

# Natural Hazards Insurance Bill

Government Bill

## Explanatory note

### General policy statement

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

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

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

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

- *Purpose, objectives and functions*
  - introducing a purpose statement; and
  - adding new objectives for the Commission; and
  - clarifying the Commission’s core functions to better recognise its obligations to stakeholders, including through—
    - a revised insurance function framed around claims management with a clear statutory objective requiring the Commission to ensure claims are managed and settled in a fair and timely manner; and
    - targeted revisions to ensure that the Commission’s research and education function has sufficient flexibility to allow it to contribute to community resilience, a whole-of-government disaster

- recovery, and work that seeks to reduce the cost of insurance over time; and
- reframing the Commission’s function in relation to the Natural Hazard Fund to better reflect its objective as a fund manager, and aligning the Commission’s fund management mandate with the mandate of other entities that invest assets on behalf of the Crown; and
- *Building and land cover*
  - improving consistency between the rules used to determine if a building is mixed-use and the resulting cover for that building; and
  - improving the cover for retaining walls and bridges and culverts, and extending and standardising building cover for items located beyond the boundary of the land on which a residential building is situated; and
  - clarifying that cover does not extend to paying for building upgrades, such as seismic improvements of earthquake-prone buildings, that were legally required before a damage-causing natural hazard event occurred; and
  - extending the damage period for a volcanic activity event from 48 hours to 7 days, to reflect the fact that volcanic events can continue for extended periods and to help ease the administrative complexity of claims for those events; and
  - defining (or providing more detailed definitions for) important terms such as appurtenant structure, service infrastructure, and the various kinds of natural hazards; and
  - introducing a clear statement of the repair standard for buildings and land cover; and
  - updating and standardising claims excesses; and
  - updating the list of excluded property and allowing some amendments to be made to that list by Order in Council; and
- *Claims handling and settlement*
  - requiring the Commission to participate in a dispute resolution scheme to ensure that claimants have an out-of-court dispute resolution option; and
  - requiring the Commission to act in accordance with a Code of Insured Persons’ Rights that sets out how claimants should be treated; and
  - including an entitlement for claimants to seek an independent review of unresolved complaints relating to a breach of that code; and
  - extending the Commission’s ability to delegate claims settlement functions to private insurers; and
  - clarifying that the benefits of a claim can be assigned; and

- clarifying how the Commission must exercise its right to salvage property; and
- enabling the Commission to decline claims where there is no financial loss; and
- *Financial governance, roles and sustainability*
  - requiring reviews of the insurance levy, monetary cap for residential building cover, and other key financial settings at least every 5 years, and requiring the Minister to publish a funding and risk management statement following each review; and
  - introducing service agreements as an option to allow for public funding of the Commission's activities that it is not appropriate to finance from the Natural Hazard Fund; and
  - enabling the Commission to negotiate (but not pay for) disaster financing (such as reinsurance) on behalf of the Crown (in addition to the Commission's power to purchase reinsurance relating to natural hazard cover, which is paid for out of the Natural Hazard Fund); and
  - introducing a statutory basis defining how the insurance levy will be set; and
  - better aligning the Commission's statutory structure with the Crown entity framework; and
  - clarifying what the Natural Hazard Fund can be spent on; and
  - providing clearer separation of the Natural Hazard Fund from the Commission; and
  - removing the Commission's discretion to discount levies payable to the Commission by private insurers; and
- *Other technical issues*
  - clarifying and strengthening the Commission's information-gathering powers and supporting information sharing with other government agencies and other persons with a proper interest in receiving it; and
  - updating offences and penalties and introducing a new offence for deliberate breaches of the obligation on insurance companies to pay levies to the Commission within the specified period; and
- *Monetary cap on residential building cover*
  - including in the Bill the monetary cap on residential building cover of \$300,000 per dwelling that will apply under the EQC Act from 1 October 2022 as a result of regulations under that Act increasing the cap from the current level of \$150,000 per dwelling (both amounts excluding GST).

### **Departmental disclosure statement**

The Treasury is required to prepare a disclosure statement to assist with the scrutiny of the 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=2022&no=113>.

### **Regulatory impact statement**

The Treasury produced regulatory impact statements on 18 March 2020, 14 April 2021, 24 May 2021, and 7 July 2021 to help inform the main policy decisions taken by the Government relating to the contents of the Bill.

A copy of those regulatory impact statements can be found at <https://treasury.govt.nz/publications/informationreleases/ris>.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause, which provides for the Bill to come into force on the later of 1 December 2023 and 12 months after Royal assent. There is an ability to defer commencement to a later date by Order in Council. It is not anticipated that this power would be used, but it is included to cover the possibility that an earthquake or other event could make commencement on the intended date impracticable for the Commission and private sector fire insurers. Commencement could not be deferred indefinitely as an Order in Council must specify the new commencement date and the order would be disallowable.

## **Part 1**

### **Preliminary provisions**

*Clause 3* sets out the purposes of the Bill.

*Clause 4* sets out the purposes of natural hazard cover.

*Clause 5* defines terms used in the Bill.

#### *Dwelling, residential building, residential land, and related terms*

There is a chain of defined terms in *clauses 6 to 20* that explain the various components of a residential building and residential land, and therefore what is insured by natural hazard cover.

Excluded property, which is listed in *Schedule 2*, is excluded from the various components of a residential building and residential land, so is not covered by natural hazard cover.

In relation to residential buildings, the definitions start with the definition of a dwelling.

*Clause 6* defines a dwelling as a building, or part of a building, that—

- is self-contained with the facilities for day-to-day living and is being used (or is ordinarily used) as someone’s home or holiday home; or
- is used to provide long-term accommodation for the elderly.

A vehicle or structure that is not ordinarily considered to be a building (such as a caravan) also qualifies as a dwelling if it is immovable and meets the self-contained home criteria.

A dwelling does not include anything that is excluded property.

*Clause 7* defines an eligible building. A building that contains 1 or more dwellings is an eligible building if the whole building is insured under a single fire insurance contract. If part of the building (including at least 1 dwelling) is insured under a single fire insurance contract, that part of the building is an eligible building.

If 2 or more different parts of the building (each including at least 1 dwelling) are insured under different fire insurance contracts, each of those parts of the building is a separate eligible building. As a result, the Bill applies separately to each of those eligible buildings.

In all cases, any part of the building that is not insured under a fire insurance contract is not part of an eligible building so is not insured under the Bill, even if it is a dwelling.

An eligible building’s fire insurance might cover non-residential parts of the building—such as shops or offices. They will be part of the eligible building, but whether they are covered by the Bill’s building cover depends on how much of the building is used for residential purposes.

*Clause 8* provides that an eligible building is a mixed-use building if it contains 1 or more dwellings and the residential parts of the eligible building occupy less than 50% of the eligible building’s floor area. It should be noted that this refers to the eligible building, which may be only part of the physical building.

Common property is excluded for the purposes of calculating the residential percentage because it is owned by the owners of all of the premises in the building (that is, the dwellings and commercial or other premises). In effect, the common property is both residential and non-residential so in calculating the residential percentage it is not counted as either residential or non-residential.

However, the common property is part of the residential building, so is covered by natural hazard cover to the extent of the dwelling-owners’ interests in it.

*Clause 9* defines a residential building, which is what is insured by natural hazard cover. The main component of a residential building is an eligible building. If the eligible building is not a mixed-use building, the residential building is—

- the whole of the eligible building (including the dwellings and any non-residential parts of the building and service infrastructure inside the eligible building); and
- any appurtenant structures and service infrastructure that are outside the eligible building.

If the eligible building is a mixed-use building, the residential building is—

- the dwellings; and
- all appurtenant structures and service infrastructure for the dwellings (whether inside or outside the eligible building); and
- the common property and joint property for the building.

*Clause 10* explains what is meant by the number of dwellings in a residential building. This is important for calculating the amount payable on claims (*see clauses 34 to 36*).

*Clause 11* defines appurtenant structures. These are parts of the eligible building outside the dwellings and structures outside the eligible building that are appurtenant to a dwelling and used by the owners or other occupants of the dwelling for household purposes or for access or that house service infrastructure.

*Clause 12* defines service infrastructure as infrastructure that provides water supply, drainage, sewerage, gas, electricity, or telecommunications to a dwelling or an appurtenant structure and is in, or within 60 metres of, the eligible building or an appurtenant structure. It only covers infrastructure that the insured person has an insurable interest in, so does not cover, for example, water pipes or sewers owned by the local authority.

*Clause 13* defines common property. If a building contains 2 or more dwellings, or includes some non-residential premises, some parts of the building may be available for use by, or for the benefit of, the owners or other occupants of all premises in the building—such as the roof and foundations, lifts, or a communal basement car park. This is common property.

*Clause 14* defines joint property. This is very similar to common property except that it is available for use by, or is for the benefit of, the owners or other occupants of some but not all premises in the building—such as a dedicated lift for premises on the upper floors of a building.

*Clause 15* defines shared property as any part of a residential building in which a person who is not the insured person has an insurable interest (for example, a party wall).

In a mixed-use building, common property, joint property, and shared property are all part of a residential building and covered by natural hazard cover, although cover for the property is limited (*see clauses 33 and 45*).

Once a residential building has been identified, identifying the residential land for that building starts with identifying the insured person's land.

*Clause 16* sets out what constitutes the insured person's land. In most cases, especially in urban areas, it is simply the residential section on which the residential building is built.

It may also include other land over which the insured person has a proprietary estate or interest, such as part of the neighbouring land over which the insured person has a right of way. It does not include land that the insured person is permitted to use under a non-proprietary right such as a licence to occupy or an encroachment licence.

*Clause 17* sets out the parts of the insured person's land that form the residential land for the residential building. That is the land that is covered by natural hazard cover. Broadly, it is the parts of the insured person's land that the residential building is situated on, up to 8 metres around the building, and the land supporting the main access way.

The residential land also includes certain retaining walls and bridges and culverts.

*Clause 18* defines retaining walls as retaining walls that are necessary to support the residential building or residential land and that are within 60 metres of the residential building. This includes retaining walls that are outside the insured person's land as long as the insured person has an insurable interest in the wall. It does not include retaining walls that are part of the landscaping but do not support or protect the residential building.

*Clause 18* also defines bridges and culverts as those on the residential land as well as some outside the insured person's land as long as the person has an insurable interest in them.

*Clause 19* defines common land, joint land, and shared land. They are the land equivalents of the residential building's common property, joint property, and shared property (see *clauses 13 to 15*).

*Clause 20* defines common ownership interest, joint ownership interest, and shared ownership interest. Those terms apply to both residential buildings and residential land and provide the basis for calculating the extent of the natural hazard cover for that property.

For common property, the extent of cover is apportioned between the owners of the dwellings and the owners of the non-residential premises in the eligible building, based on their respective ownership interests.

For joint property, the extent of cover is apportioned between the owners of the dwellings who are entitled to use the joint property and the owners of the other premises in the eligible building who are entitled to use the joint property, based on their shares of the responsibility to replace or reinstate the joint property.

For shared property, the extent of cover is apportioned between the insured person and the other persons who have insurable interests in the shared property, based on their shares of the responsibility to replace or reinstate the shared property.

### *Fire insurance, fire insurer, and insured person*

*Clause 21* defines a fire insurance contract and the fire insurer. A normal home insurance policy usually includes insurance against loss or damage by fire, so it is a fire insurance contract for the purposes of the Bill.

This clause also provides that a renewal of a fire insurance contract is taken to be a new contract.

*Clause 22* defines the insured person in relation to a residential building and its residential land as the person, or all of the persons, who are entitled to the benefit of the fire insurance contract for the residential building.

### *Natural hazards and natural hazard damage*

Natural hazard cover insures against natural hazard damage. *Clauses 23 and 24* explain what natural hazard damage is.

*Clause 23* defines a natural hazard as an earthquake, hydrothermal activity, a landslide, a tsunami, volcanic activity, a flood, a storm, or a natural hazard fire. Those terms are defined in *clause 5*.

*Clause 24* defines natural hazard damage. The main part of the definition is that natural hazard damage is physical loss or damage that occurs as a direct result of a natural hazard. However, for a storm or flood, natural hazard damage only covers damage to land.

Natural hazard damage also includes physical loss or damage as a result of measures taken to mitigate the consequences of a natural hazard (such as if residential land is damaged by an emergency embankment being constructed to mitigate the effects of a flood).

Natural hazard damage also includes damage that is imminent as a direct result of a natural hazard and, if it happened, would be natural hazard damage under the main part of the definition (such as if an earthquake destabilises a slope and exposes a house below to the risk of damage from falling rocks). This is referred to as imminent damage.

### *Other preliminary provisions*

*Clause 25* indicates that the transitional, savings, and related provisions are set out in *Schedule 1*.

*Clause 26* provides that the Bill binds the Crown.

*Clause 27* provides that the Bill does not apply to property outside New Zealand.



## Part 2

### Natural hazard cover for residential buildings and related structures and land

#### *Insurance against natural hazard damage*

*Clause 28* establishes natural hazard cover as insurance against natural hazard damage to residential buildings (building cover) and residential land (land cover).

Natural hazard cover does not provide insurance against consequential loss (such as temporary accommodation costs, loss of profits, loss or damage as a result of theft, vandalism, or business interruption, or loss of intangible property).

*Clause 29* provides that natural hazard cover commences when cover commences under the fire insurance contract and continues while the dwellings in the building continue to be insured. Continuation of cover is not affected by the occurrence of natural hazard damage, the making or settling of a claim, or any failure to pay the levy.

#### *Building cover*

*Clause 30* provides that building cover insures a residential building on a replacement cost basis. Building cover is subject to other provisions in the Bill (such as those relating to cancellation, declining a claim, and limitation of liability). It is also subject to any conditions imposed by the regulations.

*Clause 31* sets out the maximum amount that can be paid if a residential building suffers natural hazard damage. The building claim entitlement is the replacement cost of the damaged property, up to the building cover cap plus GST minus the building cover excess (which is \$500 per dwelling).

A separate building claim entitlement applies for each claim. All damage that occurs within a damage period (48 hours or 7 days, depending on the kind of natural hazard) is covered by the same claim (*see clause 51*).

*Clause 32* defines the replacement cost for damaged parts of a residential building. The replacement cost is the total cost that would reasonably be incurred to replace or reinstate the property to a condition substantially the same as its condition when it was new, but constructed using current materials and methods and modified as necessary to comply with all applicable laws.

If any of the natural hazard damage is imminent damage, the replacement cost includes costs to mitigate the risk.

If, before the damage occurred, the insured person had a legal obligation to modify the property (for example, to comply with earthquake-prone building requirements), the cost of those modifications is not included in the replacement cost because the obligation already existed and did not arise as a result of the natural hazard.

However, if any of the damaged property is shared property, common property, or joint property, only a proportion of its replacement cost will be included (*see clause 33*).

*Clause 33* provides for a proportionate reduction in the replacement cost of any damaged property that is shared property, common property, or joint property.

For shared property, the costs are apportioned between the insured person and the other persons who have interests in the property, based on their shares of the responsibility to replace or reinstate the shared property (*see examples in clause 20*).

For common property, the costs are apportioned between the owners of the dwellings and the owners of the non-residential premises in the building, based on their ownership interests in the common property (*see examples in clause 20*).

For joint property, the costs are apportioned between the owners of the dwelling who have a right to use the joint property and the owners of the non-residential premises who have a right to use the joint property, based on their shares of the responsibility to replace or reinstate the joint property.

*Clauses 34 to 36* set out how the building cover cap is determined.

If the fire insurance contract specifies a replacement sum insured, the building cover cap is the specified sum up to a maximum of \$300,000 per dwelling plus GST.

If the fire insurance contract specifies an insured amount for the purposes of the Bill, the building cover cap is the specified amount (or \$2,500 per square metre of the insured floor area plus GST, if that is more than the specified amount) up to a maximum of \$300,000 per dwelling plus GST.

In any other case, the building cap is \$300,000 per dwelling plus GST.

### *Land cover*

*Clause 37* provides that land cover insures the residential land for a residential building on an indemnity basis. Like building cover, land cover is subject to other provisions in the Bill and any conditions imposed by the regulations.

*Clause 38* sets out how the maximum amount that can be paid if the residential land suffers natural hazard damage.

The land claim entitlement is the actual loss suffered (determined under *clause 39*) up to the maximum land cover amount (determined under *clause 42*) minus the land cover excess (which is \$500 per dwelling up to a maximum of \$5,000).

A separate land claim entitlement applies for each claim. All damage that occurs within a damage period (48 hours or 7 days, depending on the kind of natural hazard) is covered by the same claim (*see clause 51*).

*Clause 39* defines the actual loss suffered as the loss suffered by the person who was the insured person at the time the damage occurred as a direct result of the natural hazard damage to the land.

To the extent that the actual loss suffered can be reasonably quantified using reinstatement cost or diminution of value, or a combination of both, the Commission must quantify the loss in that way. To the extent that using those methods would not reasonably quantify the loss, the Commission must use a method that does quantify the actual loss suffered by the person.

*Clause 40* defines the reinstatement cost for damaged residential land. The reinstatement cost is the total cost that would reasonably be incurred to reinstate the land so that it is reasonably able to be used for the same purpose as it was used before it was damaged and it is not materially more or less valuable than it was before it was damaged.

If any of the natural hazard damage is imminent damage, the reinstatement cost includes costs to mitigate the risk of the damage occurring.

*Clause 41* provides that the diminution of value is the loss of value of the residential land or the residential land and residential building as a result of the natural hazard damage to the residential land. This covers both actual damage and imminent damage. It takes into account only the loss of value due to the natural hazard damage to the land, not loss of value due to other factors.

*Clause 42* sets out how the maximum land cover amount is calculated. That is—

- the assessed market value of the land; plus
- the undepreciated value of any damaged retaining walls (up to a maximum of \$50,000 per dwelling plus GST); plus
- the undepreciated value of any damaged bridges and culverts (up to a maximum of \$25,000 per dwelling plus GST).

*Clause 43* sets out how the assessed market value of the damaged residential land is determined. This depends on whether the area of the damaged land exceeds the area cap. The area cap is 4,000 square metres unless the relevant district plan allows for smaller areas.

If the area of the damaged land is less than or equal to the area cap, the assessed market value is the amount that would have been the market value of the damaged residential land immediately before the natural hazard damage occurred.

If the area of the damaged land is greater than the area cap, the assessed market value is the amount that would have been the market value immediately before the natural hazard damage occurred of a hypothetical area of land that is equal in size to the area cap but with all the same features as the residential land.

*Clause 44* provides that the undepreciated value of a damaged retaining wall or bridge or culvert is the total cost that would reasonably be incurred to build a wall or bridge or culvert that is substantially the same as the damaged one was when it was new. This applies even if a structure of that kind would not comply with current building standards or applicable laws.

*Clause 45* provides for a proportionate reduction in the reinstatement cost, diminution of value, assessed market value, and undepreciated values, if any of the residential land is shared land, common land, or joint land. The reduction is calculated in the same way as for shared, common, and joint property (*see above in relation to clause 33 and the examples in clause 20*).

### *Other provisions relating to natural hazard cover*

*Clause 46* allows the Commission to provide contractual insurance for a residential building and its residential land, either because the building and land would not otherwise qualify for natural hazard cover or instead of the natural hazard cover that it has under the Bill. If this insurance is provided, the Bill applies as if the contractual insurance were natural hazard cover, unless the contract provides otherwise. An example of when this insurance might be provided is if the owner of a residential building is unable to obtain fire insurance for the building.

*Clause 47* allows the Commission to cancel the natural hazard cover for a residential building or residential land. It may only do so if a claim has been settled by payment of the building claim entitlement or land claim entitlement, the amount paid was the maximum amount payable for a building or land claim, and the insured person has not repaired or replaced the property after having had reasonable opportunity to do so. Even in circumstances where the Commission could cancel cover, it has a discretion about whether it will do so.

If cover is cancelled, *clause 49* requires notice of the cancellation to be recorded on the record of title for the land so that potential purchasers of the land know about it.

*Clause 48* allows the Commission to limit its liability for future landslide, flood, or storm damage in a case where the building or land has already suffered damage, is likely to suffer similar damage in future, and there are reasonable steps that the insured person could take to prevent the future damage (such as when a house has suffered damage from rocks falling from a slope above and further damage could be prevented by a rock protection fence).

The limitation of liability serves as a warning that future claims for such damage may be declined.

Even in circumstances where the Commission could limit its liability, it has a discretion about whether it will do so. And even if it does, it still has a discretion about whether to decline any future claim.

If liability is limited, *clause 49* requires notice of it to be recorded on the record of title for the land so that potential purchasers of the land know about it.

## **Part 3**

### **Claims against natural hazard cover**

#### *Making claims*

*Clause 50* provides that an insured person may make a claim in respect of a residential building or residential land (or both) that has suffered natural hazard damage.

*Clause 51* sets out the time period that is covered by a claim. This is important because a separate building claim entitlement and land claim entitlement apply for each claim (*see clauses 31 and 38*).

All natural hazard damage to a residential building and its residential land that occurs during a damage period is part of the same claim. If a claim for damage in that period has been lodged, any additional damage that occurred during the same damage period can be added to the claim.

A damage period starts when natural hazard damage first occurs and runs for 48 hours (if the initial damage is the result of an earthquake, a flood, hydrothermal activity, a landslide, a storm, or a tsunami) or 7 days (if the initial damage is the result of volcanic activity or a natural hazard fire). If more damage occurs after the 48 hours or 7 days, another damage period begins and the insured person can make another claim.

*Clause 52* provides the time limits for making a claim. A claim can be made without qualification within 3 months from when the first damage occurs.

A claim can be made between 3 months and 2 years after the damage occurs, but the Commission may be able to decline the claim if the lapse of time before making the claim notice materially prejudices the Commission's ability to assess the claim.

The regulations may extend either or both of the 3-month and 2-year periods.

The regulations may also allow claims to be made after 2 years, but only in relation to damage that could not reasonably have been discovered sooner or where the insured person was unable to make the claim sooner.

*Clause 53* requires a person making a claim to give the Commission full details of the claim as soon as practicable after the claim is made. *Clause 53* sets out the matters about which information must be provided, with regulations able to prescribe additional matters. The Commission will specify exactly what details are required, which will likely be different in different circumstances. The Commission also has power to request further information (*see clause 56*).

*Clause 54* requires the insured person to inform the Commission if they become aware of any new information relevant to the claim or if there is any material change in information they have given to the Commission or that they know the Commission has obtained from another source. The latter would cover cases where, for example, the insured person knows that the Commission has inspected some part of the residential building or residential land and subsequently there is a material change affecting that part of the property.

#### *Commission to assess, decide, and settle claims*

*Clause 55* requires the Commission to decide whether a claim is valid (in whole or part) and if it is, to assess the claim, decide how to settle it, and then settle the claim.

*Clause 56* allows the Commission to request further information from the insured person. If the insured person does not have the information, they may be required to obtain it at their cost (for example, they may need to obtain a builder's report or geotechnical information). There is no penalty for not providing the information, but the Commission may put the claim on hold until the requested information is provided.

*Clause 57* sets out the criteria for a claim to be valid.

If the Commission is satisfied the criteria are met, it must accept the claim as a valid claim (subject to *clause 64*, which allows the Commission to decline a claim in certain circumstances). If the criteria are not met, the Commission must reject it as an invalid claim.

*Clause 58* provides that, if a claim is valid, the Commission must decide how to settle it and then take the steps necessary to settle the claim.

*Clause 59* sets out the different methods that can be used to settle a claim. The Commission can choose to use 1 method for the whole claim, or a combination of methods for different parts of the claim.

*Clause 60* sets out the dates as at which settlement amounts are to be calculated.

*Clause 61* deals with payment of a claim settlement if there are 2 or more persons entitled to it. This may be because someone other than the insured person is entitled to part of it (such as an assignee or a mortgagee (*see clauses 75 and 76*) or because there are 2 or more persons entitled to the benefit of the fire insurance contract (who together constitute the insured person for the purposes of the Bill). The persons who are not insured persons will be paid their share first, and the rest will be paid to the insured person or, if there are 2 or more of them, be divided between them.

*Clause 62* sets out what is required if a claim is to be settled by relocating a residential building. Relocation could involve something as minor as moving a garden shed or as major as moving the whole residential building to a different place.

If the residential building is relocated to a site outside the insured person land, the insured person must be given an interest in the new site that is equivalent to, or greater than, their interest in the original site. Once that has been done, the Commission may exercise its right of salvage under *clauses 79 to 82* in relation to the original site.

*Clause 63* requires an insured person whose claim is settled by replacement, reinstatement, or relocation to pay the building cover excess or land cover excess (or both). If a claim is settled by a monetary payment, the excesses are deducted as part of calculating the amount to be paid (*see clauses 31 and 38*).

### *Declining claims*

*Clause 64* allows the Commission to decline a claim (or part of it) in the circumstances set out in *clauses 65 to 74*. It may do so at any time after the claim is made, regardless of how far it has got in the process of assessing, deciding, and settling the claim.

The grounds on which a claim may be declined are as follows:

- the claim was made after the standard claim date (usually 3 months from the date of the damage) and the lapse of time before the claim was made materially prejudices the Commission's ability to assess the claim (*see clause 65*);
- the damage to which the claim relates has not caused, and is not likely to cause, financial loss to the insured person (*see clause 66*);

- the regulations impose a condition on cover and state that failure to comply is grounds for declining a claim, and the condition is not complied with (*see clause 67*):
- the insured person has knowingly given misleading information to the Commission, an authorised person, or the fire insurer (*see clause 68*):
- it is fraudulent. The claim may be declined in full even if only part of it is fraudulent (*see clause 69*):
- the insured person failed to take reasonable steps to protect the property from natural hazard damage and the damage to which the claim relates occurred because of (or was exacerbated by) that failure (*see clause 70*):
- the natural hazard damage occurred because of (or was exacerbated by) an intentional act or omission of, or the negligence of, the insured person or a previous owner or occupier (if the insured person knew about it when they acquired the property) (*see clause 71*):
- the natural hazard damage occurred because of (or was exacerbated by) a failure by the insured person to comply with any law or legal requirement, such as failure to comply with the building code (*see clause 72*):
- the damage occurred because of (or was exacerbated by) the damaged property not having been constructed in accordance with the standards that applied at the time it was built. However, this does not apply to damage to integral parts of the eligible building (*see clause 73*):
- a notice under the Building Act 2004 (issued when building consent is granted for land that is subject to natural hazards) is recorded on the record of title and the claim relates to damage that is the result of the same kind of natural hazard that the notice relates to (*see clause 74*).

#### *Other provisions relating to claims*

*Clause 75* provides that the right of an insured person to the benefit of natural hazard cover can be assigned (for example, to a person who purchases the damaged property before a claim is settled).

*Clause 76* provides that if a mortgage or other document includes a provision relating to insurance against loss or damage by fire of a residential building or residential land, the provision also applies to natural hazard cover.

*Clause 77* provides that the general law of subrogation as it relates to contracts of insurance applies in relation to natural hazard cover in the same way as for contractual insurance.

*Clause 78* allows the Commission to make an ex gratia payment to a person in respect of natural hazard damage to their property if they have paid the levy amount in relation to the fire insurance contract for the property in the honest but mistaken belief that it was insured under the Bill.

*Clause 79* provides that, if the Commission settles a claim, it has a right to salvage. This is comparable with salvage rights commonly included in property insurance contracts. Before salvaging property, the Commission must notify the insured person and the fire insurer (who may also have salvage rights in relation to the property).

*Clause 80* provides that, for property other than land, the Commission may salvage any part of the damaged property that is not required for the purposes of reinstatement or replacement.

*Clause 81* provides that the Commission can salvage land only if the claim against land cover is settled for an amount equal to or greater than the market value of the insured person's estate or interest in the land. The Commission must compensate the insured person for any improvements on the land that are not themselves salvageable under *clause 80*.

*Clause 82* provides that salvaged property becomes the property of the Commission, so it can sell the property. Any proceeds must be apportioned between the Commission and any other insurers who have interests in the property.

*Clause 83* provides that if a residential building or residential land is also insured under a contract of insurance that includes cover for natural hazard damage (often called catastrophe insurance), natural hazard cover under the Bill does not cover damage that is also covered by the contractual insurance. This is to ensure that the insured person is not compensated twice for the same damage. Fire insurance contracts almost invariably state that they only cover damage in excess of the amount payable under the Bill, so this clause is very unlikely to apply.

### *Code of Insured Persons' Rights*

*Clause 84* sets out the purpose of the Code of Insured Persons' Rights (**Code**).

*Clause 85* provides for the Minister to make the Code. A draft Code will be prepared by the Commission and the Minister must be satisfied that there has been adequate publication consultation before making the Code. The Code is secondary legislation so the Minister must ensure that it is published in accordance with the Legislation Act 2019.

*Clause 86* requires the Commission to act consistently with the Code and uphold the rights of insured persons under the Code. It also requires the Commission to ensure that the Code is accessible and to promote awareness of it.

### *Complaint management procedure*

*Clause 87* requires the Commission to have a procedure for managing complaints by insured persons. This must provide for managing complaints about breaches of the Code. The Commission must publish the complaints procedure, make it accessible, and promote awareness of it, along with the Code.



*Review of complaint procedure decisions about breaches of Code*

*Clause 88* requires the Commission to have a procedure for independent persons to review decisions made by the Commission under the complaint procedure in relation to breaches of the Code. The Commission must engage independent reviewers to carry out the reviews, but reviews must be carried out in a way that is independent of the Commission.

The Commission must publish the review procedure, make it accessible, and promote awareness of it, along with the Code and complaint procedure.

*Clause 89* allows a person aggrieved by a decision made by the Commission under the complaint procedure in relation to breaches of the Code to apply for an independent review of the decision and requires the Commission to allocate the person's application to a reviewer. An application must not be allocated to a reviewer with a known conflict of interest, and if a conflict of interest becomes apparent after the application has been allocated, it must be reallocated to a different reviewer.

*Clause 90* requires the reviewer to assess whether the application relates to a decision that is reviewable and has been made in accordance with the Bill. If the reviewer decides it does meet those criteria, they must review the decision. However, if the regulations allow a reviewer to reject a claim without considering it (because, for example, it is frivolous or vexatious), the reviewer may reject the claim.

*Clause 91* sets out how the reviewer is to carry out the review. Importantly, the reviewer is required to act independently of the Commission.

*Clause 92* requires the reviewer to prepare a report setting out their decision and recommendations. The report must be given to the applicant and the Commission.

The reviewer may decide that the Commission should provide 1 or more of the remedies available under the Code for breaches of the Code. If the regulations provide that decisions about that remedy are binding, the Commission must provide the remedy.

*Clause 93* provides that seeking a review of a decision does not affect any right a person may have refer a dispute to the dispute scheme or to commence proceedings in any court or tribunal. However, if they do, the review proceedings will be stayed until the other proceedings are completed.

*Clause 94* requires the Commission to engage people as reviewers and sets out requirements for their engagement.

*Clause 95* provides for the functions, powers, and duties of reviewers.

*Clause 96* allows the regulations to make provision for payment of costs incurred in relation to review proceedings.

*Resolution of disputes about claims*

*Clause 97* requires the Commission to be a member of a dispute resolution scheme that has been approved by the Minister. If no scheme has been approved (for example,

because a suitable scheme is not available), the Commission must develop its own scheme in accordance with rules made by the Minister.

*Clause 98* sets out the criteria for the Minister to approve a scheme. The approval is secondary legislation and will be published as required by the Legislation Act 2019. The Commission must publish a copy of the scheme rules (or a link to a website where they are published) on its website.

*Clause 99* provides for the Minister to make scheme rules if there is no approved scheme and the Commission is required to set up its own dispute resolution scheme. In this case, the scheme rules are secondary legislation and will be published as required by the Legislation Act 2019.

*Clause 100* allows a person who disputes a decision of the Commission (including a decision made on behalf of the Commission by a delegate or an agent) about the validity or settlement of a claim to refer the dispute to the dispute resolution scheme.

Use of the dispute resolution scheme is voluntary—an insured person who disputes a decision made the Commission can choose to use the dispute resolution scheme but they are not required to do so.

If a dispute is referred for resolution, all parties to the dispute must comply with the scheme rules, which can be enforced by a court if required.

*Clause 101* provides that referring a dispute for resolution does not affect any right a person may have to take action in a court or a tribunal. However, if they do, the dispute resolution proceedings will be stayed until the other proceedings are completed.

*Clause 102* provides for certain outcomes of dispute resolution to be binding on the parties to the dispute. In those cases, the decision or outcome of the resolution proceedings can be enforced by a court.

*Clause 103* allows a person aggrieved by a decision of an adjudicator or other person under an adjudication or other determinative process to appeal to a court.

## **Part 4**

### **Natural Hazard Fund and levy**

#### *Natural Hazard Fund*

*Clause 104* continues the Natural Disaster Fund under the name Natural Hazard Fund. The purpose of the Fund is to provide for payment of claim settlement costs and certain of the Commission's costs. The Fund is funded by the levy, investment earnings, and payments made by the Minister (which are required to be made if the assets of the Fund are insufficient).

*Clause 105* provides that the assets of the Fund are owned by the Commission on behalf of the Crown and are managed on behalf of the Crown.

*Clause 106* sets out the amounts that must be paid into the Fund. They include levy payments, amounts paid by the Minister (whether voluntarily or as required by *clause*

108), investment earnings, amounts received from reinsurance, and any fines imposed for offences against the Bill.

*Clause 107* sets out the amounts that must be paid out of the Fund. They include—

- claim settlement costs; and
- expenses and capital expenditure incurred by the Commission in performing its claims management, fund management, levy collection, reinsurance, and enforcement functions; and
- expenses and capital expenditure incurred by the Commission in performing its other functions to the extent that doing so has the potential to benefit insured persons or reduce future claim settlement costs.

No payment may be made out of the Fund other than those permitted by this clause.

*Clause 108* requires the Minister to pay additional money into the Fund if necessary to ensure that all amounts that are payable out of the Fund (including all claim settlement costs) will be paid. There is a standing appropriation to ensure that the Minister can always make those payment when they are needed.

*Clause 109* allows the Minister to make additional payments into the Fund out of money appropriated for that purpose.

*Clause 110* allows the Minister to require repayment of any amounts paid into the Fund by the Minister. However, the Minister cannot require repayment of an amount (and the Commission cannot pay it) if that would trigger *clause 108* and require the Minister to make a payment into the Fund. Also, the Minister cannot require repayment of an amount paid under *clause 108* by way of grant.

*Clause 111* requires the Commission to invest the Fund in accordance with any directions given by the Minister under the Crown Entities Act 2004 and the funding and risk management statement made under *clause 133*, and otherwise on a prudent, commercial basis.

### *Levy*

*Clause 112* imposes a levy to fund natural hazard cover. The rate of the levy or how it is to be calculated is to be set by regulations. The levy is payable by the insurer under the fire insurance contract for a residential building.

*Clause 113* requires the levy to be paid within 2 months after the end of the month in which the fire insurance contract is entered into (although the regulations may set a different time frame for payment). Intentionally failing to pay the levy is an offence. The insurer is required to certify that the amount paid is correct.

*Clause 114* requires the insured person to pay the amount of the levy to the fire insurer. Usually fire insurers require this to be paid with the premiums for the fire insurance.

*Clause 115* allows the Commission to waive an insurer's obligation to pay the levy (or refund it if paid) if the insurer has not been paid by the insured person and is not likely to be able to recover payment.

*Clause 116* provides for the Commission to be able to recover any unpaid levies and to refund any overpayments. It also allows overpayments to be refunded to fire insurers, who must in turn must refund it to insured persons.

*Clause 117* deals with situations where fire insurance is provided by an overseas insurer. If there is an insurance intermediary in New Zealand, the obligation to pay the levy falls on them as well as the fire insurer. If not, the obligation to pay the levy falls on the insured person and any overseas broker as well as the fire insurer. This is to ensure that the levy is recoverable from someone who is in New Zealand.

*Clause 118* protects information given to the Commission by insurers when paying the levy as it is commercially confidential information. It must not be disclosed other than for the purposes of the Bill. However, the Commission may disclose it in de-identified form. A person who intentionally discloses the information in breach of this provision commits an offence. Although the Commission is bound by the confidentiality requirement, the offence does not apply to the Commission (but it does apply to the Commission's board members and workers).

*Clause 119* requires that any invoice, demand, or statement of account relating to a fire insurance contract must set out the amount of the levy separately from any premium or other amount.

*Clause 120* prohibits the charging of brokerage in respect of natural hazard cover or the levy.

As long as a residential building is insured under a fire insurance contract, it continues to have natural hazard cover. The cover is not interrupted by the occurrence of a natural hazard or the making of a claim (*see clause 29*). However, *clause 121* allows the Commission to impose a one-off charge for the continuation of the cover after a claim is settled.

## Part 5

### Administration and enforcement

#### *Toka Tū Ake – Natural Hazards Commission*

*Clauses 122 to 124* continue the Earthquake Commission (the **EQC**) under the name Toka Tū Ake – Natural Hazards Commission. It continues to be a Crown entity and to have a board with between 5 and 9 members.

*Clause 125* sets out the Commission's objectives.

*Clause 126* sets out the Commission's functions.

*Clause 127* allows the Commission to delegate its functions and powers under *sub-parts 1 and 2 of Part 3*. However, the claim settlement powers in *clauses 55(1)(c) and (d) and 58 to 62* can only be delegated to a licensed insurer.

This power of delegation is in addition to the power in section 73 of the Crown Entities Act 2004.

The Crown Entities Act 2004 allows the Minister to direct the Commission to give effect to a government policy that relates to the entity's functions and objectives. *Clause 128* provides that if the Minister gives such a direction in relation to the Commission's fund management or reinsurance functions, the Minister may take into account the Crown's and the Fund's current and possible future overall financial position. It also allows the direction to include detailed requirements and prohibitions that the Commission must comply with.

#### *Financial and accountability matters*

*Clause 129* allows the Minister and the Commission to enter into agreements in relation to the provision by the Commission of goods and services to any person (including the Crown). This provides a mechanism for the Commission to be funded to perform functions that are not funded out of the Fund, primarily its education, research, and information function and any other functions conferred on it by the Minister under the Crown Entities Act 2004.

*Clause 130* requires the Commission to include a separate statement of revenue and expenditure for the Fund in the Commission's annual financial statements. The Commission's financial statements (and therefore the Fund's statement of revenue and expenditure) are audited by the Auditor-General. The Commission can appoint an additional auditor if it wishes.

*Clause 131* defines the terms financial settings and levy settings. Financial settings are the monetary amounts set out in the Bill that are involved in calculating the amount of claim settlement payments. Levy settings are the rate of the levy or the method of calculating it, which are set out in regulations.

*Clause 132* allows the financial settings to be amended by Order in Council so they can be kept up to date. Because the levy settings are in regulations, they can be updated by regulations.

*Clause 133* sets out the requirement for the Minister to make a funding and risk management statement for each 5-year period and the purpose of the statement. The Commission is required to invest the Fund in accordance with the funding and risk management statement. The statement may also be considered by the Minister as part of any review of the financial settings and levy settings.

*Clause 134* provides the process for making the funding and risk management statement, which includes conducting a review of the financial settings and levy settings. The statement must be published on the Commission's website and presented to the House of Representatives.

*Clause 135* sets out the information that must be included in the funding and risk management statement.

*Clause 136* requires the Minister to review the adequacy and appropriateness of the financial settings and levy settings when required as part of preparing each funding and risk management statement, and at other times if the Minister considers it appropriate.

*Clause 137* sets out the matters that the Minister may have regard to when carrying out a review of the financial settings and levy settings.

### *Information and disclosure*

#### *Collection and disclosure of information by Commission*

*Clause 138* allows the Commission to collect information for the purpose of performing its functions under the Bill. If the information collected is property-related information, the Commission may make it publicly available even though its release might otherwise be prohibited by the Privacy Act 2020. However, this section does not otherwise limit that Act.

*Clause 139* allows the Commission to disclose any information in its possession if it believes on reasonable grounds that doing so is necessary to prevent or lessen a serious threat to public health or public safety or to the life or health of any individual.

*Clause 140* allows the Commission to disclose information to a person who has a proper interest in receiving it for performing their functions or exercising their powers or for law enforcement purposes.

#### *Information-gathering powers*

*Clause 141* allows the Commission to authorise individuals to exercise the information-gathering powers in *clauses 142, 144, and 145*.

*Clause 142* allows an authorised person to require a person to give information or to produce documents or other things that the Commission reasonably needs for the purpose of performing its functions. The notice must give the person a reasonable time to comply.

*Clause 143* creates an offence if a person given a notice under *clause 142* fails to comply with a notice without a lawful excuse. However, the person has the same privileges as a witness in court, which include the privilege against self-incrimination and the other privileges set out in subpart 8 of Part 2 of the Evidence Act 2006.

There is also an offence of giving misleading information in *clause 150*.

*Clause 144* gives an authorised person power to enter any land, building, or place to obtain information that the Commission reasonably needs for the purpose of performing its functions. Having entered, the authorised person may inspect and examine the land, building, or place and anything found on or in it.

The occupier of the place must be given notice of the intended entry unless it is impracticable to do so, in which case they must be notified afterwards.

This power cannot be used to enter a place for the purpose of investigating an offence, which is covered by *clause 145*.

*Clause 145* provides that, if an authorised person is investigating a possible offence against the Bill, they may enter a place only with the consent of the occupier or under a warrant.

Part 4 of the Search and Surveillance Act 2012 applies in relation to the exercise of this clause (*see* the amendment to that Act in *Schedule 3* of the Bill). Part 4 of that Act includes provisions about obtaining consent to entry, obtaining search warrants, the exercise of search powers, privileges and confidentiality, procedures relating to seized or produced materials, reporting requirements, and offences.

*Clause 146* makes it an offence to intentionally obstruct, resist, hinder, or deceive an authorised person in the exercise of a power under *clause 142, 144, or 145*.

*Clause 147* prohibits an authorised person from recording, copying, or disclosing information other than to the Commission, for an authorised purpose, for legal proceedings, or if required or permitted to do so by an Act.

#### *Fire insurers' information obligations*

*Clause 148* requires fire insurers who provide insurance for residential buildings to keep records of their fire insurance contracts. Failing to do so without a lawful excuse is an offence.

*Clause 149* requires fire insurers to comply with any auditing or reporting requirements prescribed in the regulations. Failing to do so without a lawful excuse is an offence.

#### *Offences about information generally*

*Clause 150* makes it an offence to intentionally give misleading information to the Commission or an authorised person.

*Clause 151* relates to records of information that a person is required by the Bill to keep. It is an offence to intentionally include misleading information in a required record, or to alter it so that it becomes misleading. It is also an offence to intentionally damage or destroy a required record.

#### *Attribution of liability*

*Clause 152* defines terms for the purposes of *clauses 153 and 154*.

*Clause 153* provides that if a senior manager or a worker commits an offence in the course of their duties or work and with the authority, permission, or consent of the person they are a manager or worker for, that person is taken to have also committed the offence. However, this does not apply to attribute an offence to the Commission.

*Clause 154* applies in relation to the prosecution of offences where the alleged offender is a company and it is necessary to establish the company's state of mind (for example, to establish that it did something intentionally). In such a case, it is sufficient to show that a senior manager or worker had that state of mind (for example, that a director intended the thing to be done).

## **Part 6**

### **Miscellaneous provisions**

*Clause 155* allows regulations to be made for the purposes of the Bill.

*Clause 156* allows *Schedule 2* (excluded property) to be amended by Order in Council. However, changes can only be made to remove ambiguity, modernise the kinds of property listed in *Schedule 2*, or to make minor or technical changes. Also, an Order in Council cannot amend *Schedule 2* in a way that would make property that is part of a dwelling into excluded property.

*Clause 157* allows the Commission to approve forms.

*Clause 158* repeals the Earthquake Commission Act 1993 and revokes the Earthquake Commission Regulations 1993.

*Clause 159 and Schedule 3* make consequential amendments to other legislation.

## Schedules

### *Transitional, savings, and related provisions*

*Schedule 1* sets out transitional provisions to provide for a smooth transition from the Earthquake Commission Act 1993 (the **EQC Act**) to the Bill.

Generally, those provisions, together with the Legislation Act 2019 (in particular, sections 30 to 39), provide for ongoing matters under the EQC Act to continue.

The following provisions in *Schedule 1* are worthy of note:

- *clauses 2 and 3* provide that the Bill applies to natural hazard damage that occurs on or after the commencement date and the EQC Act continues to apply to natural disaster damage that occurs before that date:
- *clause 7* provides that the money and investments that form part of the Natural Disaster Fund immediately before the commencement date continue to be part of the Natural Hazard Fund. However, the Commission's operational assets are removed from the Fund. This does not affect the level of funds available to meet claim settlement costs because payment of all of those costs is guaranteed under *clause 108*:
- *clause 11* provides for the cancellation of the EQC's shareholding. Section 7 of the EQC Act provides for the EQC to have a share capital that was wholly owned by the Crown. Toka Tū Ake – Natural Hazards Commission remains a Crown entity but without a share capital, so the shares are cancelled:
- *clause 12* provides for the Minister to make the first funding and risk management statement before the commencement date so that it takes effect as soon as the Bill commences.

### *Excluded property*

*Schedule 2* lists excluded property. Excluded property is excluded from the definitions of the various components of a residential building and residential land and so is not insured by natural hazard cover. *Clause 156* allows an Order in Council to amend *Schedule 2*, but only for the limited purposes permitted by *clause 156* and not so as to include in the schedule property that is part of a dwelling.



*Consequential amendments to other Acts*

*Schedule 3* makes consequential amendments to other Acts.



*Hon Dr David Clark*

## **Natural Hazards Insurance Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Natural Hazards Insurance Act **2022**.

**2 Commencement**

- (1) This Act commences on the later of— 5
- (a) 1 December 2023; and
- (b) 12 months after Royal assent.
- (2) However, the Governor-General may, by Order in Council, defer commencement to a later date specified in the order.
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10



## Part 1

### Preliminary provisions

#### 3 Purposes of Act

The purposes of this Act are—

- (a) to reduce the impact of natural hazards on people, property, and the community by—
  - (i) providing for first loss insurance for residential buildings and residential land against damage that is the direct result of natural hazards for the purposes set out in **section 4**; and
  - (ii) contributing to improving community resilience to natural hazards; and
  - (iii) encouraging the availability and uptake of catastrophe insurance for residential buildings; and
- (b) to contribute to the management of the financial risk to the Crown of providing natural hazard cover by—
  - (i) continuing the Fund and providing for its management; and
  - (ii) imposing a levy to contribute to the cost of providing natural hazard cover; and
  - (iii) providing for the purchase of reinsurance and other risk transfer products in respect of natural hazard cover; and
- (c) to enable the Commission to facilitate the purchase by the Crown of reinsurance or other risk transfer products in respect of other Crown risks.

#### 4 Purposes of natural hazard cover

- (1) The primary purpose of natural hazard cover is to contribute to the replacement or reinstatement of dwellings that suffer natural hazard damage.
- (2) Natural hazard cover extends beyond a dwelling to certain other parts of the building where the dwelling is located, other structures, and infrastructure (*see section 30* and the definitions in **sections 6 to 15**).
- (3) Natural hazard cover extends to residential land that supports and maintains the integrity and usability of the residential building and access to it (*see section 37* and the definitions in **sections 16 to 19**).
- (4) Natural hazard cover provides cover for—
  - (a) damage to residential buildings that is a direct result of an earthquake, hydrothermal activity, a landslide, a tsunami, volcanic activity, or a fire caused by another natural hazard; and
  - (b) damage to residential land that is a direct result of any of those hazards or a storm or a flood.

## 5 Interpretation

In this Act, unless the context otherwise requires,—

**appurtenant structure**, in relation to a dwelling, has the meaning set out in **section 11** (in relation to common property and joint property, *see sections 13 and 14*)

5

**assessed market value**, in relation to residential land, means the assessed market value determined under **sections 43 and 45**

**authorised person** means a person authorised under **section 141** to exercise any of the powers under **section 142, 144, or 145**

**bridge or culvert** has the meaning set out in **section 18**

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**building claim entitlement** has the meaning set out in **section 31**

**building cover** means the component of natural hazard cover provided for by **subpart 2 of Part 2**

**capital expenditure** has the same meaning as in section 2(1) of the Public Finance Act 1989

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**claim** means a claim made under **section 50**

**claim handling costs** means expenses and capital expenditure incurred by the Commission in administering a claim (such as those incurred in valuing property or establishing a reinstatement methodology, and legal expenses)

**claim settlement costs** means expenses and capital expenditure incurred by the Commission in settling a claim by using the method set out in **section 59** or by making an ex gratia payment under **section 78**

20

**Code** means the Code of Insured Persons' Rights made under **section 85**

**Commission** means Toka Tū Ake – Natural Hazards Commission continued by **section 122**

25

**Commission's website** means an Internet site maintained by or on behalf of the Commission

**common land**, in relation to a residential building where the eligible building is a mixed-use building, has the meaning set out in **section 19**

**common ownership interest** has the meaning set out in **section 20**

30

**common property**, in relation to a residential building where the eligible building is a mixed-use building, has the meaning set out in **section 13**

**complaint procedure** means the internal complaint management procedure required by **section 87**

**diminution of value**, in relation to residential land, means the diminution of value determined under **sections 41 and 45**

35

**dispute scheme** means the dispute resolution scheme of which the Commission is a member or that is established and operated by the Commission in accordance with **section 97**

<b>dwelling</b> has the meaning set out in <b>section 6</b>	
<b>earthquake</b> means a sudden, rapid breaking and shifting of rock beneath the earth's surface that results in ground shaking	
<b>eligible building</b> has the meaning set out in <b>section 7</b>	
<b>excluded property</b> means property of a kind described in <b>Schedule 2</b> as excluded property	5
<b>expenses</b> has the same meaning as in section 2(1) of the Public Finance Act 1989	
<b>financial settings</b> has the meaning set out in <b>section 131</b>	
<b>fire insurance contract</b> has the meaning set out in <b>section 21</b>	10
<b>fire insurer</b> has the meaning set out in <b>section 21</b>	
<b>flood</b> means inundation of normally dry land by water due to a storm, a storm surge, a meteotsunami, or the escape or release of water from its normal confines, but not inundation due to a tsunami	
<b>floor area</b> means the internal floor area in square metres measured in accordance with the methodology (if any) set out in the regulations	15
<b>Fund</b> means the Natural Hazard Fund continued by <b>section 104</b>	
<b>funding and risk management statement</b> means a statement made by the Minister under <b>section 133</b>	
<b>GST</b> means goods and services tax payable under the Goods and Services Tax Act 1985	20
<b>hydrothermal activity</b> means the release of energy, gas, or other matter due to sub-surface or surface processes involving the convection and movement of hot waters driven by magmatic or tectonic processes resulting in surface phenomena (including, for example, hydrothermal steam explosions)	25
<b>insured person</b> has the meaning set out in <b>section 22</b>	
<b>insured person's land</b> has the meaning set out in <b>section 16</b>	
<b>joint land</b> , in relation to a residential building where the eligible building is a mixed-use building, has the meaning set out in <b>section 19</b>	
<b>joint ownership interest</b> has the meaning set out in <b>section 20</b>	30
<b>joint property</b> , in relation to a residential building where the eligible building is a mixed-use building, has the meaning set out in <b>section 14</b>	
<b>land</b> does not include improvements	
<b>land claim entitlement</b> has the meaning set out in <b>section 38</b>	
<b>land cover</b> means the component of natural hazard cover provided for by <b>sub-part 3 of Part 2</b>	35
<b>landslide</b> means movement (by way of 1 or more of falling, sliding, or flowing) of ground-forming materials (being 1 or more of natural rock, soil, or arti-	

ficial fill) that, before they moved, formed an integral part of the ground, but not movement of the ground due to below-ground subsidence, soil expansion, soil shrinkage, or soil compaction (*but see section 23(2)*)

**levy** means the levy imposed by **section 112**

**levy settings** has the meaning set out in **section 131** 5

**Minister** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

**mixed-use building** has the meaning set out in **section 8**

**natural hazard** has the meaning set out in **section 23** 10

**natural hazard cover** means the insurance against natural hazard damage provided for by **Part 2**

**natural hazard damage** has the meaning set out in **section 24**

**natural hazard fire** means fire occasioned by, through, or in consequence of any other natural hazard 15

**referable decision** has the meaning set out in **section 100**

**regulations** means regulations made under **section 155**

**reinstatement cost**, in relation to residential land, means the reinstatement cost determined under **sections 40 and 45**

**replacement cost**, in relation to a residential building, means the replacement cost determined under **sections 32 and 33** 20

**residential building** has the meaning set out in **section 9**

**residential land** has the meaning set out in **section 17**

**residential percentage**, in relation to a mixed-use building, has the meaning set out in **section 8** 25

**retaining wall** has the meaning set out in **section 18**

**review procedure** means the procedure required by **section 88** for reviewing decisions made under the complaint procedure in relation to breaches of the Code

**reviewer** means a person engaged under **section 94** 30

**service infrastructure**, in relation to a dwelling, has the meaning set out in **section 12** (in relation to common property or joint property, *see section 13 or 14*)

**shared land** has the meaning set out in **section 19**

**shared ownership interest** has the meaning set out in **section 20** 35

**shared property** has the meaning set out in **section 15**

**storm** means a violent disturbance of the earth's atmosphere that includes 1 or more of high winds, heavy falls of precipitation, thunder, and lightning (such as a tornado)

**tsunami** means a wave, or series of waves, generated when a large volume of water in the sea or a lake is rapidly displaced by an earthquake, landslide, meteorite, or volcanic activity 5

**undepreciated value**, in relation to a retaining wall or bridge or culvert, means undepreciated value determined under **sections 44 and 45**

**volcanic activity** means the release of energy, gas, water, rock, magma, or other matter due to sub-surface volcanic processes resulting in surface phenomena (including, for example, volcanic explosions, lava flows, or lahars). 10

*Dwelling, residential building, residential land, and related terms*

## 6 Dwelling

*What is a dwelling*

- (1) A building, or part of a building, is a **dwelling** if— 15
- (a) it is self-contained with the facilities necessary for day-to-day living on an indefinite basis (including somewhere to cook, sleep, live, wash, and use a toilet); and
  - (b) 1 or more of the following apply to it:
    - (i) it is used by 1 or more persons to live in as their home: 20
    - (ii) it is used by 1 or more persons as their holiday home:
    - (iii) it is capable of being, and is intended by its owner to be, used for a purpose set out in **subparagraph (i) or (ii)**.
- (2) A building, or part of a building, is also a **dwelling** if it is used to provide long-term accommodation for the elderly. 25

*What is not a dwelling*

- (3) However, property that would otherwise be part of a dwelling is not part of the dwelling if it is excluded property.
- (4) To avoid doubt, a building, or part of a building, is not a dwelling if—
- (a) it is used to provide temporary or transient accommodation, being accommodation that is ordinarily provided for periods of less than 28 days at a time (such as a hotel or motel); or 30
  - (b) it provides accommodation for persons who are not living there voluntarily (such as a prison); or
  - (c) it is used primarily for a purpose other than providing accommodation on an indefinite basis (such as a hospital or an emergency care facility). 35

*Dwelling that is not in building*

- (5) A vehicle (including a motor vehicle, trailer, boat, or aircraft) or structure (or part of a vehicle or structure) that is not ordinarily considered to be a building is a **dwelling** if—
- (a) it is immovable; and 5
- (b) it meets the criteria in **subsection (1)(a) and (b)**.

**Example**

A caravan that is permanently fixed to piles and is connected to power, water, and sewerage services, and that is being used on an indefinite basis as a person's home, may be a dwelling. 10

*Regulations to clarify uncertainty*

- (6) However, if the regulations state that buildings, vehicles, or structures (or parts of them) of a particular class are or are not dwellings, a building, vehicle or structure in that class is, or is not, a dwelling (as the case may be).
- (7) The Minister must not recommend the making of those regulations unless satisfied that doubt has arisen about whether that class of buildings, vehicles, or structures are dwellings and that it is desirable for regulations to clarify the matter. 15

**7 Eligible building**

- (1) If a building contains 1 or more dwellings and the whole building is insured under a single fire insurance contract, the building is an **eligible building**. 20
- (2) If—
- (a) a building contains 1 or more dwellings; and
- (b) part of the building, including at least 1 dwelling, is insured under a single fire insurance contract,— 25
- that part of the building is an **eligible building**.
- (3) If a vehicle or structure (or part of it) is a dwelling under **section 6(5)**, this section applies as if the vehicle or structure were a building.

**Examples**

1. If a building consists of 4 town houses, 3 of which are insured under separate fire insurance contracts and the fourth is not insured, each of the 3 insured town houses is a separate eligible building but the fourth is not an eligible building. 30
2. If the whole of a building consisting of apartments and shops is insured under a single fire insurance contract, the whole building is an eligible building. Depending on how much of the building is taken up by the apartments, the eligible building may also be a mixed-use building (see **section 8**). 35

**8 Mixed-use building**

- (1) An eligible building is a **mixed-use building** if its residential percentage is less than 50%.
- (2) An eligible building's **residential percentage** is calculated as follows:

$$r = [(d + a + j) \div b] \times 100 \quad 5$$

where—

- r is the eligible building's residential percentage
- d is the floor area of the dwellings in the eligible building
- a is the floor area of all appurtenant structures for the dwellings that are part of the eligible building 10
- j is the floor area of all appurtenant structures for any joint-owner premises (as defined in **section 14(2)**) that are part of the eligible building
- b is the floor area of the whole of the eligible building, excluding any common property.
- (3) For the purposes of determining whether an eligible building is a mixed-use building, **sections 13 and 14** (common property and joint property) apply as if the eligible building were a mixed-use building. 15

**Guidance note**

Common property is not included in calculating the building's residential percentage, but it is part of the residential building, so is covered by natural hazard cover to the extent of the dwelling-owners' interests in it (see **section 33**). 20

**9 Residential building**

- (1) A **residential building** means, in the case of an eligible building that is not a mixed-use building,—
- (a) the whole of the eligible building, other than any excluded property; and 25
- (b) any other appurtenant structures and service infrastructure for the dwellings in the building.
- (2) A **residential building** means, in the case of a mixed-use building,—
- (a) all of the dwellings in the eligible building; and
- (b) all appurtenant structures and service infrastructure for those dwellings; 30  
and
- (c) all the common property and joint property for the building.
- (3) A residential building—
- (a) includes fixtures and fittings (such as built-in cupboards, plumbed-in appliances, wired-in electrical appliances, and fixed carpets), unless they 35  
are excluded property; but

- (b) does not include building contents or other personal property (such as curtains and blinds).

## 10 Number of dwellings

For the purposes of this Act, the number of dwellings in a residential building is—

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- (a) the number of dwellings that were disclosed to the fire insurer when the fire insurance contract was entered into as dwellings to be insured under the contract; or
- (b) if no number was disclosed, 1.

## 11 Appurtenant structure

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An **appurtenant structure** for a dwelling is property—

- (a) that—
  - (i) is part of the eligible building but is not part of the dwelling; or
  - (ii) is, or is part of, a separate building or another immovable structure (such as a garage or garden shed); and
- (b) that is appurtenant to the dwelling; and
- (c) that—
  - (i) is used by the owners or other occupants of the dwelling for household purposes (such as for parking or storage) or for access to the dwelling; or
  - (ii) houses service infrastructure for the dwelling (such as a shed housing a pump that supplies drinking water to a house); and
- (d) that is not excluded property; and
- (e) that is not common property or joint property; and
- (f) in which the insured person for the dwelling has an insurable interest.

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## 12 Service infrastructure

(1) The **service infrastructure** for a dwelling is infrastructure—

- (a) that provides a service to—
  - (i) the dwelling; or
  - (ii) an appurtenant structure for the dwelling that is part of the eligible building; or
  - (iii) any other appurtenant structure for the dwelling; or
  - (iv) the insured person's land; and
- (b) that is in, or within 60 metres (in a horizontal line) of,—
  - (i) if **paragraph (a)(i) or (ii)** applies, the eligible building; or
  - (ii) if **paragraph (a)(iii)** applies, the appurtenant structure; or

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- (iii) if **paragraph (a)(iv)** applies, the eligible building or an appurtenant structure for the dwelling; and
  - (c) that is not excluded property; and
  - (d) that is not common property or joint property; and
  - (e) in which the insured person for the dwelling has an insurable interest. 5
  - (2) In this section,—
    - infrastructure** means infrastructure used to provide a service to a building or structure, including—
      - (a) pipes, cables, wires, poles, and drains; and
      - (b) water tanks, water towers, and septic tanks; and 10
      - (c) equipment and machinery (such as a pump, switchboard, or heating unit)
    - service** means water supply, drainage, sewerage, gas, electricity, or telecommunications.
- 13 Common property**
- (1) If an eligible building is a mixed-use building, the **common property** for the residential building is any part of the residential building— 15
    - (a) that is available for use by, or is for the benefit of, the owners or other occupants of all the premises in the eligible building; and
    - (b) that is—
      - (i) an integral component of the eligible building (such as the roof and foundations); or 20
      - (ii) an appurtenant structure for the premises under **subsection (2)**; or
      - (iii) service infrastructure for the premises under **subsection (3)**; or
      - (iv) an area in the eligible building that is not part of any of the premises in the building (such as a store room for maintenance or cleaning supplies); and 25
    - (c) that is not excluded property; and
    - (d) in which the owners of all the premises in the building have an insurable interest. 30
  - (2) An **appurtenant structure for the premises** is property—
    - (a) that—
      - (i) is part of the eligible building but is not part of a dwelling; or
      - (ii) is, or is part of, a separate building or another immovable structure; and 35
    - (b) that is appurtenant to all the premises in the building; and
    - (c) that—

- (i) is used by the owners or other occupants of the dwellings for household purposes (such as for parking, storage, or recreation) or for access to the dwellings; or
- (ii) houses service infrastructure for the premises.
- (3) The **service infrastructure for the premises** is infrastructure (as defined in **section 12**)— 5
- (a) that provides a service (as defined in **section 12**) to—
- (i) all the premises in the building; or
- (ii) an appurtenant structure for the premises or other common property that is part of the eligible building; or 10
- (iii) any other appurtenant structure for the premises; or
- (iv) common land for the eligible building; and
- (b) that is in, or within 60 metres (in a horizontal line) of,—
- (i) if **paragraph (a)(i) or (ii)** applies, the eligible building; or
- (ii) if **paragraph (a)(iii)** applies, the appurtenant structure for the premises; or 15
- (iii) if **paragraph (a)(iv)** applies, the eligible building or an appurtenant structure for the premises.
- 14 Joint property**
- (1) If an eligible building is a mixed-use building, the **joint property** for the residential building is any part of the residential building— 20
- (a) that is available for use by, or is for the benefit of, the owners or other occupants of some but not all premises in the eligible building (the **joint-owner premises**) at least 1 of which includes a dwelling; and
- (b) that is— 25
- (i) an integral component of the eligible building (such as the roof and foundations); or
- (ii) an appurtenant structure for the joint-owner premises under **subsection (2)**; or
- (iii) service infrastructure for the joint-owner premises under **subsection (3)**; or 30
- (iv) an area in the eligible building that is not part of any of the premises in the building (such as a store room for maintenance or cleaning supplies); and
- (c) that is not excluded property; and 35
- (d) in which the owners referred to in **paragraph (a)** all have an insurable interest (whether or not the owners of any other premises in the building also have an insurable interest).

- (2) An **appurtenant structure for the joint-owner premises** is property—
- (a) that—
    - (i) is part of the eligible building but is not part of a dwelling; or
    - (ii) is, or is part of, a separate building or another immovable structure; and 5
  - (b) that is appurtenant to all the joint-owner premises; and
  - (c) that—
    - (i) is used by the owners or other occupants of the joint-owner premises that are dwellings for household purposes (such as for parking, storage, or recreation) or for access to the dwellings; or 10
    - (ii) houses service infrastructure for all the joint-owner premises.
- (3) The **service infrastructure for the joint-owner premises** is infrastructure (as defined in **section 12**)—
- (a) that provides a service (as defined in **section 12**) to—
    - (i) all the joint-owner premises; or 15
    - (ii) an appurtenant structure for the joint-owner premises or other joint property that is part of the eligible building; or
    - (iii) any other appurtenant structure for the joint-owner premises; or
    - (iv) joint land for the eligible building; and
  - (b) that is in, or within 60 metres (in a horizontal line) of,— 20
    - (i) if **paragraph (a)(i) or (ii)** applies, the eligible building; or
    - (ii) if **paragraph (a)(iii)** applies, the appurtenant structure for the joint-owner premises; or
    - (iii) if **paragraph (a)(iv)** applies, the eligible building or an appurtenant structure for the joint-owner premises. 25

## 15 Shared property

- (1) The **shared property**, in relation to a residential building, is any part of the residential building in which a person who is not the insured person has an insurable interest.
- (2) To avoid doubt, in the case of a mixed-use building, property that is common property or joint property in relation to that building may also be shared property as between the insured person and another person. 30

### Example

If an apartment block that is a mixed-use building shares a party wall with a neighbouring office block, all the owners of premises in the apartment block have an insurable interest in the wall, so it is common property for the apartment block. As all those owners are the insured person for the building, their interests in the wall do not make it shared property. 35

However, as the wall is shared by both buildings, it is shared property as between the insured person for the apartment block and the persons who have insurable interests in the office block.

## 16 Insured person's land

- (1) In relation to a residential building or residential land, the **insured person's land** means all the land that the estates and interest that make up the land holding within which a residential building is situated relate to. 5
- (2) The **land holding within which a residential building is situated** means—
- (a) the estate or interest held by the insured person in the land on which the residential building is lawfully situated; and 10
  - (b) any other estate or interest in land held by the insured person that relates to land that is—
    - (i) contiguous with the land referred to in **paragraph (a)**; and
    - (ii) used, or intended to be used, with the land referred to in **paragraph (a)** as a single residential property; and 15
  - (c) any other estate or interest in land that benefits an estate or interest referred to in **paragraph (a) or (b)**.
- (3) The land holding within which a residential building is situated does not include any non-proprietary right to use the land (such as a licence to occupy or an encroachment licence). 20
- (4) If 2 areas of land that would otherwise be contiguous are divided only by a watercourse, road, railway, or other access way, or a similar narrow area of separation, the 2 areas are taken to be contiguous for the purposes of **subsection (2)**.

## 17 Residential land 25

- (1) The **residential land**, in relation to a residential building, is—
- (a) any part of the insured person's land that is 1 or more of the following:
    - (i) land on which the residential building (other than external service infrastructure) is situated:
    - (ii) land that is within 8 metres (in a horizontal line) of the residential building (other than external service infrastructure): 30
    - (iii) land that—
      - (A) is part of, or supports land that is part of, the main access way from the boundary of the insured person's land to the residential building; and 35
      - (B) is within 60 metres (in a horizontal line) of the residential building (other than external service infrastructure); and
  - (b) any retaining walls for the residential building; and

- (c) any bridges or culverts for the residential building.
- (2) However, land is not residential land if it is excluded property.
- (3) In this section, **external service infrastructure** means service infrastructure that is outside both the eligible building and the appurtenant structures.
- 18 Retaining walls and bridges or culverts** 5
- (1) A **retaining wall** for a residential building means a retaining wall and its support system—
- (a) that are necessary to support or protect—
- (i) the residential building (other than external service infrastructure); or 10
- (ii) the residential land referred to in **section 17(1)(a)**; and
- (b) that are within 60 metres (in a horizontal line) of the residential building (other than external service infrastructure), whether or not it is on the insured person’s land; and
- (c) in which the insured person for the residential building has an insurable interest. 15
- (2) A **bridge or culvert** for a residential building means a bridge or culvert—
- (a) that is in or on—
- (i) land referred to in **section 17(1)(a)**; or
- (ii) land that is outside the insured person’s land but is otherwise land of the kind referred to in **section 17(1)(a)(i), (ii), or (iii)**; and 20
- (b) in which the insured person for the residential land has an insurable interest.
- (3) In this section, **external service infrastructure** has the same meaning as in **section 17**. 25
- 19 Common land, joint land, and shared land**
- (1) If an eligible building is a mixed-use building,—
- (a) the **common land** is any part of the residential land—
- (i) that is available for use by, or is for the benefit of, the owners or other occupants of all premises in the eligible building; and 30
- (ii) in which the owners of all of those premises have an insurable interest; and
- (b) the **joint land** is any part of the residential land—
- (i) that is available for use by, or is for the benefit of, the owners or other occupants of some (including at least 1 dwelling) but not all premises in the building; and 35

- (ii) in which those owners have an insurable interest (whether or not the owners of any other premises in the building also have an insurable interest).
- (2) The **shared land** in relation to residential land, is any part of the residential land in which a person who is not the insured person has an insurable interest. 5
- (3) To avoid doubt, where the eligible building is a mixed-use building, land that is common land or joint land in relation to the residential building may also be shared land as between the insured person and another person.

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#### Example

If the residential land for a mixed-use building shares a retaining wall with neighbouring land, all the owners of premises in the mixed-use building have an ownership interest in the wall, so it is common land. 10

However, as the wall is shared by both buildings, it is shared land as between the insured person for the apartment block and the persons who have insurable interests in the neighbouring land. 15

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## 20 Common ownership interest, joint ownership interest, and shared ownership interest

- (1) If an eligible building is a mixed-use building, the **common ownership interest** for the residential building or residential land is—
- (a) the percentage of the beneficial interest in the residential building's common property or common land (or in the entity that owns that property or land) that is held by the owners of the dwellings in the eligible building by reason of their ownership of the dwellings; or 20
- (b) if that percentage is not ascertainable, the eligible building's residential percentage. 25
- 

#### Examples

1. In a unit title building consisting of dwellings and shops, if the owners of the dwellings have ownership interests of 360 out of a total of 1000, the common ownership interest would be 36% (see section 38 of the Unit Titles Act 2010).

If the owner of one of the dwellings also owns some of the shops, the common ownership interest would still be 36% because that person's interest in the common property as a result of owning the shops is not counted. 30

2. In a residential building that is owned by a flat or office owning company to which subpart 6 of Part 3 of the Land Transfer Act 2017 applies, if the owners of the dwellings own 500 out of a total of 2000 shares in the company, the common ownership interest would be 25%. 35

3. In a residential building held under a cross-lease title arrangement, if the owners of the dwellings own two-fifths of the title to the land on which it is built, the common ownership interest would be 40%.

4. If a residential building consists of a flat above a shop and the whole building is a single undivided title, **subsection (1)(b)** would apply. If the floor areas are 70 m<sup>2</sup> for the flat and 130 m<sup>2</sup> for the shop, the common ownership interest would be 35%. 40

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- (2) If an eligible building is a mixed-use building, the **joint ownership interest** for joint property or joint land is—
  - (a) the percentage of the repair responsibility held by the owners of the joint-owner premises that are dwellings; or
  - (b) if that percentage is not ascertainable, the percentage of the beneficial interest in the joint property or joint land that is held by the owners of the joint-owner premises that are dwellings by reason of their ownership of the dwellings. 5
- (3) The percentages in **subsections (1)(a) and (2)(a) and (b)** are to be determined as percentages of the total beneficial interest or repair responsibility held by the owners of all of the premises in the eligible building. 10
- (4) An insured person’s **shared ownership interest** in shared property or shared land is,—
  - (a) if the insured person is the only person with repair responsibility, 1; or
  - (b) if 2 or more persons share repair responsibility, the insured person’s percentage of the repair responsibility; or 15
  - (c) if that percentage is not ascertainable, the percentage of the total of all insurable interests in the shared property or shared land that is held by the insured person.

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**Examples** 20

- 1. If there are 2 semi-detached dwellings that share a party wall and the insured persons for the dwellings share equal responsibility to replace or reinstate the wall, their shared ownership interest in the party wall would be 50% each.
- 2. However, if the insured person for 1 of the dwellings is solely responsible for replacing or reinstating the wall, that person’s shared ownership interest would be 100% and the other insured person’s interest would be 0%. 25
- 3. If a house and a shop have a retaining wall on the boundary of their land and share equal responsibility for it, the insured person’s shared ownership interest in the retaining wall would be 50%. The other 50% interest is not covered under this Act because the shop is not a residential building. 30

- (5) However, if **section 22(3)** applies, the shared ownership interest of the insured person is to be determined in accordance with the regulations.
- (6) In this section,—
  - joint-owner premises** has the same meaning as in **section 14**
  - repair responsibility** means the responsibility to replace or reinstate, or to contribute to the cost of replacing or reinstating,— 35
    - (a) for **subsection (2)**, the damaged joint property or joint land; and
    - (b) for **subsection (3)**, the damaged shared property or shared land.

*Fire insurance contract, fire insurer, and insured person***21 Fire insurance contract and fire insurer**

- (1) **Fire insurance contract** means a contract of insurance under which an insurer (the **fire insurer**) insures 1 or more dwellings against physical loss or damage by fire, other than— 5
- (a) a contract of reinsurance; or
  - (b) a contract that insures against physical loss or damage by natural hazard fire but not other fire.
- (2) A contract of insurance is not prevented from being a fire insurance contract only because— 10
- (a) it insures other property in addition to dwellings; or
  - (b) it does not insure against loss or damage that is the result of a natural hazard fire.
- (3) For the purposes of this Act, a contract of insurance that is renewed is taken to be a new contract entered into when cover under the renewed contract commences. 15
- (4) The **fire insurance contract**, in relation to all or part of a residential building, is the fire insurance contract under which that property is (or was at the relevant time) insured.

**22 Insured person** 20

- (1) The **insured person**, in relation to all or part of a residential building or residential land, means the person who is, or all of the persons who are, entitled to the benefit of the fire insurance contract for—
- (a) the residential building; or
  - (b) the residential building situated on the residential land. 25
- (2) However, in **sections 15(1), 19(2) and 20(4)**, **insured person** includes the holder of a mortgage or other charge granted by the insured person over the relevant part of the residential building or residential land.
- (3) If the insured person for an eligible building (**building A**) also has an insurable interest in a building or part of a building (**building B**) that contains a dwelling or other premises but is not, and is not part of, building A, then— 30
- (a) the person in their capacity as the insured person for building A (and the rest of the residential building that building A is part of and its residential land); and
  - (b) the person in their capacity as a person with an insurable interest in building B (and any other building or land associated with it),— 35
- are taken to be 2 separate persons.



*Natural hazards and natural hazard damage***23 Natural hazard**

- (1) Each of the following is a **natural hazard**:
- (a) an earthquake:
  - (b) hydrothermal activity: 5
  - (c) a landslide:
  - (d) a tsunami:
  - (e) volcanic activity:
  - (f) a flood:
  - (g) a storm: 10
  - (h) a natural hazard fire.
- (2) However, erosion that is the result of the normal action of the wind or water (including, for example, coastal erosion, bank erosion, and sheet erosion) is not a natural hazard.

**24 Natural hazard damage** 15

- (1) **Natural hazard damage** means physical loss or damage to a residential building or residential land—
- (a) that occurs as a direct result of—
    - (i) a natural hazard; or
    - (ii) measures taken under proper authority to mitigate the consequences of a natural hazard; or 20
  - (b) that,—
    - (i) in the opinion of the Commission, is imminent as a direct result of a natural hazard that has occurred; and
    - (ii) would, if it occurred, be natural hazard damage under **paragraph (a)**. 25
- (2) However, physical loss or damage to a residential building is not natural hazard damage if it occurs solely as a direct result of 1 or more of a storm, a flood, or a natural hazard fire resulting from a storm or a flood.
- (3) Physical loss or damage is not natural hazard damage under **subsection (1)(a)** if, before it occurred, it was natural hazard damage under **subsection (1)(b)**. 30
- (4) **Subsection (1)(a)(ii)** applies—
- (a) whether the physical loss or damage is intentional or accidental; but
  - (b) only if no compensation for the physical loss or damage is payable under another Act. 35

- (5) Physical loss or damage that is natural hazard damage under **subsection (1)(a)(ii)** is taken to occur as a direct result of the natural hazard in relation to which the measures were taken.
- (6) Physical loss or damage that is natural hazard damage under **subsection (1)(b)** is taken to occur at the time it becomes imminent. 5

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**Example**

If a landslide on a hill above a house exposes the house to a risk of damage from more rocks sliding down the hill and the Commission considers that damage to the house is imminent, natural hazard damage of the kind referred to in **subsection (1)(b)** would be taken to have occurred (even though actual damage to the house may not have occurred). 10

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*Other preliminary provisions*

**25 Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 15

**26 Act binds the Crown**

This Act binds the Crown.

**27 Property outside New Zealand not covered**

This Act does not apply to a dwelling or other property that is situated outside New Zealand. 20

**Part 2**

**Natural hazard cover**

Subpart 1—Insurance against natural hazard damage

**28 Natural hazard cover insures against natural hazard damage**

- (1) This Act provides insurance against natural hazard damage (**natural hazard cover**) for the dwellings in an eligible building and certain other related property. 25
- (2) Natural hazard cover has the following 2 components:
- (a) building cover, which insures the residential building (*see subpart 2*):
  - (b) land cover, which insures the residential land (*see subpart 3*). 30
- (3) Natural hazard cover does not include insurance against consequential loss (such as temporary accommodation costs, loss of profits, loss or damage as a result of the theft, vandalism, or business interruption, or loss of intangible property).

**29 When natural hazard cover commences and ceases**

- (1) Natural hazard cover for a residential building—
  - (a) commences when the insurance cover under the fire insurance contract for the dwellings in the eligible building commences; and
  - (b) continues while the dwellings remain insured under the fire insurance contract, unless the natural hazard cover is cancelled under **section 47** or otherwise ceases under this Act. 5
- (2) Natural hazard cover is not interrupted or affected by—
  - (a) the occurrence of natural hazard damage; or
  - (b) the making or settling of a claim; or 10
  - (c) any failure to pay the levy or an amount payable under **section 114 or 121**.

*Effect of becoming or ceasing to be dwelling*

- (3) If a dwelling is insured under a fire insurance contract but ceases to be a dwelling during the period of the contract, this Act continues to apply as if it were still a dwelling until the insurance cover under the fire insurance contract ceases or is renewed. 15
- (4) If—
  - (a) property that does not include a dwelling is insured under a contract of insurance against physical loss or damage by fire; and 20
  - (b) all or part of the property becomes a dwelling during the period of the contract,—

that contract is not a fire insurance contract for the purposes of this Act, but if it is renewed, the renewed contract is a fire insurance contract.

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**Guidance note** 25

A contract of insurance that is renewed is taken to be a new contract entered into when the renewal occurs (see **section 21**).

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Subpart 2—Building cover

**30 Building cover insures residential building on replacement cost basis**

- (1) Building cover provides insurance for a residential building on a replacement cost basis. 30
- (2) However, building cover is subject to—
  - (a) the other provisions of this Act (such as **section 47** (cancellation of cover), **section 48** (limitation of liability for preventable repeat damage), and **section 64** (when Commission may decline claim)); and 35
  - (b) any conditions imposed by the regulations.

**Guidance note**

Excluded property listed in **Schedule 2** is not covered by building cover.

**31 Building claim entitlement**

- (1) If a residential building suffers natural hazard damage, the maximum amount that may be paid for a claim made in respect of building cover is the building claim entitlement. 5
- (2) The **building claim entitlement** is—
- (a) the lesser of—
- (i) the replacement cost of the damaged parts of the residential building; and 10
- (ii) the building cover cap for the residential building determined under **sections 34 to 36**; minus
- (b) the building cover excess, being the number of dwellings in the residential building multiplied by \$500.
- (3) However, if the building cover excess is greater than the amount calculated under **subsection (2)(a)**, the building claim entitlement is zero. 15

**Guidance note**

All natural hazard damage that occurs during a damage period is the subject of the same claim (see **section 51**).

**32 Replacement cost** 20

- (1) The **replacement cost** of the damaged parts of the residential building is the total cost that would reasonably be incurred to replace or reinstate the damaged property to a condition substantially the same as, but not better or more extensive than, its condition when it was new, but with the property—
- (a) modified as necessary to comply with all applicable laws (such as the Building Act 2004 and the building code under that Act); and 25
- (b) replaced or reinstated using materials and methods that are currently in common use.
- (2) The **total cost** to replace or reinstate the damaged property means—
- (a) the costs of all replacement or reinstatement work; and 30
- (b) the cost of demolition and removal of debris to the extent that is reasonably required to enable the damaged property to be replaced or reinstated; and
- (c) the costs of complying with all applicable laws; and
- (d) other fees or costs payable in the course of replacing or reinstating the damaged property (for example, architects' fees and fees payable to local authorities); and 35

- (e) GST.
- (3) If any of the natural hazard damage to the residential building is natural hazard damage under **section 24(1)(b)**, the replacement cost for that damage may include the cost that would reasonably be incurred to mitigate the risk to the residential building of the imminent damage actually occurring. 5
- (4) The replacement cost does not include—
- (a) the cost of modifying the damaged property to comply with an applicable law if, immediately before the natural hazard damage occurred, the insured person had a legal obligation to make the modification (whether at the time or in the future); or 10
- (b) claim handling costs.
- (5) However, this section is subject to **section 33**.
- 33 Proportionate costs for shared, common, or joint property**
- (1) This section applies for the purpose of determining the replacement cost of any of the damaged property that is shared property, common property, or joint property. 15
- (2) In respect of shared property, the replacement cost is the amount that would be the replacement cost in the absence of this section multiplied by the insured person's shared ownership interest.
- (3) In respect of common property, the replacement cost is the amount that would be the replacement cost in the absence of this section multiplied by the residential building's common ownership interest. 20
- (4) In respect of joint property, the replacement cost is the amount that would be the replacement cost in the absence of this section multiplied by the joint property's joint ownership interest. 25
- (5) If the damaged property is—
- (a) shared property and common property, **subsection (2)** applies and then **subsection (3)** applies (with any necessary modifications); or
- (b) shared property and joint property, **subsection (2)** applies and then **subsection (4)** applies (with any necessary modifications). 30
- 34 Building cover cap: specified replacement sum insured**
- (1) This section applies if the fire insurance contract specifies a replacement sum insured for the residential building (or 2 or more sums covering different parts of the residential building).
- (2) The building cover cap for the residential building is the lesser of— 35
- (a) the specified replacement sum insured (or the total of those sums); and
- (b) the number of dwellings in the residential building multiplied by \$300,000 plus GST.

- (3) If a fire insurance contract insures 2 or more eligible buildings, this section applies in relation to any one of those buildings only if the contract specifies a replacement sum insured in relation to that building and that sum does not cover any other eligible building.

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**Guidance note**

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For the number of dwellings in a building, see **section 10**.

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**35 Building cover cap: specified amount for natural hazard cover**

- (1) This section applies if—
- (a) **section 34** does not apply; and
  - (b) the fire insurance contract specifies an amount for which the residential building is to be insured under this Act. 10
- (2) The building cover cap for the residential building is—
- (a) the greater of—
    - (i) the specified amount; and
    - (ii) the insured floor area multiplied by \$2,500 plus GST; or 15
  - (b) the number of dwellings in the residential building multiplied by \$300,000 plus GST, if that is less than the amount determined under **paragraph (a)**.
- (3) If a fire insurance contract insures 2 or more eligible buildings, this section applies in relation to any one of those buildings only if the contract specifies a replacement sum insured in relation to that building and that sum does not cover any other eligible building. 20
- (4) The **insured floor area** for a residential building (except for a mixed-use building) is the sum of—
- (a) the floor area of the whole of the eligible building; and 25
  - (b) the floor area of all appurtenant structures for the dwellings that are not part of the eligible building but are, or are part of, a different building.
- (5) The **insured floor area** for a residential building where the eligible building is a mixed-use building is calculated as follows:

$$f = d + a + j + (c \times r \div 100) \quad 30$$

where—

- f is the insured floor area
- d is the floor area of the dwellings in the residential building
- a is the floor area of all appurtenant structures for the dwellings that are, or are part of, a building 35
- j is the floor area of all appurtenant structures for any joint-owner premises (as defined in **section 14(2)**) that are, or are part of, a building

c is the floor area of any common property that is, or is part of, a building  
 r is the eligible building's residential percentage.

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**Guidance note**

For the number of dwellings in a building, see **section 10**.

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**36 Building cover cap: no specified amount** 5

If neither of **sections 34 and 35** applies, the building cover cap for the residential building is the number of dwellings in the residential building multiplied by \$300,000 plus GST.

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**Guidance note**

For the number of dwellings in a building, see **section 10**. 10

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Subpart 3—Land cover

**37 Land cover insures residential land on indemnity basis**

(1) Land cover provides insurance for the residential land for a residential building on an indemnity basis.

(2) However, land cover is subject to— 15

(a) the other provisions of this Act (such as **section 47** (cancellation of cover), **section 48** (limitation of liability for preventable repeat damage), and **section 64** (when Commission may decline claim); and

(b) any conditions imposed by the regulations.

---

**Guidance note** 20

Excluded property listed in **Schedule 2** is not covered by land cover.

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**38 Land claim entitlement**

(1) If residential land suffers natural hazard damage, the maximum amount that may be paid for a claim made in respect of land cover is the land claim entitlement. 25

(2) The **land claim entitlement** is—

(a) the lesser of—

(i) the actual loss suffered (determined under **section 39**); and

(ii) the maximum land cover amount (determined under **section 42**);  
 minus 30

(b) the land cover excess, being the lesser of—

(i) the number of dwellings in the residential building multiplied by  
 \$500; and

(ii) \$5,000.

- (3) However, if the land cover excess is greater than the amount calculated under **subsection (2)(a)**, the land claim entitlement is zero.

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**Guidance notes**

For the number of dwellings in a building, see **section 10**.

All natural hazard damage that occurs during a damage period is the subject of the same claim (see **section 51**). 5

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**39 Actual loss suffered**

- (1) The **actual loss suffered** is the actual loss suffered—
- (a) by the person who was the insured person for the residential land at the time the natural hazard damage occurred; and 10
  - (b) as a direct result of the natural hazard damage to the residential land, but not including any consequential loss (see **section 28(3)**).
- (2) To the extent that the actual loss suffered can be reasonably quantified using reinstatement cost or diminution of value, or a combination of both, the Commission must quantify the loss in that way. 15
- (3) Which method is used to quantify the actual loss suffered depends on all the circumstances, including—
- (a) whether, or to what extent, reinstatement—
    - (i) is technically feasible; and
    - (ii) could lawfully be carried out; and 20
    - (iii) would be disproportionately expensive compared with the diminution of value if the land were not reinstated; and
  - (b) whether, or to what extent, the person referred to in **subsection (1)** has reinstated the land or intends to do so.

**40 Reinstatement cost** 25

- (1) The **reinstatement cost** of residential land (or part of it) is the total cost that would reasonably be incurred to reinstate the damaged residential land (or that part of it)—
- (a) in a way that would be reasonably sufficient in the circumstances; and
  - (b) so that the land is— 30
    - (i) able to be used for substantially the same purpose as it was used for before it was damaged; and
    - (ii) not materially more or less valuable than it was before it was damaged.
- (2) However, in the case of reinstatement of the residential land (or part of it) only to a limited extent, **subsection(1)(b)** does not apply. 35



- (3) To the extent that the natural hazard damage consists of the accumulation of earth, rock, or other debris on the land, reinstating the land is limited to removing the debris.
- (4) If any of the natural hazard damage to the residential land is natural hazard damage under **section 24(1)(b)**, the reinstatement cost for that damage may include the cost that would reasonably be incurred to mitigate the risk to the residential land of the imminent damage actually occurring. 5
- (5) The **total cost** to reinstate the damaged residential land means—
- (a) the costs of all reinstatement work; and
  - (b) the costs of complying with all applicable laws; and 10
  - (c) other fees or costs payable in the course of reinstating the damaged residential land (for example, architects' fees and fees payable to local authorities); and
  - (d) GST.
- (6) The reinstatement cost does not include— 15
- (a) the cost of modifying the damaged residential land to comply with an applicable law if, immediately before the natural hazard damage occurred, the insured person had a legal obligation to make the modification (whether at the time or in the future); or
  - (b) claim handling costs. 20
- (7) However, this section is subject to **section 45**.

#### 41 Diminution of value

- (1) The **diminution of value** is the loss of value of the residential land, or the residential land and residential building, as a direct result of the natural hazard damage to the damaged residential land. 25
- (2) To avoid doubt, the diminution of value does not include any loss of value resulting from any of the following (whether occurring as a result of the natural hazard or otherwise):
- (a) damage to the residential building:
  - (b) changes in the value of the residential building (other than changes that are a direct result of the natural hazard damage to the damaged residential land): 30
  - (c) damage to, or changes in the value of, other land or buildings:
  - (d) changes in market perception of the safety or desirability of the residential building or residential land: 35
  - (e) other changes in market conditions:
  - (f) regulatory changes.
- (3) However, this section is subject to **section 45**.

**42 Maximum land cover amount**

- (1) The **maximum land cover amount** for the residential land is—
- (a) the assessed market value; plus
  - (b) if there are any damaged retaining walls for the residential building, the lesser of— 5
    - (i) the undepreciated value of the damaged retaining walls; and
    - (ii) the number of dwellings in the residential building multiplied by \$50,000 plus GST; plus
  - (c) if there are any damaged bridges or culverts for the residential building, the lesser of— 10
    - (i) the undepreciated value of the damaged bridges or culverts; and
    - (ii) the number of dwellings in the residential building multiplied by \$25,000 plus GST.
- (2) However, this section is subject to **section 45**.

**Guidance note** 15

For the number of dwellings in a building, see **section 10**.

**43 Assessed market value**

- (1) If the area of the damaged part of the residential land is less than or equal to the area cap, the **assessed market value** is the prior market value of that part of the residential land. 20
- (2) If the area of the damaged part of the residential land is greater than the area cap, the **assessed market value** is the prior market value of a hypothetical area of residential land that, to the extent that is practicable,—
- (a) has an area equal to the area cap; and
  - (b) is situated in the same place as the residential land; and 25
  - (c) has all of the same features as the residential land.
- (3) The **prior market value** of land is the amount that would have been the market value of the land immediately before the natural hazard damage occurred (including any GST).
- (4) The valuation must be made using per square metre market rates, applying 30 (where appropriate) different rates for different areas of the land based on their different utility (but so that the sum of the values of the different areas equates to the value of the land being valued as a whole).
- (5) However this section is subject to **section 45**.
- (6) In this section,— 35
- area cap** means,—
- (a) if there is a district plan minimum area, the lesser of—

- (i) the district plan minimum area; and
  - (ii) 4,000 square metres; or
- (b) if there is no district plan minimum area, 4,000 square metres

**district plan** means the operative district plan (as defined in section 43AA of the Resource Management Act 1991) for the district where the damaged residential land is situated 5

**district plan minimum area** means the minimum area (in square metres) allowable under the district plan for land that is used for the purpose for which the damaged residential land was being used at the time the natural hazard damage occurred. 10

#### 44 Undepreciated value of retaining walls, bridges, or culverts

- (1) The **undepreciated value** of a damaged retaining wall, bridge, or culvert is the total cost that would reasonably be incurred to construct a structure that is substantially the same as, but not better or more extensive than, the damaged one was when it was new (even if a structure of that kind would not comply with current building standards or applicable laws). 15
- (2) The **total cost** of constructing the structure means—
- (a) the cost of all construction work; and
  - (b) the costs of complying with all applicable laws; and
  - (c) other fees or costs payable in the course of constructing the structure (for example, architects' fees and fees payable to local authorities) as if the structure did comply with current building standards and applicable laws; and 20
  - (d) GST.
- (3) The undepreciated value does not include— 25
- (a) the cost of carrying out any work other than the actual construction of the structure, even if that work would be necessary to enable the structure to be constructed (such as removing or rebuilding other structures to provide access to the construction site); or
  - (b) claim handling costs. 30

#### 45 Proportionate costs, values, and amounts for shared, common, or joint land

- (1) This section applies for the purpose of determining the following (each a **relevant amount**):
- (a) the reinstatement cost of any of the damaged residential land that is shared land, common land, or joint land: 35

- (b) any part of the diminution of value of residential land that relates to shared land, common land, joint land, shared property, common property, or joint property:
- (c) the assessed market value of any residential land that is shared land, common land, or joint land: 5
- (d) the undepreciated value of any retaining wall or bridge or culvert that is shared land, common land, or joint land.
- (2) In respect of shared land, each relevant amount is the amount that would be the relevant amount in the absence of this section multiplied by the insured person's shared ownership interest. 10
- (3) In respect of common land, each relevant amount is the amount that would be the relevant amount in the absence of this section multiplied by the residential land's common ownership interest.
- (4) In respect of joint property, each relevant amount is the amount that would be the relevant amount in the absence of this section multiplied by the joint land's joint ownership interest. 15
- (5) If the damaged land is—
  - (a) shared land and common land, **subsection (2)** applies and then **subsection (3)** applies (with any necessary modifications); or
  - (b) shared land and joint land, **subsection (2)** applies and then **subsection (4)** applies (with any necessary modifications). 20

#### Subpart 4—Other provisions relating to natural hazard cover

#### 46 Optional insurance for property without natural hazard cover

- (1) The Commission may, on application, provide insurance (**direct cover**) against natural hazard damage for a building that is (or would be if it were insured under a fire insurance contract) a residential building and its associated residential land. 25
- (2) A person may apply for direct cover only if they have an insurable interest in the property.
- (3) Direct cover— 30
  - (a) may be provided—
    - (i) for property that does not have natural hazard cover; or
    - (ii) instead of natural hazard cover that would otherwise cover the property; and
  - (b) may only be provided for both the residential building and its residential land. 35
- (4) Direct cover is to be provided by a contract of insurance—
  - (a) between the Commission and the applicant; and

- (b) on the terms and for a period, set out in the contract, that the Commission considers appropriate, but subject to **subsection (5)**.
- (5) If direct cover is provided for property, this Act applies (with any necessary modifications) as if the cover were natural hazard cover, except to the extent that the contract expressly provides otherwise. 5
- (6) If **subsection (3)(a)(ii)** applies, while the direct cover is in force, the property is not covered by natural hazard cover.
- (7) Premiums paid for the direct cover must be paid into the Fund.
- 47 Cancellation of cover**
- (1) This section applies if— 10
- (a) a claim is settled by payment of a building claim entitlement or a land claim entitlement, or both; and
- (b) in the case of a claim relating to a residential building, the building claim entitlement was calculated based on the building cover cap referred to in **section 31(2)(a)(ii)**; and 15
- (c) in the case of a claim relating to residential land,—
- (i) the land claim entitlement was calculated using the assessed market value; and
- (ii) the area of the damaged part of the residential land is equal to or greater than the area cap (as defined in **section 43**) or is the whole of the residential land; and 20
- (d) sufficient time has elapsed since the claim was settled to give the insured person reasonable opportunity to replace or reinstate the damaged property; and
- (e) the damaged property has not been replaced or reinstated to the satisfaction of the Commission. 25
- (2) The Commission may cancel building cover, land cover, or both for the residential building and residential land by giving the insured person written notice of the cancellation and the reasons for it.
- (3) The cancellation takes effect when the notice is given and continues until the cover is reinstated under **subsection (6)**. 30
- (4) Cover may be cancelled for a residential building and its residential land even if the prior settlement related to only 1 of them.
- (5) Cancellation of cover for the residential land for a residential building applies only to the residential land for that building (and not to any other parts of the insured person's land on which there are other residential buildings). 35
- (6) The Commission must reinstate cancelled cover if, on application by a person affected by the cancellation, it considers that the cancellation should no longer apply.

- (7) To avoid doubt, the cancellation is not affected by—
- (a) a new fire insurance contract being entered into; or
  - (b) any change of the insured person or persons having an insurable interest in the property.
- 48 Limitation of liability for preventable repeat damage** 5
- (1) This section applies if—
- (a) either—
    - (i) a residential building has suffered natural hazard damage as a direct result of a landslide; or
    - (ii) residential land has suffered natural hazard damage as a direct result of a landslide, flood, or storm; and 10
  - (b) the Commission considers that—
    - (i) it is likely that the residential building or residential land (or part of it) will suffer substantially the same natural hazard damage in the future (**future damage**); and 15
    - (ii) the insured person could take reasonable steps to mitigate the risk of future damage.
- (2) The Commission may limit its liability for future damage to the residential building or residential land (or both) by giving the insured person written notice that claims for future damage may be declined under **sections 64 and 70** and the reasons for the Commission’s decision. 20
- (3) The limitation takes effect when the notice is given to the insured person and continues until it is removed under **subsection (4)**.
- (4) The Commission must remove the limitation if, on application by a person affected by the cancellation, it considers that the limitation should no longer apply. 25
- (5) To avoid doubt, the limitation is not affected by—
- (a) a new fire insurance contract being entered into; or
  - (b) any change of the insured person or persons having an insurable interest in the property. 30
- 49 Cancellation or limitation of liability to be recorded on land title**
- (1) This section applies if the Commission—
- (a) cancels building cover or land cover under **section 47**; or
  - (b) limits its liability for future damage under **section 48**.
- (2) The Commission must give a certificate to the Registrar-General of Land stating that the Commission has cancelled the cover or limited its liability (as the case requires). 35

- (3) If the Commission reinstates cancelled cover under **section 47(6)** or removes the limitation of liability under **section 48(4)**, the Commission must give a notice to the Registrar-General of Land discharging the certificate.
- (4) A certificate or notice given to the Registrar-General of Land must—
  - (a) be in the form, and include the information required, by the regulations; 5  
and
  - (b) be given as soon as practicable after the notice is given under **section 47(2) or 48(2)** or the cover is reinstated or limitation is removed (as the case requires).
- (5) The Registrar-General of Land must (without charge) register the certificate (or any amendment to it) or discharge on the record of title for the land to which it relates. 10

### Part 3 Claims

#### Subpart 1—Making claims 15

##### **50 Insured person may make claim**

- (1) If a residential building or residential land (or both) suffers natural hazard damage, the insured person may make a claim against the property's natural hazard cover.
- (2) The claim must include— 20
  - (a) the insured person's name and contact details; and
  - (b) the address or location of the damaged property; and
  - (c) any other information required by the regulations.
- (3) The claim must be made in the way required by the regulations.

##### **51 Claim covers all damage that occurs during damage period 25**

- (1) This section applies if a residential building, residential land, or both (the **insured property**)—
  - (a) suffers natural hazard damage (**initial damage**); and
  - (b) during the damage period, suffers more natural hazard damage (**subsequent damage**). 30
- (2) The initial damage and subsequent damage (to the extent that any claim is made in relation to them) are the subject of the same claim.
- (3) If, after the expiry of the damage period, the insured property suffers more natural hazard damage (**further damage**), this section applies again, with the further damage being the initial damage for the purpose of another damage period. 35
- (4) In this section, **damage period** means the period—

- 
- (a) beginning at the time the initial damage occurs (the **start time**); and
  - (b) ending,—
    - (i) if the initial damage is the direct result of an earthquake, a flood, hydrothermal activity, a landslide, a storm, or a tsunami, 48 hours after the start time; or 5
    - (ii) if the initial damage is the direct result of volcanic activity or a natural hazard fire, on the seventh day after the day on which the initial damage occurs and at the same time on that seventh day as the start time.
- (5) For the purposes of this section, it does not matter whether the initial damage, subsequent damage, and further damage are the direct result of— 10
- (a) 1 natural hazard that occurs over a period of time or 2 or more separate natural hazards; or
  - (b) the same kind of natural hazard or 2 or more different kinds of natural hazards. 15
- (6) If the initial damage is the direct result of 2 or more natural hazards,—
- (a) if 1 or more of the natural hazards are volcanic activity or a natural hazard fire, **subsection (4)(b)(ii)** applies; or
  - (b) otherwise, **subsection (4)(b)(i)** applies.

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### Examples 20

1. If a house is damaged by an earthquake, the natural hazard damage that occurs at the time of that earthquake is initial damage and is the subject of a single claim. If the house is damaged again by a second earthquake 12 hours later, that is subsequent damage and part of the same claim.

2. If a house is damaged by volcanic activity at 3 pm on a Sunday, the damage period continues until 3 pm on the following Sunday. So if the land is damaged by a flood in the morning of the second Sunday, the flood damage is part of the same claim as the volcanic damage. However, if the flood occurs in the evening of that Sunday, the flood damage is the subject of a separate claim. 25

3. If volcanic activity triggers a landslide and both damage a house, this is initial damage resulting from both events. Because one of them is volcanic activity, the damage period is 7 days. If the volcanic activity continues for more than 7 days, the first damage that occurs on the eighth day is separate initial damage and starts a second damage period of 7 days. 30

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## 52 Time for making claim 35

- (1) A claim may be made—
  - (a) on or before the standard claim date; or
  - (b) after the standard claim date but on or before the extended claim date; or
  - (c) after the extended claim date if that is permitted by **subsection (2)**.
- (2) A claim may made after the extended claim date if— 40



- (a) the regulations allow late claims to be made; and
  - (b) either or both of the following apply:
    - (i) the damage could not reasonably have been discovered in time to enable the insured person (acting reasonably promptly) to make a claim on or before the extended claim date: 5
    - (ii) the insured person is unable to make a claim on or before the extended claim date because of absence, incapacity, or other disability; and
  - (c) the claim is made both—
    - (i) as soon as practicable after the damage is discovered or as soon as the insured person is reasonably able to make the claim (as the case requires); and 10
    - (ii) within the period required by the regulations.
- (3) In this section,—
- extended claim date** means the date that is 2 years after the date on which the earliest damage included in the claim occurs, or any later date allowed by the regulations 15
- standard claim date** means the date that is 3 months after the date on which the earliest damage included in the claim occurs, or any later date allowed by the regulations. 20
- 
- Guidance note**
- The Commission may be able to decline a claim made after the standard claim date (see **section 65**).
- 
- 53 Providing further information**
- (1) As soon as practicable after making the claim, the insured person must give to the Commission sufficient details about the following to enable the claim to be assessed, decided, and settled: 25
    - (a) the damaged property:
    - (b) the natural hazard:
    - (c) the natural hazard damage: 30
    - (d) the fire insurance contract and any other insurance contract under which any of the damaged property is insured:
    - (e) any other persons who have an insurable interest in the damaged property:
    - (f) any other matters set out in the regulations. 35
  - (2) The Commission may specify (in a particular case or for any class of cases or all cases) the details that are required under **subsection (1)**.

- (3) The information must be obtained (if the insured person does not already have it) and given to the Commission at the insured person's expense.
- (4) The Commission may defer taking any action in relation to the claim until it is given the required information.

#### **54 Updating information** 5

- (1) This section applies if the insured person becomes aware of—
  - (a) any material change in any information relating to the claim that—
    - (i) the insured person has given to the Commission; or
    - (ii) the insured person knows, or ought reasonably to know, that the Commission has obtained from another source; or 10
  - (b) any new information that is relevant to the claim.
- (2) The insured person must give the changed or new information to the Commission as soon as practicable after becoming aware of it (whether or not the claim has been settled).
- (3) If the Commission is aware of information that ought to have been given to it but has not been, the Commission may defer taking any action in relation to the claim until it is given the required information. 15

#### Subpart 2—Commission must assess, decide, and settle claims

#### **55 Commission must assess, decide, and settle claim**

- (1) When a claim is made, the Commission must— 20
  - (a) decide whether to accept it as a valid claim (in whole or part) (*see section 57*); and
  - (b) if (or to the extent that) it accepts the claim—
    - (i) assess the claim; and
    - (ii) decide how to settle the claim (*see section 58*); and 25
    - (iii) settle the claim.
- (2) The Commission must assess, decide, and settle the claim—
  - (a) in accordance with, and to the extent to which it is liable to do so under, this Act; and
  - (b) as soon as practicable after the claim is made. 30
- (3) The Commission—
  - (a) is not required to determine whether there is any damage to the residential building or residential land beyond that identified by the insured person; but
  - (b) if it becomes aware of any such damage, must notify the insured person of that damage. 35

- (4) If, after making any decision in relation to a claim, the Commission obtains further information relevant to the decision (under **section 54 or 56** or otherwise), the Commission may reconsider, and, if appropriate, change, the decision in light of the new information.

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**Guidance note**

The Commission may decline a claim in certain circumstances (see **section 64**).

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**56 Commission may request further information**

- (1) The Commission may, by written notice, request the insured person to give or produce to the Commission any information, document, or other thing that the Commission believes on reasonable grounds that it needs to assess, decide, or settle the claim. 10
- (2) The notice may—
- (a) relate to information, documents, or things that are within the insured person’s possession or control or that later come into their possession or control; or 15
- (b) require the insured person to obtain the information, documents, or things if they do not already have them.
- (3) The notice may do 1 or more of the following:
- (a) specify the form and manner in which information, documents, or things must be provided: 20
- (b) specify a reasonable period within which information, documents, or things must be provided:
- (c) require the insured person to provide a statutory declaration as to the truth of information given by the person:
- (d) otherwise specify how anything required by the notice must be done. 25
- (4) The information, documents, or things must be obtained (if the insured person does not already have them) and given or produced to the Commission at the insured person’s expense.
- (5) The regulations may also impose requirements of the kind referred to in **subsection (3)**. 30
- (6) After giving the notice, the Commission may defer taking any action in relation to the claim until the insured person has complied with the notice and any requirements in the regulations.
- (7) This section applies even if the claim has been settled, if the Commission becomes aware of matters relevant to the claim that were not taken into account when it was settled or that information that ought to have been given to it has not been. 35

**Guidance note**

There is also a power to enter land, buildings, or places for the purpose of obtaining information (see **section 144**).

**57 Commission must decide validity of claim**

- (1) After receiving a claim, the Commission must,— 5
- (a) if (or to the extent that) it is satisfied that the claim meets the criteria in **subsection (2)**, accept it as a valid claim; or
- (b) if (or to the extent that) it is not so satisfied, reject it as an invalid claim.
- (2) The criteria for a valid claim are all of the following: 10
- (a) the claim is made in accordance with **section 50** and within the period allowed by **section 52**:
- (b) the property the claim relates to—
- (i) is a residential building, residential land, or both; and
- (ii) is covered by natural hazard cover:
- (c) the property has suffered natural hazard damage: 15
- (d) the claimant—
- (i) has an insurable interest in the property; and
- (ii) is the insured person for the property.
- (3) However, the Commission is not required to decide the validity of a claim if, before doing so, it declines the claim under **section 64**. 20
- (4) If the Commission rejects a claim (in whole or part), or declines a claim before deciding its validity, the Commission must notify the insured person of—
- (a) the Commission’s decision; and
- (b) the reasons for the decision; and
- (c) the insured person’s rights to refer disputes about referable decisions to the dispute scheme, and any information about that scheme required by the regulations. 25
- (5) If a person who has made a claim lodges another claim in relation to other damage that occurred during the same damage period (as defined in **section 51**), the later claim is taken to be further information provided under **section 53** in respect of the first claim. 30

**58 Commission must decide on settlement and settle claim**

- (1) The Commission must settle a valid claim as the Commission considers appropriate—
- (a) using one of the methods set out in **section 59** that are applicable to the case; or 35

- (b) using a combination of those methods to settle different parts of the claim.
- (2) The Commission must decide which method or methods to use as soon as practicable after the claim is made.
- (3) After making its decision, the Commission must— 5
  - (a) notify the insured person of the decision; and
  - (b) settle the claim to the extent to which it is liable to do so under this Act.
- (4) If the Commission decides to settle the claim (in whole or part) by making a payment referred to in **section 59(1)(a)**, it must make the payment not more than 1 year after it decides on the amount to be paid. 10
- (5) The Commission and the insured person must comply with any procedural requirements in the regulations relating to settling claims.
- (6) The notice under **subsection (3)(a)** must set out—
  - (a) the Commission’s decision; and
  - (b) the reasons for the decision; and 15
  - (c) the insured person’s rights to refer disputes about referable decisions to the dispute scheme, and any information about that scheme required by the regulations.
- (7) Nothing the Commission does before giving the notice under **subsection (3)(a)** is to be taken as evidence that the Commission has made any decision under this section. 20

## **59 Methods available to settle claim**

- (1) The methods for settling a claim are the following:
  - (a) paying the building claim entitlement and land claim entitlement to the insured person (or to another person who is lawfully entitled to it) (*see also section 61*): 25
  - (b) if the building claim entitlement and land claim entitlement are zero, notifying the insured person of that fact:
  - (c) replacing or reinstating the damaged property to the standard described in **section 32 or 40**: 30
  - (d) relocating the residential building under **section 62**:
  - (e) declining the claim under **section 64**.
- (2) If a claim relating to damage to a residential building and residential land is settled by relocating the building under **section 62(1)(b)**,—
  - (a) the relocation and reinstatement of the building settle the claim in relation to the residential building; and 35
  - (b) the transfer of the estate or interest in the new site to the insured person under **section 62(4)** settles the claim in relation to the residential land.

**60 Date for determining amounts**

- (1) If the Commission decides to settle a claim (or part of it) in a way that requires the calculation of the replacement cost or reinstatement cost of damaged property, the Commission must calculate the replacement cost or reinstatement cost— 5
- (a) as at the date on which it decides the amount of the replacement cost or reinstatement; or
  - (b) if the Commission is satisfied that the circumstances of the case justify doing so, as at an earlier date (but not before the date on which the damage occurred). 10
- (2) If the Commission decides to settle a claim (or part of it) in a way that requires the calculation of the assessed market value of land or the undepreciated value of damaged property, the Commission must calculate the assessed market value or undepreciated value—
- (a) as at the date on which the damage occurred; or 15
  - (b) if, because of circumstances relating to the cause of the damage, the claim cannot be settled promptly, as at a later date determined by the Commission.

**Example**

If an insured person intentionally gives the Commission misleading information that results in settlement of a building cover claim taking longer than would otherwise have been the case, that may justify the Commission assessing the replacement cost as at the date on which the claim would likely have been settled if correct information had been given. 20

**61 Settlement payments if 2 or more persons entitled to payment** 25

- (1) This section applies if—
- (a) the Commission decides to settle a claim by making a payment referred to in **section 59(1)(a)**; and
  - (b) 2 or more persons are entitled to all or part of the amount (**entitled persons**). 30
- (2) If any of the entitled persons are not the insured person, the Commission must first pay them the amounts to which they are entitled under the contract (such as an assignment or a document referred to in **section 76**) or law under which they are entitled.
- (3) The Commission must pay the remainder of the amount to the insured person. 35
- (4) If 2 or more persons are together the insured person, the Commission must,—
- (a) if all of them agree on whom the amount is to be paid to or how it is to be divided between them, pay the amount as agreed; or
  - (b) otherwise, divide the amount between them in the same proportions as—

- (i) their respective responsibilities to replace or reinstate the damaged property; or
    - (ii) if the extent of their responsibilities cannot be ascertained, their respective insurable interests in the damaged property.
  - (5) In deciding how to divide the amount under this section, the Commission must comply with any requirements in the regulations relating to—
    - (a) how the amount is to be divided; and
    - (b) the matters that are to be taken into account in deciding how the amount is to be divided.
- 62 Relocating residential building** 10
- (1) A claim may be settled by relocating all or part of a residential building (whether damaged or not) from the site where it was situated immediately before the natural hazard occurred (the **original site**) to another site (the **new site**)—
    - (a) on the insured person’s land; or 15
    - (b) if, as a result of natural hazard damage, that land is no longer suitable for that purpose, on other land.
  - (2) The new site must be reasonably equivalent in all material respects to the original site.
  - (3) The relocated property must be reinstated (including by replacing or reinstating any property damaged during the relocation) to the standard described in **section 32**. 20
  - (4) If property is relocated under **subsection (1)(b)**,—
    - (a) the Commission must ensure that the insured person is given an estate or interest in the new site that is equivalent to, or greater than, their estate or interest in the original site; and 25
    - (b) the land at the original site is then salvageable property for the purposes of **sections 79 to 82**.
  - (5) The Commission and the insured person must comply with any requirements in the regulations relating to how their rights and obligations under this section are to be exercised or complied with. 30
- 63 Insured person must pay excess if non-monetary settlement**
- (1) This section applies—
    - (a) if the Commission decides to settle a claim (in whole or part) using the method set out in **section 59(1)(c) or (d)**; and 35
    - (b) the replacement, reinstatement, or relocation has been completed.
  - (2) The insured person must, on receiving an invoice from the Commission, pay to the Commission an amount equal to,—

- (a) if the claim relates to a residential building, the building cover excess referred to in **section 31(2)(b)**; and
- (b) if the claim relates to residential land, the land cover excess referred to in **section 38(2)(b)**.
- (3) However, if the Commission decides to settle part of the claim using the method set out in **section 59(1)(c) or (d)** and in part by making a payment referred to in **section 59(1)(a)**, the Commission— 5
- (a) must reduce the total amount for which the claim is settled by an amount equal to the building claim excess and land claim excess applicable to the claim; but 10
- (b) may do so by deducting the excesses under **sections 31 and 38** or by issuing an invoice under this section, or by a combination of the two.
- (4) Any amount paid under this section must be paid into the Fund.

### *Declining claims*

#### **64 When Commission may decline claim** 15

- (1) The Commission may decline a claim (in whole or part) if it is satisfied that grounds to do so exist under **sections 65 to 74**.
- (2) The Commission may decline the claim at any time regardless of any action the Commission has taken towards assessing, deciding, or settling the claim.

#### **65 Claim may be declined if delay is prejudicial** 20

There are grounds to decline a claim if—

- (a) the claim is made after the standard claim date under **section 52(1)(b) or (c)**; and
- (b) the lapse of time before the claim was made materially prejudices the Commission's ability to assess the claim. 25

#### **66 Claim may be declined if no financial loss**

There are grounds to decline a claim if the natural hazard damage has not caused, and is not likely to cause, financial loss to the insured person.

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#### **Example**

If, before a natural hazard occurred, an insured person was in the process of demolishing their house in preparation for building a new one in its place, any natural hazard damage to the house is unlikely to cause the person any financial loss. 30

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#### **67 Claim may be declined if condition not complied with**

There are grounds to decline a claim if—



(a)	regulations imposing a condition (referred to in <b>section 30 or 37</b> ) state that non-compliance with the condition is a ground for declining a claim; and	
(b)	the condition is not complied with.	
<b>68</b>	<b>Claim may be declined if misleading information given to Commission or insurer</b>	5
(1)	There are grounds to decline a claim if the insured person knowingly gives misleading information—	
(a)	to the Commission or an authorised person for the purposes of this Act; or	10
(b)	to the fire insurer in relation to the fire insurance contract or any claim made under it.	
(2)	In this section, <b>misleading information</b> means information that is false, misleading in a material particular, or misleading because of the omission of a material particular.	15
<b>69</b>	<b>Claim may be declined for fraud</b>	
	There are grounds to decline a claim if it (or any part of it) is fraudulent.	
<b>70</b>	<b>Claim may be declined for failure to protect property</b>	
(1)	An insured person must—	
(a)	take reasonable steps to mitigate the risk of natural hazard damage to the residential building and residential land; and	20
(b)	if the residential building or residential land suffers natural hazard damage, take reasonable steps to mitigate the risk of any further damage.	
(2)	There are grounds to decline a claim if—	
(a)	the insured person has failed to comply with <b>subsection (1)</b> ; and	25
(b)	the natural hazard damage to which the claim relates occurred because of (or was exacerbated by) that failure.	
(3)	This section applies whether or not the Commission has limited its liability in relation to the damage under <b>section 48</b> .	
	<b>Example</b>	30
	A claim for damage to the foundations of a house is settled by payment of the reinstatement cost, but the insured person has not repaired it (despite having had enough time to do so). If another natural hazard causes more damage to the house that would not have occurred had the foundations had been repaired, the Commission may be able to decline a claim for the later damage.	35

- 71 Claim may be declined if damage due to intentional act, omission, or negligence**
- There are grounds to decline a claim if the natural hazard damage occurred because of (or was exacerbated by) an intentional act or omission of, or the negligence of,— 5
- (a) the insured person; or
  - (b) a previous owner or occupier of the property, if the insured person was aware of the act, omission, or negligence when they acquired their insurable interest in the property.
- 72 Claim may be declined if damage due to unlawful conduct** 10
- There are grounds to decline a claim if the natural hazard damage occurred because of (or was exacerbated by) a failure by the insured person to comply with any law or legal requirement.
- 73 Claim may be declined if damage due to substandard construction**
- (1) This section applies if a claim relates to damage to— 15
    - (a) any part of a residential building that is not an integral part of the eligible building; or
    - (b) a retaining wall, or a bridge or culvert.
  - (2) There are grounds to decline the claim (to the extent that it relates to that damage) if— 20
    - (a) the damaged property was not constructed in accordance with standards considered appropriate for that property at the time it was constructed; and
    - (b) the damage occurred because of (or was exacerbated by) the failure to comply with those standards. 25
- 74 Claim may be declined if natural hazard notification on land title**
- (1) There are grounds to decline a claim if—
    - (a) the record of title for residential land (or any part of it) contains an entry under section 74 of the Building Act 2004 in relation to a building consent granted under section 72 of that Act; and 30
    - (b) the notice relates to a natural hazard (as defined in section 71 of the Building Act 2004) that is also a natural hazard as defined in **section 23** of this Act; and
    - (c) the claim relates to damage that is the direct result of a natural hazard of the kind that the notice relates to. 35
  - (2) **Subsection (1)** applies (with any necessary modifications) to an entry on a record of title under section 36(2) of the Building Act 1991 or section 641A of the Local Government Act 1974.

## Subpart 3—Other provisions relating to claims

- 75 Assignment of benefit of claim**  
 The right of an insured person to the benefit of the natural hazard cover for property that has suffered natural hazard damage is a thing in action (which can be assigned under subpart 5 of Part 2 of the Property Law Act 2007). 5
- 76 Insurance conditions in mortgage, etc, apply to natural hazard cover**
- (1) If a mortgage, lease, or other document includes an express or implied covenant, condition, or power relating to the insurance against physical loss or damage by fire of a residential building or residential land, the covenant, condition, or power applies (with any necessary modifications) in relation to the natural hazard cover for the residential building or residential land. 10
- (2) However, **subsection (1)** is subject to any express provision to the contrary in the mortgage, lease, or other document or any regulations.
- 77 Subrogation of rights**
- (1) The general law of subrogation as it relates to contracts of insurance applies in relation to natural hazard cover as if it were insurance provided under a contract of indemnity between the Commission and the insured person. 15
- (2) The insured person must (at the Commission's expense) do anything reasonably required by the Commission to enable it to exercise or enforce any subrogated rights or remedies. 20
- 78 Ex gratia payments**
- (1) The Commission may make an ex gratia payment to a person in relation to natural hazard damage to property if—
- (a) the property is not part of a residential building or residential land; but
- (b) the person has paid the amount referred to in **section 114** in relation to the fire insurance contract for the property in the honest but mistaken belief that it was insured under this Act. 25
- (2) The amount of the ex gratia payment must not exceed what would have been payable under this Act in respect of the natural hazard damage if the property had been covered by natural hazard cover. 30
- 79 Right to salvage**
- (1) To the extent that a claim is settled by a method set out in **section 59(1)(a), (c), or (d)**, the Commission has a right to salvage property in accordance with this section and sections 80 to 82.
- (2) Before salvaging any property, the Commission must take reasonable steps to give the insured person and the fire insurer reasonable notice of its intention to do so. 35

- (3) The Commission and the insured person must comply with any requirements in the regulations relating to how their rights and obligations under this section and sections 80 to 82 are to be exercised or complied with.
- (4) The regulations may provide that those rights and obligations may be enforced as if they were contractual rights and obligations. 5
- (5) The Commission—
- (a) is not required to salvage any damaged property; and
- (b) does not acquire title to, and has no obligation to remove or dispose of, damaged property that it chooses not to salvage (even if that property is abandoned by the insured person). 10
- (6) Nothing done by the Commission in the exercise, or purported exercise, of its rights under this section and sections 80 to 82—
- (a) gives rise to any liability of the Commission to the insured person; or
- (b) affects any other rights or obligations of the Commission or the insured person under this Act or the regulations. 15

### **80 Salvage of property other than land**

- (1) The Commission may salvage any part of the property to which the settlement relates (other than land) that is not required for the purposes of reinstating or replacing that property by taking possession of it.
- (2) The Commission must carry out any salvage work reasonably and, as far as is practicable, in a way that is co-ordinated with the reinstatement or replacement of the damaged property. 20

### **81 Salvage by acquisition of title to land**

- (1) The Commission may salvage land only if the claim against land cover is settled for an amount equal to or greater than the market value of the land holding within which a residential building is situated (as defined in **section 16**). 25
- (2) The Commission may, by written notice, require the insured person to transfer their title to that land holding to the Commission.
- (3) The insured person must comply with the notice.
- (4) After title has been transferred, the Commission must pay compensation to the insured person for the value of any improvements on the land that are not salvageable under **section 80** and for which no other compensation is payable. 30

### **82 Dealing with salvaged property**

- (1) When the Commission salvages property, it becomes the property of the Commission, and any person who acquires it from the Commission acquires good title to it. 35
- (2) The Commission must divide the proceeds of any sale of salvaged property (less costs and any compensation paid under **section 81(4)**) between itself,

the fire insurer, and any other insurers who have an interest in the property in proportion to their respective interests in the property.

- (3) Any proceeds retained by the Commission must be paid into the Fund.

**83 Claim entitlements reduced if other catastrophe insurance applies**

- (1) This section applies if— 5
  - (a) a residential building or residential land is insured by an insurer other than the Commission under a contract of insurance against 1 or more natural hazards (a **contract**); and
  - (b) the contract is not limited to insuring the residential building or residential land only to the extent that the amount of any damage exceeds the building claim entitlement or land claim entitlement for the damage; and 10
  - (c) the residential building or residential land suffers natural hazard damage.
- (2) For the purposes of **section 31 or 38**, the building claim entitlement or land claim entitlement for the claim is reduced to an amount calculated as follows:

$$r = n - (c + e) \tag{15}$$

where—

- r is the reduced building claim entitlement or land claim entitlement
- n is the amount that would be the building claim entitlement or land claim entitlement under **section 31 or 38** if this section did not apply
- c is the amount payable under the contract in respect of the damage (or that would be payable if a claim were made) 20
- e is the total of any excess or other amounts to be borne by the insured person in relation to a claim under the contract in respect of the damage.

**Subpart 4—Code of Insured Persons’ Rights**

**84 Purpose of Code of Insured Persons’ Rights** 25

- (1) There must be a Code of Insured Persons’ Rights.
- (2) The purpose of the Code is to set out the rights of insured persons to have their claims managed and settled in a fair and timely manner.
- (3) For that purpose, the Code must— 30
  - (a) confer rights on insured persons, and impose obligations on the Commission, in relation to how the Commission is to deal with insured persons, particularly in relation to the timeliness of managing claims and the fair treatment of insured persons; and
  - (b) provide remedies for a breach of the Code; and
  - (c) explain an insured person’s rights— 35
    - (i) to have complaints to which the complaint procedure applies dealt with in accordance with that procedure; and

- (ii) to have decisions made by the Commission under the complaint procedure in relation to breaches of the Code dealt with in accordance with the review procedure; and
- (iii) to refer disputes about referable decisions to the dispute scheme.
- (4) The rights conferred on insured persons by the Code are in addition to any other rights they may have, and do not affect their entitlements and responsibilities under this Act, other legislation, or the general law. 5
- 85 Minister to make Code**
- (1) The Minister must make a Code of Insured Persons' Rights for the purposes set out in **section 84**. 10
- (2) For the purpose of doing so, the Minister—
- (a) must request the Commission to prepare a draft Code and provide it to the Minister; and
- (b) may request the Commission to make amendments to it.
- (3) The Minister must not make the Code unless satisfied that— 15
- (a) adequate public consultation has been undertaken in relation to the draft Code; and
- (b) interested persons have been given a reasonable opportunity to make submissions on the draft Code, and any submissions have been taken into account. 20
- (4) The Code is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 86 Commission's obligations in relation to Code**
- (1) In all its dealings with insured persons, the Commission must ensure that its actions— 25
- (a) are consistent with the Code; and
- (b) uphold the rights of insured persons under the Code.
- (2) The Commission must—
- (a) publish the Code on the Commission's website; and
- (b) make the Code accessible to, and promote awareness of it among, insured persons and the public generally (*see also* **section 87**). 30
- (3) The obligations imposed on the Commission by the Code are in addition to its other obligations under this Act, other legislation, and the general law.

### Subpart 5—Complaint management procedure

- 87 Commission must have complaint management procedure**
- (1) The Commission must have a procedure in place for managing complaints by insured persons.
  - (2) The procedure must provide for managing complaints about breaches of the Code. 5
  - (3) The complaint procedure must be consistent with this subpart, the Code, and any requirements in the regulations.
  - (4) The Commission must publish the complaint procedure, make it accessible, and promote awareness of it, along with the Code (*see section 86*). 10
  - (5) The Commission must manage complaints in accordance with the complaint procedure.

### Subpart 6—Review of complaint procedure decisions about breaches of Code

- 88 Commission must have procedure for review of complaint procedure decisions about breaches of Code** 15
- (1) The Commission must have a procedure in place for independent persons to review decisions made by the Commission under the complaint procedure in relation to a breach of the Code.
  - (2) The review procedure must— 20
    - (a) be consistent with this subpart, the Code, and any requirements in the regulations; and
    - (b) provide for decisions to be reviewed in a way that is independent of the Commission (other than its obligations under **sections 89 and 94**).
  - (3) The Commission must publish the review procedure, make it accessible, and promote awareness of it, along with the Code (*see section 86*). 25
  - (4) The Commission must engage persons to be reviewers in accordance with **section 94**.
- 89 Application for review of decision**
- (1) A person aggrieved by a decision made by the Commission under the internal complaints procedure in relation to a breach of the Code may apply for an independent review of that decision. 30
  - (2) An application must—
    - (a) be made to the Commission in the way, and within the period, required by the regulations; and 35
    - (b) include the information required by the regulations.

- (3) On receiving an application, the Commission must allocate it to a reviewer in accordance with any requirements in the regulations.
- (4) The Commission must not allocate the application to a reviewer who it is aware has any previous involvement in the matter under review or any other conflict of interest. 5
- (5) If, after allocating an application, the Commission becomes aware of any such prior involvement or conflict, it must reallocate the review to another reviewer.
- (6) If the regulations require a reviewer to transfer the application to another reviewer (for example, because of a conflict of interest), the reviewer must do so. 10

### 90 Reviewer must assess application

- (1) On receiving an application, the reviewer must—
- (a) assess whether the application—
- (i) relates to a decision made by the Commission under the complaint procedure in relation to a breach of the Code; and 15
- (ii) is made in accordance with **section 89(2)**; and
- (b) if they decide it does meet those criteria, review the decision in accordance with **section 91**.
- (2) However, if the regulations allow a reviewer to reject a claim without considering it (because, for example, it is frivolous or vexatious), the reviewer may reject the claim without complying with **subsection (1)**. 20
- (3) If the reviewer decides that the application does not meet the criteria in **subsection (1)(a)** or decides to reject the claim under **subsection (2)**, they must notify the applicant and the Commission in writing of that decision and the reasons for it. 25
- (4) If the reviewer decides that the application does not meet the criteria in **subsection (1)(a)** but considers that the application relates to a referable decision, the notice under **subsection (3)** must explain the applicant's right to refer disputes about referable decisions to the dispute scheme.

### 91 Review of decision 30

- (1) The reviewer must carry out the review—
- (a) within the period set by, and in accordance with any other requirements in, the regulations; and
- (b) in accordance with the principles of natural justice; and
- (c) otherwise in an informal, timely, and practical manner as the reviewer thinks fit. 35
- (2) In carrying out the review, the reviewer must—
- (a) act independently of the Commission; and



- (b) exercise due diligence.

## 92 Report of reviewer

- (1) After completing the review, the reviewer must prepare a written report setting out—
- (a) the reviewer’s decision on the application and their reasons for it; and 5
  - (b) the reviewer’s decision on whether the Commission must provide any of the remedies available under the Code (as required by **section 84(3)(b)**); and
  - (c) any other recommendations to the Commission; and
  - (d) any matters required by the regulations; and 10
  - (e) any other matters the reviewer considers appropriate.
- (2) The reviewer must give the report to the applicant, the Commission, and any other person as required by the regulations.
- (3) If the reviewer decides that the Commission should provide a remedy available under the Code and the regulations state that decisions in relation to that remedy are binding, the Commission must provide the remedy. 15
- (4) The reviewer and any person to whom the report is given must comply with any requirements in the regulations about the confidentiality of reviewers’ reports.

## 93 Other proceedings 20

- (1) Applying for a review under this subpart does not affect any right any person may have to refer a dispute to the dispute scheme or to commence proceedings in any court or tribunal.
- (2) However, if such other proceedings are commenced in relation to the matters under review, the review proceedings are stayed until the other proceedings are determined and all appeal rights exhausted (unless a court or tribunal orders otherwise). 25

## 94 Commission must engage reviewers

- (1) The Commission must engage as many persons as it considers necessary to be reviewers. 30
- (2) Reviewers must be engaged in accordance with any requirements (including as to the terms of their engagement) in the regulations.
- (3) The Commission must not engage an individual as a reviewer if they are any of the following:
- (a) a member of the Commission’s board: 35
  - (b) a worker of the Commission:
  - (c) a delegate referred to in **section 127** or a worker of a delegate:

- (d) a person specified in the regulations.
- (4) The Commission must not engage a body corporate as a reviewer unless satisfied that none of the body corporate's workers who will be involved in carrying out reviews are persons referred to in **subsection (3)**.
- (5) The Commission must not include in its contract with a reviewer any term or condition that could have the effect, directly or indirectly, of influencing the reviewer in favour of the Commission. 5
- (6) A person is a **worker** of another person (**person B**) if the person carries out work for person B as an employee, an agent, or in any other capacity.
- 95 Functions, powers, and duties of reviewers** 10
- (1) A reviewer has the functions, powers, and duties conferred on reviewers by the regulations (in addition to those conferred by this subpart).
- (2) A reviewer to whom a review is, or is to be, allocated must inform the Commission of any prior involvement in a matter under review, or any other conflict of interest,— 15
- (a) before the application is allocated (if the prior involvement or conflict is known at the time); or
- (b) as soon as practicable after they become aware of the prior involvement or conflict.
- 96 Regulations as to fees and costs** 20
- (1) The regulations may provide for—
- (a) the payment of fees in respect of a review; and
- (b) the payments of costs incurred by parties to a review in relation to the review.
- (2) If the regulations provide for a reviewer to make orders as to costs, any such order may be enforced by a court of competent jurisdiction as if it were a judgment of the court. 25
- Subpart 7—Resolution of disputes about claims
- 97 Commission must participate in dispute resolution scheme**
- (1) The Commission must be a member of a dispute resolution scheme approved by the Minister for resolving disputes about the Commission's decisions on the validity or settlement of claims. 30
- (2) If there is no approved dispute resolution scheme, the Commission must establish and operate a scheme with scheme rules made by the Minister under **section 99**. 35

**98 Approval of dispute resolution scheme**

- (1) The Minister may approve a dispute resolution scheme for the purposes of this subpart.
- (2) The Minister must not approve a scheme unless satisfied that—
  - (a) it is based on the following principles: 5
    - (i) accessibility:
    - (ii) independence:
    - (iii) fairness:
    - (iv) accountability:
    - (v) efficiency: 10
    - (vi) effectiveness; and
  - (b) it provides for the resolution of disputes about referable decisions.
- (3) An approval granted under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (4) The Commission must publish on the Commission’s website— 15
  - (a) a copy of the scheme rules (as amended from time to time); or
  - (b) a link to another Internet site where the rules are published.

**99 Rules for scheme established by Commission**

- (1) For the purposes of **section 97(2)**, the Minister may make rules for a dispute resolution scheme that is to be established and operated by the Commission. 20
- (2) For the purpose of doing so, the Minister—
  - (a) must request the Commission to prepare draft rules and provide them to the Minister; and
  - (b) may request the Commission to make amendments to the draft.
- (3) The Minister must not make rules unless satisfied that the scheme will meet the criteria set out in **section 98(2)**. 25
- (4) Rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**100 Referral of dispute and participation in resolution**

- (1) If the Commission has made a referable decision about a claim, an affected person who disputes the decision may (but is not required to) refer the dispute to the dispute scheme. 30
- (2) The Commission is a party to dispute resolution proceedings and must participate in the resolution of the dispute.
- (3) All parties to the dispute resolution proceedings must comply with the scheme rules. 35

- (4) A court of competent jurisdiction may, on application, order a party to the proceedings to comply with the scheme rules.
- (5) An application to the court may be made by a party to the proceedings or the person conducting the proceedings.
- (6) In this section,— 5
- affected person** means—
- (a) the insured person for the residential building or residential land that the claim relates to; or
- (b) any other person who is lawfully entitled to all or part of any building claim entitlement or land claim entitlement payable on the settlement of the claim 10
- referable decision** means a decision made by the Commission—
- (a) under **section 57** as to whether, or to what extent, a claim is valid; or
- (b) under **section 58** as to how a claim is to be, or has been, settled,— 15
- but not a decision of a kind specified in the regulations as not suitable for resolution under the dispute scheme.
- 101 Other proceedings**
- (1) The referral of a dispute to the dispute scheme does not affect any right any person may have to commence proceedings in any court or tribunal.
- (2) However, if such proceedings are commenced in relation to the matters that are the subject of the dispute resolution proceedings, the dispute resolution proceedings are stayed until the other proceedings are determined and all appeal rights exhausted (unless the court or tribunal orders otherwise). 20
- 102 Enforcement of dispute resolution scheme**
- (1) This section applies if a dispute is resolved under the dispute scheme— 25
- (a) by an order or other decision of an adjudicator or other decision maker; or
- (b) by mediation or other process the outcome of which the parties have agreed will be binding.
- (2) The outcome of the dispute resolution proceedings— 30
- (a) is binding on the parties to the proceedings; and
- (b) may be enforced by a court of competent jurisdiction.
- (3) An application to the court may be made by—
- (a) a party to the proceedings; or
- (b) if **subsection (1)(a)** applies, the adjudicator or other decision maker. 35
- (4) If **subsection (1)(a)** applies, an order or a decision that requires the payment of money may be enforced as if it were a judgment of the court.

- (5) If **subsection (1)(b)** applies and the court is satisfied that the terms on which the dispute was resolved are manifestly unreasonable, the court may modify those terms before enforcing them.

### 103 Appeals

- (1) A person (including the Commission) aggrieved by a decision referred to in **section 102(1)(a)** may appeal to a court of competent jurisdiction. 5
- (2) An appeal must be brought—
- (a) in accordance with the rules of the court; and
  - (b) within—
    - (i) 20 working days after the date of the decision; or 10
    - (ii) any further time allowed by the court (on application made before or after that period expires).

## Part 4

### Natural Hazard Fund and levy

#### Subpart 1—Natural Hazard Fund 15

### 104 Natural Hazard Fund

- (1) The Natural Disaster Fund under the Earthquake Commission Act 1993 is continued with the name Natural Hazard Fund.
- (2) The purpose of the Fund is to provide for payment of claim settlement costs and the other amounts referred to in **section 107**. 20
- (3) The primary sources of funding for the Fund are—
- (a) the levy; and
  - (b) earnings from the investment of the Fund; and
  - (c) payments made by the Minister (which are required by **section 108** if the assets of the Fund are not sufficient to pay the amounts payable out of the Fund under **section 107**). 25

### 105 Fund owned and managed on behalf of Crown

- (1) All assets in the Fund are owned by the Commission on behalf of the Crown.
- (2) The Commission is not a trustee, or a constructive trustee, in relation to the performance of its functions or any other matter. 30
- (3) The Fund is managed by the Commission on behalf of the Crown.
- (4) All money payable into the Fund must be paid to the credit of a bank account established under section 158(1) of the Crown Entities Act 2004 (and section 65U of the Public Finance Act 1989 does not apply).

- (5) All money owing in respect of the Fund is recoverable by the Commission in a court of competent jurisdiction as a debt due to the Commission.
- (6) The Commission must comply with any requirements in the regulations relating to how payments out of the Fund are to be made.
- 106 Amounts to be paid into Fund** 5
- The following must be paid into the Fund:
- (a) levy payments under **subpart 2**:
  - (b) money payable by the Minister under **section 108 or 109**:
  - (c) money accruing from the investment of the Fund under **section 111**:
  - (d) money received from reinsurance or other risk transfer products referred to in **section 126(d)**: 10
  - (e) fines imposed for offences against this Act:
  - (f) any other money lawfully payable into the Fund.
- 107 Amounts to be paid out of Fund**
- (1) The following must be paid out of the Fund: 15
    - (a) claim settlement costs:
    - (b) expenses and capital expenditure incurred by the Commission in performing its functions under **section 126(a) to (d) or (g)**:
    - (c) expenses and capital expenditure incurred by the Commission in undertaking any other activity in the performance of its functions if the Commission believes on reasonable grounds that the activity has the potential to— 20
      - (i) provide a benefit to insured persons; or
      - (ii) reduce the future cost of providing natural hazard cover:
    - (d) repayments (with any applicable interest) of— 25
      - (i) amounts paid into the Fund under **section 108** on terms that require them to be repaid; and
      - (ii) amounts required to be repaid under **section 110**:
    - (e) refunds payable under **section 115 or 116**.
  - (2) If an expense or a capital expenditure is incurred in undertaking an activity only part of which is within the scope of **subsection (1)**, only the part of the expense or capital expenditure that is attributable to that part of the activity must be paid out of the Fund. 30
  - (3) No payment may be made out of the Fund other than those permitted by this section. 35

**108 Minister must make payments into Fund**

- (1) If the assets of the Fund are not sufficient to pay the amounts due and payable out of the Fund under **section 107**, the Minister must pay into the Fund sufficient money to enable those amounts to be paid.
- (2) The amount payable by the Minister is to be paid— 5
  - (a) by way of loan or grant; and
  - (b) on terms (including as to the payment of interest) that the Minister considers appropriate; and
  - (c) out of public money and without further appropriation than this section.

**109 Minister may make additional payments into Fund**

10

- (1) The Minister may pay into the Fund money that is additional to that required under this Act.
- (2) The amount is to be paid—
  - (a) on terms (including as to the payment of interest) that the Minister considers appropriate; and 15
  - (b) out of money appropriated by Parliament for that purpose.

**110 Repayment of amounts paid by Minister**

- (1) The Minister may, in writing, require the Commission to repay out of the Fund any amount paid into the Fund by the Minister.
- (2) The amount is to be repaid on terms (including as to the payment of interest) that the Minister considers appropriate. 20
- (3) However, the Minister cannot require an amount to be repaid if making the repayment as required would result in the Minister being required to make a payment into the Fund under **section 108**.
- (4) The Commission must comply with a requirement made by the Minister, unless doing so would result in the Minister being required to make a payment into the Fund under **section 108**. 25
- (5) Before requiring repayment under this section, the Minister must consult the Commission.
- (6) This section— 30
  - (a) does not apply to amounts paid into the Fund by way of grant under **section 108** of this Act or section 16 of the Earthquake Commission Act 1993; but
  - (b) applies to all other amounts paid into the Fund by the Minister, whether under **section 108 or 109**, the Earthquake Commission Act 1993, or otherwise, and whether paid before or after the commencement of this Act. 35

**111 Investment of Fund**

- (1) The Commission is responsible for investing the Fund.
- (2) The Commission must invest the Fund as required by—
  - (a) any direction by the Minister under section 103 of the Crown Entities Act 2004; and 5
  - (b) the funding and risk management statement (*see section 133*).
- (3) Subject to **subsection (2)**, the Commission must invest the Fund on a prudent, commercial basis that is consistent with—
  - (a) best-practice portfolio management; and
  - (b) maximising return without undue risk to the Fund as a whole; and 10
  - (c) avoiding prejudice to New Zealand’s reputation as a responsible member of the world community.
- (4) Section 100 of the Crown Entities Act 2004 does not apply in relation to the Fund.

**Subpart 2—Levy** 15**112 Levy payable for natural hazard cover**

- (1) A levy is payable in respect of a residential building that is insured under a fire insurance contract.
- (2) The rate of the levy is the rate set out in, or determined using the method set out in, the regulations. 20
- (3) The levy is payable by the fire insurer.
- (4) If there are 2 or more fire insurance contracts for a residential building, the liability for the levy is to be apportioned between the insurers in accordance with any requirements in the regulations.

**Guidance note** 25

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If the fire insurer is an overseas insurer, any insurance intermediary and the insured person may also be liable to pay the levy under **section 117**.

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**113 Payment of levy**

- (1) A fire insurer must pay the levy to the Commission—
  - (a) within 2 months after the end of the month in which the fire insurance contract is entered into, or within any other period set out in the regulations; and 30
  - (b) in the way required by the regulations.
- (2) When making the payment, the fire insurer must give to the Commission a statement, certified by an officer or agent of the insurer, that according to the 35



insurer's records and to the best of the person's knowledge and belief, the payment is correct.

- (3) A person who intentionally fails to comply with this section—
- (a) commits an offence; and
  - (b) is liable on conviction,— 5
    - (i) in the case of an individual, to imprisonment for a term not exceeding 2 months or a fine not exceeding \$25,000 (or both); and
    - (ii) in any other case, to a fine not exceeding \$50,000.

#### **114 Insured person must pay amount of levy to fire insurer**

- (1) On entering into a fire insurance contract, the insured person must pay an amount equal to the amount of the levy to the fire insurer in accordance with the fire insurance contract. 10
- (2) The amount payable is a debt due by the insured person to the fire insurer and is recoverable by the fire insurer.
- (3) If, before the amount is paid, another person becomes the insured person (or becomes 1 of the persons who are together the insured person), that person also becomes liable for the outstanding amount. 15
- (4) If 2 or more persons are liable for an amount under this section, they are jointly and severally liable for the amount.

#### **115 Waiver or refund of levy if amount not recoverable from insured person** 20

The Commission may waive a fire insurer's obligation to pay all or part of the levy in relation to a fire insurance contract, or refund an amount paid, if satisfied that,—

- (a) at the time the insurer is required by **section 113** to pay the levy, the insured person has not paid the amount payable under **section 114**; and 25
- (b) the fire insurer is unlikely to be able to recover that amount.

#### **116 Unpaid or overpaid levy**

- (1) Any unpaid levy is recoverable by the Commission under **section 105(5)**.
- (2) The Commission may refund any overpayment of the levy to the fire insurer.
- (3) The fire insurer must in turn refund the same amount to the insured person (unless the insured person has not complied with **section 114**). 30

#### **117 Liability for levy if overseas insurer**

- (1) This section applies if a fire insurer—
- (a) is not a licensed insurer; and
  - (b) does not carry on insurance business in New Zealand; and 35
  - (c) does not carry on business in New Zealand.

- (2) If the contract is negotiated (directly or indirectly) by an insurance intermediary who carries on business in New Zealand,—
- (a) the insurance intermediary is liable (jointly and severally with the fire insurer) to pay the levy; and
- (b) **sections 113 to 116, 148, and 149** apply as if the insurance intermediary were a fire insurer. 5
- (3) If the contract is negotiated (directly or indirectly) by an insurance intermediary who does not carry on business in New Zealand, the insurance intermediary and the insured person are liable (jointly and severally with each other and the fire insurer) to pay the levy. 10
- (4) If the contract is not negotiated by an insurance intermediary, the insured person is liable (jointly and severally with the fire insurer) to pay the levy.
- (5) If the insured person is liable under **subsection (3) or (4)**,—
- (a) **sections 113(1) and (3) and 116(1) and (2)** apply as if the person were a fire insurer; and 15
- (b) **section 114** does not apply.
- (6) For the purposes of this Act, a fire insurance contract to which this section applies is to be treated as being governed by New Zealand law.
- (7) In this section,—
- carry on business**, in New Zealand, has the same meaning as in section 332 of the Companies Act 1993 20
- carry on insurance business in New Zealand** has the same meaning as in section 8 of the Insurance (Prudential Supervision) Act 2010
- licensed insurer** has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010 25
- insurance intermediary** has the same meaning as in section 2(1) of the Insurance Intermediaries Act 1994.

## 118 Confidentiality of levy information

- (1) The Commission, a member of the Commission's board, or a worker must not disclose information obtained under **section 113** other than— 30
- (a) for the purposes of this Act; or
- (b) as permitted by **subsection (2)**.
- (2) The Commission may disclose the amount of levy payments received and cover provided under this Act in a manner that does not enable the amounts paid by, or attributable to, a particular fire insurer to be identified. 35
- (3) A board member or worker who intentionally fails to comply with **subsection (1)**—
- (a) commits an offence; and

- (b) is liable on conviction to a fine not exceeding,—
- (i) in the case of an individual, \$25,000; and
  - (ii) in any other case, \$50,000.
- (4) In this section, **worker** means a person who carries out work for the Commission as an employee, an agent, or in any other capacity. 5
- 119 Levy amount to be stated separately**
- In any invoice, demand, or statement of account relating to a fire insurance contract, the fire insurer must set out the amount of the levy separately from any premium or other amount.
- 120 Brokerage not to be charged** 10
- No person may require payment of any brokerage, commission, or other fee in respect of natural hazard cover, the levy, or an amount payable under **section 114**.
- 121 Charge for continuation of natural hazard cover after claim**
- (1) When a claim is settled, the Commission may charge the insured person an amount set out in, or determined using the method set out in, the regulations for the continuation of natural hazard cover for the residential building and residential land. 15
  - (2) An amount charged under this section may be—
    - (a) deducted from any amount payable to the insured person to settle the claim; or 20
    - (b) recovered from the insured person and paid into the Fund.

## Part 5

### Administration and enforcement

#### Subpart 1—Toka Tū Ake – Natural Hazards Commission 25

**122 Toka Tū Ake – Natural Hazards Commission**

The Earthquake Commission under the Earthquake Commission Act 1993 is continued with the name Toka Tū Ake – Natural Hazards Commission.

**123 Commission is Crown entity**

- (1) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004. 30
- (2) That Act applies to the Commission except to the extent that this Act expressly provides otherwise.

**124 Membership of Commission's board**

The board of the Commission consists of at least 5, and not more than 9, members appointed by the Minister under section 28 of the Crown Entities Act 2004.

**125 Objectives of Commission**

5

- (1) The Commission's primary objective is to reduce the impact of natural hazards on people, property and the community.
- (2) The Commission's more specific objectives are—
  - (a) to administer natural hazard cover, in particular by managing and settling claims, in a fair and timely manner in accordance with this Act (including the Code): 10
  - (b) to contribute to the management of the financial risk to the Crown of providing natural hazard cover by managing the Fund, collecting the levy, and purchasing reinsurance or other risk transfer products:
  - (c) to contribute, through the performance of its functions under **section 126(e) and (f)**, to— 15
    - (i) reducing the impact of natural hazard damage:
    - (ii) improving community resilience to, and recovery from, natural hazards:
    - (iii) reducing the cost of recovery from natural hazards: 20
  - (d) to facilitate the purchase by the Crown of reinsurance or other risk transfer products in respect of other Crown risks.

**126 Functions of Commission**

The Commission has the following functions:

- (a) to administer natural hazard cover, in particular by managing and settling claims: 25
- (b) to manage the Fund, including by investing the Fund, in accordance with this Act:
- (c) to collect the levy in accordance with this Act:
- (d) to purchase reinsurance or other risk transfer products in respect of all or part of natural hazard cover: 30
- (e) to facilitate research and education, and to contribute to the sharing of information, knowledge, and expertise, including in relation to—
  - (i) natural hazards and their impacts:
  - (ii) damage to residential buildings, residential land, and other property as a result of natural hazards, including methods of reducing or preventing such damage: 35
  - (iii) community resilience to natural hazards:

- (iv) natural hazard and risk management:
  - (v) planning for, and recovering from, natural hazards:
  - (vi) natural hazard cover and the operation of this Act:
  - (f) to support the Minister in performing the Minister's functions, including by providing information, knowledge, and expertise (whether in relation to the matters set out in **paragraph (e)** or in relation to other matters): 5
  - (g) to monitor compliance with this Act, investigate possible offences against this Act, and enforce this Act:
  - (h) any other functions conferred on it—
    - (i) under this or any other Act; or 10
    - (ii) by the Minister under section 112 of the Crown Entities Act 2004 (including the function of facilitating the purchase by the Crown of reinsurance or other risk transfer products in respect of other Crown risks).
- 127 Delegation of claims management functions and powers** 15
- (1) The Commission may delegate any of its functions and powers—
    - (a) under **subparts 1 and 2 of Part 3** to a licensed insurer; or
    - (b) under those subparts, other than **sections 55(1)(b)(ii) and (iii) and 58 to 62**, to any other person.
  - (2) The power of delegation in **subsection (1)** is in addition to the power in section 73 of the Crown Entities Act 2004. 20
  - (3) However, a delegation made under **subsection (1)** has effect as if it had been made under section 73 of the Crown Entities Act 2004.
  - (4) To avoid doubt, a delegation may be made to any person (whether an individual, a body corporate, or otherwise). 25
- 128 Directions by Minister**
- (1) Before giving a direction, the Minister must (if practicable) consult the persons likely to be affected by the direction.
  - (2) In giving a direction in relation to the Commission's functions under **section 126(b) and (d)**, the Minister may take the following into account: 30
    - (a) the purposes of this Act and natural hazard cover set out in **sections 3 and 4**:
    - (b) the Crown's current and possible future overall financial position, having regard to the Minister's obligations under **section 108**:
    - (c) the Crown's current and possible future overall financial position, taking into account the interests of the Crown in the entities referred to in section 27(3) of the Public Finance Act 1989: 35
    - (d) the Fund's current and possible future overall financial position.

- (3) In a direction in relation to the Commission's functions under **section 126(b) and (d)**, the Minister may specify detailed requirements or prohibitions, or both, to which the Commission must give effect.
- (4) In this section, **direction** means a direction given by the Minister to the Commission under section 103 of the Crown Entities Act 2004. 5

## Subpart 2—Financial and accountability matters

### 129 Service agreement

- (1) This section applies—
- (a) in relation to goods and services provided by the Commission to any person (including the Crown) in the performance of the Commission's functions; and 10
- (b) if the expenses and capital expenditure incurred in providing the goods and services are not payable out of the Fund under **section 107**.
- (2) The Minister and the Commission may enter into 1 or more agreements setting out— 15
- (a) the goods and services to be provided; and
- (b) which of the Commission's functions enables the Commission to provide the goods and services; and
- (c) the terms and conditions on which the Commission must or may provide the goods and services; and 20
- (d) the payment to be made by the Minister to the Commission for the provision of the goods and services.
- (3) Payments by the Minister to the Commission under the agreement must be made out of money appropriated by Parliament for that purpose.
- (4) Before providing goods or services to which this section applies, the Commission must take reasonable steps to ensure that there is an agreement in place under this section requiring the Minister to pay all expenses and capital expenditure incurred by the Commission in providing those goods or services. 25
- (5) The Commission must publish the agreement on the Commission's website.
- (6) However, the Commission is not required to publish an agreement (or part of it) if satisfied on reasonable grounds that good reason for withholding the agreement (or part of it) would exist under the Official Information Act 1982, in which case the Commission must publish that reason and the grounds supporting it. 30

### 130 Financial statements 35

- (1) The Commission's financial statements required to be prepared under section 154 of the Crown Entities Act 2004 must include a statement of revenue and expenditure for the Fund.

- 
- (2) The Commission must keep the financial records of the Fund separately from the Commission's own financial records.
- (3) The Commission may appoint a qualified auditor (as defined in section 35 of the Financial Reporting Act 2013) to be an auditor of the Fund or Commission (or both) in addition to the Auditor-General (*see* section 14 of the Public Audit Act 2001). 5
- (4) The Commission may appoint an additional auditor only with the approval of the Minister and after consulting the Auditor-General.
- 131 Financial settings and levy settings**
- (1) The **financial settings** are the monetary amounts specified in the following provisions: 10
- (a) **section 31** (building cover excess):
- (b) **sections 34, 35, and 36** (building cover caps):
- (c) **section 38** (land cover excess):
- (d) **section 42** (caps for retaining walls and bridges or culverts). 15
- (2) The **levy settings** are the rate of the levy, or the method for determining the rate of the levy, set out in the regulations made for the purposes of **section 112**.
- 132 Orders in Council to amend financial settings**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister after carrying out a review under **section 136**, amend 1 or more of the provisions referred to in **section 131** to change the financial settings. 20
- (2) The Order in Council may also make consequential amendments to **Schedule 1** (transitional, savings, and related provisions). 25
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 133 Funding and risk management statement**
- (1) At least once every 5 years the Minister must make a funding and risk management statement for the next 5 years. 30
- (2) The purpose of a funding and risk management statement is to—
- (a) support public confidence in the costs of claims being met by providing transparency about how those costs will be shared between the Fund and the Crown; and
- (b) provide transparency about how financial settings and levy settings are determined; and 35
- (c) communicate the Crown's financial strategy in relation to the funding of those costs and its impact on the financial settings and levy settings; and

- (d) set out requirements relating to the investment of the Fund that the Commission is required to comply with under **section 111(2)(b)**; and
- (e) provide guidance to the Commission in performing its functions under **section 126(b) and (d)**.
- 134 Making funding and risk management statement** 5
- (1) For the purpose of preparing the funding and risk management statement, the Minister must—
- (a) review the financial settings and levy settings in accordance with **section 136**; and
- (b) consult— 10
- (i) the Commission; and
- (ii) any other persons as the Minister considers appropriate.
- (2) A funding and risk management statement remains in force until it is replaced by a new statement (even if that results in the statement remaining in force for more than 5 years). 15
- (3) As soon as practicable after a funding and risk management statement is made,—
- (a) the Minister must present it to the House of Representatives; and
- (b) the Commission must make it available on the Commission’s website.
- 135 Content of funding and risk management statement** 20
- A funding and risk management statement must set out the following:
- (a) the financial settings and levy settings at the time the statement is made and any changes proposed to be made to them:
- (b) financial projections showing estimates of the cost of providing natural hazard cover, the amount in the Fund, and the financial implications of any changes to the financial settings or levy settings: 25
- (c) the methodology, assumptions, and forecasts used in preparing the financial projections:
- (d) the policy considerations taken into account by the Minister in conducting the review and preparing the statement: 30
- (e) the current and projected allocation of risk between the Crown and the Fund:
- (f) the Government’s strategy to reduce or finance any deficiency in the Fund:
- (g) a copy of any directions or letters of expectation relating to the Commission’s functions under **section 126(b) and (d)** given by the Minister under the Crown Entities Act 2004. 35



**136 Review of financial settings and levy settings**

- (1) The Minister must review the adequacy and appropriateness of the financial settings and levy settings—
- (a) when required for the purposes of **section 134**; and
  - (b) at any other time the Minister considers appropriate. 5
- (2) In carrying out a review, the Minister—
- (a) may have regard to the matters set out in **section 137**; and
  - (b) must consult the Commission; and
  - (c) may consult any other persons as the Minister considers appropriate.
- (3) When carrying out a review under **subsection (1)(b)**, the Minister must also review, and if appropriate update, the funding and risk management statement if— 10
- (a) the review under **subsection (1)(b)** will be completed more than 12 months before the end of the 5-year period covered by the current funding and risk management statement; and 15
  - (b) as a result of the review, the Minister proposes to recommend the making of either or both of the following:
    - (i) an Order in Council under **section 132** to make a material change to any of the financial settings;
    - (ii) an amendment to the regulations to make a material change to the levy settings. 20

**137 Matters Minister may have regard to**

In carrying out the review, the Minister may have regard to the following:

- (a) the purposes of this Act and natural hazard cover set out in **sections 3 and 4**: 25
- (b) the current financial settings and levy settings;
- (c) the Crown's current and possible future overall financial position, including—
  - (i) the Minister's obligations under **section 108**; and
  - (ii) the Crown's interests in the entities referred to in section 27(3) of the Public Finance Act 1989: 30
- (d) the current and possible future financial position of the Fund, including—
  - (i) the amount in the Fund; and
  - (ii) any amounts repayable under **section 110**; and 35
  - (iii) the Commission's risk modelling and known and expected claims; and

- (iv) the Commission's ability to purchase reinsurance or other risk transfer products:
- (e) the current funding and risk management statement:
- (f) the impact that any change to the financial settings and levy settings may have on the availability, affordability, and uptake of catastrophe insurance for residential buildings: 5
- (g) the benefit to the public of minimising volatility in the financial settings and levy settings:
- (h) any other matter the Minister considers appropriate.

### Subpart 3—Information and disclosure 10

#### *Collection and disclosure of information by Commission*

#### **138 Purposes for which Commission may collect information**

- (1) The Commission may collect information for the purpose of performing its functions under this Act.
- (2) If property-related information is collected for that purpose, it is taken to have also been collected for the purpose of making the information available (including to the public). 15
- (3) This section does not limit the Privacy Act 2020 or any other right the Commission may have to collect or disclose information.
- (4) In this section, **property-related information** means information about property (whether generally or in relation to 1 or more identified properties), including information about— 20
  - (a) natural hazard damage to the property; and
  - (b) any claims made under this Act in relation to the property (including information about the assessed cost of replacing or reinstating damaged property, reinstatement methods, and settlement amounts). 25

#### **139 Disclosure of information if serious threat to life, health, or safety**

- (1) The Commission may disclose (including to the public) any information in its possession if it believes on reasonable grounds that doing so is necessary to prevent or lessen a serious threat to public health or public safety or to the life or health of any individual. 30
- (2) This section does not limit the Privacy Act 2020 or any other right the Commission may have to collect or disclose information.
- (3) In this section, **serious threat** has the same meaning as in section 7(1) of the Privacy Act 2020. 35

**140 Disclosure to persons with proper interest**

The Commission may disclose any information (including personal information as defined in section 7(1) of the Privacy Act 2020) in its possession—

- (a) to the Crown, a Crown entity (as defined in section 7 of the Crown Entities Act 2004), or an Office of Parliament (as defined in section 2(1) of the Public Finance Act 1989); or 5
- (b) if the Commission believes on reasonable grounds that the recipient has a proper interest in receiving it—
  - (i) for performing their functions or exercising their powers; or
  - (ii) for law enforcement purposes. 10

*Information-gathering powers***141 Authorising persons to exercise information-gathering powers**

- (1) The Commission may authorise an individual to exercise any of the powers under **sections 142, 144, and 145**.
- (2) The authorisation must— 15
  - (a) be made in writing; and
  - (b) state that it is made under this section; and
  - (c) set out the following:
    - (i) the name of the individual:
    - (ii) the powers they are authorised to exercise: 20
    - (iii) the purpose for which they may exercise them:
    - (iv) the duration of the authorisation (which may be until it is revoked).

**142 Power to require information**

- (1) An authorised person may, by written notice, require a person (the **recipient**) to— 25
  - (a) give or produce to an authorised person any information, document, or other thing that the Commission reasonably needs for the purpose of performing its functions; and
  - (b) allow an authorised person to inspect and examine, and to copy or make other records of, the information, document, or thing. 30
- (2) However, this section cannot be used to obtain information, documents or things from an insured person for the purposes of assessing, deciding, or settling a claim made by the person (*see instead section 56*).
- (3) The notice may relate to information, documents, or other things that are within the recipient's possession or control or that later come into their possession or control. 35

- 
- (4) The notice must specify a reasonable period within which it must be complied with.
- (5) The notice may do 1 or more of the following:
- (a) specify the form and manner in which information, documents, or things must be provided: 5
  - (b) require the insured person to provide a statutory declaration as to the truth of information given by the person:
  - (c) otherwise specify how anything required by the notice must be done.
- (6) The regulations may also impose requirements of the kind referred to in **sub-section (5)**. 10
- (7) The recipient of a notice has the same privileges in relation to things required by the notice as a witness has in proceedings before a court.
- 

**Guidance note**

The privileges of a witness include the privilege against self-incrimination and the other privileges set out in subpart 8 of Part 2 of the Evidence Act 2006. 15

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**143 Failure to comply**

The recipient of a notice under **section 142** who fails, without lawful excuse, to comply with the notice or any regulations made for the purposes of that section—

- (a) commits an offence; and 20
  - (b) is liable on conviction to a fine not exceeding,—
    - (i) in the case of an individual, \$5,000; and
    - (ii) in any other case, \$25,000.
- 

**Guidance note**

Giving misleading information is an offence under **section 150**. 25

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**144 Power of entry**

- (1) For the purpose of obtaining information that the Commission reasonably needs for the purpose of performing its functions, an authorised person—
- (a) may, at any reasonable time, enter any land, building, or place (the **target place**); and 30
  - (b) having done so, inspect and examine the target place and anything found on or in it.
- (2) Before the authorised person enters the target place, the occupier must be given reasonable notice (orally or in writing) of the intended entry unless it is impracticable to do so. 35

- 
- (3) If notice is not given before entry and the occupier is not present when entry occurs, the occupier must be given written notice of the entry as soon as practicable after it occurs.
- (4) A notice under **subsection (2) or (3)** must state—
- (a) that entry to the target place is authorised by this section; and 5
  - (b) the purpose for which entry is required or was made; and
  - (c) how and when entry is to be, or was, made.
- (5) An authorised person entering the target place must—
- (a) have with them evidence of their identity and their authorisation under **section 141**; and 10
  - (b) produce that evidence to the occupier,—
    - (i) if practicable, when first entering the target place; and
    - (ii) subsequently, if reasonably requested by the occupier.
- (6) This section does not apply in circumstances in which **section 145** applies.
- 145 Power to enter if investigating offence** 15
- (1) An authorised person must not enter any land, building, or place for the purpose of—
- (a) ascertaining whether an offence against this Act has been committed; or
  - (b) obtaining evidential material in relation to an offence or a suspected offence against this Act,— 20
- except with the consent of an occupier or under a search warrant.
- (2) An authorised person may apply to an issuing officer (as defined in the Search and Surveillance Act 2012) for a warrant.
- (3) The issuing officer may issue a warrant if satisfied that there are reasonable grounds to believe that— 25
- (a) an offence against this Act has been, is being, or is intended to be committed; and
  - (b) there is evidential material in relation to the offence on or in the land, building, or place.
- 
- Guidance note** 30
- Part 4 of the Search and Surveillance Act 2012 (other than sections 118 and 119 and subpart 8) applies in relation to this section.
- 
- 146 Obstructing authorised persons**
- (1) A person must not intentionally obstruct, resist, hinder, or deceive an authorised person in the exercise of a power under **section 142, 144, or 145**. 35
- (2) A person who fails to comply with this section—

- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding,—
  - (i) in the case of an individual, \$25,000; and
  - (ii) in any other case, \$50,000.
- (3) However, the person has the same privileges in relation to the exercise by the authorised person of their powers as a witness has in proceedings before a court. 5

#### 147 Restrictions on recording or disclosing information

An authorised person must not make a record or copy of, or disclose, information obtained in the exercise of a power under **section 142, 144, or 145** other than— 10

- (a) to the Commission; or
- (b) for an authorised purpose; or
- (c) for the purposes of any legal proceedings; or
- (d) if required or permitted to do so under this or any other Act. 15

#### *Fire insurers' information obligations*

#### 148 Record keeping

- (1) A fire insurer must keep records of their fire insurance contracts.
- (2) For each contract, the records must include the following:
  - (a) the name of the insured person: 20
  - (b) details identifying the building and dwellings insured under the contract:
  - (c) if the contract insures more than 1 dwelling,—
    - (i) the number of insured dwellings; and
    - (ii) if the insured dwellings are in more than 1 building, the number of them in each building: 25
  - (d) the date on which the insurance cover started and each renewal date:
  - (e) the information necessary to enable the building cap under **sections 34 to 36** (as applicable) to be calculated:
  - (f) the amount and date of payment of each levy payment made in respect of the contract: 30
  - (g) details of any property that is not insured under the contract but would be part of the residential building if it were insured under the contract:
  - (h) any other information required by the regulations.
- (3) The records must be kept—
  - (a) for 25 years after the expiry of the contract, or any other period required by regulations; and 35

- (b) in the way required by the regulations.
- (4) A fire insurer who fails, without lawful excuse, to comply with this section—
  - (a) commits an offence; and
  - (b) is liable on conviction to a fine not exceeding,—
    - (i) in the case of an individual, \$5,000; and 5
    - (ii) in any other case, \$25,000.

#### **149 Auditing and reporting to Commission**

- (1) A fire insurer must comply with any requirements in the regulations relating to—
  - (a) the auditing of the information the fire insurer is required to keep under this Act; and 10
  - (b) giving reports or other information about the fire insurer's contracts of fire insurance to the Commission.
- (2) A fire insurer who fails, without lawful excuse, to comply with this section—
  - (a) commits an offence; and 15
  - (b) is liable on conviction to a fine not exceeding,—
    - (i) in the case of an individual, \$5,000; and
    - (ii) in any other case, \$25,000.

#### *Offences about information generally*

#### **150 Misleading information** 20

- (1) A person not give misleading information to the Commission or an authorised person.
- (2) A person who fails to comply with this section—
  - (a) commits an offence; and
  - (b) is liable on conviction to a fine not exceeding,— 25
    - (i) in the case of an individual, \$25,000; and
    - (ii) in any other case, \$50,000.
- (3) In this section, **misleading information** means information that is false, misleading in a material particular, or misleading because of the omission of a material particular. 30

#### **151 Misleading information or damaging required records**

- (1) A person must not intentionally—
  - (a) include misleading information in a required record; or
  - (b) alter a required record so that information in it becomes misleading information. 35

- (2) A person must not intentionally damage or destroy a required record.
- (3) A person who fails to comply with this section—
- (a) commits an offence; and
  - (b) is liable on conviction to a fine not exceeding,—
    - (i) in the case of an individual, \$25,000; and 5
    - (ii) in any other case, \$50,000.
- (4) In this section,—
- misleading information** means information that is false, misleading in a material particular, or misleading because of the omission of a material particular 10
- required record** means a record of information that a person is required to keep under this Act.

*Attribution of liability*

**152 Meaning of senior manager and worker**

- (1) This section applies for the purposes of **sections 153 and 154**. 15
- (2) A person (**person A**) is a **senior manager** of another person (**person B**) if any of the following applies:
- (a) person A is a director of person B (as defined in section 6(1) of the Financial Markets Conduct Act 2013):
  - (b) person A occupies a position in relation to person B that allows person A to exercise significant influence over the management or administration of person B (for example, a chief executive or a chief financial officer): 20
  - (c) person A is otherwise able, whether directly or through 1 or more interposed entities, to exercise significant influence over the management or administration of person B. 25
- (3) A person (**person A**) is a **worker** of another person (**person B**) if person A carries out work for person B as an employee, an agent, or in any other capacity.

**153 Attribution of offence committed by senior manager or worker**

- (1) If a senior manager or worker of a person (**person B**) commits an offence in the course of carrying out their duties or work, and the act or omission constituting the offence occurred with person B's authority, permission, or consent, person B is taken to have also committed the offence. 30
- (2) This section does not apply if person B is the Commission.

**154 Attribution of state of mind of senior managers and workers**

- (1) This section applies in a prosecution for an offence against this Act if— 35



- (a) the prosecution relates to conduct engaged in by a person (**person B**); and
- (b) it is necessary to establish the state of mind of person B.
- (2) It is sufficient to show that a senior manager or worker of person B, acting within the scope of their actual or apparent authority, had that state of mind. 5
- (3) However, this section does not apply if person B is an individual.

## Part 6 Miscellaneous provisions

### 155 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations— 10
  - (a) providing for anything that this Act says may or must be provided for by regulations:
  - (b) exempting any class of residential building or residential land from the application of any provision of this Act or the regulations: 15
  - (c) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

### 156 Orders in Council to amend Schedule 2 20

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend **Schedule 2** (excluded property).
- (2) However, an Order in Council cannot amend **Schedule 2** to include in the schedule property that is part of a dwelling.
- (3) The Minister must not recommend that an Order in Council be made unless satisfied that the amendment is necessary or desirable to do 1 or more of the following: 25
  - (a) remove ambiguity about whether property of a particular kind is or is not excluded property:
  - (b) modernise the kinds of property that is or is not excluded property (for example, as a consequence of technological changes): 30
  - (c) make other changes of a minor or technical nature.
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

### 157 Commission may approve forms 35

- (1) The Commission may approve forms for use under this Act.

- (2) If a form is approved for doing a thing, the thing must be done using that form.

**158 Repeal and revocation**

- (1) The Earthquake Commission Act 1993 (1993 No 84) is repealed.  
(2) The Earthquake Commission Regulations 1993 (SR 1993/345) are revoked.

**159 Consequential amendments**

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

5

**Schedule 1**  
**Transitional, savings, and related provisions**

s 25

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**Part 1**

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**Part 1**

**Provisions relating to this Act as enacted**

5

**1 Interpretation**

In this Part,—

**commencement date** means the date on which this Act commences under **section 2**

**EQC Act** means the Earthquake Commission Act 1993

**natural disaster** has the same meaning as in the EQC Act

**natural disaster damage** has the same meaning as in the EQC Act. 5

### *Cover and claims*

#### **2 Act applies to natural hazard damage occurring on or after commencement date**

- (1) This Act—
- (a) applies in relation to natural hazard damage that occurs on or after the commencement date; and 10
  - (b) does not apply in relation to natural disaster damage that occurred before the commencement date, unless this Part provides otherwise.
- (2) If property suffers natural disaster damage before the commencement date, any further damage to the property that occurs after the commencement date but before the expiry of the applicable period under clause 1 of Schedule 3 of the EQC Act is, for the purposes of **clause 3(1)**, taken to have occurred before the commencement date. 15

#### **3 EQC Act applies to prior natural disaster damage**

- (1) The EQC Act continues to apply (as if it had not been repealed by **section 158**) in relation to natural disaster damage that occurred before the commencement date (including damage that is deemed by **clause 2(2)** to have occurred before that date). 20
- (2) **Subparts 4 to 6 of Part 3** of this Act apply (with any necessary modifications) in relation to anything that is done or occurs after the commencement date in relation to a claim made under the EQC Act. 25
- (3) **Subpart 7 of Part 3** of this Act does not apply in relation to claims made—
- (a) before the commencement date under the EQC Act; or
  - (b) after the commencement date under the EQC Act as continued by this Part. 30

#### **4 Cancellation and limitation of liability**

If, before the commencement date,—

- (a) the Commission had—
  - (i) cancelled cover for a residential building or residential land under clause 4 of Schedule 3 of the EQC Act; or 35
  - (ii) limited its liability for future natural disaster damage under clause 5 of Schedule 3 of the EQC Act; and

- (b) as at the commencement date the cover had not been reinstated or the limitation had not been removed,—

the cancellation or limitation continues on and after the commencement date as if it had been effected under **section 47 or 48**.

- 5 Declining a claim** 5
- (1) If the criteria in **sections 65 to 74** giving rise to grounds to decline a claim include something being done or occurring, the criteria include a reference to the thing having being done or occurred before the commencement date.
- (2) For the purposes of **subclause (1)**, those sections are to be read with any necessary modifications. 10
- 6 Insurance conditions in mortgage, etc, apply to natural hazard cover**
- Section 76** applies in relation to a mortgage, lease, or other document whether executed or made before, on, or after the commencement date.
- Fund and levy*
- 7 Money, investments, and assets of Fund** 15
- (1) All money and other investments that form part of the Fund immediately before the commencement date continue to be part of the Fund.
- (2) However, on the commencement date, any other assets of the Commission cease to be part of the Fund (but continue to be assets of the Commission).
- 8 Amounts to be paid into or out of Fund** 20
- An amount must be paid into or out of the Fund if—
- (a) it became payable under the EQC Act before the commencement date or becomes payable on or after that date under that Act as continued by this Part; and
- (b) it would have been payable into or out of the Fund under section 14 or 15 of the EQC Act. 25
- 9 Debts, liabilities, and obligations**
- (1) All debts, liabilities, and other obligations owed by or to the Commission immediately before the commencement date continue to be owed on and after that date. 30
- (2) To the extent that the EQC Act applied in relation to a debt, a liability, or an obligation, it continues to apply on and after the commencement date despite the repeal of that Act by **section 158**.

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**Example**

If a fire insurer enters into a contract of fire insurance before the commencement date but has not yet paid the premium under sections 23 and 24 of the EQC Act, 35

the liability to pay the premium continues on and after that date and the EQC Act continues to apply in relation to it.

---

*Commission*

**10 Ministerial directions**

A direction that is given to the Commission by the Minister under the Crown Entities Act 2004 for the purposes of the EQC Act and that is in force immediately before the commencement date continues in force (with any necessary modifications) as a direction for the purposes of this Act. 5

**11 Share capital of EQC**

On the commencement date, all shares in the Commission (referred to in section 7 of the EQC Act) are cancelled and the Commission ceases to have any share capital. 10

*Financial and accountability matters*

**12 Funding and risk management statement**

- (1) The first funding and risk management statement under **section 133** must take effect on the commencement date. 15
- (2) In relation to that statement,—
- (a) **section 134(1)(a)** does not apply; and
- (b) the reference in **section 134(1)(b)** to consultation includes consultation undertaken before the commencement date. 20

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**Guidance note**

Section 43 of the Legislation Act 2019 allows certain powers in an Act to be exercised before the Act commences.

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*Information and disclosure*

**13 Information collected before commencement** 25

**Subpart 3 of Part 5** applies to information collected by the Commission before the commencement date, or after that date for the purpose of performing the Commission's functions under the EQC Act as continued by this Part, as if that information had been collected by the Commission for the purpose of performing its functions under this Act. 30

**14 Fire insurers' duty to keep records**

- (1) **Section 148** applies to the records of contracts of fire insurance that an insurance company was required to keep under section 26 of the EQC Act.

- 
- (2) However, those records need not include any of the details referred to in **section 148** that were not required to be included under section 26 of the EQC Act.
- (3) This clause does not affect any other obligation a fire insurer may have to keep records. 5

*Other matters*

**15 References to EQC Act or defined terms**

- (1) On and after the commencement date, an existing reference to the EQC Act is taken to include a reference to this Act.
- (2) On and after the commencement date, an existing reference to something using a term defined in the EQC Act is taken to include a reference to the thing referred to by the equivalent term as defined in this Act. 10
- (3) This clause applies unless the context otherwise requires.
- (4) In this clause, **existing reference** means a reference in a document or other information that was made or recorded before the commencement date and that, as at the commencement date, had ongoing effect. 15

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**Example**

If an insurance policy made before the commencement date refers to natural disaster damage (as defined in the EQC Act), on and after the commencement date it is taken to also refer to natural hazard damage (as defined in this Act). 20

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**16 FENZ levy for FENZ transitional period**

For the purposes of clause 28(1) of Schedule 1 of the Fire and Emergency New Zealand Act 2017, if a residential building has natural hazard cover under this Act, it is taken to be insured under section 18 of the EQC Act as if that Act had not been repealed. 25

## Schedule 2

### Excluded property

ss 5, 6, 9, 11, 12, 13, 14, 17

#### 1 Uninsured property excluded

Property that would, but for this schedule, be part of a residential building is excluded property if it is not insured under the fire insurance contract for the residential building. 5

#### 2 Property excluded except in limited circumstances

(1) The property listed in table 1 is excluded property unless—

- (a) it is an integral component of an eligible building; or 10
- (b) it is an integral component of, but does not constitute the main use and purpose of, property that is an appurtenant structure, service infrastructure, common property, or joint property.

##### Examples

1. A free-standing mailbox at the end of a driveway would be excluded under **item 2 of table 1**, but a mailbox that is built into the wall of a garage (which is an appurtenant structure) would not be excluded because of **subclause (1)(b)**. 15

2. If a rotary hoist clothes line is an appurtenant structure, a pole that is an integral part of it would not be excluded under **item 6 of table 1**.

3. If a tank holding water used to water a garden is an integral part of a garage, the tank would not be excluded under **item 8 of table 1** because the garage is an appurtenant structure and the tank is not the main purpose for the garage. However, if the tank is part of a shed the whole purpose of which is to house the tank, the tank would be excluded under **item 8 of table 1**. Further, once the tank is excluded, the shed would not meet the definition of appurtenant structure and so would not be covered by natural hazard cover. 20 25

(2) A vehicle (including a motor vehicle, trailer, boat, or aircraft) is excluded property unless—

- (a) it is a dwelling under **section 6(5)**; or
- (b) it would, but for this schedule, be an appurtenant structure, common property, or joint property. 30

##### Example

If a cable car structure that provides access to a house is an appurtenant structure, the moving cable car is not excluded by **subclause (2)** because it is part of the appurtenant structure. 35

##### Table 1

Item	Excluded property
1	Fences
2	Mailboxes



<b>Item</b>	<b>Excluded property</b>
3	Paths, driveways, stairs, walkways, and other forms of access
4	Paving and other artificial surfaces
5	Retaining walls that are not retaining walls for a residential building as defined in <b>section 18</b>
6	Other walls and poles
7	Bridges or culverts that are not bridges or culverts for a residential building as defined in <b>section 18</b>
8	Tanks and other structures used to store water or other liquids, but not— <ul style="list-style-type: none"> <li>• water tanks and water towers used to store water for supply to a residential building; and</li> <li>• septic tanks.</li> </ul>

**3 Property excluded in all circumstances**

The property listed in table 2 is excluded property.

**Table 2**

<b>Item</b>	<b>Excluded property</b>
1	Swimming pools, spas, and baths and structures ancillary to them (unless they are inside, and are an integral component of, an eligible building)
2	Sports fields and courts (such as tennis courts and football fields) and structures ancillary to them
3	Living things (such as plants and fungi)
4	Drainage ditches and other open drains, channels, tunnels, and cuttings
5	Jetties, wharves, and landings
6	Dams, reservoirs, breakwaters, moles, and groynes

**4 Effect on land of being excluded property**

The land on or within which excluded property is situated is not excluded property by reason only of the property on or within it being excluded property. 5

### Schedule 3 Consequential amendments to other Acts

s 159

#### Canterbury Earthquakes Insurance Tribunal Act 2019 (2019 No 21)

In section 5, replace the definition of EQC with:

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**Earthquake Commission Act 1993** means that Act as in force before its repeal by **section 158** of the Natural Hazards Insurance Act **2022**, and section 38 of the Legislation Act 2019 does not apply

**EQC** means the Crown entity continued under section 4 of the Earthquake Commission Act 1993 with the name Earthquake Commission, and, after the commencement of the Natural Hazards Insurance Act **2022**, continued under **section 122** of that Act with the name Toka Tū Ake – Natural Hazards Commission

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#### Civil Defence Emergency Management Act 2002 (2002 No 33)

In section 109(8), replace “Earthquake Commission Act 1993” with “Natural Hazards Insurance Act **2022**”.

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In section 109(8), replace “disaster” with “hazard” in each place.

#### Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 1,—

(a) repeal the item relating to the Earthquake Commission; and

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(b) insert in its appropriate alphabetical order:

Toka Tū Ake – Natural Hazards Commission	✓	✓	✓	✓	✓
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#### Fire and Emergency New Zealand Act 2017 (2017 No 17)

In section 160(2)(a), replace “Earthquake Commission Act 1993” with “Natural Hazards Insurance Act **2022**”.

In section 160(2), replace “disaster” with “hazard” in each place.

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Replace section 160(3) with:

(3) In this section, **natural hazard damage** has the same meaning as in **section 24** of the Natural Hazards Insurance Act **2022**.

#### Income Tax Act 2007 (2007 No 97)

In Schedule 29, item 6, replace “The Earthquake Commission” with “Toka Tū Ake – Natural Hazards Commission”.

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**Insurance (Prudential Supervision) Act 2010 (2010 No 111)**

In section 8(2)(a), replace “the Earthquake Commission” with “Toka Tū Ake – Natural Hazards Commission”.

**Ombudsmen Act 1975 (1975 No 9)**

In Schedule 1, Part 2,—

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- (a) repeal the item relating to the Earthquake Commission; and
- (b) insert in its appropriate alphabetical order:  
Toka Tū Ake – Natural Hazards Commission

**Privacy Act 2020 (2020 No 31)**

In section 138, definition of **specified organisation**,—

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- (a) repeal paragraph (d); and
- (b) after paragraph (i), insert:  
(ia) Toka Tū Ake – Natural Hazards Commission:

**Search and Surveillance Act 2012 (2012 No 24)**

In the Schedule, insert in its appropriate alphabetical order:

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Natural Hazards Insurance Act <b>2022</b>	<b>145</b>	Power to enter if investigating offence	All (except sections 118 and 119 and subpart 8)
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