

Earthquake Commission Amendment Bill

Government Bill

Explanatory note

General policy statement

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

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

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

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

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

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

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

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

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

Departmental disclosure statement

The Treasury is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=37>

Regulatory impact assessment

The Treasury produced a regulatory impact assessment on 28 February 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill, other than *Part 2*, comes into force on the day after it receives the Royal assent. *Part 2* comes into force at the same time as sections 80 to 140 of the Fire and Emergency New Zealand Act 2017 (which relate to levies under that Act). Those sections will come into force on 1 July 2019 or an

earlier date appointed by Order in Council. If a date is fixed to commence those sections before this Bill is enacted (which is possible but is not expected to be the case), *Part 2* will commence 12 months after the day on which the Bill receives the Royal assent.

Clause 3 identifies the Earthquake Commission Act 1993 as the Act being amended.

Part 1 of the Bill amends the Act to—

- set out the circumstances in which EQC may release information; and
- extend the time limits for claimants to notify EQC when property insured under the Act is damaged so that notice can (in most circumstances) be given up to 2 years after the damage occurs.

Release of information

Under the Privacy Act 1993, EQC is permitted to disclose personal information in the circumstances set out in privacy principle 11. However, circumstances have arisen in which it would have been in the public interest to release certain information but it was not clear whether EQC was permitted to do so. *New section 31A* sets out the circumstances (in addition to those set out in privacy principle 11) in which EQC may release information in its possession, including information about property and claims (but not information that is required to be kept secret under section 25 of the Act). *New section 31A* comes into force on the day after the Bill receives the Royal assent and applies to all information, irrespective of when EQC obtained it (*see clause 1 of new Schedule 1AA*, inserted by *clause 6*).

Claims times

Clause 7 of *Schedule 3* of the Act sets out the procedure for notifying EQC of damage to insured property and making claims. Currently, an insured person must notify EQC within 3 months of damage occurring and lodge a claim as soon as practicable after that. This 3-month period is prescribed in the regulations.

In future, the Act will allow an insured person to give notice of damage up to 3 months after the damage occurs without any preconditions, and up to 2 years after the damage occurs subject only to the limitation that a claim made after 3 months may be refused if the lateness of the claim materially prejudices EQC's ability to assess the claim.

This change comes into force on the day after the Bill receives the Royal assent and applies to natural disasters occurring after that date. The current time limits will continue to apply in relation to events that have already occurred (*see clause 2 of new Schedule 1AA*).

Part 2 of the Bill amends the Act to—

- increase the monetary cap on residential building insurance under the Act from \$100,000 to \$150,000; and
- discontinue insurance cover under the Act for personal property.

Building insurance cap

Section 18 of the Act, which provides for residential building insurance, is amended to increase the monetary cap on residential building cover from \$100,000 to \$150,000 and increase the build-cost rate from \$1,000 per m² to \$2,500 per m². The build-cost rate is designed to reduce under-insurance by requiring that the value of a property for the purposes of insurance under the Act is not less than the specified minimum value per square metre.

Personal property cover

Currently the Act provides insurance for residential buildings, residential land, and personal property (contents) up to the value of \$20,000. In future, insurance will not be provided under the Act for personal property.

Transitional arrangements for Part 2

As the changes in *Part 2* of the Bill affect the level of insurance cover provided under the Act, they will have flow-on effects for private residential property and contents insurance cover, and for the reinsurance contracts of both EQC and private insurers. To give property owners, EQC, and private insurers sufficient time to make the necessary contractual changes, these amendments will not come into force until sections 80 to 140 of the Fire and Emergency New Zealand Act 2017 come into force, which is anticipated to be on 1 July 2019. The current insurance levels will continue to apply to contracts entered into before that date, so the new insurance levels will take effect gradually over the following 12 months as those policies are renewed (*see clauses 3 and 4 of new Schedule 1AA*, inserted by *clause 12*).

Hon Dr Megan Woods

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Earthquake Commission Amendment Act **2018**.

2 Commencement

(1) This Act, other than **Part 2**, comes into force on the day after the assent date. 5

(2) **Part 2** comes into force—

(a) if the FENZ commencement date is on or after the assent date, on the FENZ commencement date; or

(b) if the FENZ commencement date is before the assent date, 12 months after the assent date. 10

(3) In this section,—

assent date means the date on which this Act receives the Royal assent

FENZ commencement date means the date on which sections 80 to 140 of the Fire and Emergency New Zealand Act 2017 come into force under section 2(5) and (6) of that Act. 15

3 Principal Act

This Act amends the Earthquake Commission Act 1993 (the **principal Act**).

Part 1

Amendments commencing on day after assent date

4 New section 3A inserted (Transitional, savings, and related provisions) 20

After section 3, insert:

3A Transitional, savings, and related provisions

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

5 New section 31A inserted (Release of information) 25

Before section 32, insert:

31A Release of information

(1) The Commission may release information held by the Commission if it is released for 1 or more of the following purposes:

(a) preventing or lessening a threat to public health or public safety or to the life or health of any individual: 30

(b) the administration of this Act or the performance by the Commission of its functions:

- (c) facilitating natural disaster preparedness, response, or recovery (including settlement of insurance claims by insurance companies):
- (d) making property-related information publicly available.
- (2) However, the Commission may release the information only if the Commission is satisfied,—
 - (a) if the information is released under **subsection (1)(c) or (d)**, that the release of the information is in the public interest; and
 - (b) if the information is released under **subsection (1)(a) to (c)** and is personal information, that appropriate protections are or will be in place to maintain the confidentiality of the information.
- (3) The Commission may release information under this section on its own initiative (whether or not any person has asked for it to be released).
- (4) Property-related information is not personal information for the purposes of this section or the Privacy Act 1993.
- (5) This section is subject to section 25.
- (6) In this section,—

information means any information held by the Commission, including—

 - (a) property-related information; and
 - (b) information about claims or claimants

personal information, subject to **subsection (3)**, has the same meaning as in section 2(1) of the Privacy Act 1993

property-related information means information about property (whether generally or in relation to 1 or more identified properties),—

 - (a) including information about—
 - (i) natural disaster damage to the property; and
 - (ii) any claims made under this Act in relation to the property (including information about the assessed cost to replace or reinstate damaged property, reinstatement methods, and settlement amounts); but
 - (b) not including information about any claimant personally.

6 New Schedule 1AA inserted

After section 41, insert the **Schedule 1AA** set out in **Schedule 1** of this Act.

7 Schedule 3 amended

- (1) In Schedule 3, clause 7(1)(a), replace “30 days (or such longer time as may be prescribed by regulations made under this Act)” with “the time allowed by **subclause (2)**”.
- (2) In Schedule 3, replace clause 7(2) with:

- (2) The notice under subclause (1)(a) must be given to the Commission—
- (a) not more than 3 months after the damage occurred (or any longer period prescribed by regulations made under this Act); or
 - (b) subject to **subclause (2A)**, after the period set out in **paragraph (a)** has expired but not more than 2 years after the damage occurred. 5
- (2A) **Subclause (2)(b)** does not apply in relation to a claim if the Commission is satisfied that the insured person’s failure to make the claim within the time limit set out in **subclause (2)(a)** materially prejudices the Commission’s ability to assess the claim.
- (3) In Schedule 3, after clause 13(1), insert: 10
- (1A) Where any claim is made under this Act in respect of natural disaster damage to any property more than 3 months after the damage occurred, the Commission may settle the claim on the basis of the amount it would cost to replace or reinstate the property at the time of the settlement of the claim.
- (4) In Schedule 3, clause 13(2), replace “subclause (1)” with “subclauses (1) and **(1A)**”. 15

Part 2

Amendments with delayed commencement

8 Section 18 amended (Residential buildings)

- (1) In section 18(1)(c), replace “\$100,000” with “\$150,000”. 20
- (2) In section 18(2), replace “a sum of not less than \$1,000” with “\$2,500”.
- (3) In section 18(2), replace “be \$1,000” with “be the amount calculated by multiplying \$2,500,”.

9 Section 20 repealed (Personal property)

Repeal section 20. 25

10 Section 22 amended (Voluntary insurance against natural disaster damage)

- (1) In section 22(1), replace “, residential land, or personal property, the Commission may enter into a contract to insure that building, land, or personal property” with “or residential land, the Commission may enter into a contract to insure that building or land”. 30
- (2) In section 22(1), replace “any of sections 18 to 20” with “section 18 or 19”.
- (3) Replace section 22(2)(a) and (b) with:
 - (a) for the insurance of any residential building or residential land that is not insured under section 18 or 19; or 35

- (b) for the insurance of any residential building or residential land in substitution for the insurance of that building or land under section 18 or 19.

11 Schedule 1AA amended

In **Schedule 1AA** (as inserted by **section 6**), after **clause 2**, insert:

- | | | |
|----------|---|----|
| 3 | Residential buildings | 5 |
| (1) | Section 18, as in force before the commencement date, continues to apply in relation to a contract of fire insurance entered into before that date. | |
| (2) | In this clause, commencement date means the date on which section 8 of the Earthquake Commission Amendment Act 2018 comes into force. | |
| 4 | Personal property | 10 |
| (1) | Section 20, as in force before the commencement date, continues to apply in relation to a contract of fire insurance entered into before that date. | |
| (2) | Section 22, as in force before the commencement date, continues to apply in relation to a contract of insurance entered into under that section before that date. | 15 |
| (3) | Sections 2, 21, 23, 27, 30, 31, and 36, and clause 5 of Schedule 3, as in force before the commencement date, continue to apply to the extent that either or both of sections 20 and 22 (as the case requires) continue to apply under sub-clause (1) or (2) . | |
| (4) | In this clause, commencement date means the date on which section 9 of the Earthquake Commission Amendment Act 2018 comes into force. | 20 |

12 Consequential amendments

Amend the principal Act as set out in **Schedule 2**.

Schedule 1
New Schedule 1AA inserted

s 6

Schedule 1AA
Transitional, savings, and related provisions

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s 3A

Part 1
Provisions relating to Earthquake Commission Amendment Act 2018

- | | | | |
|----------|-------------------------------|--|----|
| 1 | Release of information | | 10 |
| | | To avoid doubt, section 31A applies to all information held by the Commission, regardless of when it was obtained by the Commission. | |
| 2 | Reporting of claims | | |
| (1) | | Clauses 7 and 13 of Schedule 3, as in force before the commencement date, continue to apply in relation to a claim relating to natural disaster damage that occurred before that date. | 15 |
| (2) | | In this clause, commencement date means the date on which section 7 of the Earthquake Commission Amendment Act 2018 comes into force. | |

Schedule 2

Consequential amendments

s 12

Section 2

In section 2(1), repeal the definition of **personal property**. 5

In section 2(1), replace the definition of **replacement value** with:

replacement value, in relation to a residential building, means any costs which would be reasonably incurred in respect of—

- (a) demolition and removal of debris, to the extent that is essential to enable the building to be replaced or reinstated; and 10
- (b) replacing or reinstating the building to a condition substantially the same as but not better or more extensive than its condition when new, modified as necessary to comply with any applicable laws; and
- (c) complying with any applicable laws in relation to the replacement or reinstatement of the building; and 15
- (d) other fees or costs payable in the course of replacing or reinstating the building, including architects' fees, surveyors' fees, and fees payable to local authorities

Section 21

In section 21(1), replace “to 20” with “and 19”. 20

Section 23

In section 23(1), replace “any of sections 18 to 20” with “section 18”.

Section 27

In section 27(a), replace “, residential land, or personal property under sections 18 to 20” with “or residential land under section 18 or 19”. 25

In section 27(b), replace “, residential land, or personal property” with “or residential land”.

Sections 30 and 31

In sections 30(1) and (3) and 31, replace “any of sections 18 to 20” with “section 18 or 19”. 30

Section 36

In section 36(1)(a), replace “, residential land, or personal property” with “or residential land”.

In section 36(1)(b), replace “, residential land, or personal property, or class of residential building, residential land, or personal property, are insured under any or all of 35

Section 36—*continued*

sections 18 to 20” with “or residential land, or class of residential building or residential land, are insured under any or all of sections 18, 19.”

In section 36(1)(e), replace “, residential land, or personal property or class of residential buildings, residential land, or personal property,” with “or residential land, or class of residential buildings or residential land,”.

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Schedule 3

In Schedule 3, clause 5(2)(a)(i), replace “, residential land, or personal property” with “or residential land”.