

Canterbury Earthquakes Insurance Tribunal Bill

Government Bill

Explanatory note

General policy statement

Purpose

This Bill establishes the Canterbury Earthquakes Insurance Tribunal (the **tribunal**). The tribunal's purpose is to provide speedy, flexible, and cost-effective services to help resolve insurance claims between policyholders and insurers (including Southern Response Earthquake Services Limited) and insured persons and the Earthquake Commission under the Earthquake Commission Act 1993 (the **Act**). Claims must relate to damage to residential buildings, property, or land caused by the series of Canterbury earthquakes that occurred in 2010 and 2011. Insurance claim is defined in the Bill as including a claim by a policyholder under a contract of insurance with an insurer or a claim made by an insured person under the Act.

Policy objective of tribunal

The tribunal will be an independent judicial body that provides policyholders and insured persons with an alternative pathway to resolve their insurance claims that is speedy, flexible, and cost-effective. Seven years on from the Canterbury earthquakes, the tribunal will aid in resolving these long-standing insurance claims and, in doing so, assist policyholders and insured persons to obtain some closure and help them get on with their lives.

Tribunal's jurisdiction

The Bill provides that policyholders and insured persons can apply to the tribunal to help resolve their outstanding insurance claims. The tribunal—

- will only be able to consider claims between policyholders and insurers or insured persons and the Earthquake Commission:

- may join other potentially liable parties to the claim where necessary for the fair and speedy resolution of a claim:
- will decide claims based on existing law and (if relevant) the terms of the insurance contract between the parties:
- will not consider claims relating to properties that have been sold following the damage to which the claim relates, because these types of claims are novel and legally complex and will continue to be considered by the courts.

Where a claim has already been filed in the court, policyholders and insured persons will be able to apply for the claim to be transferred to the tribunal.

Policyholders, insurers, insured persons, and the Earthquake Commission can still file claims about their insurance disputes with the courts or access any other dispute resolution services that are available.

Key features of tribunal

The tribunal will—

- be a specialist disputes resolution body that will develop expertise in managing Canterbury earthquake-related insurance claims:
- apply existing law and precedent:
- take an inquisitorial approach to proceedings:
- take a proactive approach to case management; for example, by setting time frames for providing information, or convening conferences of experts:
- appoint independent expert advisers to assist it, for example, on construction, geotechnical, engineering, or any other matters necessary to support the resolution of disputes:
- direct parties to independent mediation where it considers mediation may be helpful to resolve the dispute or narrow down the points at issue:
- have the power to order any remedy that a court can order, and a tribunal decision will be enforced as a District Court order:
- have the power to award general damages against parties as appropriate; for example, for mental stress:
- have the power to award costs against parties as appropriate; for example, if a party causes unreasonable delay during the tribunal process.

Parties will be able to appeal against decisions of the tribunal on questions of fact and law to the High Court, with leave of the High Court, and on questions of law only to the Court of Appeal and the Supreme Court.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about

the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=82>

Regulatory impact assessment

The Ministry of Justice produced regulatory impact assessments on 14 February 2018 and 4 July 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of these regulatory impact assessments can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/regulatory-impact-statements>
- <https://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and says that *sections 6, 8 to 52, 62, and 64 and Schedule 1 and Part 1 of Schedule 2* come into force on a date set by Order in Council, and 1 or more orders may be made bringing these provisions into force on different dates. Any provision not brought into force by **25 March 2019** comes into force on that day. The rest of the Act comes into force on the day after the date of Royal assent.

Delayed commencement is needed for the specified provisions to allow time for the tribunal to be established, including for the appointment of its members, and for associated processes to be implemented.

Part 1

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

Subpart 1—Purpose and preliminary provisions

Clause 3 states the purpose of the Bill, which is to provide speedy, flexible, and cost-effective services for resolving disputes about insurance claims for physical loss or damage to residential buildings, property, and land arising from the Canterbury earthquakes.

Clause 4 sets out an overview of the Bill to assist with navigation of the Bill's provisions.

Clause 5 lists definitions of terms used in the Bill. Three key defined terms are Canterbury earthquakes, insurance claim, and insurer. For the purposes of the Bill,—

- Canterbury earthquakes means 1 or more earthquakes and aftershocks in the period from 4 September 2010 until the close of 31 July 2011:
- insurance claim means both a claim under a contract of insurance by a policyholder to an insurer and a claim made under the Earthquake Commission Act 1993 by an insured person to the Earthquake Commission (EQC):
- insurer means a person who is liable as the insurer under a contract of insurance in respect of a residential building or residential property, and includes Southern Response Earthquake Services Limited.

The definition of an insurance claim is different from that of a claim. In the Bill, a claim means a claim that is before the tribunal because the chairperson has accepted an application to the tribunal, or a court has transferred proceedings to the tribunal.

Clause 6 is the operative provision for *Schedule 1*, which contains transitional, savings, and related provisions. There are 2 transitional provisions relating to *clauses 16 and 17* in that schedule.

Clause 7 says that the Bill binds the Crown.

Subpart 2—Eligibility criteria and parties to claim before tribunal

Clause 8 says that this Bill applies to 2 types of disputes. The first type of dispute is between policyholders and insurers about insurance claims for physical loss or damage arising from the Canterbury earthquakes to a residential building or residential property. The second type of dispute is between insured persons and the EQC about insurance claims for physical loss or damage arising from the Canterbury earthquakes to a residential building or residential land, or both. This Bill does not, however, apply if the ownership of the building, property, or land has been transferred to the policyholder or insured person under a sale and purchase agreement following the physical loss or damage giving rise to the insurance claim. Definitions of residential building, residential land, and residential property are specific to the type of dispute and are provided in this clause.

Clause 9 sets out the eligibility criteria for bringing a claim before the tribunal. The claim—

- must arise from a dispute between the parties under *clause 8*; and
- must seek resolution of liability, or remedies, or both; and
- must be within the jurisdiction of the tribunal to make an order under *clause 44*.

Clause 10 describes the 2 ways in which a claim may be brought to the tribunal. The first way is by a person making an application to the tribunal under *clause 12* that is accepted by the chairperson under *clause 13*. Only a person who is a policyholder or an insured person (or both) may bring a claim against an insurer or the EQC (or both) by making an application to the tribunal. The second way that a claim may be brought is by the transfer of proceedings from the District Court or the High Court to the tribunal, which is described in *clause 16*.

Clause 11 sets out the power of the tribunal to order that a third party respondent be joined to a claim before the tribunal or a party be removed from a claim. The tribunal may do so if it is necessary for the fair and speedy resolution of the claim. In addition, the tribunal may order that an insurer or the EQC be joined as a respondent to a claim, but only if the claimant is both a policyholder and an insured person. *Clause 11* also says that if a specified respondent is removed from a claim and only a third party respondent remains, a claim is to be treated as withdrawn. In that case, the Bill allows the claimant to file a claim against the third party respondent in another forum within 6 months of the date on which the order to remove the specified respondent was made. This is allowed even if the time for filing a claim in the other forum has passed, but only if the original claim before the tribunal was brought within any applicable limitation period.

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

Bringing claims by application to tribunal

Clause 12 says that a person who is a policyholder or an insured person (or both) may bring a claim by applying to the tribunal. This clause sets out the components of an application and specifies the filing date of an application.

Clause 13 sets out the basis on which the chairperson may accept an application to the tribunal.

Clause 14 requires the claimant to serve notice of a claim before the tribunal on the respondent (or respondents), unless the tribunal serves notice of the claim on the claimant's behalf.

Clause 15 sets out the time of 15 working days within which a respondent may file with the tribunal a written response and supporting documentation and serve a copy on the claimant and any other respondent.

Bringing claims to tribunal by transfer of proceedings from court

Clause 16 describes the way in which a claim may be brought to the tribunal by the transfer of proceedings from a court. Only a policyholder or an insured person can make an application for transfer. However, as well, in cases where they are the plaintiff, a Judge may transfer the proceedings to the tribunal on the Judge's own motion. A Judge's ability to order that proceedings be transferred differs depending on whether the person who is the policyholder or insured person is the plaintiff or the defendant in the proceedings. If the policyholder or insured person is the plaintiff, the Judge may make an order if the proceedings meet the eligibility criteria under *clause 9* and the Judge believes that the transfer to the tribunal is in the interests of justice. If the policyholder or insured person is the defendant, the Judge must be satisfied about both those matters and, as well, the insurer or the EQC (or both) must agree to the transfer because they will become the claimant or claimants before the tribunal.

Ineligible claims because of proceedings in another forum

Clause 17 prevents a person from bringing a claim before the tribunal under *clause 12* if arbitration or proceedings have been commenced or decided in another forum. The exception is where proceedings are transferred under *clause 16*.

Clause 18 applies to a person who is already a claimant before the tribunal. If a claimant commences proceedings in a court or the Disputes Tribunal or commences arbitration, the claimant must notify the tribunal and the claim is to be treated as having been withdrawn.

Status and effect of claim under other enactments

Clause 19 describes the status and effect of a claim before the tribunal under other enactments.

Subpart 4—Case management

Clause 20 sets out some basic requirements for case management by the tribunal for the first case management conference and for further case management conferences, up to the point in time when parties begin to prepare for a hearing. (A separate case management provision is contained in *clause 37*, which sets out requirements for case management by the tribunal at the adjudication stage.) *Clause 20* says that when managing claims, the tribunal must have regard to the purpose of this Bill, which is to provide speedy, flexible, and cost-effective services. In particular, the tribunal—

- must encourage the parties to work together on matters that are agreed;
- if experts are used, must consider using conferences of experts to avoid duplication of advice or evidence on matters that are or are likely to be agreed.

The tribunal must comply with the rules of natural justice when managing claims. However, this does not require the tribunal to use or allow the use of experts unless, in the tribunal's opinion, it is necessary to do so.

(The term experts is defined in *clause 5* as including both expert advisers appointed by the tribunal and experts retained by parties as advisers or witnesses.)

First case management conference

Clause 21 sets out the notification date requirement for the first case management conference.

Clause 22 sets out attendance requirements at the first case management conference.

Clause 23 sets out who may accompany a party at the first case management conference.

Clause 24 describes the types of matters that the tribunal may deal with at the first case management conference. This includes, if a respondent is joined to the claim, a requirement for the tribunal to notify that respondent and specify a date by which a response and information or documents must be filed and served on the other parties.

Clause 24 also sets out requirements relating to expert advisers and says that the first case management conference must be held in private.

Clause 25 requires expert advisers appointed by the tribunal to act independently. When being considered for appointment or after being appointed, they must disclose any conflicts of interest to the tribunal and the parties. They must not accept the appointment or must withdraw from acting unless all the parties agree otherwise. A party who agrees to an expert adviser being appointed or continuing to act forfeits any right to object to the expert adviser acting on the basis of the conflict of interest that was disclosed.

Further case management

Clauses 26 to 28 relate to further case management by the tribunal following the first case management conference (up to the point in time when parties begin to prepare for hearing).

Clause 26 allows the tribunal to hold any number of case management conferences and to otherwise communicate with the parties in any way it considers is efficient, to progress the claim. If a party is not a natural person, the tribunal may require the attendance of an individual who is authorised to bind the party. A case management conference must be conducted in private and may be conducted by telephone or audiovisual link or similar technological means. The tribunal may direct that the number of participants at a conference be limited to allow for the efficient conduct of the conference.

Clause 27 sets out the powers the tribunal has when conducting a case management conference (following the first case management conference) or communicating with the parties. The powers include 2 general powers to request, direct, or order the parties to do anything provided for in *Part 1 of Schedule 2*, and to issue any reasonable directions for resolving a claim. If a respondent is joined to a claim, the tribunal must do the things listed in *clause 24(2)*, which involves notifying that respondent and specifying a date by which a response and information or documents must be filed and served on the other parties. *Clause 27* also sets out requirements relating to expert advisers.

Clause 28 allows the tribunal to transfer a claim to a court if it would be appropriate because—

- the claim presents undue complexity;
- the claim is a novel claim;
- the subject matter of the claim is related to the subject matter of proceedings that are already before the court.

A transfer can occur at any time before the tribunal makes an assessment of liability. A claim that is transferred to a court goes to the District Court if it is within the monetary jurisdiction of the court (as stated in section 74 of the District Court Act 2016). All other claims must be transferred to the High Court.

Part 2

Mediation and adjudication of claims

Subpart 1—Mediation

Clause 29 provides that this subpart applies where the tribunal directs the parties to mediation.

Clause 30 provides for mediators to be employed or engaged to assist parties to resolve claims promptly and effectively through mediation. It also confirms that parties are not prevented from mediating their dispute using other mediation services.

Clause 31 provides that mediators must act independently and must be independent of the parties. If a mediator has a conflict of interest, the mediator must disclose the conflict of interest and (unless the parties agree otherwise) step down as mediator.

Clause 32 confers a broad discretion on the mediator to decide what mediation services are appropriate to a claim. However, it is for the parties to apply to the tribunal for more time for mediation if they agree that they require it, and the mediator cannot determine any matter, even if the parties ask the mediator to do so.

Clause 33 provides that any information or document created or disclosed for the purposes of mediation must be kept confidential.

Clause 34 requires the mediator to notify the tribunal within 5 days of becoming aware that a claim (or part of a claim) has been settled. It also provides for agreed terms of settlement to be provided to the chief executive (defined in *clause 5*) and for the agreed terms of settlement to be used by the department for research, educational, monitoring, or evaluation purposes, provided the parties and the specifics of the dispute are not identifiable.

Clause 35 provides that the parties to a claim (or part of a claim) that has been settled may apply to the tribunal for the agreed terms of settlement to be recorded as a decision of the tribunal. Such a decision, once filed in the District Court, is then enforceable in accordance with the Bill.

Clause 36 provides that mediation services provided under this subpart cannot be challenged on the basis that the nature or content (or both) of the services was inappropriate or that the manner in which the services were provided was inappropriate.

Subpart 2—Adjudication, enforcement, and appeals

Clause 37 sets out some basic requirements for the tribunal when managing the adjudication of claims (including at hearings). The provision repeats the requirements contained in the general case management provision in *clause 20* but also contains an additional requirement and an additional power which are particularly relevant at the adjudication stage. *Clause 37* says that when managing claims at this stage, the tribunal must have regard to the purpose of this Bill, which is to provide speedy, flexible, and cost-effective services. In particular, the tribunal—

- must encourage the parties to work together on matters that are agreed:
- must not admit or permit unnecessary or irrelevant evidence or cross-examination:
- if experts are used, must consider using conferences of experts to avoid duplication of advice or evidence on matters that are or are likely to be agreed.

The tribunal is required to comply with the rules of natural justice when managing claims at the adjudication stage. However, this does not require the tribunal to—

- permit the cross-examination of a party or person, but it may in its absolute discretion do so:
- use or allow the use of experts unless, in the tribunal's opinion, it is necessary to do so.

The term experts is defined in *clause 5* as including both expert advisers appointed by the tribunal and experts retained by parties as advisers or witnesses.

Clause 38 says that if adjudication is necessary to resolve a claim, the tribunal must set a date for a case management conference to prepare for the hearing. The focus of that conference is to identify issues on which the parties are agreed and the core issues in dispute, and to decide whether parties need to be joined to or removed from the claim. If a respondent is joined to a claim, the tribunal must do the things listed in *clause 24(2)*, which involves notifying that respondent and specifying a date by which a response and information or documents must be filed and served on the other parties. *Clause 26* (relating to flexibility for the tribunal when dealing with the parties) applies to a case management conference under this clause.

Clause 39 sets out the powers the tribunal has when preparing for a hearing and at the hearing. The powers include 2 general powers to request, direct, or order the parties to do anything provided for in *Part 1 of Schedule 2*, and to issue any reasonable directions for resolving the claim. *Clause 39* repeats some of the powers in the general case management provision in *clause 27*, but also contains additional powers relevant at the adjudication stage. An example of a repeated power is the power to appoint an expert adviser. An example of a power particularly relevant to the adjudication stage is the power to direct that evidence be exchanged.

Clause 39 also states that *clause 28* (relating to the transfer of a claim to a court) applies at the adjudication stage.

Clause 40 says that the appointment of an expert adviser under *clause 39(1)(f)* is at the absolute discretion of the tribunal. However, the parties must be given a reasonable opportunity to comment before an appointment is made. *Clause 40* also states that *clause 25* (relating to the independence of expert advisers) applies at the adjudication stage. Expert advisers must act in accordance with practice notes issued by the chairperson of the tribunal.

Clause 41 says that the substantive hearing of a claim must be held in public unless an exception in the clause applies. The exceptions are—

- on application by a party, the tribunal may order that all or part of a hearing be held in private, after hearing from the parties, having regard to both the interests of the parties and to the public interest, and considering the open justice principle;
- the tribunal may decide a claim on the papers if the tribunal considers it appropriate and after giving the parties a reasonable opportunity to comment.

A hearing or part of it may be conducted by telephone or audiovisual link or similar technological means.

Clause 42 is the operative provision for further provisions contained in *Part 1 of Schedule 2* relating to the tribunal's procedure, evidence, expert advisers, witnesses, an annual report to the Minister of Justice, provision of assistance and guidance to parties, and publication of information and decisions. Some of the clauses in this schedule are based on provisions in the Weathertight Homes Resolution Services Act 2006 and some are standard provisions in the Tribunals Powers and Procedures Legislation Bill.

Tribunal's decision

Clause 43 sets out the matters the tribunal may decide. These are—

- any liability of any respondent to the claimant;
- any remedies for that liability;
- any liability of any respondent to any other respondent;
- any remedies for that liability.

If the tribunal decides that a specified respondent has no liability to the claimant, the tribunal may still decide that a third party respondent has liability to the claimant. This contrasts with subclauses (3) and (4) of *clause 11*, under which a claim can continue only if it has at least 1 specified respondent and, if not, even if a third party respondent remains, the claim is to be treated as withdrawn.

Clause 44 relates to the substance of the tribunal's decision in any case. The tribunal may make any order that a court of competent jurisdiction could make in relation to a claim, but it must do so in accordance with any of the following that are relevant to the claim:

- the terms of the contract of insurance in dispute between the parties;
- current law, in particular the law of contract as it relates to contracts of insurance and the Earthquake Commission Act 1993.

Clause 44 says that the Limitation Act 2010 and any other enactment that prescribes a limitation period or other limitation defence apply to a claim brought before the tribunal.

An order may require the payment of general damages (for example, for mental distress). If an order requires a party to do something (other than pay money), the tribunal must also set an amount of money that is payable by them, and the date by which that amount is payable, if they fail or refuse to do that thing by that date. The tribunal

may make the payment of money by a party subject to conditions or decide that the liability of a party depends on another party meeting particular conditions.

If a claim is settled by agreement between the parties before the case is decided, the tribunal must terminate the claim and may record the settlement in the form of a decision on agreed terms.

Clause 45 allows the tribunal to award costs against a party whether the party is successful or not (with all or part of their claim or response). Relevant factors are whether—

- the party caused costs and expenses to be incurred unnecessarily through acting in bad faith or making allegations or objections that are without substantial merit;
- the party caused unreasonable delay, including by failing to meet a deadline set by the tribunal without a reasonable excuse for doing so.

A costs award can relate only to costs incurred by the parties. An order for costs may be enforced in the District Court as if it were an order of that court.

Clause 46 allows the tribunal to award interest on all or part of the money ordered to be paid for all or part of the period between the date on which the cause of action arose and the date of payment. *Clause 46* also sets out how interest must be calculated.

Clause 47 relates to the form of the tribunal's decision in any case. Decisions must be in writing and the tribunal may correct errors following the release of a decision.

Clause 48 says that no direction, decision, or order given or anything done by the tribunal, or anything done by anyone relating to the tribunal, is invalid for want of form.

Clause 49 gives the tribunal the power to make suppression orders relating to all or part of the evidence or the name or any identifying particulars of any witness. An order may be subject to conditions. A person who breaches a suppression order commits an offence and is liable on conviction to a fine not exceeding \$3,000. This clause is one of the standard provisions in the Tribunals Powers and Procedures Legislation Bill.

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

Clause 50 says that a decision of the tribunal may be enforced as if it were an order of the District Court, except in cases where the amount sought to be enforced is an amount the tribunal decided would be payable under *clause 44(4)*. In those cases, written notice must be given by the Registrar of the court to the party against whom enforcement is sought. If that party fails to file a notice of objection within 10 working days, the decision can be enforced. A notice of objection may be given only on the ground that the party believes the decision of the tribunal has been fully complied with. All tribunal decisions are enforceable in the District Court even if the amount at issue exceeds the jurisdiction of the court (stated in section 74 of the District Court Act 2016).

Clause 51 allows the tribunal to refer questions of law to the High Court. Following an opinion being given by the High Court, the tribunal must continue the hearing of the claim in accordance with the opinion.

Clause 52 allows tribunal decisions to be appealed to the High Court, decisions of the High Court to be appealed to the Court of Appeal, and decisions of the Court of Appeal to be appealed to the Supreme Court. Appeals require the leave of the court that is being appealed to. An appeal to the High Court can be on a question of fact or law. Further appeals can be on a question of law only.

Part 3

Canterbury Earthquakes Insurance Tribunal

Subpart 1—Canterbury Earthquakes Insurance Tribunal established

Clause 53 establishes the Canterbury Earthquakes Insurance Tribunal, which comprises members and a chairperson who presides over the tribunal.

Clause 54 says that the proceedings of the tribunal are judicial proceedings subject to appeal to the High Court, the Court of Appeal, and the Supreme Court and are inquisitorial in nature.

Clause 55 allows for members to be appointed by the Governor-General on the recommendation of the Minister of Justice. The Minister can only recommend people who are suitable to be appointed as members, taking into account their knowledge, skills, and experience. One member must be appointed as the chairperson.

Clause 56 says that the functions of the tribunal are performed by its members. Function is defined in *clause 5* as including a function, power, or duty.

Clause 57 is the operative provision for *Part 2 of Schedule 2*, which contains further provisions relating to tribunal members. Some of these are based on procedural provisions in the Weathertight Homes Resolution Services Act 2006 and some are standard provisions from the Tribunals Powers and Procedures Legislation Bill.

Chairperson's responsibilities

Clause 58 requires the chairperson to assign 1 member (and they may assign themselves) to act as the tribunal for each claim or to perform functions under *clause 64(4)* (relating to access to tribunal records).

Clause 59 places responsibility on the chairperson to make any arrangements that are practicable to ensure that each member (including themselves) performs their functions in an orderly and efficient manner and in a way that achieves the purposes of this Bill. This clause is one of the standard provisions in the Tribunals Powers and Procedures Legislation Bill.

Clause 60 allows the chairperson to delegate functions, except the power to delegate, and sets out requirements for a valid delegation. This clause is largely based on one of the standard provisions in the Tribunals Powers and Procedures Legislation Bill. However, unlike the standard provision, *clause 60* expressly states that a member to

whom a function is delegated is not entitled to additional remuneration for work undertaken in performing that function.

Registrar and staff of tribunal

Clause 61 allows for the appointment of a Registrar for the tribunal and assignment of employees of the Ministry of Justice to act as staff for the tribunal. The Secretary for Justice appoints the Registrar and assigns staff to the tribunal. Those people may also hold any other office or position in the Ministry.

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

Clause 62 establishes an offence of contempt of the tribunal that is punishable by a fine not exceeding \$2,000. The tribunal may order the exclusion of a person from a sitting of the tribunal (the term sitting is defined in *clause 5*). The tribunal may do so if, in the tribunal's opinion, the person's behaviour constitutes an offence under the clause, whether or not the person is charged. An officer or a staff member of the tribunal, or a constable, may enforce the exclusion. This clause is largely based on one of the standard provisions in the Tribunals Powers and Procedures Legislation Bill.

Clause 63 says that specified persons are not under any criminal or civil liability (unless they have acted in bad faith) for certain acts or omissions or words, or anything in a notice given under the Bill. Those persons are the Secretary for Justice, the chief executive (defined in *clause 5*), a mediator, a member of the tribunal, an expert adviser, or an officer, an agent, or a staff member of the tribunal.

Clause 64 says that the tribunal is responsible for ensuring the safe custody of the records and papers relating to applications or claims under the Bill. The records and papers must be available for public inspection unless they are protected by the confidentiality provision relating to mediation in *clause 33*. The District Court (Access to Court Documents) Rules 2017 apply to access to tribunal records and papers.

Regulations and rules

Clause 65 empowers the making of regulations for—

- prescribing fees:
- making rules for tribunal procedures:
- any other matters contemplated by this Bill, necessary for its administration, or necessary for giving it full effect.

Clause 66 empowers the making of rules for the District Court and High Court in proceedings under the Bill.

Consequential amendments

Clause 67 is the operative provision for the consequential amendments set out in *Schedule 3*. Consequential amendments are made to the Courts Security Act 1999 and the Legal Services Act 2011.

Hon Andrew Little

Canterbury Earthquakes Insurance Tribunal Bill

Government Bill

Contents

	Page
1 Title	4
2 Commencement	4
Part 1	
Purpose, preliminary provisions, eligibility, bringing claims, and case management	
Subpart 1—Purpose and preliminary provisions	
3 Purpose	4
4 Overview of Act	4
5 Definitions	5
6 Transitional, savings, and related provisions	6
7 Act binds the Crown	6
Subpart 2—Eligibility criteria and parties to claim before tribunal	
8 Application of Act	7
9 Eligibility criteria to bring claim before tribunal	7
10 Bringing claim to tribunal	7
11 Additional parties and removal of parties	7
Subpart 3—Bringing claims to tribunal, ineligible claims, and status of claims under other enactments	
<i>Bringing claims by application to tribunal</i>	
12 Claim brought by application to tribunal	8
13 Applications that chairperson may accept	9
14 Serving notice on respondent	9
15 Response from respondent	9

Canterbury Earthquakes Insurance Tribunal Bill

	<i>Bringing claims to tribunal by transfer of proceedings from court</i>	
16	Claim brought by transfer of proceedings from court	9
	<i>Ineligible claims because of proceedings in another forum</i>	
17	Application ineligible because of proceedings or decision in another forum	10
18	Withdrawal of claim on claimant commencing proceedings in another forum	10
	<i>Status and effect of claim under other enactments</i>	
19	Status and effect of claim under other enactments	11
	Subpart 4—Case management	
20	Managing claims and natural justice	11
	<i>First case management conference</i>	
21	Notifying date for first case management conference	12
22	Attendance at first case management conference	12
23	Accompanying party at first case management conference	13
24	Matters for first case management conference	13
25	Independence of expert advisers	13
	<i>Further case management</i>	
26	Further case management	14
27	Powers of tribunal	14
28	Transfer of claim to court	15
	Part 2	
	Mediation and adjudication of claims	
	Subpart 1—Mediation	
29	Mediation	16
30	Mediation services	16
31	Independence of mediators	16
32	Procedure in relation to mediations	16
33	Confidentiality	17
34	Settlements to be notified	18
35	Enforcement	18
36	Mediation services not to be questioned as being inappropriate	18
	Subpart 2—Adjudication, enforcement, and appeals	
37	Managing adjudication of claims and natural justice	19
38	Case management conference to prepare for hearing	19
39	Powers of tribunal	19
40	Expert advisers	20
41	Hearing of claim	20
42	Further provisions relating to tribunal	21

Canterbury Earthquakes Insurance Tribunal Bill

Tribunal's decision

43	Matters tribunal may decide	21
44	Tribunal's decision: substance	21
45	Costs	22
46	Tribunal may award interest	23
47	Tribunal's decision: form	23
48	Nothing done by or relating to tribunal invalid for want of form	23
49	Suppression orders	23

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

50	Enforcement of tribunal decisions (other than costs awards)	23
51	Questions of law may be referred to High Court	24
52	Appeals	24

Part 3

Canterbury Earthquakes Insurance Tribunal

Subpart 1—Canterbury Earthquakes Insurance Tribunal
established

53	Canterbury Earthquakes Insurance Tribunal established	25
54	Nature of proceedings	25
55	Appointment of members of tribunal	25
56	Performance of functions of tribunal	25
57	Further provisions relating to tribunal members	25

Chairperson's responsibilities

58	Assignment of member to act as tribunal	25
59	Orderly and efficient operation	26
60	Delegation by chairperson	26

Registrar and staff of tribunal

61	Registrar and staff	26
----	---------------------	----

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

62	Contempt of tribunal	26
63	Exclusion of liability	27
64	Tribunal records	27

Regulations and rules

65	Regulations	28
66	Rules of court: District Court and High Court	28

Consequential amendments

67	Consequential amendments to Acts	28
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Schedule 1

Transitional, savings, and related provisions

Schedule 2	30
Further provisions relating to tribunal and members	
Schedule 3	40
Consequential amendments to Acts	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Canterbury Earthquakes Insurance Tribunal Act **2018**.

2 Commencement

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

Part 1

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

Subpart 1—Purpose and preliminary provisions

3 Purpose

15

The purpose of this Act is to provide speedy, flexible, and cost-effective services for resolving disputes about insurance claims for physical loss or damage to residential buildings, property, and land arising from the Canterbury earthquakes.

4 Overview of Act

20

- (1) This section is a guide to the general scheme and effect of the Act.
- (2) **Subpart 1 of Part 1** sets out the purpose of the Act and preliminary provisions. The latter provisions include a section containing definitions and a section that states that this Act binds the Crown.
- (3) **Subpart 2 of Part 1** sets out the nature of disputes and insurance claims to which this Act applies, and the eligibility criteria for a claim before the Canterbury Earthquakes Insurance Tribunal (established under **Part 3**). 25
- (4) **Subpart 3 of Part 1** sets out the procedure for bringing a claim before the tribunal (either by applying to the tribunal or by transferring proceedings from a court to the tribunal). 30

- (5) **Subpart 4 of Part 1** contains provisions for case management (up to the point when the parties begin to prepare for hearing), including the first case management conference.
- (6) **Subpart 1 of Part 2** sets out processes for the mediation of claims.
- (7) **Subpart 2 of Part 2** sets out the main functions and powers of the tribunal for the adjudication of claims, including case management to prepare for hearing. Other provisions relating to the tribunal are contained in **Part 1 of Schedule 2**. 5
- (8) **Subpart 1 of Part 3** establishes the tribunal, including the appointment of members. Other provisions relating to tribunal members are contained in **Part 2 of Schedule 2**. 10
- (9) **Subpart 2 of Part 3** contains miscellaneous provisions, including an offence of contempt of tribunal.

5 Definitions

In this Act, unless the context otherwise requires,— 15

Canterbury earthquakes means 1 or more of the earthquakes on 4 September 2010, 26 December 2010, 22 February 2011, and 13 June 2011, and any after-shocks until the close of 31 July 2011

chairperson means the member of the tribunal appointed as the chairperson under **section 55(3)** 20

chief executive means the chief executive of the department

claim means a claim that is before the tribunal because—

- (a) the chairperson has accepted an application to the tribunal under **section 13**; or
- (b) a court has transferred proceedings to the tribunal under **section 16** 25

claimant means—

- (a) a person who is a policyholder or an insured person (or both) who has a claim before the tribunal because—
 - (i) the chairperson has accepted the person’s application under **section 13**; or 30
 - (ii) the person was the plaintiff in proceedings that a court has transferred to the tribunal under **section 16**; or
- (b) an insurer or the EQC, if they were the plaintiff in proceedings that a court has transferred to the tribunal under **section 16** 35

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

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

	expert includes both expert advisers appointed by the tribunal (<i>see sections 24(1)(f), 27(1)(f), and 39(1)(f)</i>) and experts retained by parties as advisers or witnesses	
	function includes a function, power, or duty	
	insurance claim means—	5
	(a) a claim made under a contract of insurance by a policyholder to an insurer:	
	(b) a claim made under the Earthquake Commission Act 1993 by an insured person to the EQC	
	insured person has the meaning given in section 2(1) of the Earthquake Commission Act 1993	10
	insurer —	
	(a) means a person who is liable as the insurer under a contract of insurance in respect of a residential building or residential property; but	
	(b) for the purpose of this Act, also includes Southern Response	15
	mediator means a person employed or engaged to provide mediation services under subpart 1 of Part 2	
	policyholder means a person who holds a contract of insurance with an insurer to insure a residential building or residential property	
	residential building has the meanings given in section 8	20
	residential land has the meaning given in section 8	
	residential property has the meaning given in section 8	
	respondent —	
	(a) means a person against whom a claim is before the tribunal; and	
	(b) includes a third party respondent	25
	sitting includes a case management conference and a substantive hearing of a claim	
	Southern Response means Southern Response Earthquake Services Limited	
	tribunal means the Canterbury Earthquakes Insurance Tribunal established under Part 3 .	30
6	Transitional, savings, and related provisions	
	The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.	
7	Act binds the Crown	
	This Act binds the Crown.	35

Subpart 2—Eligibility criteria and parties to claim before tribunal

8 Application of Act

- (1) This Act applies to disputes between policyholders and insurers about insurance claims for physical loss or damage arising from the Canterbury earthquakes to a residential building or residential property. 5
- (2) This Act also applies to disputes between insured persons and the EQC about insurance claims for physical loss or damage arising from the Canterbury earthquakes to a residential building or residential land, or both.
- (3) Despite **subsections (1) and (2)**, this Act does not apply if the ownership of the building, property, or land has been transferred to the policyholder or insured person under a sale and purchase agreement following the physical loss or damage giving rise to the insurance claim. 10
- (4) For the purpose of **subsection (1), residential building and residential property** have the meanings given in a contract of insurance between a policyholder and an insurer. 15
- (5) For the purpose of **subsection (2), residential building and residential land** have the meanings given in section 2(1) of the Earthquake Commission Act 1993.

9 Eligibility criteria to bring claim before tribunal

- The eligibility criteria to bring a claim before the tribunal are that the claim— 20
- (a) must arise from a dispute between the parties under **section 8**; and
 - (b) must seek resolution of liability, or remedies, or both; and
 - (c) must be within the jurisdiction of the tribunal to make an order under **section 44**.

10 Bringing claim to tribunal 25

- (1) A claim may be brought to the tribunal only in accordance with **subsection (2) or (3)**.
- (2) A person who is a policyholder or an insured person (or both) may bring a claim to the tribunal against an insurer or the EQC (or both) by making an application under **section 12** that is accepted by the chairperson under **section 13**. 30
- (3) A claim may also be brought by the transfer of proceedings from a court to the tribunal under **section 16**.

11 Additional parties and removal of parties

- (1) If the tribunal considers it necessary for the fair and speedy resolution of a claim, it may order that— 35
 - (a) a person be joined as a third party respondent:

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

Subpart 3—Bringing claims to tribunal, ineligible claims, and status of claims under other enactments 20

Bringing claims by application to tribunal

12 Claim brought by application to tribunal

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

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

13 Applications that chairperson may accept

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

14 Serving notice on respondent 10

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

15 Response from respondent

- (1) A respondent may file with the tribunal a written response and supporting documentation within 15 working days of being served a notice of the claim or within a later time period directed by the tribunal.
- (2) The respondent must serve a copy of any response and supporting documentation on the claimant and any other respondent before or immediately after any response and supporting documentation is filed with the tribunal. 20
- (3) See **clause 11 of Schedule 2** for service of notices.

Bringing claims to tribunal by transfer of proceedings from court

16 Claim brought by transfer of proceedings from court 25

- (1) If a person who is a policyholder or an insured person (or both) is a plaintiff in court proceedings relating to an insurance claim in dispute, a Judge may, on the application of the plaintiff or on the Judge’s own motion, order that the proceedings be transferred to the tribunal.
- (2) An order to transfer proceedings may be made under **subsection (1)** only if— 30
 - (a) the proceedings meet the eligibility criteria for a claim under **section 9**; and
 - (b) the Judge making the order believes that the transfer is in the interests of justice.
- (3) If a person who is a policyholder or an insured person (or both) is a defendant in court proceedings relating to an insurance claim in dispute, a Judge may, on 35

the application of the defendant, order that the proceedings be transferred to the tribunal.

- (4) An order to transfer proceedings may be made under **subsection (3)** only if—
- (a) the proceedings meet the eligibility criteria for a claim under **section 9**; and 5
 - (b) the parties to the proceedings agree to the transfer; and
 - (c) the Judge making the order believes that the transfer is in the interests of justice.
- (5) If court proceedings are transferred to the tribunal, the plaintiff in the proceedings becomes the claimant before the tribunal. 10
- (6) If proceedings are transferred, the tribunal may have regard to any notes of evidence transmitted to it by the court, and it is not necessary for that evidence to be given again unless the tribunal requires it.
- (7) **Sections 12 to 15** do not apply to a claim that is transferred under this section from a court to the tribunal. 15
- (8) For the purpose of this section, **Judge** means a District Court Judge or a High Court Judge.

Ineligible claims because of proceedings in another forum

17 Application ineligible because of proceedings or decision in another forum

A person may not bring a claim before the tribunal under **section 12** if— 20

- (a) they have commenced arbitration relating to the same insurance claim in dispute; or
- (b) they have commenced proceedings relating to the same insurance claim in dispute in the Disputes Tribunal and the proceedings are in progress; or 25
- (c) they have commenced proceedings relating to the same insurance claim in dispute (including by way of counterclaim) in a court and the proceedings are in progress (although the proceedings may be transferred to the tribunal under **section 16**); or
- (d) they were a party to proceedings before a court or the Disputes Tribunal relating to the same insurance claim in dispute and the proceedings have been decided by the court or the Disputes Tribunal. 30

18 Withdrawal of claim on claimant commencing proceedings in another forum

- (1) A claimant may not continue a claim before the tribunal if— 35
- (a) they commence arbitration relating to the same insurance claim in dispute; or

- (b) they commence proceedings relating to the same insurance claim in dispute (including by way of counterclaim) in a court or in the Disputes Tribunal.
- (2) If a claimant commences arbitration or proceedings of a kind referred to in this section,— 5
 - (a) the claimant must notify the tribunal:
 - (b) the claim must be treated as withdrawn.

Status and effect of claim under other enactments

19 Status and effect of claim under other enactments

- (1) This section applies to a claim before the tribunal when— 10
 - (a) the chairperson accepts the relevant application; or
 - (b) a court transfers the relevant proceedings to the tribunal.
- (2) The claim before the tribunal must be treated as— 15
 - (a) proceedings for the purpose of section 76 of the Insolvency Act 2006; and
 - (b) legal proceedings under section 248 of the Companies Act 1993; and
 - (c) legal proceedings under section 321(1)(b) of the Companies Act 1993; and
 - (d) actions or proceedings for the purposes of section 42 of the Corporations (Investigation and Management) Act 1989. 20

Subpart 4—Case management

20 Managing claims and natural justice

- (1) When managing claims, the tribunal must have regard to the purpose of this Act, which is to provide speedy, flexible, and cost-effective services.
- (2) In particular, the tribunal— 25
 - (a) must encourage the parties to work together on matters that are agreed; and
 - (b) if experts are used, must consider using conferences of experts to avoid duplication of advice or evidence on matters that are or are likely to be agreed. 30
- (3) The tribunal must comply with the principles of natural justice.
- (4) However, **subsection (3)** does not require the tribunal to use or allow the use of experts unless, in the tribunal’s opinion, it is necessary to do so.
- (5) For case management relating to adjudication of claims, *see* **section 37**.

*First case management conference***21 Notifying date for first case management conference**

- (1) The tribunal must notify the parties within the time period set out in **subsection (2)** of the date for the first case management conference.
- (2) The time period for notification is within 15 working days of— 5
 - (a) the chairperson accepting the relevant application; or
 - (b) a court transferring the relevant proceedings to the tribunal.
- (3) The tribunal may notify a change of date of the first case management conference if the circumstances require it.

22 Attendance at first case management conference 10

- (1) A party must attend the first case management conference unless—
 - (a) the party has a reasonable excuse for not attending; or
 - (b) the tribunal decides that the party does not need to attend.
- (2) If a party is not a natural person, the following individuals may attend the first case management conference on behalf of the party, but only if they are authorised to bind the party: 15
 - (a) for the EQC, an officer or employee:
 - (b) for another corporation or an unincorporated body of persons,—
 - (i) an officer or employee; or
 - (ii) a member of the corporation or body; or 20
 - (iii) an individual who holds a majority interest in that corporation or body:
 - (c) for a person jointly liable or entitled with another or others, one of the individuals jointly liable or entitled or, in the case of a partnership, an employee of the partnership. 25
- (3) The tribunal may impose in respect of any participant (**A**) attending the first case management conference any conditions that it considers necessary to ensure that any other participant (**B**) is not substantially disadvantaged by the attendance of A.
- (4) Any participant who attends the first case management conference must do so in person unless— 30
 - (a) the necessary facilities are available for the participant to attend by telephone, audiovisual link, or another remote access facility; and
 - (b) the tribunal considers it appropriate for the participant to attend via one of those means. 35

23 Accompanying party at first case management conference

- (1) A party at the first case management conference may be accompanied by—
- (a) 1 or more representatives (*see clause 3 of Schedule 2*):
 - (b) experts employed by the party.
- (2) The tribunal may direct that the number of representatives and experts at the first case management conference be limited to allow for the efficient conduct of the conference. 5

24 Matters for first case management conference

- (1) At the first case management conference, the tribunal may—
- (a) set a timetable for future steps to progress the claim, for example, for information or documents to be produced and the convening of an expert conference: 10
 - (b) identify any issues on which the parties are agreed and the core issues in dispute:
 - (c) obtain further information regarding the claim or a response to the claim: 15
 - (d) decide whether parties need to be joined or removed and, if so, make an order under **section 11** to this effect:
 - (e) direct a respondent to file a response to the claim:
 - (f) appoint an expert adviser to assist the tribunal:
 - (g) direct the parties to mediation and set time frames for mediation: 20
 - (h) issue any other reasonable directions that may assist with the early resolution of the claim.
- (2) If a respondent is joined to the claim, the tribunal must—
- (a) notify them that they have been joined as a respondent to the claim:
 - (b) specify the date by which a response must be filed with the tribunal and served on the other parties: 25
 - (c) specify the date by which any information or documents must be produced to the tribunal and the other parties.
- (3) An appointment of an expert adviser under **subsection (1)(f)** is at the absolute discretion of the tribunal. However, before appointing an expert adviser, the tribunal must advise the parties that it intends to do so and give them a reasonable opportunity to comment. 30
- (4) Expert advisers must act in accordance with practice notes issued by the chairperson.
- (5) The first case management conference must be held in private. 35

25 Independence of expert advisers

- (1) Expert advisers appointed by the tribunal—

- (a) must act independently when assisting the tribunal with any particular claim or aspect of it; and
- (b) must be independent of any of the parties to the claim.
- (2) An expert adviser who is being considered for appointment to assist, or is assisting, the tribunal and who has a conflict of interest in relation to the particular claim— 5
 - (a) must disclose it to the tribunal and all the parties; and
 - (b) unless all the parties agree otherwise,—
 - (i) must not accept the appointment:
 - (ii) must withdraw from acting in relation to the claim. 10
- (3) A party who agrees to an expert adviser being appointed or continuing to act forfeits any right to object to the expert adviser acting on the basis of the conflict of interest that was disclosed by the expert adviser.

Further case management

26 Further case management 15

- (1) For the purpose of case management following the first case management conference and at any stage before the parties begin preparing for a hearing (if one is needed), the tribunal may, as it thinks fit in order to progress the claim,—
 - (a) hold any number of case management conferences; and
 - (b) if a party is not a natural person, require the attendance at a case management conference of an individual listed in **section 22(2)** who is authorised to bind the party; and 20
 - (c) otherwise communicate with the parties in any way it considers is efficient.
- (2) A case management conference must be held in private. 25
- (3) A case management conference may be conducted by telephone, audiovisual link, or another remote access facility if the tribunal considers it appropriate and the necessary facilities are available.
- (4) The tribunal may direct that the number of participants at a case management conference be limited to allow for the efficient conduct of the conference. 30

27 Powers of tribunal

- (1) The tribunal may do any of the following that are relevant to the stage of proceedings at which a case management conference or other communication with the parties occurs:
 - (a) set a timetable for future steps to progress the claim, including for any of the things in **paragraphs (b) to (j)**: 35
 - (b) direct that information or documents be produced:

- (c) request written submissions from a party or the parties on preliminary matters, as long as it then gives the relevant parties a reasonable opportunity to comment on them:
 - (d) decide whether parties need to be joined or removed and, if so, make an order under **section 11** to this effect: 5
 - (e) direct a respondent to file a response to the claim:
 - (f) appoint an expert adviser to assist the tribunal:
 - (g) convene an expert conference:
 - (h) even if the parties have attempted mediation previously, direct the parties to mediation and set time frames for mediation: 10
 - (i) request, direct, or order the parties to do anything provided for in **Part 1 of Schedule 2**:
 - (j) issue any other reasonable directions for resolving the claim.
- (2) **Section 24(2)** (relating to the filing of a response by a respondent joined to a claim) applies if a respondent is joined to a claim under this section. 15
- (3) An appointment of an expert adviser under **subsection (1)(f)** is at the absolute discretion of the tribunal. However, before appointing an expert adviser, the tribunal must advise the parties that it intends to do so and give them a reasonable opportunity to comment.
- (4) **Section 25** (relating to the independence of expert advisers) applies to expert advisers appointed under **subsection (1)(f)**. 20
- (5) Expert advisers must act in accordance with practice notes issued by the chairperson.
- 28 Transfer of claim to court**
- (1) The tribunal may order that a claim be transferred to the District Court or the High Court at any time before the tribunal makes an assessment of liability if, in the tribunal’s view, it is more appropriate for a court to decide the claim for any or all of the following reasons: 25
- (a) the claim presents undue complexity:
 - (b) the claim is a novel claim: 30
 - (c) the subject matter of the claim is related to the subject matter of proceedings that are already before the court.
- (2) If the total amount at issue is within the jurisdiction of the District Court stated in section 74 of the District Court Act 2016, the claim must be transferred to the District Court. 35
- (3) Any other claim must be transferred to the High Court.

Part 2 Mediation and adjudication of claims

Subpart 1—Mediation

29 Mediation

This subpart applies where the tribunal directs the parties to mediation. 5

30 Mediation services

- (1) The chief executive must employ or engage persons to provide mediation services to assist parties to resolve claims promptly and effectively.
- (2) Nothing in this Act prevents any person from seeking and using mediation services other than those provided by the chief executive under this subpart to settle a dispute to which this Act could apply. 10

Compare: 2006 No 84 ss 77(1), 79

31 Independence of mediators

- (1) A mediator—
 - (a) must act independently when deciding how to deal with any particular claim or aspect of it; and 15
 - (b) must be independent of any of the parties to whom the mediator provides mediation services.
- (2) A mediator who has a conflict of interest in relation to a particular claim—
 - (a) must disclose it to all the parties; and 20
 - (b) must, unless all the parties agree otherwise, refuse to act (or withdraw from acting) in relation to the claim.
- (3) A party who agrees to a mediator acting (or continuing to act) forfeits any right to object to the mediator acting on the basis of the conflict of interest that was disclosed by the mediator. 25

Compare: 2006 No 84 s 78(1)

32 Procedure in relation to mediations

- (1) Except as provided in this section, the mediator decides what services are appropriate to a particular claim.
- (2) If the parties to a claim agree that they require more time for mediation of the claim than is provided by any order of the tribunal, the parties may apply to the tribunal for more time for mediation. 30
- (3) The mediator—
 - (a) may, having regard to the purpose of this Act and the needs of the parties, follow any procedures, whether structured or unstructured, or do 35

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

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

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

Compare: 2006 No 84 s 81(1)–(3)

33 Confidentiality

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

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

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

- (2) The people are—

- (a) the mediator:

- (b) a party to the mediation:

- (c) the chief executive:

- (d) a person employed or engaged by the department: 20

- (e) a person who assists the mediator or a party.

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

- (a) the mediation services provided by the mediator; or

- (b) anything related to those services that comes to the mediator’s knowledge in the course of providing those services. 25

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

- (5) Nothing in the Official Information Act 1982 applies to any information or document disclosed to the mediator in the course of a mediation under this subpart. 30

- (6) Nothing in this section—

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

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

Compare: 2006 No 84 s 84

34 Settlements to be notified

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

Compare: 2006 No 84 s 86

35 Enforcement

- (1) The parties to a claim (or part of a claim) that has been settled may apply to the tribunal for the agreed terms of settlement to be recorded as a decision of the tribunal. 25
- (2) If this occurs, the decision is enforceable in accordance with **section 50**.
- (3) However, the decision must be filed in the District Court before it can be enforced.
- (4) **Section 33(4)** (which relates to confidentiality) does not apply to a decision filed in the District Court in accordance with this section. 30

Compare: 2006 No 84 s 87

36 Mediation services not to be questioned as being inappropriate

- Mediation services provided under this subpart cannot be challenged or called into question in any proceedings on either or both of the following grounds: 35
- (a) that the nature or content, or both, of the services was inappropriate:
 - (b) that the manner in which the services were provided was inappropriate.

Compare: 2006 No 84 s 88(1)

Subpart 2—Adjudication, enforcement, and appeals

37 Managing adjudication of claims and natural justice

- (1) When managing the adjudication of claims (including at hearings), the tribunal must have regard to the purpose of this Act, which is to provide speedy, flexible, and cost-effective services. 5
- (2) In particular, the tribunal—
- (a) must encourage the parties to work together on matters that are agreed; and
 - (b) must not admit or permit unnecessary or irrelevant evidence or cross-examination; and 10
 - (c) if experts are used, must consider using conferences of experts to avoid duplication of advice or evidence on matters that are or are likely to be agreed.
- (3) The tribunal must comply with the principles of natural justice.
- (4) However, **subsection (3)** does not require the tribunal to— 15
- (a) permit the cross-examination of a party or person, but it may in its absolute discretion do so:
 - (b) use or allow the use of experts unless, in the tribunal’s opinion, it is necessary to do so.
- Compare: 2006 No 84 s 57 20

38 Case management conference to prepare for hearing

- (1) If adjudication is necessary to resolve a claim, the tribunal must set a date for a case management conference to prepare for a hearing.
- (2) At that case management conference, the tribunal must—
- (a) identify any issues on which the parties are agreed and the core issues in dispute; and 25
 - (b) decide whether parties need to be joined or removed and, if so, make an order under **section 11** to this effect.
- (3) **Section 24(2)** (relating to the filing of a response by a respondent joined to a claim) applies if a respondent is joined to a claim under this section. 30
- (4) **Section 26** (relating to flexibility for the tribunal to deal with the parties as it thinks fit to progress the claim) applies to case management under this subpart.

39 Powers of tribunal

- (1) For the purposes of preparing for a hearing and the hearing of a claim, the tribunal may— 35
- (a) set a timetable for future steps to progress the claim, including for any of the things in **paragraphs (b) to (k)**:

- (b) direct that information or documents be produced:
- (c) direct that statements of evidence be exchanged:
- (d) consider evidence from another claim heard by the tribunal or on appeal that it thinks relevant and applicable to the present claim, as long as the tribunal— 5
- (i) informs the parties that it intends to do so; and
- (ii) gives them a reasonable opportunity to comment:
- (e) request written submissions from a party or the parties, as long as it then gives the relevant parties a reasonable opportunity to comment on them:
- (f) appoint an expert adviser to assist the tribunal: 10
- (g) convene conferences of the parties or experts:
- (h) even if the parties have attempted mediation previously, direct the parties to mediation and set time frames for mediation:
- (i) inspect the dwelling house, property, or land to which the claim relates (as long as the consent of the owner or occupier is obtained before entry): 15
- (j) request, direct, or order the parties to do anything provided for in **Part 1 of Schedule 2**:
- (k) issue any other reasonable directions for resolving the claim.
- (2) **Section 28** (relating to the transfer of a claim to a court) applies at the adjudication stage. 20
- 40 Expert advisers**
- (1) An appointment of an expert adviser under **section 39(1)(f)** is at the absolute discretion of the tribunal. However, before appointing an expert adviser, the tribunal must advise the parties that it intends to do so and give them a reasonable opportunity to comment. 25
- (2) **Section 25** (relating to the independence of expert advisers) applies to expert advisers at the adjudication stage.
- (3) Expert advisers must act in accordance with practice notes issued by the chairperson. 30
- 41 Hearing of claim**
- (1) The substantive hearing of a claim must be held in public except if, or to the extent that, an exception in this section applies.
- (2) On application by a party, the tribunal may order that all or part of a hearing be held in private. 35
- (3) The tribunal may make an order under **subsection (2)** only after—
- (a) hearing from the parties; and

- (b) having regard to—
 - (i) the interests of the parties; and
 - (ii) the public interest; and
- (c) considering the open justice principle.
- (4) The tribunal may decide a claim on the papers if the tribunal considers it appropriate. However, before making that decision, the tribunal must give the parties a reasonable opportunity to comment. 5
- (5) A hearing or any part of it may be conducted by telephone, audiovisual link, or other remote access facility if the tribunal considers it appropriate and the necessary facilities are available. 10

Compare: 1996 No 99 s 14H

42 Further provisions relating to tribunal

Further provisions relating to the tribunal’s procedure, evidence, expert advisers, witnesses, an annual report to the Minister of Justice, provision of assistance and guidance to parties, and publication of information and decisions are set out in **Part 1 of Schedule 2**. 15

Tribunal’s decision

43 Matters tribunal may decide

- (1) The tribunal may decide—
 - (a) any liability of any respondent to the claimant; and 20
 - (b) any remedies for that liability.
- (2) The tribunal may also decide—
 - (a) any liability of any respondent to any other respondent; and
 - (b) any remedies for that liability.
- (3) If the tribunal decides that an insurer or the EQC has, or both have, no liability to a claimant who is a policyholder or an insured person, or both, the tribunal may still decide that a third party respondent has liability to that claimant. 25
- (4) If the tribunal decides that a policyholder or an insured person has no liability to a claimant who is either an insurer or the EQC, the tribunal may still decide that a third party respondent has liability to that claimant. 30

44 Tribunal’s decision: substance

- (1) The tribunal may make any order that a court of competent jurisdiction could make in relation to a claim in accordance with any of the following that are relevant to the claim:
 - (a) the terms of the contract of insurance in dispute between the parties: 35
 - (b) current law, in particular,—

- (i) the law of contract as it relates to contracts of insurance:
 - (ii) the Earthquake Commission Act 1993.
- (2) The Limitation Act 2010 and any other enactment that prescribes a limitation period or other limitation defence apply to a claim brought before the tribunal.
- (3) An order may require the payment of general damages (for example, for mental distress). 5
- (4) If an order requires a party to do something, other than pay money, the tribunal must also set an amount of money that is payable by them, and the date by which that amount is payable, if they fail or refuse to do that thing by that date.
- (5) If the tribunal decides that a party is liable to make a payment to another party, the tribunal may make the payment subject to any conditions. 10
- (6) The tribunal may decide that the liability of a party depends on another party meeting particular conditions.
- (7) If a claim is settled by agreement between the parties before the tribunal's decision is given, the tribunal— 15
- (a) must terminate the claim; and
 - (b) if requested by the parties, may record the settlement in the form of a decision on agreed terms.
- (8) In this section, **mental distress** means 1 or more of the following: 20
- (a) emotional or mental anxiety:
 - (b) distress or stress.
- Compare: 2006 No 84 Schedule 4

45 Costs

- (1) A costs award may be made against a party whether the party is successful or not (with all or part of the party's claim or response) if the tribunal considers that— 25
- (a) the party caused costs and expenses to be incurred unnecessarily through—
 - (i) acting in bad faith; or
 - (ii) making allegations or objections that are without substantial merit; or 30
 - (b) the party caused unreasonable delay, including by failing to meet a deadline set by the tribunal without a reasonable excuse for doing so.
- (2) A costs award must relate to costs incurred by the parties only and not to costs incurred by the tribunal. 35
- (3) If the tribunal does not make an order under this section, the parties must meet their own costs and expenses.

- (4) An order for costs may, on registration of a certified copy of the tribunal’s decision, be enforced in the District Court as if it were an order of that court.

46 Tribunal may award interest

- (1) In a claim for the recovery of money, the tribunal may order the inclusion of interest on all or part of the money ordered to be paid for all or part of the period between the date on which the cause of action arose and the date of payment. 5
- (2) Interest must be calculated,—
 - (a) if provision is made for interest in the relevant contract of insurance, in accordance with that contract: 10
 - (b) if no provision is made in the relevant contract of insurance or the claim does not involve a contract of insurance, in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

47 Tribunal’s decision: form

- (1) The tribunal’s decision must be in writing and include the tribunal’s reasons. 15
- (2) After a copy of a decision is given to the parties, the tribunal may correct any minor clerical or typographical errors or errors of a similar nature.

48 Nothing done by or relating to tribunal invalid for want of form

No direction, decision, or order given or anything done by the tribunal, or anything done by anyone relating to the tribunal, is invalid for want of form. 20

49 Suppression orders

- (1) The tribunal may order that all or part of the evidence given or the name or any identifying particulars of any witness not be published.
- (2) An order may be made subject to any conditions that the tribunal considers appropriate, having regard to the interests of the parties and to the public interest. 25
- (3) A person who breaches an order made under this section commits an offence and is liable on conviction to a fine not exceeding \$3,000.

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

50 Enforcement of tribunal decisions (other than costs awards) 30

- (1) A decision of the tribunal may be enforced as if it were an order of the District Court except as provided in this section.
- (2) If application is made to the District Court for the issue of any process to enforce a decision by the tribunal setting an amount payable by a party who fails or refuses to do something by a certain date (*see section 44(4)*), the Registrar of the court must give written notice of the application to the party against whom enforcement is sought. 35

- (3) If that party does not file a notice of objection within 10 working days after receiving that notice, the decision may then be enforced against the party.
- (4) A notice of objection may be given only on the ground that the party believes that the decision of the tribunal has been fully complied with.
- (5) This section applies even if the amount at issue exceeds the jurisdiction of the District Court stated in section 74 of the District Court Act 2016. 5

51 Questions of law may be referred to High Court

- (1) If a question of law arises during the hearing of a claim, the tribunal—
- (a) may (if a member is acting as the tribunal, with the written approval of the chair) refer the question to the High Court for its opinion; and 10
- (b) may delay the hearing until it receives the court’s opinion.
- (2) The High Court must give the tribunal its opinion on the question, following which the tribunal must continue the hearing of the claim in accordance with the opinion.

52 Appeals 15

- (1) A party to a claim that has been decided by the tribunal may appeal on a question of law or fact that arises from the decision.
- (2) An appeal must be filed in the High Court and requires the leave of the High Court.
- (3) A notice of appeal and an application for leave to appeal must be filed together within— 20
- (a) 20 working days of the tribunal’s decision; or
- (b) any further time that the High Court allows.
- (4) The High Court may—
- (a) confirm, modify, or overturn the tribunal’s decision: 25
- (b) order a remedy or award costs or interest that could be ordered or awarded by the tribunal.
- (5) Except to the extent modified by this Act, the High Court Rules apply to an appeal brought under this section.
- (6) A party may appeal a decision of the High Court to the Court of Appeal and a decision of the Court of Appeal to the Supreme Court, in each case— 30
- (a) with the leave of the court that is being appealed to; and
- (b) on a question of law only.

Part 3

Canterbury Earthquakes Insurance Tribunal

Subpart 1—Canterbury Earthquakes Insurance Tribunal established

- 53 Canterbury Earthquakes Insurance Tribunal established**
- (1) The Canterbury Earthquakes Insurance Tribunal is established. 5
- (2) The tribunal comprises all members.
- (3) The chairperson presides over the tribunal.
- 54 Nature of proceedings**
- Proceedings of the tribunal are—
- (a) judicial proceedings subject to appeal to the High Court, Court of Appeal, and Supreme Court; and 10
- (b) inquisitorial in nature.
- Compare: 2006 No 1 s 239(5); 2009 No 51 s 218
- 55 Appointment of members of tribunal**
- (1) Each member of the tribunal is appointed by the Governor-General on the recommendation of the Minister of Justice. 15
- (2) The Minister must recommend for appointment only people who, in the Minister's opinion, are suitable to be appointed as members, taking into account their knowledge, skills, and experience.
- (3) One member must be appointed by the Governor-General as the chairperson of the tribunal. 20
- 56 Performance of functions of tribunal**
- The functions of the tribunal are performed by its members.
- 57 Further provisions relating to tribunal members**
- Further provisions relating to tribunal members are set out in **Part 2 of Schedule 2**. 25

Chairperson's responsibilities

- 58 Assignment of member to act as tribunal**
- The chairperson must assign 1 member (and may assign themselves) to act—
- (a) as the tribunal for each claim: 30
- (b) as the tribunal to perform the functions required to be performed under **section 64(4)** (relating to access to tribunal records).

59 Orderly and efficient operation

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

- (a) in an orderly and efficient manner; and 5
- (b) in a way that achieves the purposes of this Act.

60 Delegation by chairperson

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

*Registrar and staff of tribunal***61 Registrar and staff**

- (1) The Secretary for Justice may appoint a person as the Registrar for the tribunal. 25
- (2) The Secretary may assign employees of the Ministry of Justice to act as staff of the tribunal as may be required for the tribunal to have the services and resources necessary to perform its functions.
- (3) A person appointed as the Registrar and employees who are assigned to act as staff may also hold any other office or position in the Ministry. 30

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

62 Contempt of tribunal

- (1) A person commits an offence if they—

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

- (2) The records and papers must be available for public inspection at all reasonable times, on payment of the fee payable (if any) for searching and accessing court records under the District Court Fees Regulations 2009.
- (3) **Subsection (2)** is subject to **section 33** (which relates to the confidentiality of information and documents relating to mediation). 5
- (4) The District Court (Access to Court Documents) Rules 2017 apply to access to the formal record of a claim by any person, or to other records and papers by the parties or by any person, with any necessary modifications; and in those rules the functions of a Judge are to be read as being the functions of the tribunal. 10

Regulations and rules

65 Regulations

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

- (a) prescribing fees for the purposes of this Act: 15
- (b) making rules for tribunal procedures:
- (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

66 Rules of court: District Court and High Court

- (1) In addition to the powers conferred by the District Court Act 2016 or the Senior Courts Act 2016, the Governor-General may, by Order in Council, make rules regulating the practice and procedure of the District Court or the High Court in proceedings under this Act. 20
- (2) Rules may be made only with the concurrence of—
- (a) the Chief District Court Judge (for rules for the District Court) or the Chief Justice (for rules for the High Court); and 25
- (b) 2 or more members of the Rules Committee established under section 155 of the Senior Courts Act 2016 of whom at least 1 is a District Court Judge (for rules for the District Court) or a High Court Judge (for rules for the High Court). 30

Consequential amendments

67 Consequential amendments to Acts

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

Schedule 1
Transitional, savings, and related provisions

s 6

Part 1
Provisions relating to this Act as enacted

5

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

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

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

10

Section 17 applies regardless of whether—

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

Schedule 2

Further provisions relating to tribunal and members

ss 27, 39, 42, 57

Contents

Page

Part 1

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

Procedure

1	Procedure	31
2	Practice notes	31
3	Representation and privilege of communications	32
4	Privileges and immunities of counsel	32
5	Consolidation of claims	32
6	Urgency	32
7	Claim to continue on change of member acting as tribunal	32
8	Party's failure to act does not affect tribunal's ability to continue to hear and decide claim	32
9	Tribunal may strike out, decide, or adjourn claim	33
10	Withdrawal of claim	33
11	Service of notices	33
12	Discovery	34

Evidence

13	Evidence	34
14	Tribunal may take evidence on oath	34
15	Tribunal may dispense with evidence if agreement by all parties	34
16	Tribunal may draw inferences from party's failure to act and decide claim based on available information	34

Expert advisers

17	Expert advisers not compellable witnesses	34
----	---	----

Witnesses

18	Party competent as witness	35
19	Witness summons and production of things in evidence	35
20	Protection and privileges of witnesses	35
21	Witnesses' expenses	35

Annual report to Minister

22	Annual report to Minister on performance of tribunal's functions	35
----	--	----

Assistance and guidance, and publication of information and decisions

23	Assistance and guidance for claimants and respondents	36
24	Online publication of information about procedures, time frames, and progress of decisions	36
25	Online publication of final written decisions	36

Part 2

Tribunal members

26	Term of appointment	37
27	Oath of office	37
28	Term of office	37
29	Resignation or removal from or vacation of office	38
30	Appointment of temporary acting chairperson or member	38
31	Duty of members to disclose conflicts of interest	39
32	Members not compellable witnesses	39
33	Salaries and allowances	39

Part 1

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

<i>Procedure</i>	5
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1 Procedure

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

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

2 Practice notes 10

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

- (f) any other matter to facilitate the orderly and efficient operation of the tribunal.
- (2) Practice notes must not be inconsistent with this Act or any regulations made under it.
- 3 Representation and privilege of communications** 5
- (1) A party to a claim may be represented by another person of their choice whether or not that other person is legally qualified.
- (2) If a party's representative is not legally qualified, any communications between the party and their representative are privileged to the extent that the communications would be if the representative were legally qualified. 10
- 4 Privileges and immunities of counsel**
- Any counsel appearing before the tribunal has the same privileges and immunities as counsel in a court of law.
- 5 Consolidation of claims**
- (1) The tribunal may order that 1 or more claims be heard together if— 15
- (a) it considers that it would be efficient to do so because the claims involve 1 or more of the same parties or the same building, property, or land; and
- (b) all the affected parties consent.
- (2) This clause does not permit the bringing of a claim on behalf of a class of persons. 20
- 6 Urgency**
- Upon application by a party for a claim to be heard urgently, the tribunal—
- (a) must consider that application; and
- (b) may, if satisfied that it is necessary and just to do so, order that the claim be heard by the tribunal as soon as practicable. 25
- 7 Claim to continue on change of member acting as tribunal**
- (1) If the member acting as the tribunal for hearing a claim cannot continue to hear it and another member is appointed to do so, the hearing of the claim is not affected and is to continue as if no change had taken place.
- (2) However, the new member may require evidence to be retaken if they consider it necessary to do so. 30
- 8 Party's failure to act does not affect tribunal's ability to continue to hear and decide claim**
- The tribunal may continue to hear and decide a claim if a party fails, without reasonable excuse, to do anything the tribunal requests or directs, including failing to meet a deadline set by the tribunal. 35

9 Tribunal may strike out, decide, or adjourn claim

- (1) The tribunal may strike out a claim, in full or in part, if satisfied that it—
 - (a) discloses no reasonable cause of action; or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or 5
 - (d) is otherwise an abuse of process.
- (2) If a party is not present or represented at the hearing of a claim, the tribunal—
 - (a) may—
 - (i) strike out the claim; or
 - (ii) decide it in the absence of the party; or 10
 - (iii) adjourn the hearing:
 - (b) must, if it does so, notify that party that it has done so.
- (3) If a claimant fails to prosecute their claim, the tribunal may strike it out.

10 Withdrawal of claim

- A claim may be withdrawn if— 15
- (a) the parties agree; or
 - (b) the claimant serves written notice of withdrawal on the tribunal, and either—
 - (i) no respondent objects to the withdrawal; or
 - (ii) the tribunal considers that a respondent who objects to the withdrawal does not have a legitimate interest in the claim continuing and being decided. 20

11 Service of notices

- (1) Any notice or other document required to be served on, or given to, a person under this Act or any regulations made under this Act is sufficiently served or given if— 25
 - (a) it is delivered to that person; or
 - (b) it is left at or posted to that person’s usual or last known place of residence or business in New Zealand; or
 - (c) it is transmitted on a working day to an email address provided by that person; or 30
 - (d) it is sent in any other manner approved by the chairperson.
- (2) The notice or other document is to be treated as having been served—
 - (a) 5 working days after it was left at or posted to the recipient’s last known place of residence or business in New Zealand; or 35

- (b) on the first working day after the day on which it was transmitted by email.

12 Discovery

The tribunal may make any order for discovery that the District Court may make under section 105 or 106 of the District Court Act 2016, and those sections apply with all necessary modifications. 5

Evidence

13 Evidence

Any party may give and call evidence.

14 Tribunal may take evidence on oath 10

- (1) The tribunal may take evidence on oath, and the member acting as the tribunal in any case or any other person acting under the express or implied direction of the tribunal may administer an oath.

- (2) On a charge of perjury, it is sufficient to prove that the oath was administered in accordance with **subclause (1)**. 15

15 Tribunal may dispense with evidence if agreement by all parties

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

16 Tribunal may draw inferences from party's failure to act and decide claim based on available information 20

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

- (a) draw from the failure any reasonable inferences it thinks fit; and
 (b) decide the claim on the basis of the information available to it; and
 (c) if information was to be provided by a certain time and it was not provided by that time, give any weight it thinks fit to that information. 25

Expert advisers

17 Expert advisers not compellable witnesses

An expert adviser appointed under **section 24(1)(f), 27(1)(f), or 39(1)(f)** cannot be required to give evidence in any civil case on anything connected with a claim in the tribunal that has come to their knowledge due to their involvement with that claim. 30

*Witnesses***18 Party competent as witness**

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

19 Witness summons and production of things in evidence

5

(1) The tribunal may issue a summons to a person requiring the person to attend the hearing of a claim and give evidence, including to produce books, papers, documents, records, or things in that person's possession or under that person's control that relate to the issues in dispute.

(2) A member cannot be summonsed.

10

20 Protection and privileges of witnesses

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

(a) giving information to the tribunal; and

(b) giving evidence to, or answering questions before or put by, the tribunal; and

15

(c) producing anything to the tribunal.

21 Witnesses' expenses

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

20

(2) The fees, allowances, and travelling expenses must be paid by the party calling the witness.

(3) The tribunal may disallow all or any part of a sum payable under this section.

(4) On each occasion on which the tribunal issues a summons under **clause 19**, the tribunal must fix an amount that must be paid to the witness either—

25

(a) on the service of the summons; or

(b) at some other reasonable time before the date on which the witness is required to attend the tribunal.

(5) When fixing the amount for a summons, the tribunal must estimate the amount of the allowances and travelling expenses (but not fees) that will be payable to the witness under this section.

30

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

(1) Each year the chairperson of the tribunal must report to the Minister of Justice on the tribunal's performance in the period 1 July to 30 June.

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- (2) The report must be provided to the Minister by 30 September each year.
- (3) The report must include the following details:
- (a) the number of applications filed in that year:
 - (b) the number of applications accepted as claims in that year:
 - (c) the number of claims settled in that year: 5
 - (d) the stage at which claims were settled:
 - (e) the average length of time taken to settle claims:
 - (f) the number of claims discontinued for other reasons in that year, for example, claims that were struck out or withdrawn:
 - (g) the number of cases still to be resolved as at the last day of that year. 10
- (4) The report—
- (a) must identify the number of claims filed against each insurer; but
 - (b) must not identify individual claimants or contain details that could lead to the identification of individual claimants.
- (5) The report must be published by the Ministry of Justice on an Internet site. 15

Assistance and guidance, and publication of information and decisions

23 Assistance and guidance for claimants and respondents

- (1) The Ministry of Justice and the chief executive (for mediation only) may assist and guide claimants and respondents with the processes for dealing with claims. 20
- (2) The assistance and guidance may include—
- (a) providing information about case management conferences, mediation, and adjudication:
 - (b) providing information about other possible means of resolving disputes.

24 Online publication of information about procedures, time frames, and progress of decisions 25

The following information must be published on an Internet site:

- (a) information about the purpose of the tribunal and the ways that a person may use it:
- (b) any requirements that a person must meet to use the tribunal: 30
- (c) guidelines on how and when parties may obtain information on the progress of their application or claim and when a decision may be expected.

25 Online publication of final written decisions

- (1) Every final written decision of the tribunal must be published on an Internet site as soon as practicable unless there is good reason not to publish it. 35

- (2) A final written decision may be published in part if there is good reason for not publishing the full decision.
- (3) **Good reason not to publish** a decision or part of it includes the following:
- (a) non-publication is necessary because of a suppression order under **section 49** or a statutory requirement that affects publication or continued publication: 5
 - (b) the decision is of limited public value:
 - (c) having taken into account the presumption in favour of publication, the tribunal nevertheless decides that publication of the decision or any part of it would be contrary to the interests of justice. 10
- (4) In this section, **final written decision**—
- (a) means a written decision that decides, or substantially decides, the outcome of a claim in the tribunal and is either of the following:
 - (i) a written reserved decision following an oral hearing:
 - (ii) a written decision for a claim considered on the papers: 15
 - (b) does not include agreed terms of settlement recorded as a decision of the tribunal under **section 35**.

Part 2 Tribunal members

- 26 Term of appointment** 20
- (1) A member takes office on the date and for the term stated in the member’s notice of appointment.
- (2) A person who is appointed as a member is not an employee as defined in section 2 of the State Sector Act 1988.
- (3) A person appointed as a member may hold that office concurrently with any other office. 25
- 27 Oath of office**
- A member must, before performing any function under this Act, swear or affirm before a Judge of the High Court that they will faithfully and impartially perform their functions and duties as a member. 30
- 28 Term of office**
- (1) Except as otherwise provided in this schedule, a member—
- (a) holds office for a term of up to 5 years; and
 - (b) may be reappointed.
- (2) However, a member continues in office despite the expiry of their term of office until— 35

- (a) the member is reappointed; or
 - (b) the member's successor is appointed; or
 - (c) the member is notified that a replacement member will not be appointed; or
 - (d) the member vacates or is removed from office. 5
- (3) A member who continues in office for a period under **subclause (2)** may act as a member during that period for the purpose of—
- (a) completing a claim partly or fully heard by that member acting as the tribunal before the expiry of their term of office:
 - (b) hearing another claim. 10
- (4) A member who has resigned or whose successor is appointed or who will not be replaced may continue in office to complete the hearing of and deciding a claim that was partly or fully heard by that member acting as the tribunal.
- (5) However, a member may not continue to act under **subclause (3) or (4)** if they are removed from or are treated as having vacated their office under **clause 29(2) or (3)**. 15

29 Resignation or removal from or vacation of office

- (1) A member may at any time resign from office by written notice given to the Minister of Justice.
- (2) A member may at any time be removed from office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General. 20
- (3) A member is to be treated as having vacated their office if they are adjudged bankrupt under the Insolvency Act 2006.

30 Appointment of temporary acting chairperson or member 25

- (1) If the chairperson or another member of the tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if the chairperson or another member considers it is not proper or not desirable that they adjudicate on a particular claim, the Governor-General, on the recommendation of the Minister of Justice, may appoint a suitable person as an acting chairperson or acting member for the period or purpose stated in the appointment. 30
- (2) No person may be appointed as an acting chairperson or acting member unless they are eligible for appointment to the relevant position.
- (3) An acting chairperson or acting member is, while acting in the position, to be treated as the chairperson or a member of the tribunal. 35
- (4) An appointment of an acting chairperson or acting member, an act done by an acting chairperson or acting member, or an act done by the tribunal may not be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

31 Duty of members to disclose conflicts of interest

- (1) A member who, in performing the functions of the tribunal, has a conflict of interest in relation to a particular claim—
 - (a) must disclose it to the chairperson and all the parties; and
 - (b) must withdraw from acting in relation to the claim unless all the parties agree otherwise. 5
- (2) A party who agrees to a member hearing or continuing to hear a claim forfeits any right to object to the member doing so on the basis of the conflict of interest that was disclosed by the member.

32 Members not compellable witnesses 10

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

33 Salaries and allowances

- (1) All members of the tribunal must be paid, or reimbursed for, out of public money, without further appropriation than this section and in accordance with the fees framework,— 15
 - (a) a fee, a salary, or an allowance, or any combination of those things; and
 - (b) actual and reasonable expenses incurred in performing their functions as members. 20
- (2) For the period that an acting chairperson or acting member acts, they must be paid a salary and allowances calculated as a pro-rata proportion of the salary and allowances of a full-time chairperson or member.
- (3) In this section, **fees framework** means the framework determined by the Government for the classification and remuneration of statutory and other bodies in which the Crown has an interest. 25

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

Schedule 3

Consequential amendments to Acts

s 67

Courts Security Act 1999 (1999 No 115)

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

5

(ja) the Canterbury Earthquakes Insurance Tribunal:

Legal Services Act 2011 (2011 No 4)

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

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

10

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