribunal to record the settlement decision without needing the agreement of all parties. This would be in line with the overarching objective of the tribunal which is to aid policyholders in resolving their insurance disputes. We recommend consequential amendments to clauses 24(4B), 26(5), and 38(5). These amendments would require the tribunal to ensure that all parties understand the effect of recording the settlement (the effect of clause 44(7)).

Costs

Clause 45 deals with costs that the tribunal may award. We recommend clarifying the scope of this clause by inserting new subclause (1AA). This would make it clear that the tribunal could only award costs in accordance with clause 45, and not more generally. We also recommend inserting new subclause (2A) to ensure that the tribunal took into account whether the insurer was already liable to pay costs under the insurance contract. This amendment would be consistent with the purpose of the tribunal, which is to provide a cost-effective service. It would also remove the risk of a party paying the costs of the other party (except as provided for in the clause) and would take into account any other liability for costs under an insurance contract.

Membership of the tribunal

Clause 55 sets out the process for appointing members to the tribunal. We recommend inserting new subclause (1AA) to set a minimum of 1 member for the tribunal.

We also recommend inserting new subclause (4) to require the chairperson of the tribunal to have held a practising certificate as a barrister, or barrister and solicitor, of the New Zealand High Court for at least 7 years. This would ensure the chairperson has sufficient experience to undertake the role.

Liability exclusions

Clause 63 would exclude certain people from criminal or civil liability in certain circumstances. We recommend amending clause 63(1)(b) to clarify that it also applies to the chairperson.

Remuneration

Clause 60 would allow the chairperson to delegate functions (except the function to delegate) to other members. The clause as introduced would not allow members to be paid additional remuneration for delegated functions. We recommend amending clause 60(5) to allow any member who undertakes delegated functions to be properly paid for that function. This would bring the bill into line with the Tribunals Powers and Procedures Legislation Act 2018.

Clause 33 of Schedule 2 provides for the reimbursement of tribunal members. However, the use of the word “salary” throughout this clause is incorrect, because members would not be employees of the tribunal. Therefore, we recommend substituting the word “remuneration” in this clause.

Evidence

Clause 13 of Schedule 2 states that any party may give and call evidence. Clause 14 allows the tribunal to take such evidence on oath. We recommend amending clause 14 of Schedule 2 to make it clear that the tribunal could also take evidence on affirmation, and that it could require documents or information to be verified by oath, affirmation, statutory declaration, affidavit, or other means (new clause 14(1A)).

We also recommend inserting new clause 39A in Part 2 of the bill. This would allow the tribunal to seek and receive evidence on its own initiative, rather than only being able to rely on the parties to call evidence. This new clause would also include a requirement to disclose all evidence received by the tribunal to the parties and allow them reasonable opportunity to comment.

These powers would be consistent with the inquisitorial nature of the tribunal (see clause 54(b)).

Annual report requirements

Clause 22 of Schedule 2 sets out the annual report requirements of the tribunal, such as what details the annual report must include. We recommend amending clause 22(3) to specify that the report must also include the number of claims transferred from the courts, the number of claims settled through mediation (as opposed to having been decided by the tribunal), and the number of claims decided after a hearing in the tribunal. We also recommend that, under clause 22(4), the report must identify the number of claims filed against EQC as well as the number against the insurer.

Finally, we recommend inserting new clause 22(4A) into Schedule 2 to provide the tribunal chairperson an opportunity to highlight any other information in the report that they wished to include.

Adding these requirements would ensure that the Minister receiving the report was provided with key statistics regarding the tribunal, and ensure the report was consistent with the reporting practices of other tribunals in New Zealand.

Incapacitated persons and minors

The High Court Rules and the District Court Rules both provide for ways for incapacitated persons and minors to be supported in the courts. We recommend adding new clause 3A in Schedule 2 to apply the relevant District Court Rules to the tribunal. This would give the tribunal powers to ensure that incapacitated people who have applied to the tribunal, and minors who may be involved in claims, have the support they need in the tribunal.

Appendix

Committee process

The Canterbury Earthquakes Insurance Tribunal Bill was referred to the committee on 4 September 2018. The closing date for submissions was 18 October 2018. We received and considered 26 submissions from interested groups and individuals. We heard oral evidence from 10 submitters.

We received advice from the Ministry of Justice.

Committee membership

Brett Hudson (Chairperson)

Ginny Andersen

Kanwaljit Singh Bakshi

Hon Jacqui Dean

Paul Eagle

Hon Peeni Henare

Jamie Strange

Dr Jian Yang

Stuart Smith participated in much of the consideration for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Andrew Little

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Part 3

Canterbury Earthquakes Insurance Tribunal

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The Parliament of New Zealand enacts as follows:

- 1 Title**
- This Act is the Canterbury Earthquakes Insurance Tribunal Act **2018**.
- 2 Commencement**
- (1) **Sections 6, 8 to 52, 62, and 64 and Schedule 1 and Part 1 of Schedule 2** come into force on a date set by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates the day that is 28 days after the date of Royal assent. 5
- (2) Any provision that has not earlier been brought into force comes into force on **25 March 2019**. 10
- (3) The rest of this Act comes into force on the day after the date of Royal assent.

Part 1

Purpose, preliminary provisions, eligibility, bringing claims, and case management

- Subpart 1—Purpose and preliminary provisions 15
- 3 Purpose**
- The purpose of this Act is to provide 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. 20
- 4 Overview of Act**
- (1) This section is a guide to the general scheme and effect of the Act.
- (2) **Subpart 1 of Part 1** sets out the purpose of the Act and preliminary provisions. The latter provisions include a section containing definitions and a section that states that this Act binds the Crown. 25

- (3) **Subpart 2 of Part 1** sets out the nature of disputes and insurance claims to which this Act applies, and the eligibility criteria for a claim before the Canterbury Earthquakes Insurance Tribunal (established under **Part 3**).
- (4) **Subpart 3 of Part 1** sets out the procedure for bringing a claim before the tribunal (either by applying to the tribunal or by transferring proceedings from a court to the tribunal). 5
- (5) **Subpart 4 of Part 1** contains provisions for case management (up to the point when the parties begin to prepare for hearing), including the first case management conference.
- (6) **Subpart 1 of Part 2** sets out processes for the mediation of claims. 10
- (7) **Subpart 2 of Part 2** sets out the main functions and powers of the tribunal for the adjudication of claims, including case management to prepare for hearing. Other provisions relating to the tribunal are contained in **Part 1 of Schedule 2**.
- (8) **Subpart 1 of Part 3** establishes the tribunal, including the appointment of members. Other provisions relating to tribunal members are contained in **Part 2 of Schedule 2**. 15
- (9) **Subpart 2 of Part 3** contains miscellaneous provisions, including an offence of contempt of tribunal.
- 5 **Definitions** 20
- In this Act, unless the context otherwise requires,—
- Canterbury earthquakes** means 1 or more of the earthquakes on 4 September 2010, 26 December 2010, 22 February 2011, ~~and~~ 13 June 2011, and 23 December 2011, and any aftershocks until the close of 31 ~~July~~ December 2011
- chairperson** means the member of the tribunal appointed as the chairperson under **section 55(3)** 25
- chief executive** means the chief executive of the department
- claim** means a claim that is before the tribunal because—
- (a) the chairperson has accepted an application to the tribunal under **section 13**; or 30
- (b) a court has transferred proceedings to the tribunal under **section 16**
- claimant** means—
- (a) a person who is a policyholder or an insured person (or both) who has a claim before the tribunal because—
- (i) the chairperson has accepted the person’s application under **section 13**; or 35
- (ii) the person was ~~the~~ a plaintiff in proceedings that a court has transferred to the tribunal under **section 16**; or

- (b) an insurer or the EQC, if they were ~~the~~ a plaintiff in proceedings that a court has transferred to the tribunal under **section 16**

department means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of **sub-part 1 of Part 2**

5

EQC means the Crown entity, called the Earthquake Commission, continued under section 4 of the Earthquake Commission Act 1993

expert includes both expert advisers appointed by the tribunal (*see sections 24(1)(f), 27(1)(f), and 39(1)(f)*) and experts retained by parties as advisers or witnesses

10

function includes a function, power, or duty

insurance claim means—

- (a) a claim made under a contract of insurance by a policyholder to an insurer:

- (b) a claim made under the Earthquake Commission Act 1993 by an insured person to the EQC

15

insured person has the meaning given in section 2(1) of the Earthquake Commission Act 1993

insurer—

- (a) means a person who is liable as the insurer under a contract of insurance in respect of a residential building or residential property; but

20

- (b) for the purpose of this Act, also includes Southern Response

mediator means a person employed or engaged to provide mediation services under **subpart 1 of Part 2**

Minister means the Minister of Justice

25

policyholder means a person who holds a contract of insurance with an insurer to insure a residential building or residential property

residential building has the meanings given in **section 8**

residential land has the meaning given in **section 8**

residential property has the meaning given in **section 8**

30

respondent—

- (a) means a person against whom a claim is before the tribunal; and

- (b) includes a third party respondent

sitting includes a case management conference and a substantive hearing of a claim

35

Southern Response means Southern Response Earthquake Services Limited

tribunal means the Canterbury Earthquakes Insurance Tribunal established under **Part 3**.

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

7 Act binds the Crown

This Act binds the Crown.

5

Subpart 2—Eligibility criteria and parties to claim before tribunal

8 Application of Act

(1) This Act applies to disputes between policyholders and insurers about insurance claims for physical loss or damage arising from the Canterbury earthquakes to a residential building or residential property. 10

(2) This Act also applies to disputes between insured persons and the EQC about insurance claims for physical loss or damage arising from the Canterbury earthquakes to a residential building or residential land, or both.

(2A) This Act also applies if—

(a) a policyholder or an insured person (or a person who is both) has both: 15

(i) a dispute or disputes described in **subsection (1) or (2)** (the **first dispute**); and

(ii) a dispute or disputes about an insurance claim for further physical loss or damage to the same building, property, or land that is the subject of the first dispute (the **second dispute**); and 20

(b) that further physical loss or damage arose from any earthquake or after-shock that occurred after 31 December 2011.

(3) Despite **subsections (1) and (2)(1), (2), and (2A)**, this Act does not apply if the ownership of the building, property, or land has been transferred to the policyholder or insured person under a sale and purchase agreement following the physical loss or damage giving rise to the insurance claim. 25

(4) For the purpose of **subsection (1)**, **residential building** and **residential property** ~~have the meanings given in a contract of insurance between a policyholder and an insurer. —~~

(a) include similar terms (such as home) used in a contract of insurance between a policyholder and an insurer; and 30

(b) have the meanings given in a contract of insurance to residential building, residential property, or any similar term.

(5) For the purpose of **subsection (2)**, **residential building** and **residential land** have the meanings given in section 2(1) of the Earthquake Commission Act 1993. 35

(6) For the purpose of **subsection (2A)**, —

- (a) the first dispute and the second dispute may be or include disputes with different insurers:
- (b) if the EQC is not a party to the first dispute, the second dispute may be or include a dispute with the EQC:
- (c) further physical loss or damage may be related to or be entirely separate from the particular physical loss or damage that is the subject of the first dispute. 5

9 Eligibility criteria to bring claim before tribunal

- (1) The eligibility criteria to bring a claim before the tribunal are that the claim—
 - (a) must arise from a dispute between the parties under **section 8**; and 10
 - (b) must seek resolution of liability, or remedies, or both; and
 - (c) must be within the jurisdiction of the tribunal to make an order under **section 44**.
- (2) **Subsection (1)(c)** does not require the chairperson (under **section 13**) or a Judge (under **section 16(2)(a) or (4)(a)**)— 15
 - (a) to form a view on any question of law; or
 - (b) to assess the likelihood of success of the claim or any defence to it.

10 Bringing claim to tribunal

- (1) A claim may be brought to the tribunal only in accordance with **subsection (2) or (3)**. 20
- (2) A person who is a policyholder or an insured person (or both) may bring a claim to the tribunal against an insurer or the EQC (or both) by making an application under **section 12** that is accepted by the chairperson under **section 13**.
- (3) A claim may also be brought by the transfer of proceedings from a court to the tribunal under **section 16**. 25

11 Additional parties and removal of parties

- (1) If the tribunal considers it necessary for the fair and speedy resolution of a claim, it may order that—
 - (a) a person be joined as a third party respondent: 30
 - (b) a party be removed.
- (2) ~~The~~ However, the tribunal may order that an insurer or the EQC be joined as a respondent only if the claimant is both a policyholder and an insured person.
- (3) ~~A claim in which the claimant is a policyholder or an insured person (or both) cannot continue in the tribunal unless at least 1 respondent is an insurer or the EQC. If 1 or both of the insurer and the EQC are removed and only a third party respondent remains, the claim must be treated as withdrawn.~~ 35

- (4) ~~A claim in which the claimant is an insurer or the EQC cannot continue in the tribunal unless 1 respondent is the policyholder or insured person. If the policyholder or insured person is removed and only a third party respondent remains, the claim must be treated as withdrawn.~~
- (3) If a claim involves more than 2 parties and a party or parties are removed from it, the claim may continue in the tribunal only if— 5
- (a) at least 1 person who is a policyholder or an insured person (or both) remains as a claimant and at least 1 insurer or the EQC remains as a respondent; or
- (b) at least 1 person who is a policyholder or an insured person (or both) remains as a respondent and at least 1 insurer or the EQC remains as the claimant. 10
- (5) ~~If a claim is treated as having been withdrawn cannot continue in the tribunal under **subsection (3) or (4)** and one of the parties is a third party respondent, the claimant may pursue the claim against the third party respondent in another forum—~~ 15
- (a) if the claim is filed in the other forum within 6 months of the date on which the order was made to remove a respondent; and
- (b) even if the time for filing a claim in that other forum has passed; but
- (c) only if the claim before the tribunal was brought within any applicable limitation period. 20

Subpart 3—Bringing claims to tribunal, ineligible claims, and status of claims under other enactments

Bringing claims by application to tribunal

- 12 Claim brought by application to tribunal** 25
- (1) A person who is a policyholder or an insured person (or both) may bring a claim by applying to the tribunal.
- (2) The application must set out (for both a first dispute and a second dispute (*see section 8(2A)*), if relevant)—
- (a) the date of the application; and 30
- (b) a description of the claim and the parties involved; and
- (c) the remedy sought; and
- (d) the names and addresses of the parties involved; and
- (e) if available, the addresses that the parties have specified for the service of notices. 35
- (3) The application must—
- (a) be in writing; and

- (b) be in the form (if any) approved by the tribunal; and
 - (c) include sufficient information and supporting documentation to fairly inform other parties and the tribunal of the substance of the claim being brought; and
 - (d) be accompanied by the prescribed fee (if any). 5
- (4) The filing date of an application is the date on which the tribunal receives the complete application.

13 Applications that chairperson may accept

The chairperson may accept an application only if it meets the eligibility criteria in **section 9**. 10

14 Serving notice on respondent

- (1) This section applies if the chairperson has accepted an application.
- (2) The claimant must serve notice of the claim before the tribunal on the respondent (or respondents), unless the tribunal serves notice of the claim on the claimant's behalf. 15
- (3) See **clause 11 of Schedule 2** for requirements for service of notices.

15 Response from respondent

- (1) A respondent may file with the tribunal a written response and supporting documentation within 15 working days of being served a notice of the claim or within a later time period directed by the tribunal. 20
- (1A) A response must—
 - (a) be in writing; and
 - (b) be in the form (if any) approved by the tribunal; and
 - (c) include sufficient information and supporting documentation to fairly inform other parties and the tribunal of the substance of the response. 25
- (2) The respondent must serve a copy of any response and supporting documentation on the claimant and any other respondent before or immediately after any response and supporting documentation is filed with the tribunal.
- (3) See **clause 11 of Schedule 2** for requirements for service of notices.

Bringing claims to tribunal by transfer of proceedings from court 30

16 Claim brought by transfer of proceedings from court

- (1) If a person who is a policyholder or an insured person (or both) is a plaintiff in court proceedings relating to an insurance claim in dispute, a Judge may, on the application of ~~the plaintiff~~ that person or on the Judge's own motion, order that the proceedings be transferred to the tribunal. 35
- (2) An order to transfer proceedings may be made under **subsection (1)** only if—

- (a) the proceedings meet the eligibility criteria for a claim under **section 9** (however, the proceedings may also include additional parties to those referred to in **section 8**, but may not include a class action—*see clause 5(2) of Schedule 2*); and
 - (ab) the other party or parties to the proceedings have been given a reasonable opportunity to comment; and 5
 - (b) the Judge making the order believes that the transfer is in the interests of justice.
 - (3) If a person who is a policyholder or an insured person (or both) is a defendant in court proceedings relating to an insurance claim in dispute, a Judge may, on the application of ~~the defendant~~ that person, order that the proceedings be transferred to the tribunal. 10
 - (4) An order to transfer proceedings may be made under **subsection (3)** only if—
 - (a) the proceedings meet the eligibility criteria for a claim under **section 9** (however, the proceedings may also include additional parties to those referred to in **section 8**, but may not include a class action—*see clause 5(2) of Schedule 2*); and 15
 - (b) the other party or parties to the proceedings agree to the transfer; and
 - (c) the Judge making the order believes that the transfer is in the interests of justice. 20
 - (5) If court proceedings are transferred to the tribunal, ~~the~~ a plaintiff in the proceedings becomes ~~the~~ a claimant before the tribunal.
 - (6) If proceedings are transferred, the tribunal may have regard to any notes of evidence transmitted to it by the court, and it is not necessary for that evidence to be given again unless the tribunal requires it. 25
 - (7) **Sections 12 to 15** do not apply to a claim that is transferred under this section from a court to the tribunal.
 - (8) For the purpose of this section, **Judge** means a District Court Judge or a High Court Judge. 30
- Compare: 2006 No 84 s 120 30

Ineligible claims because of proceedings in another forum

17 Application ineligible because of proceedings or decision in another forum

A person may not bring a claim before the tribunal under **section 12** if—

- (a) they have commenced arbitration relating to the same insurance claim in dispute; or 35
- (b) they have commenced proceedings relating to the same insurance claim in dispute in the Disputes Tribunal and the proceedings are in progress; or

- (c) they have commenced proceedings relating to the same insurance claim in dispute (including by way of counterclaim) in a court and the proceedings are in progress (although the proceedings may be transferred to the tribunal under **section 16**); or
- (d) they were a party to proceedings before a court or the Disputes Tribunal relating to the same insurance claim in dispute and the proceedings have been decided by the court or the Disputes Tribunal. 5
- 18 Withdrawal of claim on claimant commencing proceedings in another forum**
- (1) A claimant may not continue a claim before the tribunal if— 10
- (a) they commence arbitration relating to the same insurance claim in dispute; or
- (b) they commence proceedings relating to the same insurance claim in dispute (including by way of counterclaim) in a court or in the Disputes Tribunal. 15
- (2) If a claimant commences arbitration or proceedings of a kind referred to in this section,—
- (a) the claimant must notify the tribunal:
- (b) the claim must be treated as withdrawn.
- Status and effect of claim under other enactments* 20
- 19 Status and effect of claim under other enactments**
- (1) This section applies to a claim before the tribunal when—
- (a) the chairperson accepts the relevant application; or
- (b) a court transfers the relevant proceedings to the tribunal.
- (2) The claim before the tribunal must be treated as— 25
- (a) proceedings for the purpose of section 76 of the Insolvency Act 2006; and
- (b) legal proceedings under section 248 of the Companies Act 1993; and
- (c) legal proceedings under section 321(1)(b) of the Companies Act 1993; and 30
- (d) actions or proceedings for the purposes of section 42 of the Corporations (Investigation and Management) Act 1989.

Subpart 4—Case management

- 20 Managing claims and natural justice**
- (1) When managing claims, the tribunal must have regard to the purpose of this Act, which is to provide fair, speedy, flexible, and cost-effective services. 35

- (2) In particular, the tribunal—
- (a) must encourage the parties to work together on matters that are agreed; and
 - (b) if experts are used (whether by a party or the tribunal), must consider using conferences of experts to avoid duplication of advice or evidence on matters that are or are likely to be agreed. 5
- (3) The tribunal must comply with the principles of natural justice.
- (4) ~~However, **subsection (3)** does not require the tribunal to use or allow the use of experts unless, in the tribunal’s opinion, it is necessary to do so.~~
- (4) However, **subsection (3)** does not require the tribunal to allow the use of an expert by a party in the tribunal’s case management processes if the tribunal considers this is unnecessary. 10
- (5) For case management relating to adjudication of claims, see **section 37**.

First case management conference

21 Notifying date for first case management conference 15

- (1) The tribunal must notify the parties within the time period set out in **subsection (2)** of the date for the first case management conference.
- (2) The time period for notification is within 15 working days of—
- (a) the chairperson accepting the relevant application; or
 - (b) a court transferring the relevant proceedings to the tribunal. 20
- (3) The tribunal may notify a change of date of the first case management conference if the circumstances require it.

22 Attendance at first case management conference

- (1) A party must attend the first case management conference unless—
- (a) the party has a reasonable excuse for not attending; or 25
 - (b) the tribunal decides that the party does not need to attend.
- (2) If a party is not a natural person, the following individuals may attend the first case management conference on behalf of the party, but only if they are authorised to bind the party:
- (a) for the EQC, an officer or employee: 30
 - (b) for another corporation or an unincorporated body of persons,—
 - (i) an officer or employee; or
 - (ii) a member of the corporation or body; or
 - (iii) an individual who holds a majority interest in that corporation or body: 35

- (c) for a person jointly liable or entitled with another or others, one of the individuals jointly liable or entitled or, in the case of a partnership, an employee of the partnership.
- (3) The tribunal may impose in respect of any participant (**A**) attending the first case management conference any conditions that it considers necessary to ensure that any other participant (**B**) is not substantially disadvantaged by the attendance of A. 5
- (4) Any participant who attends the first case management conference must do so in person unless—
- (a) the necessary facilities are available for the participant to attend by telephone, audiovisual link, or another remote access facility; and 10
- (b) the tribunal considers it appropriate for the participant to attend via one of those means.
- 23 Accompanying party at first case management conference**
- (1) A party at the first case management conference may be accompanied by— 15
- (a) 1 or more representatives (*see clause 3 of Schedule 2*):
- (b) experts employed by the party.
- (2) The tribunal may direct that the number of representatives and experts at the first case management conference be limited to allow for the efficient conduct of the conference. 20
- 24 Matters for first case management conference**
- (1) At the first case management conference, the tribunal may—
- (a) set a timetable for future steps to progress the claim, for example, for information or documents to be produced and the convening of an expert conference: 25
- (b) identify any issues on which the parties are agreed and the core issues in dispute:
- (c) obtain further information regarding the claim or a response to the claim:
- (d) decide whether parties need to be joined or removed and, if so, make an order under **section 11** to this effect: 30
- (e) direct a respondent to file a response to the claim:
- (f) appoint an expert adviser to assist the tribunal:
- (g) direct the parties to mediation and set time frames for mediation:
- (ga) direct that arrangements be made to inspect the dwelling house, property, or land to which the claim relates (as long as the consent of the owner or occupier is obtained before entry): 35
- (h) issue any other reasonable directions that may assist with the early resolution of the claim.

- (2) If a respondent is joined to the claim, the tribunal must—
- (a) notify them that they have been joined as a respondent to the claim:
 - (b) specify the date by which a response must be filed with the tribunal and served on the other parties:
 - (c) specify the date by which any information or documents must be produced to the tribunal and the other parties. 5
- (3) An appointment of an expert adviser under **subsection (1)(f)** is at the absolute discretion of the tribunal. However, before appointing an expert adviser, the tribunal must advise the parties that it intends to do so and give them a reasonable opportunity to comment. 10
- (4) Expert advisers must act in accordance with practice notes issued by the chairperson.
- (4A) Before directing the parties to mediation, the tribunal must inform the parties of the effect of **section 35** (which relates to the enforcement of settlements reached through mediation). 15
- (4B) At the first case management conference, the tribunal must inform the parties of the effect of **section 44(7)** (which relates to settlements by agreement between the parties (otherwise than through mediation under this Act)).
- (5) The first case management conference must be held in private.
- 25 Independence of expert advisers** 20
- (1) Expert advisers appointed by the tribunal—
- (a) must act independently when assisting the tribunal with any particular claim or aspect of it; and
 - (b) must be independent of any of the parties to the claim.
- (2) An expert adviser who is being considered for appointment to assist, or is assisting, the tribunal and who has a conflict of interest in relation to the particular claim— 25
- (a) must disclose it to the tribunal and all the parties; and
 - (b) unless all the parties agree otherwise,—
 - (i) must not accept the appointment: 30
 - (ii) must withdraw from acting in relation to the claim.
- (3) A party who agrees to an expert adviser being appointed or continuing to act forfeits any right to object to the expert adviser acting on the basis of the conflict of interest that was disclosed by the expert adviser.

*Further case management***26 Further case management**

- (1) For the purpose of case management following the first case management conference and at any stage before the parties begin preparing for a hearing (if one is needed), the tribunal may, as it ~~thinks fit~~ considers appropriate in order to progress the claim,— 5
- (a) hold any number of case management conferences; and
 - (b) if a party is not a natural person, require the attendance at a case management conference of an individual listed in **section 22(2)** who is authorised to bind the party; and 10
 - (c) otherwise communicate with the parties in any way it considers is efficient.
- (2) A case management conference must be held in private.
- (3) A case management conference may be conducted by telephone, audiovisual link, or another remote access facility if the tribunal considers it appropriate and the necessary facilities are available. 15
- (4) The tribunal may direct that the number of participants at a case management conference be limited to allow for the efficient conduct of the conference.
- (5) If a party has been joined to the claim since the first case management conference, the tribunal must as soon as practicable inform the new party and at the same time remind the other parties of the effect of **section 44(7)** (which relates to settlements by agreement between the parties (otherwise than through mediation under this Act)). 20

27 Powers of tribunal

- (1) The tribunal may do any of the following that are relevant to the stage of proceedings at which a case management conference or other communication with the parties occurs: 25
- (a) set a timetable for future steps to progress the claim, including for any of the things in **paragraphs (b) to (j)**:
 - (b) direct that information or documents be produced: 30
 - (c) request written submissions from a party or the parties on preliminary matters, as long as it then gives the relevant parties a reasonable opportunity to comment on them:
 - (d) decide whether parties need to be joined or removed and, if so, make an order under **section 11** to this effect: 35
 - (e) direct a respondent to file a response to the claim:
 - (f) appoint an expert adviser to assist the tribunal:
 - (g) convene an expert conference:

- (h) even if the parties have attempted mediation previously, direct the parties to mediation and set time frames for mediation:
 - (i) request, direct, or order the parties to do anything provided for in **Part 1 of Schedule 2**:
 - (j) issue any other reasonable directions for resolving the claim. 5
 - (2) **Section 24(2)** (relating to the filing of a response by a respondent joined to a claim) applies if a respondent is joined to a claim under this section.
 - (3) An appointment of an expert adviser under **subsection (1)(f)** is at the absolute discretion of the tribunal. However, before appointing an expert adviser, the tribunal must advise the parties that it intends to do so and give them a reasonable opportunity to comment. 10
 - (4) **Section 25** (relating to the independence of expert advisers) applies to expert advisers appointed under **subsection (1)(f)**.
 - (5) Expert advisers must act in accordance with practice notes issued by the chairperson. 15
 - (6) Before directing the parties to mediation, the tribunal must inform the parties of the effect of **section 35** (which relates to the enforcement of settlements reached through mediation).
- 28 Transfer of claim to court**
- (1) The tribunal may order that a claim be transferred to the District Court or the High Court at any time before the tribunal makes an assessment of liability if, in the tribunal’s view, it is more appropriate for a court to decide the claim for any or all of the following reasons: 20
 - (a) the claim presents undue complexity:
 - (b) the claim is a novel claim: 25
 - (c) the subject matter of the claim is related to the subject matter of proceedings that are already before the court.
 - (1A) Before making an order under **subsection (1)**, the tribunal must give the parties a reasonable opportunity to comment.
 - (2) If the total amount at issue is within the jurisdiction of the District Court stated in section 74 of the District Court Act 2016, the claim must be transferred to the District Court. 30
 - (3) Any other claim must be transferred to the High Court.

Part 2 Mediation and adjudication of claims

Subpart 1—Mediation

- 29 Mediation Application of this subpart** 5
This subpart applies where the tribunal directs the parties to mediation.
- 30 Mediation services**
- (1) The chief executive must employ or engage persons to provide mediation services that are fair, speedy, flexible, and cost-effective to assist parties to resolve claims ~~promptly and effectively~~.
- (2) Nothing in this Act prevents any person from seeking and using mediation services other than those provided by the chief executive under this subpart to settle a dispute to which this Act could apply. 10
Compare: 2006 No 84 ss 77(1), 79
- 31 Independence of mediators**
- (1) A mediator— 15
- (a) must act independently when deciding how to deal with any particular claim or aspect of it; and
- (b) must be independent of any of the parties to whom the mediator provides mediation services.
- (2) A mediator who has a conflict of interest in relation to a particular claim— 20
- (a) must disclose it to all the parties; and
- (b) must, unless all the parties agree otherwise, refuse to act (or withdraw from acting) in relation to the claim.
- (3) A party who agrees to a mediator acting (or continuing to act) forfeits any right to object to the mediator acting on the basis of the conflict of interest that was disclosed by the mediator. 25
Compare: 2006 No 84 s 78(1)
- 32 Procedure in relation to mediations**
- (1) Except as provided in this section, the mediator decides what services are appropriate to a particular claim. 30
- (2) If the parties to a claim agree that they require more time for mediation of the claim than is provided by any order of the tribunal, the parties may apply to the tribunal for more time for mediation.
- (3) The mediator— 35
- (a) may, having regard to the purpose of this Act and the needs of the parties, follow any procedures, whether structured or unstructured, or do

any things that the mediator considers appropriate to resolve the claim promptly and effectively; and

- (b) may receive any information, document, or other material, in any way that the mediator thinks fit, whether or not it would be admissible in judicial proceedings. 5

- (4) However, a mediator does not have power to determine any matter, even if asked to do so by the parties.

Compare: 2006 No 84 s 81(1)–(3)

33 Confidentiality

- (1) The people specified in **subsection (2)** must, unless authorised to do otherwise by the parties or the relevant party, keep confidential— 10

- (a) ~~any information or document~~, document, or other material created for the purposes of mediation (including any admission or agreed terms of settlement); and

- (b) any information that, for the purposes of a mediation, is disclosed orally in the course of the mediation. 15

- (2) The people are—

- (a) the mediator;
- (b) a party to the mediation;
- (c) the chief executive: 20
- (d) a person employed or engaged by the department;
- (e) a person who assists the mediator or a party.

- (3) A mediator must not give evidence in any civil proceedings, whether under this Act or any other Act, about—

- (a) the mediation services provided by the mediator; or 25
- (b) anything related to those services that comes to the mediator’s knowledge in the course of providing those services.

- (4) No evidence is admissible in any court, or before any person acting judicially, of any ~~information or document~~, document, or other material that, by **subsection (1)**, is required to be kept confidential. 30

- (5) Nothing in the Official Information Act 1982 applies to any ~~information or document~~, document, or other material disclosed to the mediator in the course of a mediation under this subpart.

- (6) Nothing in this section—

- (a) prevents the discovery or affects the admissibility of any evidence that would otherwise be discoverable or admissible and that existed independently of the mediation process merely because the evidence was presented in the course of a mediation under this subpart; or 35

- (b) prevents the gathering of information by the department for research, educational, monitoring, or evaluation purposes so long as the parties and the specific matters in issue between them are not identifiable; or
- (c) prevents the disclosure by any person employed or engaged by the chief executive to any other person employed or engaged by the chief executive of matters that need to be disclosed for the purposes of giving effect to this Act. 5

Compare: 2006 No 84 s 84

34 Settlements to be notified provided to chief executive and tribunal

- (1) ~~Within 5 working days of becoming aware that a claim (or part of a claim) has been settled, the mediator must—~~ 10
 - (a) ~~notify the tribunal that the claim (or part of the claim) has been settled; and~~
 - (b) ~~provide a copy of the agreed terms of settlement to the chief executive.~~
- (1) If a claim (or part of a claim) settles at mediation, the mediator must promptly provide a copy of the agreed terms of settlement to the chief executive and to the tribunal. 15
- (2) The agreed terms of settlement provided to the chief executive may be—
 - (a) used by the department for research, educational, monitoring, or evaluation purposes so long as the parties and the specific matters in issue between them are not identifiable; and 20
 - (b) disclosed to any person who is employed or engaged by the chief executive if the disclosure is necessary for the purposes of giving effect to this Act.

Compare: 2006 No 84 s 86

25

35 Enforcement of mediated settlements

- (1) ~~The parties to a claim (or part of a claim) that has been settled may apply to the tribunal for the agreed terms of settlement to be recorded as a decision of the tribunal.~~
- (1) The tribunal must record the agreed terms of settlement provided to the tribunal under **section 34(1)** as a decision of the tribunal. 30
- (2) ~~If this occurs, the decision is enforceable in accordance with **section 50**.~~
- (2) The decision is enforceable under **section 50**.
- (3) ~~However, the decision must be filed in the District Court before it can be enforced.~~ 35
- (4) **Section 33(4)** (which relates to confidentiality) does not apply to a decision filed in the District Court in accordance with this section.

- (4) **Section 33(4)** (which relates to the admissibility of confidential information, documents, and other material) does not apply to the decision for the purpose of enforcement proceedings.

Compare: 2006 No 84 s 87

36 Mediation services not to be questioned as being inappropriate 5

Mediation services provided under this subpart cannot be challenged or called into question in any proceedings on either or both of the following grounds:

- (a) that the nature or content, or both, of the services was inappropriate:
- (b) that the manner in which the services were provided was inappropriate.

Compare: 2006 No 84 s 88(1) 10

Subpart 2—Adjudication, enforcement, and appeals

37 Managing adjudication of claims and natural justice

- (1) When managing the adjudication of claims (including at hearings), the tribunal must have regard to the purpose of this Act, which is to provide fair, speedy, flexible, and cost-effective services. 15

- (2) In particular, the tribunal—

- (a) must encourage the parties to work together on matters that are agreed; and
- (b) must not admit or permit unnecessary or irrelevant evidence or cross-examination; and 20
- (c) if experts are used (whether by a party or the tribunal), must consider using conferences of experts to avoid duplication of advice or evidence on matters that are or are likely to be agreed.

- (3) The tribunal must comply with the principles of natural justice.

- (4) However, **subsection (3)** does not require the tribunal to— 25

- (a) permit the cross-examination of a party or person, ~~but it may in its absolute discretion do so:~~
- (b) ~~use or allow the use of experts unless, in the tribunal's opinion, it is necessary to do so.~~
- (b) allow the use of an expert by a party in the tribunal's processes for managing the adjudication of a claim, or allow a party's expert to give evidence, if the tribunal considers this is unnecessary. 30

Compare: 2006 No 84 s 57

38 Case management conference to prepare for hearing

- (1) If adjudication is necessary to resolve a claim, the tribunal must set a date for a case management conference to prepare for a hearing. 35

- (2) At that case management conference, the tribunal must—

- (a) identify any issues on which the parties are agreed and the core issues in dispute; and
- (b) decide whether parties need to be joined or removed and, if so, make an order under **section 11** to this effect.
- (3) **Section 24(2)** (relating to the filing of a response by a respondent joined to a claim) applies if a respondent is joined to a claim under this section. 5
- (4) **Section 26** (relating to flexibility for the tribunal to deal with the parties as it ~~thinks fit~~ considers appropriate to progress the claim) applies to case management under this subpart.
- (5) At the first case management conference to prepare for the hearing, the tribunal must inform the parties and, if a party is later joined to the claim following that conference, must as soon as practicable inform the new party and at the same time remind the other parties, of the effect of **section 44(7)** (which relates to settlements by agreement between the parties (otherwise than through mediation under this Act)). 10
15
- 39 Powers of tribunal**
- (1) For the purposes of preparing for a hearing and the hearing of a claim, the tribunal may—
- (a) set a timetable for future steps to progress the claim, including for any of the things in **paragraphs (b) to (k)**: 20
- (b) direct that information or documents be produced:
- (c) direct that statements of evidence be exchanged:
- (d) consider evidence from another claim heard by the tribunal or on appeal that it thinks relevant and applicable to the present claim, as long as the tribunal— 25
- (i) informs the parties that it intends to do so; and
- (ii) gives them a reasonable opportunity to comment:
- (e) request written submissions from a party or the parties, as long as it then gives the relevant parties a reasonable opportunity to comment on them:
- (f) appoint an expert adviser to assist the tribunal: 30
- (g) convene conferences of the parties or experts:
- (h) even if the parties have attempted mediation previously, direct the parties to mediation and set time frames for mediation:
- (i) direct that arrangements be made to inspect the dwelling house, property, or land to which the claim relates (as long as the consent of the owner or occupier is obtained before entry): 35
- (j) request, direct, or order the parties to do anything provided for in **Part 1 of Schedule 2**:
- (k) issue any other reasonable directions for resolving the claim.

- (1A) Before directing the parties to mediation, the tribunal must inform the parties of the effect of **section 35** (which relates to the enforcement of settlements reached through mediation).
- (2) **Section 28** (relating to the transfer of a claim to a court) applies at the adjudication stage. 5
 Compare: 2006 No 84 s 73
- 39A Tribunal’s powers to seek and receive evidence, investigate, and make inquiries**
- (1) The tribunal may, on its own initiative, seek and receive any evidence and make investigations and inquiries that it considers appropriate. 10
- (2) All evidence and information received by the tribunal must be disclosed to every party, and each party must be given a reasonable opportunity to comment on it.
- 40 Expert advisers**
- (1) An appointment of an expert adviser under **section 39(1)(f)** is at the absolute discretion of the tribunal. However, before appointing an expert adviser, the tribunal must advise the parties that it intends to do so and give them a reasonable opportunity to comment. 15
- (2) **Section 25** (relating to the independence of expert advisers) applies to expert advisers at the adjudication stage. 20
- (3) Expert advisers must act in accordance with practice notes issued by the chairperson.
- 41 Hearing of claim**
- (1) The substantive hearing of a claim must be held in public except if, or to the extent that, an exception in this section applies. 25
- (2) On application by a party, the tribunal may order that all or part of a hearing be held in private.
- (3) The tribunal may make an order under **subsection (2)** only after—
- (a) hearing from the parties; and
 - (b) having regard to— 30
 - (i) the interests of the parties; and
 - (ii) the public interest; and
 - (c) considering the open justice principle.
- (4) The tribunal may decide a claim on the papers if the tribunal considers it appropriate. However, before making that decision, the tribunal must give the parties a reasonable opportunity to comment. 35

- (5) A hearing or any part of it may be conducted by telephone, audiovisual link, or other remote access facility if the tribunal considers it appropriate and the necessary facilities are available.

Compare: 1996 No 99 ss 14G and 14H; 2006 No 84 s 106

41A Consolidation of expert evidence on same subject matter for multiple claims 5

- (1) The tribunal may order that expert evidence on a subject matter relevant to more than 1 claim be given at a special sitting of the tribunal at which the parties to all affected claims and their representatives are entitled to be present and be heard, including to cross-examine the witness or witnesses giving the evidence (subject to any other provision in this or another Act). 10
- (2) Evidence that is given at the special sitting may include evidence resulting from a conference of experts.
- (3) The evidence given at the special sitting forms part of the evidence for each claim. 15
- (4) A claim may be included in a special hearing only if—
- (a) the tribunal considers it would be efficient to do so; and
 - (b) all parties to that claim agree.

42 Further provisions relating to tribunal

Further provisions relating to the tribunal's procedure, evidence, expert advisers, witnesses, an annual report to the Minister of Justice, provision of assistance and guidance to parties, and publication of information and decisions are set out in **Part 1 of Schedule 2**. 20

Tribunal's decision

43 Matters tribunal may decide 25

- (1) The tribunal may decide, under section 44,—
- (a) any liability of any respondent to the claimant any party to any other party; and
 - (b) any remedies for that liability.
- (2) ~~The tribunal may also decide—~~ 30
- (a) ~~any liability of any respondent to any other respondent; and~~
 - (b) ~~any remedies for that liability.~~
- (3) If the tribunal decides that an insurer or the EQC has, or both have, no liability to a claimant who is a policyholder or an insured person, or both, the tribunal may still decide that a third party respondent has liability to that claimant. 35
- (4) If the tribunal decides that a policyholder or an insured person has no liability to a claimant who is either an insurer or the EQC, or has no liability to either,

the tribunal may still decide that a third party respondent has liability to that claimant.

44 Tribunal’s decision: substance

- (1) The tribunal may make any order that a court of competent jurisdiction could make in relation to a claim in accordance with ~~any of the following that are relevant to the claim:~~ 5
 - (a) the terms of the contract of insurance in dispute between the parties:
 - (b) ~~current law~~ the general law of New Zealand, in particular,—
 - (i) the law of contract as it relates to contracts of insurance: 10
 - (ii) the Earthquake Commission Act 1993.
- (2) The Limitation Act 2010 and any other enactment that prescribes a limitation period or other limitation defence apply to a claim brought before the tribunal.
- (3) An order may require the payment of general damages ~~(for example, for mental distress)~~ in accordance with the general law of New Zealand.
- (4) If an order requires a party to do something, other than pay money, the tribunal must also set an amount of money that is payable by them, and the date by which that amount is payable, if they fail or refuse to do that thing by that date. 15
- (5) If the tribunal decides that a party is liable to make a payment to another party, the tribunal may make the payment subject to any conditions.
- (6) The tribunal may decide that the liability of a party depends on another party meeting particular conditions. 20
- (7) If a claim is settled by agreement between the parties before the tribunal’s decision is given (otherwise than through the mediation process provided in this Act), the tribunal—
 - (a) must terminate the claim; and 25
 - (b) if requested by the ~~parties,~~ may policyholder or insured person, may record the settlement in the form of a decision ~~on agreed terms~~ of the tribunal.
- (7A) The agreement of all parties is not required before the tribunal records a settlement agreement as a decision under **subsection (7)(b).** 30
- (7B) The resulting decision is enforceable under **section 50.**
- (8) In this section, **mental distress** means ~~1 or more of the following:~~
 - (a) emotional or mental anxiety:
 - (b) distress or stress.

Compare: 2006 No 84-Schedule 4_s 90 35

45 Costs

(1AA) The tribunal may award costs against a party only in accordance with this section.

- (1) A costs award may be made against a party whether the party is successful or not (with all or part of the party's claim or response) if the tribunal considers that— 5
- (a) the party caused costs and expenses to be incurred unnecessarily ~~through~~ by—
- (i) acting in bad faith; or
- (ii) making allegations or objections that are without substantial merit; or 10
- (b) the party caused unreasonable delay, including by failing to meet a deadline set by the tribunal without a reasonable excuse for doing so.
- (2) A costs award must relate to costs incurred by the parties only and not to costs incurred by the tribunal. 15
- (2A) The tribunal must take into account any costs an insurer is liable to pay under an insurance contract.
- (3) If the tribunal does not make an order under this section, the parties must meet their own costs and expenses.
- (4) An order for costs may, on registration of a certified copy of the tribunal's decision, be enforced in the District Court as if it were an order of that court. 20

Compare: 2006 No 84 s 91

46 Tribunal may award interest

- (1) In a claim for the recovery of money, the tribunal may order the inclusion of interest on all or part of the money ordered to be paid for all or part of the period between the date on which the cause of action arose and the date of payment. 25
- (2) Interest must be calculated,—
- (a) if provision is made for interest in the relevant contract of insurance, in accordance with that contract: 30
- (b) if no provision is made in the relevant contract of insurance or the claim does not involve a contract of insurance, in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

47 Tribunal's decision: form

- (1) The tribunal's decision must be in writing and include the tribunal's reasons for it. 35
- (2) After a copy of a decision is given to the parties, the tribunal may correct any minor clerical or typographical errors or errors of a similar nature.

48 Nothing done by or relating to tribunal invalid ~~for want of form~~ because of failure to comply with technicality or legal form

No direction, decision, or order given or anything done by the tribunal, or anything done by anyone relating to the tribunal, is invalid ~~for want of form~~ because of a failure to comply with a technicality or legal form.

5

49 Suppression orders

(1) The tribunal may order that all or part of the evidence given or the name or any identifying particulars of any witness not be published.

(2) An order may be made subject to any conditions that the tribunal considers appropriate, having regard to the interests of the parties and to the public interest.

10

(3) A person who breaches an order made under this section commits an offence and is liable on conviction to a fine not exceeding \$3,000.

Enforcement, referral of questions of law to High Court, and appeals

50 Enforcement of tribunal decisions (other than costs awards)

15

(1) A decision of the tribunal may be enforced as if it were an order of the District Court except as provided in this section.

(2) If application is made to the District Court for the issue of any process to enforce a decision by the tribunal setting an amount payable by a party who fails or refuses to do something by a certain date (*see section 44(4)*), the Registrar of the court must give written notice of the application to the party against whom enforcement is sought.

20

(3) If that party does not file a notice of objection within 10 working days after receiving that notice, the decision may then be enforced against the party.

(4) A notice of objection may be given only on the ground that the party believes that the decision of the tribunal has been fully complied with.

25

(5) This section applies even if the amount at issue exceeds the jurisdiction of the District Court stated in section 74 of the District Court Act 2016.

Compare: 2006 No 84 s 98

51 Questions of law may be referred to High Court

30

(1) If a question of law arises during any case management process under this Act or at the hearing of a claim, the tribunal—

(a) may (if a member is acting as the tribunal, with the written approval of the chairperson) refer the question to the High Court for its opinion; and

(b) may delay the hearing until it receives the court’s opinion.

35

(1A) The tribunal must give the parties a reasonable opportunity to comment on whether the question should be referred to the High Court.

- (2) The High Court must give the tribunal its opinion on the question, following which the tribunal must continue the hearing of the claim in accordance with the opinion.

52 Appeals

- (1) A party to a claim that has been decided by the tribunal may appeal on a question of law or fact that arises from the decision. 5
- (2) An appeal must be filed in the High Court and requires the leave of the High Court.
- (3) A notice of appeal and an application for leave to appeal must be filed together within— 10
- (a) 20 working days of the tribunal’s decision; or
 - (b) any further time that the High Court allows.
- (4) The High Court may—
- (a) confirm, modify, or overturn the tribunal’s decision:
 - (b) order a remedy or award costs or interest that could be ordered or awarded by the tribunal. 15
- (5) Except to the extent modified by this Act, the High Court Rules apply to an appeal brought under this section.
- (6) A party may appeal a decision of the High Court to the Court of Appeal and a decision of the Court of Appeal to the Supreme Court, in each case— 20
- (a) with the leave of the court that is being appealed to; and
 - (b) on a question of law only.

Part 3

Canterbury Earthquakes Insurance Tribunal

Subpart 1—Canterbury Earthquakes Insurance Tribunal established 25

53 Canterbury Earthquakes Insurance Tribunal established

- (1) The Canterbury Earthquakes Insurance Tribunal is established.
- (2) The tribunal comprises all members.
- (3) The chairperson presides over the tribunal.

54 Nature of proceedings 30

Proceedings of the tribunal are—

- (a) judicial proceedings subject to appeal to the High Court, Court of Appeal, and Supreme Court; and

- (b) inquisitorial in nature (*see, for example, the powers of the tribunal to seek and receive evidence, investigate, and make inquiries under **section 39A***).

Compare: 2006 No 1 s 239(5); 2009 No 51 s 218

55 Appointment of members of tribunal 5

(1AA) The minimum number of members that must be appointed to the tribunal is 1.

- (1) Each member of the tribunal is appointed by the Governor-General on the recommendation of the Minister of Justice.
- (2) ~~The Minister must recommend for appointment only people who, in the Minister's opinion, are suitable to be appointed as members, taking into account their knowledge, skills, and experience.~~ 10
- (a) only people who, in the Minister's opinion, are suitable to be appointed as members, taking into account their knowledge, skills, and experience;
and
- (b) at least 1 person who has the experience required to be the chairperson under **subsection (4)**. 15
- (3) One member must be appointed by the Governor-General as the chairperson of the tribunal.
- (4) The chairperson must have held a New Zealand practising certificate as a barrister or as a barrister and solicitor for at least 7 years. 20

56 Performance of functions of tribunal

The functions of the tribunal are performed by its members.

57 Further provisions relating to tribunal members

Further provisions relating to tribunal members are set out in **Part 2 of Schedule 2**. 25

Chairperson's responsibilities

58 Assignment of member to act as tribunal

The chairperson must assign 1 member (and may assign themselves) to act—

- (a) as the tribunal for each claim:
- (b) as the tribunal to perform the functions required to be performed under **section 64(4)** (relating to access to tribunal records). 30

59 Orderly and efficient operation

The chairperson is responsible for making any arrangements that are practicable to ensure that each member (including themselves) performs their functions— 35

- (a) in an orderly and efficient manner; and

(b) in a way that achieves the purposes of this Act.

60 Delegation by chairperson

- (1) The chairperson may delegate any functions (except this function to delegate) to a member who the chairperson is satisfied has the necessary capability, skills, and experience to perform that function. 5
- (2) A delegation—
- (a) must be in writing; and
 - (b) must be to a named member; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance of the function by the chairperson. 10
- (3) A member to whom a function is delegated may perform it in the same manner and with the same effect as if it had been conferred directly by this Act and not by delegation.
- (4) A member who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary. 15
- (5) A member to whom a function is delegated is ~~not~~ entitled to additional remuneration for work undertaken in performing that function at the rate at which the chairperson would be paid to perform the function (also see **clause 33 of Schedule 2**). 20

Registrar and staff of tribunal 20

61 Registrar and staff

- (1) The Secretary for Justice may appoint a person as the Registrar for the tribunal.
- (2) The Secretary may assign employees of the Ministry of Justice to act as staff of the tribunal as may be required for the tribunal to have the services and resources necessary to perform its functions. 25
- (3) A person appointed as the Registrar and employees who are assigned to act as staff may also hold any other office or position in the Ministry.

Subpart 2—Contempt, exclusion of liability, tribunal records, regulations and rules, and consequential amendments

62 Contempt of tribunal 30

- (1) A person commits an offence if they—
- (a) wilfully insult or obstruct the tribunal, a member, a witness, or an officer or staff member of the tribunal during a sitting of the tribunal or while a member, a witness, or an officer or staff member is going to, or returning from, a sitting of the tribunal; or 35

- (b) wilfully insult or obstruct a person attending at a sitting of the tribunal; or
 - (c) wilfully interrupt, or otherwise misbehave at, a sitting of the tribunal; or
 - (d) wilfully and without lawful excuse disobey an order or direction of the tribunal during the hearing of a claim; or 5
 - (e) fail to—
 - (i) attend at the tribunal after receiving a witness summons to do so; or
 - (ii) produce any books, papers, documents, records, or things that the tribunal has required be produced. 10
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$2,000.
- (3) The tribunal may order the exclusion of a person from a sitting of the tribunal if that person’s behaviour, in the opinion of the tribunal, constitutes an offence against **subsection (1)**, whether or not the person is charged with the offence. 15
- (4) An officer or a staff member of the tribunal or a constable may take any steps that are reasonably necessary to enforce the exclusion.
- 63 Exclusion of liability**
- (1) This section applies to—
- (a) the Secretary for Justice and the chief executive; and 20
 - (b) a mediator, a member of the tribunal (including the chairperson), or an expert adviser; and
 - (c) an officer, an agent, or a staff member of the tribunal.
- (2) Unless they have acted in bad faith, none of those people are under any criminal or civil liability for— 25
- (a) an act done or omitted in the course of performing a function under this Act; or
 - (b) any words spoken or written at, or for the purposes of, a mediation or a sitting or hearing of a claim; or
 - (c) anything in a notice given under this Act. 30
- 64 Tribunal records**
- (1) The tribunal is responsible for ensuring the safe custody of the records and papers relating to an application or a claim under this Act.
- (2) The records and papers must be available for public inspection at all reasonable times, on payment of the fee payable (if any) for searching and accessing court records under the District Courts Fees Regulations 2009. 35
- (3) **Subsection (2)** is subject to **section 33** (which relates to the confidentiality of information and documents relating to mediation).

- (4) The District Court (Access to Court Documents) Rules 2017 apply to access to the formal record of a claim by any person, or to other records and papers by the parties or by any person, with any necessary modifications; and in those rules references to the functions of a Judge are to be read as ~~being~~ references to the functions of the tribunal. 5

Regulations and rules

65 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing fees for the purposes of this Act: 10
- (b) making rules for tribunal procedures:
- (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

66 Rules of court: District Court and High Court

- (1) In addition to the powers conferred by the District Court Act 2016 or the Senior Courts Act 2016, the Governor-General may, by Order in Council, make rules regulating the practice and procedure of the District Court or the High Court in proceedings under this Act. 15
- (2) Rules may be made only with the concurrence of—
 - (a) the Chief District Court Judge (for rules for the District Court) or the Chief Justice (for rules for the High Court); and 20
 - (b) 2 or more members of the Rules Committee established under section 155 of the Senior Courts Act 2016 of whom at least 1 is a District Court Judge (for rules for the District Court) or a High Court Judge (for rules for the High Court). 25

Consequential amendments

67 Consequential amendments to Acts

Amend the Acts specified in **Schedule 3** as set out in that schedule.

Schedule 1
Transitional, savings, and related provisions

s 6

Part 1
Provisions relating to this Act as enacted

5

1 Proceedings commenced in court before or after section 16 in force

Section 16 applies regardless of whether the proceedings commenced in court before or after that section comes into force.

2 Arbitration or proceedings commenced or decided before or after section 17 in force

10

Section 17 applies regardless of whether—

- (a) arbitration commenced before or after that section comes into force; or
- (b) the proceedings were commenced or decided before or after that section comes into force.

Schedule 2

Further provisions relating to tribunal and members

ss 27, 39, 42, 57

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Part 1

Tribunal procedure, evidence, expert advisers, witnesses, annual report to Minister, assistance and guidance, and publication of information and decisions

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1 Procedure

The tribunal may regulate its procedures as it thinks fit, subject to—

- (a) this Act and any regulations made under it; and
- (b) any practice notes issued under **clause 2**.

2 Practice notes 10

- (1) The chairperson may issue practice notes for—
 - (a) making an application to the tribunal, including guidance on the type and quality of information and documentation required to support an application so that it meets the eligibility criteria:
 - (b) convening and organising case management conferences: 15
 - (c) referring cases to mediation:
 - (d) the use of expert advisers by the tribunal:
 - (e) how expert advisers must conduct themselves while assisting the tribunal to resolve claims:

- (f) any other matter to facilitate the orderly and efficient operation of the tribunal.
- (2) Practice notes must not be inconsistent with this Act or any regulations made under it.
- 3 Representation and privilege of communications** 5
- (1) A party to a claim may be represented by another person of their choice whether or not that other person is legally qualified.
- (2) If a party's representative is not legally qualified, any communications between the party and their representative are privileged to the extent that the communications would be if the representative were legally qualified. 10
- 3A Incapacitated persons and minors**
- (1) When managing or adjudicating claims, the tribunal has the powers provided in subpart 7 of Part 4 of the District Court Rules 2014, and any reference to the court in those rules is to be read as a reference to the tribunal.
- (2) The appointment of a litigation guardian may be made by the tribunal at any time, including before an application is made to the tribunal under **section 12**. 15
- 4 Privileges and immunities of counsel**
- Any counsel appearing before the tribunal has the same privileges and immunities as counsel in a court of law.
- 5 Consolidation of claims** 20
- (1) The tribunal may order that 1 or more claims be heard together if—
- (a) it considers that it would be efficient to do so because the claims involve 1 or more of the same parties or the same building, property, or land; and
- (b) all the affected parties consent.
- (2) This clause does not permit the bringing of a claim on behalf of a class of persons. 25
- 6 Urgency**
- Upon application by a party for a claim to be heard urgently, the tribunal—
- (a) must consider that application; and
- (b) may, if satisfied that it is necessary and just to do so, order that the claim be heard by the tribunal as soon as practicable. 30
- 7 Claim to continue on change of member acting as tribunal**
- (1) If the member acting as the tribunal for hearing a claim cannot continue to hear it and another member is appointed to do so, the hearing of the claim is not affected and is to continue as if no change had taken place. 35

- (2) However, the new member may require evidence to be retaken if they consider it necessary to do so.

8 Party’s failure to act does not affect tribunal’s ability to continue to hear and decide claim

The tribunal may continue to hear and decide a claim if a party fails, without reasonable excuse, to do anything the tribunal requests or directs, including failing to meet a deadline set by the tribunal. 5

9 Tribunal may strike out, decide, or adjourn claim

- (1) The tribunal may strike out a claim, in full or in part, if satisfied that it—
- (a) discloses no reasonable cause of action under the tribunal’s jurisdiction; 10
or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of process.
- (2) If a party is not present or represented at the hearing of a claim, the tribunal— 15
- (a) may—
 - (i) strike out the claim; or
 - (ii) decide it in the absence of the party; or
 - (iii) adjourn the hearing:
 - (b) must, if it does so, notify that party that it has done so. 20
- (3) If a claimant fails to prosecute their claim, the tribunal may strike it out.
- (4) Before striking out a claim, the tribunal must consider whether to instead transfer it to a court but may do so only if all parties agree. **Section 28(2) and (3)** applies to a transfer under this subclause.

10 Withdrawal of claim 25

A claim may be withdrawn if—

- (a) the parties agree; or
- (b) the claimant serves written notice of withdrawal on the tribunal, and either—
 - (i) no respondent objects to the withdrawal; or 30
 - (ii) the tribunal considers that a respondent who objects to the withdrawal does not have a legitimate interest in the claim continuing and being decided.

11 Service of notices

- (1) Any notice or other document required to be served on, or given to, a person under this Act or any regulations made under this Act is sufficiently served or given if—
- (a) it is delivered to that person; or 5
 - (b) it is left at or posted to that person’s usual or last known place of residence or business in New Zealand; or
 - (c) it is transmitted on a working day to an email address provided by that person; or
 - (d) it is sent in any other manner approved by the chairperson. 10
- (2) The notice or other document is to be treated as having been served—
- (a) 5 working days after it was left at or posted to the recipient’s last known place of residence or business in New Zealand; or
 - (b) on the first working day after the day on which it was transmitted by email. 15

12 Discovery

The tribunal may make any order for discovery that the District Court may make under section 105 or 106 of the District Court Act 2016, and those sections apply with all necessary modifications.

Evidence 20

13 Evidence

Any party may give and call evidence.

14 Tribunal may take evidence on oath

- (1) The tribunal may take evidence on oath or affirmation, and the member acting as the tribunal in any case or any other person acting under the express or implied direction of the tribunal may administer an oath or affirmation. 25
- (1A) The tribunal may require that any documents or information be verified by oath or affirmation, statutory declaration, affidavit, or other means.
- (2) On a charge of perjury, it is sufficient to prove that the oath or affirmation was administered, or the documents or information were verified, in accordance with ~~subclause (1)~~ this clause. 30

15 Tribunal may dispense with evidence if agreement by all parties

When hearing a claim, the tribunal may dispense with evidence on any matters on which all parties have agreed.

16 Tribunal may draw inferences from party’s failure to act and decide claim based on available information

If a party fails, without reasonable excuse, to do anything that the tribunal requests or directs be done, the tribunal may—

- (a) draw from ~~the~~ that failure any reasonable inferences it thinks fit; and 5
- (b) decide the claim on the basis of the information available to it; and
- (c) if information was to be provided by a certain time and it was not provided by that time, give any weight it thinks fit to that information.

Expert advisers

17 Expert advisers not compellable witnesses 10

An expert adviser appointed under **section 24(1)(f), 27(1)(f), or 39(1)(f)** cannot be required to give evidence in any civil case on anything connected with a claim in the tribunal that has come to their knowledge due to their involvement with that claim.

Witnesses 15

18 Party competent as witness

Any party is competent to give evidence in the hearing of a claim and may be compelled to give evidence as a witness.

19 Witness summons and production of things in evidence

- (1) The tribunal may issue a summons to a person requiring the person to attend the hearing of a claim and give evidence, including to produce books, papers, documents, records, or things in that person’s possession or under that person’s control that relate to the issues in dispute. 20
- (2) A member cannot be summonsed.

20 Protection and privileges of witnesses 25

A witness before the tribunal has the same privileges as witnesses have in a court of law, when—

- (a) giving information to the tribunal; and
- (b) giving evidence to, or answering questions before or put by, the tribunal; and 30
- (c) producing anything to the tribunal.

21 Witnesses’ expenses

- (1) A person attending or giving evidence before the tribunal is entitled to be paid witnesses’ fees, allowances, and travelling expenses as prescribed by the Witnesses and Interpreters Fees Regulations 1974. 35

- (2) The fees, allowances, and travelling expenses must be paid by the party calling the witness.
- (3) The tribunal may disallow all or any part of a sum payable under this section.
- (4) On each occasion on which the tribunal issues a summons under **clause 19**, the tribunal must fix an amount that must be paid to the witness— 5
- (a) on the service of the summons; or
- (b) at some other reasonable time before the date on which the witness is required to attend the tribunal.
- (5) When fixing the amount for a summons, the tribunal must estimate the amount of the allowances and travelling expenses (but not fees) that will be payable to the witness under this section. 10

Annual report to Minister

22 Annual report to Minister on performance of tribunal's functions

- (1) Each year the chairperson of the tribunal must report to the Minister of Justice on the tribunal's performance in the period 1 July to 30 June. 15
- (2) The report must be provided to the Minister by 30 September each year.
- (3) The report must include the following details for the relevant year:
- (a) the number of applications filed ~~in that year~~;
- (b) the number of applications accepted as claims ~~in that year~~;
- (ba) the number of claims that were transferred from a court to the tribunal: 20
- (c) the number of claims settled ~~in that year~~ through the mediation process provided under this Act:
- (ca) the number of claims settled otherwise than through the mediation process provided under this Act:
- (cb) the number of claims decided after a hearing in the tribunal: 25
- (d) the stage at which claims were settled;
- (e) the average length of time taken to settle or decide claims;
- (f) the number of claims discontinued for other reasons ~~in that year~~, for example, claims that were struck out or withdrawn;
- (g) the number of cases still to be resolved as at the last day of that year. 30
- (4) The report—
- (a) must identify the number of claims filed against each insurer and against the EQC; but
- (b) must not identify individual claimants or contain details that could lead to the identification of individual claimants. 35
- (4A) The report may also contain information about any matters that the chairperson wishes to report on that relate to or affect the tribunal's operations.

- (5) The report must be published by the Ministry of Justice on an Internet site that is maintained by, or on behalf of, the Ministry of Justice.

Assistance and guidance, and publication of information and decisions

23 Assistance and guidance for ~~claimants and respondents~~ parties

- (1) The Ministry of Justice and the chief executive (for mediation only) may assist and guide ~~claimants and respondents~~ parties with the processes for dealing with claims. 5
- (2) The assistance and guidance may include—
- (a) providing information about case management conferences, mediation, and adjudication: 10
- (b) providing information about other possible means of resolving disputes.

24 Online publication of information about procedures, time frames, and progress of decisions

The following information must be published on an Internet site that is maintained by, or on behalf of, the Ministry of Justice: 15

- (a) information about the purpose of the tribunal and the ways that a person may use it:
- (b) any requirements that a person must meet to use the tribunal:
- (c) guidelines on how and when parties may obtain information on the progress of their application or claim and when a decision may be expected. 20

25 Online publication of final written decisions

- (1) Every final written decision of the tribunal must be published on an Internet site that is maintained by, or on behalf of, the Ministry of Justice as soon as practicable unless there is good reason not to publish it.
- (2) A final written decision may be published in part if there is good reason for not publishing the full decision. 25
- (3) **Good reason not to publish** a decision or part of it includes the following:
- (a) non-publication is necessary because of a suppression order under **section 49** or a statutory requirement that affects publication or continued publication: 30
- (b) the decision is of limited public value:
- (c) having taken into account the presumption in favour of publication, the tribunal nevertheless decides that publication of the decision or any part of it would be contrary to the interests of justice.
- (4) In this section, **final written decision**— 35
- (a) means a written decision that decides, or substantially decides, the outcome of a claim in the tribunal and is either of the following:

- (i) a written reserved decision following an oral hearing:
- (ii) a written decision for a claim considered on the papers:
- (b) does not include agreed terms of settlement recorded as a decision of the tribunal under **section 35 or 44(7)**.

Part 2

5

Tribunal members

26 Term of appointment

- (1) A member takes office on the date and for the term stated in the member's notice of appointment.
- (2) A person who is appointed as a member is not an employee as defined in section 2 of the State Sector Act 1988. 10
- (3) A person appointed as a member may hold that office concurrently with any other office.

27 Oath of office

A member must, before performing any function under this Act, swear or affirm before a Judge of the High Court that they will faithfully and impartially perform their functions and duties as a member. 15

28 Term of office

- (1) Except as otherwise provided in this schedule, a member—
 - (a) holds office for a term of up to 5 years; and 20
 - (b) may be reappointed.
- (2) However, a member continues in office despite the expiry of their term of office until—
 - (a) the member is reappointed; or
 - (b) the member's successor is appointed; or 25
 - (c) the member is notified that a replacement member will not be appointed; or
 - (d) the member vacates or is removed from office.
- (3) A member who continues in office for a period under **subclause (2)** may act as a member during that period for the purpose of— 30
 - (a) completing a claim partly or fully heard by that member acting as the tribunal before the expiry of their term of office:
 - (b) hearing another claim.

- (4) A member who has resigned or whose successor is appointed or who will not be replaced may continue in office to complete the hearing of and deciding a claim that was partly or fully heard by that member acting as the tribunal.
- (5) However, a member may not continue to act under **subclause (3) or (4)** if they are removed from or are treated as having vacated their office under **clause 29(2) or (3)**. 5
- 29 Resignation or removal from or vacation of office**
- (1) A member may at any time resign from office by written notice given to the Minister of Justice.
- (2) A member may at any time be removed from office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General. 10
- (3) A member is to be treated as having vacated their office if they are adjudged bankrupt under the Insolvency Act 2006.
- 30 Appointment of temporary acting chairperson or member** 15
- (1) If the chairperson or another member of the tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if the chairperson or another member considers it is not proper or not desirable that they adjudicate on a particular claim, the Governor-General, on the recommendation of the Minister of Justice, may appoint a suitable person as an acting chairperson or acting member for the period or purpose stated in the appointment. 20
- (2) No person may be appointed as an acting chairperson or acting member unless they are eligible for appointment to the relevant position.
- (3) An acting chairperson or acting member is, while acting in the position, to be treated as the chairperson or a member of the tribunal. 25
- (4) An appointment of an acting chairperson or acting member, an act done by an acting chairperson or acting member, or an act done by the tribunal may not be questioned on the ground that the occasion for the appointment had not arisen or had ceased.
- 31 Duty of members to disclose conflicts of interest** 30
- (1) A member who, in performing the functions of the tribunal, has a conflict of interest in relation to a particular claim—
- (a) must disclose it to the chairperson and all the parties; and
- (b) must withdraw from acting in relation to the claim unless all the parties agree otherwise. 35
- (2) A party who agrees to a member hearing or continuing to hear a claim forfeits any right to object to the member doing so on the basis of the conflict of interest that was disclosed by the member.

32 Members not compellable witnesses

A member cannot be required to give evidence in any civil case on anything connected with a claim in the tribunal that has come to their knowledge due to their involvement with that claim.

33 ~~Salaries and allowances~~ Remuneration and expenses

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(1) All members of the tribunal ~~must be paid, or (including the chairperson) are entitled to be paid, and~~ be reimbursed for, out of public money, without further appropriation than this section and in accordance with the fees framework,—

(a) ~~a fee, a salary, or an allowance, or any combination of those things~~ remuneration for services as a member; and

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(b) actual and reasonable expenses incurred in performing their functions as a members.

(2) For the period that an acting chairperson or acting member acts, they ~~must be paid a salary and allowances~~ are entitled to be paid remuneration calculated as a pro-rata proportion of the ~~salary and allowances~~ remuneration of a full-time chairperson or member respectively.

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(3) In this ~~section~~ clause, **fees framework** means the framework determined by the Government for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

Compare: 2016 No 17 Schedule 5 cl 32; 2016 No 49 ss 35, 60(2)

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Schedule 3

Consequential amendments to Acts

s 67

Courts Security Act 1999 (1999 No 115)

After section 3(5)(j), insert:

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(ja) the Canterbury Earthquakes Insurance Tribunal:

Legal Services Act 2011 (2011 No 4)

In section 4(1), definition of **civil proceedings**, paragraph (a), after “the Care of Children Act 2004,”, insert “the Canterbury Earthquakes Insurance Tribunal Act **2018**,”.

After section 7(1)(p), insert:

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(pa) proceedings before the tribunal under the Canterbury Earthquakes Insurance Tribunal Act **2018**:

Legislative history

1 August 2018
4 September 2018

Introduction (Bill 82–1)
First reading and referral to Governance and Administration
Committee