

Earthquake Commission Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Earthquake Commission Amendment Bill, and recommends by majority that it be passed with the amendments shown.

Introduction

The Earthquake Commission Amendment Bill aims to update and improve the operation of the Earthquake Commission (EQC). EQC is a Crown entity that invests in natural disaster research and education, and provides insurance to residential property owners against the event of a natural disaster. The bill as introduced would amend the Earthquake Commission Act 1993 to:

- remove cover for contents, to ensure that EQC's primary focus is on housing repair and recovery
- increase (to \$150,000, excluding GST) the monetary cap for residential building damage, which has not changed since the Earthquake Commission Act was introduced
- extend the time limit under which EQC claims may be submitted
- insert new provisions regarding EQC's ability to share and publish information, to improve claim settlement and for public good purposes.

Proposed amendments

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

Collection and disclosure of information

In response to a submission by the Office of the Privacy Commissioner, we recommend replacing clause 5, which would insert new section 31A in the Act. This clause as introduced is intended to set out EQC's ability to disclose information. We agree with the Privacy Commissioner's submission that the wording of proposed section 31A is too broad and could create unintended consequences for privacy, as it is unclear how the section as introduced interacts with the Privacy Act 1993.

We have recommended re-drafting this section to ensure it more closely connects with the Privacy Act. By providing specific and routine reasons for which information may be collected, EQC would be able to disclose information it has collected with greater certainty.

We also recommend amendments to new section 31A to give greater certainty that EQC can disclose information to prevent or lessen a serious threat.

Extending claim deadlines to 2 years

Under the Act, claimants are required to give notice of damage to EQC within 30 days of the damage occurring or, under special circumstances (such as damage not being immediately apparent), within 3 months of the damage occurring.

Clause 7 of the bill as introduced would extend the initial period of notice to allow claimants to give notice within 3 months of damage occurring. EQC could also accept claims up to 2 years after damage occurred, as long as EQC's ability to assess the claim would not be "materially prejudiced" as a result of the length of time taken to make the claim.

We recommend two amendments to these provisions in clause 7(2) of the bill, which would replace clause 7(2) of Schedule 3 in the Act.

We recommend amending new clause 7(2)(b) of Schedule 3, to allow the initial period of notice to be extended beyond 3 months by regulation.

We also recommend adding clause 7(2A) to Schedule 3 of the Act to provide that regulations may be made to allow EQC to accept notice given after the 2-year limit. It could accept notice given after the limit if either or both of the following applied:

- damage could not reasonably have been discovered in time to allow the claimant to give notice within the time limit
- absence, incapacity, or other disability prevented the claimant from giving notice within the time limit.

In addition to the above requirements for allowing late notice by regulation, we recommend providing that notice after the 2-year time limit must be given as soon as reasonably practical after damage is discovered or as soon the claimant is reasonably able to, and within the time limit as specified in any future regulations.

We also recommend providing that notice provided after the 2-year limit is subject to the same material prejudice conditions that would apply to claims that were made under the initial 3-month limit.

Settling claims based on costs at the time damage was incurred

Clause 7(3) of the bill as introduced would insert clause 13(1A) into Schedule 3. This would provide that, for a claim made more than 3 months after damage has occurred, EQC may settle it on the basis of the amount it would have cost to replace or reinstate the property at the time of the damage. We understand that this policy reflects EQC's current settlement practice, regardless of the length of time that has passed. However, there is no provision to this effect in the Act.

We consider that this subclause would create uncertainty as to how it is applied, and recommend removing it. We consider there will be more appropriate legislation in the future through which this policy could be enacted.

Commencement and transitional arrangements

We recommend several changes to the commencement of various provisions of the bill in clauses 2 and 11.

Part 2 of the bill relates to the removal of cover for contents and increasing the residential building monetary cap. As introduced, the commencement of Part 2 is linked to the commencement of certain provisions of the Fire and Emergency New Zealand Act 2017. As the commencement date for those provisions is now uncertain, we recommend that Part 2 of the bill commence on 1 July 2019, with provision for delaying commencement by Order in Council.

Clause 11 of the bill sets out transitional provisions. The intention of these provisions is to ensure that, in relation to existing insurance policies, the amendments effected by Part 2 of the bill are phased in over a 12 month period as policies are renewed.

Clause 11 is based on the assumption that all insurance policies are renewed annually. Several submitters from the insurance industry informed us that this is not the case, and some policies are renewed as frequently as every two weeks. In addition, policies that were amended during their term could trigger the transitional provisions. In these circumstances, the transitional provisions as introduced would not operate as intended.

Therefore, we recommend amending clause 11 to provide that the new regime takes effect on the anniversary date of the provision of cover under the relevant contract, so the new regime is phased in relatively evenly over the 12 months from 1 July 2019.

Appendix

Committee process

The Earthquake Commission Amendment Bill was referred to the committee on 29 March 2018. The closing date for submissions was 31 May 2018. We received and considered 16 submissions from interested groups and individuals. We heard oral evidence from 9 submitters at hearings in Wellington.

We received advice from the Treasury and the Earthquake Commission.

Committee membership

Michael Wood (Chairperson)

Hon Amy Adams

Kiritapu Allan

Andrew Bayly

Rt Hon David Carter

Tamati Coffey

Hon Judith Collins

Ian McKelvie

Willow-Jean Prime

Dr Deborah Russell

David Seymour

Fletcher Tabuteau

Dr Duncan Webb

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Dr Megan Woods

Earthquake Commission Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

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

~~(2) **Part 2** comes into force —~~

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

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

~~(3) In this section, —~~

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

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

(2) **Part 2** comes into force on 1 July 2019 or a later date appointed by the Governor-General by Order in Council.

3 Principal Act

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

Part 1

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Amendments commencing on day after assent date

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

After section 3, insert:

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms. 25

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

~~Before section 32, insert:~~

31A Release of information

- (1) ~~The Commission may release information held by the Commission if it is released for 1 or more of the following purposes:~~
- (a) ~~preventing or lessening a threat to public health or public safety or to the life or health of any individual;~~ 5
 - (b) ~~the administration of this Act or the performance by the Commission of its functions;~~
 - (c) ~~facilitating natural disaster preparedness, response, or recovery (including settlement of insurance claims by insurance companies);~~
 - (d) ~~making property related information publicly available.~~ 10
- (2) ~~However, the Commission may release the information only if the Commission is satisfied,—~~
- (a) ~~if the information is released under **subsection (1)(c) or (d)**, that the release of the information is in the public interest; and~~
 - (b) ~~if the information is released under **subsection (1)(a) to (c)** and is personal information, that appropriate protections are or will be in place to maintain the confidentiality of the information.~~ 15
- (3) ~~The Commission may release information under this section on its own initiative (whether or not any person has asked for it to be released).~~
- (4) ~~Property related information is not personal information for the purposes of this section or the Privacy Act 1993.~~ 20
- (5) ~~This section is subject to section 25.~~
- (6) ~~In this section,—~~
- ~~**information** means any information held by the Commission, including—~~
- (a) ~~property related information; and~~ 25
 - (b) ~~information about claims or claimants~~
- ~~**personal information**, subject to **subsection (3)**, has the same meaning as in section 2(1) of the Privacy Act 1993~~
- ~~**property related information** means information about property (whether generally or in relation to 1 or more identified properties),—~~ 30
- (a) ~~including information about—~~
 - (i) ~~natural disaster damage to the property; and~~
 - (ii) ~~any claims made under this Act in relation to the property (including information about the assessed cost to replace or reinstate damaged property, reinstatement methods, and settlement amounts); but~~ 35
 - (b) ~~not including information about any claimant personally.~~

5 New section 31A inserted (Collection and disclosure of information)

Before section 32, insert:

31A Collection and disclosure of information

- (1) The Commission may collect information for any of the following purposes:
- (a) administering this Act: 5
 - (b) performing its functions:
 - (c) facilitating natural disaster preparedness, response, or recovery (including settlement of insurance claims by insurance companies).
- (2) Information collected by the Commission for any of the purposes referred to in **subsection (1)** is taken to have been collected— 10
- (a) for all of those purposes; and
 - (b) if it is property-related information, for the purpose of making the information available (including to the public).
- (3) The Commission may make available any information in its possession if it believes on reasonable grounds that doing so is necessary to prevent or lessen a serious threat to public health or public safety or to the life or health of any individual. 15
- (4) This section does not limit the Privacy Act 1993 or any other right the Commission may have to collect or disclose information.
- (5) In this section,— 20
- property-related information** means information about property (whether generally or in relation to 1 or more identified properties), including information about—
- (a) natural disaster damage to the property; and
 - (b) any claims made under this Act in relation to the property (including information about the assessed cost of replacing or reinstating damaged property, reinstatement methods, and settlement amounts) 25
- serious threat** has the same meaning as in section 2(1) of the Privacy Act 1993.

6 New Schedule 1AA inserted 30

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

7 Schedule 3 amended

- (1) In Schedule 3, clause 7(1)(a), replace “30 days (or such longer time as may be prescribed by regulations made under this Act)” with “the time allowed by **subclause (2)**”. 35
- (2) In Schedule 3, replace clause 7(2) with:
- (2) The notice under subclause (1)(a) must be given to the Commission—

- (a) not more than 3 months after the damage occurred (or any longer period prescribed by regulations made under this Act); or
- (b) subject to **subclause (2A2B)**, after the period set out in **paragraph (a)** has expired but not more than 2 years after the damage occurred (or any longer period prescribed by regulations made under this Act). 5
- ~~(2A) **Subclause (2)(b)** does not apply in relation to a claim if the Commission is satisfied that the insured person’s failure to make the claim within the time limit set out in **subclause (2)(a)** materially prejudices the Commission’s ability to assess the claim.~~
- (2A) However, the regulations may permit the Commission to accept notice given after the time limit applying under **subclause (2)(b)** if— 10
 - (a) either or both of the following apply:
 - (i) the natural disaster damage could not reasonably have been discovered in time to enable the insured person (acting reasonably promptly) to give notice within the time limit applying under **subclause (2)(b)**: 15
 - (ii) the insured person is unable to give notice within the time limit applying under **subclause (2)(b)** because of absence, incapacity, or other disability; and
 - (b) the notice is given— 20
 - (i) as soon as is reasonably practicable after the natural disaster damage is discovered or as soon as the insured person is reasonably able to give notice; and
 - (ii) in any event, within the time specified in the regulations.
- (2B) If notice is given after the time limit applying under **subclause (2)(a)**, the Commission may decline the claim if the lapse of time before the notice was given materially prejudices the Commission’s ability to assess the claim. 25
- ~~(3) In Schedule 3, after clause 13(1), insert:~~
- ~~(1A) Where any claim is made under this Act in respect of natural disaster damage to any property more than 3 months after the damage occurred, the Commission may settle the claim on the basis of the amount it would cost to replace or reinstate the property at the time of the settlement of the claim.~~ 30
- ~~(4) In Schedule 3, clause 13(2), replace “subclause (1)” with “subclauses (1) and **(1A)**”.~~

Part 2 35

Amendments with delayed commencement

8 Section 18 amended (Residential buildings)

- (1) In section 18(1)(c), replace “\$100,000” with “\$150,000”.

- (2) In section 18(2), replace “a sum of not less than \$1,000” with “\$2,500”.
- (3) In section 18(2), replace “be \$1,000” with “be the amount calculated by multiplying \$2,500.”.
- 9 Section 20 repealed (Personal property)**
Repeal section 20. 5
- 10 Section 22 amended (Voluntary insurance against natural disaster damage)**
- (1) In section 22(1), replace “, residential land, or personal property, the Commission may enter into a contract to insure that building, land, or personal property” with “or residential land, the Commission may enter into a contract to insure that building or land”. 10
- (2) In section 22(1), replace “any of sections 18 to 20” with “section 18 or 19”.
- (3) Replace section 22(2)(a) and (b) with:
- (a) for the insurance of any residential building or residential land that is not insured under section 18 or 19; or 15
- (b) for the insurance of any residential building or residential land in substitution for the insurance of that building or land under section 18 or 19.
- 11 Schedule 1AA amended**
In **Schedule 1AA** (as inserted by **section 6**), after **clause 2**, insert:
- 3 Residential buildings** 20
- (1) ~~Section 18, as in force before the commencement date, continues to apply in relation to a contract of fire insurance entered into before that date.~~
- (2) ~~In this clause, **commencement date** means the date on which **section 8** of the Earthquake Commission Amendment Act **2018** comes into force.~~
- 4 Personal property** 25
- (1) ~~Section 20, as in force before the commencement date, continues to apply in relation to a contract of fire insurance entered into before that date.~~
- (2) ~~Section 22, as in force before the commencement date, continues to apply in relation to a contract of insurance entered into under that section before that date.~~ 30
- (3) ~~Sections 2, 21, 23, 27, 30, 31, and 36, and clause 5 of Schedule 3, as in force before the commencement date, continue to apply to the extent that either or both of sections 20 and 22 (as the case requires) continue to apply under **sub-clause (1) or (2)**.~~
- (4) ~~In this clause, **commencement date** means the date on which **section 9** of the Earthquake Commission Amendment Act **2018** comes into force.~~ 35

3 **New regime phased in over 12 months**

(1) The new regime applies in relation to all contracts on and after the commencement date unless **subclause (2)** provides otherwise.

(2) If the period of cover under a contract (the **existing contract**) began before the commencement date,—

(a) the old regime continues to apply in relation to the existing contract; and

(b) if the existing contract is renewed 1 or more times after the commencement date, the old regime also applies in relation to each renewed contract.

(3) However, **subclause (2)** ceases to have effect (and the old regime therefore ceases to apply) in relation to the existing contract and each renewed contract at the beginning of the first anniversary date of the existing contract after the commencement date.

(4) In this clause,—

anniversary date of the existing contract means the anniversary of the first day of the period of cover under,—

(a) if the existing contract was not a renewal of a previous contract, the existing contract; or

(b) if the existing contract was a renewal in a series of 1 or more previous contracts, the first contract in the series

commencement date means the date on which **Part 2** of the Earthquake Commission Amendment Act **2018** comes into force

contract means—

(a) a contract of fire insurance of a kind referred to in section 18 or 20; or

(b) a contract entered into by the Commission under section 22

new regime means this Act as amended by **Part 2** of the Earthquake Commission Amendment Act **2018**

old regime means this Act as in force immediately before **Part 2** of the Earthquake Commission Amendment Act **2018** comes into force.

12 **Consequential amendments**

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

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Schedule 1
New Schedule 1AA inserted

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Schedule 1AA
Transitional, savings, and related provisions

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s 3A

Part 1
Provisions relating to Earthquake Commission Amendment Act 2018

1 Release of information

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~~To avoid doubt, **section 31A** applies to all information held by the Commission, regardless of when it was obtained by the Commission.~~

1 Collection and disclosure of information

Information collected by the Commission before **section 5** of the Earthquake Commission Amendment Act **2018** comes into force is taken to have been collected for all of the purposes referred to in **section 31A(1) and (2)**.

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2 Reporting of claims

- (1) Clauses 7 and 13 of Schedule 3, as in force before the commencement date, continue to apply in relation to a claim relating to natural disaster damage that occurred before that date.
- (2) In this clause, **commencement date** means the date on which **section 7** of the Earthquake Commission Amendment Act **2018** comes into force.

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Schedule 2

Consequential amendments

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Section 2

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

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

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

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

Section 21

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

Section 23

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

Section 27

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

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

Sections 30 and 31

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

Section 36

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

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

Section 36—*continued*

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

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

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Schedule 3

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

Legislative history

22 March 2018
29 March 2018

Introduction (Bill 37–1)
First reading and referral to Finance and Expenditure Committee