

18 May 2018

Attorney General

Canterbury Earthquakes Insurance Tribunal Bill (Consultation draft): Consistency with the New Zealand Bill of Rights Act 1990  
Our Ref: ATT395/283

1. I have considered the above Bill for consistency with the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). I advise that the Bill appears to be consistent with the Bill of Rights Act. A copy of the consultation draft of the Bill is attached.
2. The Bill establishes a Tribunal to manage disputes between policyholders and insurers (the Earthquake Commission, Southern Response or other private insurers) arising out of Canterbury earthquake insurance claims. The Tribunal's jurisdiction will be limited to claims in respect of residential land and property, and includes:
  - 2.1 Unsettled claims; made for damage due to the earthquakes;
  - 2.2 Reopened claims due to discovery of additional/further earthquake damage; and
  - 2.3 Reopened claims due to deficient repair work, where the repairs were managed directly by the Earthquake Commission, Southern Response or other private insurers.
3. The Bill also establishes an independently funded mediation process, to support parties to agree a settlement themselves before the case progresses to a hearing in the Tribunal. It also enables the Tribunal to appoint technical experts to assist the Tribunal with determining claims. The High Court will continue to have jurisdiction to hear and determine earthquake related insurance claims, and there is provision for claims to be transferred between the Tribunal and the High Court, for example where a novel question of law arises or where the case would set a precedent that will enable other similar cases to settle more quickly.
4. The Tribunal's determinations will be treated and enforced as a District Court order.

## Restriction on appeal rights

5. There is no "privative" clause in the Bill, so claims already commenced in the High Court or District Court will continue there unless transferred to the Tribunal, and a claimant can still choose to bring proceedings in those Courts. The District Court or High Court can transfer a claim to the Tribunal on a party's application or on the judge's own motion, if the judge believes that the transfer is in the interests of justice (Clause 16). **If** a claimant commences Court proceedings, any claim in the Tribunal relating to the same insurance claim will be treated as withdrawn (clause 18).
6. Clause 20(3) provides that the Tribunal must comply with the principles of natural justice.
7. Clause 51 provides that Tribunal decisions may be appealed to the High Court on questions of fact and law, and may only be permitted with leave of the High Court. Second and subsequent appeals to the Court of Appeal and Supreme Court are permitted with leave of the relevant court and on questions of law only (Clause 51(6)).
8. This engages the right to justice in s 27(2) of the Bill of Rights Act, which states:
 

Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.
9. This affirms the High Court's jurisdiction to supervise the lawfulness of decisions of inferior courts and tribunals.<sup>1</sup> This Bill does not limit a person's ability to judicially review a decision of the Canterbury Earthquakes Insurance Tribunal, and so the only issue is whether the right protected by s 27(2) also includes the right to appeal a decision. We do not think section 27 extends that far.<sup>2</sup> Even if it did, clause 51 does not extinguish the right of appeal altogether, but restricts it to sufficiently meritorious cases (as determined by the High Court). Although we do not consider the right protected by s 27(2) is limited, any limitation would be demonstrably justified, to ensure the fast and efficient resolution of outstanding insurance disputes, and to achieve finality in sometimes protracted litigation.
10. Clause 35 prevents mediation services being called into question in proceedings as being inappropriate. This provision has the potential to engage the right to freedom of expression protected by s 14 of the Bill of Rights Act. However, we consider this provision is consistent with the need to maintain confidentiality of mediation and the finality of settlement reached through mediation, and therefore we do not consider s 14 is properly engaged or infringed by cl 35.

Review of this advice

11. This advice has been reviewed in accordance with Crown Law protocol by Paul Rishworth QC, Senior Crown Counsel.



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Kate Stone  
Crown Counsel

Noted



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Hon David Parker  
Attorney-General  
.M.. /5/2018

# DRAFT FOR CONSULTATION

## Canterbury Earthquakes Insurance Tribunal Bill

Government Bill

### Explanatory note

#### General policy statement

#### 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 [PPU to insert URL and link] (if it has been provided for publication).

#### Regulatory impact assessment

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

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

- [Insert URL link(s) to the RIS on the agency's/agencies' Internet site(s)]  
<http://www.treasury.govt.nz/publications/informationreleases/ris>

#### Clause by clause analysis

*Clause*

*Hon Andrew Little*

# **Canterbury Earthquakes Insurance Tribunal Bill**

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Canterbury Earthquakes Insurance Tribunal Act 2018.

2 Commencement

- (1) Sections xx 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.
- (2) Any provision that has not earlier been brought into force comes into force on 1 March 2019.
- (3) The rest of this Act comes into force on the day after the date of Royal assent.

**Part 1**

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

**Subpart 1-Purpose and preliminary provisions**

3 Purpose

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

4 Overview of Act

- (1) This section is a guide to the general scheme and effect of the Act.
- (2) Subpart 1 of Part 1 sets out the purpose of the Act and preliminary provisions. The latter provisions consist of a section containing definitions, the operative provision for the transitional, savings, and related provisions contained in Schedule 1, and a section which provides 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) under this Act.
- (4) Subpart 3 of Part 1 sets out provisions for bringing a claim (by either applying to the tribunal or by transferring proceedings from a court to the tribunal).



- (5) Subpart 4 of Part 1 sets out provisions for case management, including a first case management conference.
- (6) Subpart 1 of Part 2 sets out provisions for the mediation of claims.
- (7) Subpart 2 of Part 2 sets out the main functions and powers of the tribunal relating to the adjudication of claims.
- (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. Subpart 1 also contains provisions relating to the chairperson's responsibilities and provides for appointment of a Registrar and for staff to be assigned to the tribunal.
- (9) Subpart 2 of Part J contains miscellaneous provisions, including an offence of contempt of tribunal.

## 5 Definitions

In this Act, unless the context otherwise requires,-

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

chairperson means the member of the tribunal appointed under section 54(3)

chief executive means the chief executive of the department

claim means a claim before the tribunal under this Act 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

claimant means a primary party who has a claim before the tribunal under this Act

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

function includes a function, power, or duty

insurance claim means-

- (a) a claim made under a contract of insurance by a policyholder to an insurer;
- (b) a claim made under the Earthquake Commission Act 1993 by an insured person to the EQC

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

**insurer-**

(a) has the meaning given in section 6(I) of the Insurance (Prudential Supervision) Act 2010; but

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

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

policyholder has the meaning given in section 6(I) of the Insurance (Prudential Supervision) Act 2010

primary party means a party to whom section 10 applies

respondent means a person against whom a claim is before the tribunal under this Act

Southern Response means Southern Response Earthquake Services Limited

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

## 6 Transitional, savings, and related provisions

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

## 7 Act binds the Crown

This Act binds the Crown.

## Subpart 2-Eligibility criteria and parties to claim before tribunal

## 8 Application of Act

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

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

(3) For the purpose of subsection (1), residential building and residential property have the meanings given in the contract of insurance between the policyholder and the insurer.

(4) For the purpose of subsection (2), residential building and residential land have the meanings given in section 2(I) of the Earthquake Commission Act 1993.

## 9 Eligibility criteria for claim under Act

(1) The eligibility criteria to bring a claim under this Act are that the claim-

(a) must arise from a dispute under section 8(1) or (2), or both; and

- (b) must seek resolution of liability, remedies, or both for an insurance claim; and
  - (c) must be between primary parties.
- (2) For a claim to proceed before the tribunal under this Act,-
- (a) the chairperson must accept an application to the tribunal under section 13; or
  - (b) proceedings must be transferred from a court to the tribunal under section 16.

#### 10 Primary parties to claim before tribunal under Act

- (1) The primary parties under section 8(1) are the policyholder and the policyholder's insurer.
- (2) The primary parties under section 8(2) are the insured person and the EQC.
- (3) A primary party may bring a claim under this Act against the other primary party, as specified under subsection (1) or (2).
- (4) A person who is both a policyholder and an insured person (under section 8(1) and (2)) may bring a claim under this Act against their insurer and the EQC as primary parties.

#### 11 Additional parties

- (1) If the tribunal considers it necessary for the fair and speedy resolution of a claim under this Act, it may, at any stage, order that
- (a) a person be joined as a third party respondent;
  - (b) a party be removed.
- (2) The tribunal may not join the EQC or an insurer as a third party respondent to a claim.
- (3) However, if a person brings a claim under section 10(3), and the tribunal considers that it would be more appropriate for the person to bring the claim under section 10(4), the tribunal may order that the policyholder's insurer or the EQC be joined to the claim as primary parties.
- (4) A claim cannot continue in the tribunal unless it has a claimant who is a primary party and at least 1 respondent who is a primary party, and if a primary party or parties are removed and only a third party respondent remains, the claim must be treated as having been withdrawn.
- (5) If a claim is treated as having been withdrawn under subsection (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 (resulting in there being no respondent to the claim who is a primary party); and

- (b) even if the time for filing a claim in that other forum has passed.

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

#### *Bringing claims by application to tribunal*

#### 12 Claim brought by application

- (1) A person may bring a claim under this Act by applying to the tribunal.
- (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 (*see* section 43) sought; and
  - (d) the names and addresses of the parties involved; and
  - (e) if available, the addresses that the parties have specified for the service of notices.
- (3) The application must--
- (a) be in writing; and
  - (b) be in the form (if any) approved by the tribunal; and
  - (c) include sufficient information and supporting documentation to fairly inform other parties and the tribunal of the substance of the claim being brought; and
  - (d) be accompanied by the prescribed fee (if any).
- (4) The filing date of an application is the date on which the tribunal receives the complete application.

#### 13 Applications that chairperson may accept

The chairperson may accept an application only if it meets the eligibility criteria in section 9(1).

#### 14 Serving notice on respondents

- (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 Response from respondents

- (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 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.
- (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

- (1) If proceedings relating to an insurance claim in dispute have been commenced in the District Court, a District Court Judge may, on the application of any party or on the Judge's own motion, order that the proceedings be transferred to the tribunal.
- (2) If proceedings relating to an insurance claim in dispute have been commenced in the High Court, a High Court Judge may, on the application of any party or on the Judge's own motion, order that the proceedings be transferred to the tribunal.
- (3) If proceedings are transferred, the tribunal may have regard to any notes of evidence transmitted to it by the Judge, and it is not necessary for that evidence to be given again under this Act unless the tribunal requires it.
- (4) An order to transfer proceedings may be made only if the proceedings meet the eligibility criteria for a claim under **section 9(1)** and-
- (a) the parties to the proceedings agree to the transfer; or
  - (b) the Judge making the order believes that the transfer is in the best interests of justice.
- (5) **Sections 12 to 15** do not apply to a claim that is transferred under this section from a court to the tribunal.

### *Ineligible claims because of proceedings in other forum*

## 17 Application ineligible because of proceedings or decision in another forum

A person may not bring a claim before the tribunal under this Act if-

- (a) the primary parties to the claim have agreed to enter into arbitration relating to the same insurance claim in dispute and the arbitration has already commenced; or
- (b) the person has initiated proceedings relating to the same insurance claim in dispute in the Disputes Tribunal and the proceedings are in progress; or

- (c) the person has initiated proceedings relating to the same insurance claim in dispute (including by way of counterclaim) in a court and the proceedings are in progress (unless they have been transferred to the tribunal under **section 16**); or
  - (d) the person was 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.
- 18 Withdrawal of claim on claimant initiating proceedings in another forum
- (1) A claimant may not continue a claim before the tribunal under this Act if.
- (a) the primary parties to the claim have agreed to enter into arbitration relating to the same insurance claim in dispute and the arbitration has already commenced; or
  - (b) the claimant initiates 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 initiates proceedings of a kind referred to in this section, 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*

- 19 Status and effect of claim under other enactments
- (1) This section applies to a claim when-
- (a) the chairperson accepts the relevant application; or
  - (b) a court transfers the relevant proceedings to the tribunal.
- (2) The claim before the tribunal under this Act must be treated as-
- (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(I)(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.

**Subpart 4-Case management**

- 20 Management of claims and natural justice
- (1) When managing claims the tribunal must have regard to the purpose of this Act to provide speedy, flexible, and cost-effective services.
- (2) In particular, the tribunal-

- (a) must encourage the parties to work together on matters that are agreed; and
  - (b) may use or allow the use of experts only if, in the tribunal's opinion, it is necessary to do so;
  - (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) In this section, experts includes both an expert adviser appointed by the tribunal and an expert retained by a party as an adviser or a witness.

*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-
- (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.

22 Attendance at first case management conference

- (1) A party must attend the first case management conference (with or without 1 or more representatives) 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) 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.
- (3) 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.
- (4) A participant at the first case management conference is required to attend in person, **unless**-
- (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.

- (5) The first case management conference must be held in private.
- 23 Types of matters at first case management conference
- (1) At the first case management conference, the tribunal may-
- (a) set a timetable for the future steps in the progress of the claim under this Act, including the provision of documents and the convening of any expert conferences:
  - (b) identify the core issues in dispute:
  - (c) decide whether other parties need to be joined or removed and, if so, make an order under **section 11** to this effect:
  - (d) obtain further information regarding the claim or a response to the claim:
  - (e) identify any further documents or evidence that needs to be produced by the parties:
  - (f) direct the parties to mediation and set time frames for mediation:
  - (g) issue any other procedural directions necessary to achieve the overall objective of this Act.
- (2) If a party is joined to the claim, the tribunal must —
- (a) notify the party that the party is a respondent in the claim:
  - (b) specify the date by which a response must be filed with the tribunal and served on the other parties:
  - (c) specify the date by which any information or documents must be produced to the tribunal and the other parties.

*Further case management*

- 24 Case management
- (1) For the purpose of case management following the first case management conference and at any stage prior to preparing for a hearing (if one is needed), the tribunal may-
- (a) hold any number of case management conferences needed to progress the claim; and
  - (b) otherwise communicate with the parties in any way it considers is efficient.
- (2) A case management conference must be held in private.
- (3) A case management conference may be conducted by telephone, audiovisual link, or another remote access facility if the tribunal considers it appropriate and the necessary facilities are available.
- (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.



## 25 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)**;
  - (b) direct that 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 an 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;
  - (e) direct a respondent to file a response to the claim;
  - (f) appoint an expert adviser to assist the tribunal;
  - (g) convene an expert conference;
  - (h) even if the parties have attempted mediation previously, direct the parties to mediation and set time frames for mediation;
  - (i) request, direct, or order the parties to do any thing provided for in **Part 1 of Schedule 2**;
  - (j) issue any other reasonable directions for resolving the claim.
- (2) **Section 23(2)** (relating to the filing of a response by a party joined to a claim) applies if a party is joined to a claim under this section.
- (3) An appointment of an expert adviser is in 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 an opportunity to comment.
- (4) Expert advisers must act in accordance with practice notes issued by the chairperson.

**Note: instructors need to check this list of powers.**

## 26 Independence of expert advisers

- (1) Expert advisers appointed by the tribunal under **sections 25(1)(f) and 38(1)(f)**-
- (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-
- (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.
- (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.

#### 27 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:
  - (a) the claim presents undue complexity:
  - (b) the claim presents a novel claim:
  - (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.
- (3) Any other claim must be transferred to the High Court.

## Part 2

### Mediation and adjudication of claims

#### Subpart I-Mediation

#### 28 Mediation

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

#### 29 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.

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

#### 30 Independence of mediators

- (1) A mediator-
  - (a) must act independently when deciding how to handle or deal with any particular claim or aspect of it; and

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

Compare: 2006 No 84 s 78(1)

### 31 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.
- (3) The mediator-
  - (a) may, having regard to the purpose of this Act and the needs of the parties, follow such procedures, whether structured or unstructured, or do such things as the mediator considers appropriate, to resolve the claim promptly and effectively; and
  - (b) may receive any information, document, or other material, and in any way that the mediator thinks fit, whether or not it would be admissible in judicial proceedings.
- (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(1H3)

### 32 Confidentiality

- (1) The people specified in **subsection (2)** must, unless authorised to do otherwise by the parties or the relevant party, keep confidential—
  - (a) any information or document created for the purposes of a 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.
- (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;
  - (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.
- (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.
- (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
  - (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.

Compare: 2006 No 84 s 84

### 33 Settlements to be **notified**, etc

- (1) Within 5 working days of becoming aware that a claim (or part of a claim) has settled, the mediator must-
- (a) notify the tribunal that the claim (or part of the claim) has 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-
- (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.

Compare: 2006 No 84 s 86

### 34 Enforcement

- (1) The parties to a claim (or part of a claim) that has settled may apply to the tribunal for the agreed terms of settlement to be recorded as a decision of the tribunal.
- (2) If this occurs, the decision is enforceable in accordance with **section 49**.
- (3) However, the decision must be filed in the District Court before it can be enforced.
- (4) **Section 32(4)** (which relates to confidentiality) does not apply to a decision filed in the District Court in accordance with this section.

Compare: 2006 No 84 s 87

### 35 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:

- (a) that the nature or content, or both, of the services was inappropriate; or
- (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

### 36 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 to provide speedy, flexible, and cost-effective services.
- (2) In particular, the tribunal-
- (a) must encourage the parties to work together on matters that are agreed;
- (b) must not admit or permit unnecessary or irrelevant evidence or cross-examination;
- (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-
- (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.
- (5) In this section, experts includes both an expert adviser appointed by the tribunal and an expert retained by a party as an adviser or a witness.

Compare: 2006 No 84 s 57

37 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 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:
  - (b) decide whether parties need to be joined or removed and, if so, make an order under **section 11** to this effect.
- (3) **Section 23(2)** (relating to the filing of a response by a party joined to a claim) applies if a party is joined to a claim under this section.

38 Powers of tribunal

- (1) For the purpose of preparing for hearing and hearing a claim the tribunal may do any of the following (as relevant)-
  - (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 documents be produced:
  - (c) direct that evidence be exchanged:
  - (d) consider evidence from another claim heard by the tribunal or on appeal that it thinks is relevant and applicable to the present claim, as long as the tribunal-
    - (i) informs the parties that it intends to do so; and
    - (ii) gives them the opportunity to comment:
  - (e) request written submissions from a party or the parties, as long as it then gives the relevant parties an opportunity to comment on them:
  - (f) appoint an expert adviser to assist the tribunal:
  - (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):
  - (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 a claim.
- (2) **Section 27** (relating to transfer of claim to court) applies at the adjudication stage.

### 39 Expert advisers

- (1) An appointment of an expert adviser under **section 38(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 an opportunity to comment.
- (2) **Section 26** (relating to 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.

### 40 Sittings of tribunal

- (1) A hearing of the tribunal in which evidence is given or the parties make submissions on the issues in dispute must be conducted in public except to the extent that an exception provided for in this section applies.
- (2) Sittings of the tribunal dealing with procedural or administrative matters to prepare for hearing, including a case management conference, may be held in public or private.
- (3) 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.
- (4) A hearing or any part of it or a sitting to discuss preliminary, procedural, or administrative matters may be conducted by telephone, audiovisual link, or other remote access facility if the tribunal considers it appropriate and the necessary facilities are available.
- (5) On application by a party, the tribunal may order that all or part of a hearing be held in private.
- (6) The tribunal may make an order under **subsection (5)** only after-
  - (a) hearing from the parties; and
  - (b) having regard to the interests of the parties and to the public interest.

### 41 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**.

#### *Tribunal decision*

### 42 Matters tribunal may decide

- (1) The tribunal may decide-
  - (a) any liability of any respondent to the claimant; and

- (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 no primary party has any liability to the claimant, the tribunal may still decide that a party joined as a third party respondent has liability to the claimant.

#### 43 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;
  - (b) current law, in particular the law of contract as it relates to contracts of insurance;
  - (c) the Earthquake Commission Act 1993.
- (2) An order may require the payment of general damages (for example, for mental distress).
- (3) 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 that person and the date by which that amount is payable if they fail or refuse to do that thing by that date.
- (4) If the tribunal decides that a party is liable to make a payment to another party, the tribunal may make that decision subject to any conditions.
- (5) The tribunal may decide that the liability of a party depends on another party meeting particular conditions.
- (6) If a claim is settled by agreement between the parties before the tribunal's decision is given, the tribunal-
  - (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.
- (7) In this section, mental distress means all or any of the following:
  - (a) emotional or mental anxiety;
  - (b) distress or stress.

Compare: 2006 No 84 Sch 4



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#### 44 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-
- (a) the party has 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
  - (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.
- (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.

#### 45 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 for all or part of the period between the date on which the cause of action arose and the date of payment.
- (2) Interest must be calculated,-
- (a) if provision is made for interest in the relevant insurance contract, in accordance with that contract;
  - (b) if no provision is made in the relevant insurance contract or the claim does not involve an insurance contract, in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

#### 46 Tribunal's decision: form

- (1) The tribunal's decision must be in writing and include the tribunal's reasons for it.
- (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.

#### 47 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 dealing with a claim, is invalid for want of form.

#### 48 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.
- (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*

#### 49 Enforcement of tribunal decisions (other than costs awards)

- (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 43(3)), the Registrar must give written notice of the application to the party against whom enforcement is sought.
- (3) If that party does not file a notice of objection within 10 working days after receiving that notice of the application, 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.

#### 50 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
  - (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.

#### 51 Appeals

- (1) A party to a claim that has been decided by the tribunal may appeal on a question of law or fact that arises from the decision.
- (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-
  - (a) 20 working days of the tribunal's decision; or
  - (b) any further time that the High Court allows.
- (4) The High Court may-
  - (a) confirm, modify, or overturn the tribunal's decision;
  - (b) order a remedy or costs or award 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-
  - (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 I-Canterbury Earthquakes Insurance Tribunal established

#### 52 Canterbury Earthquakes Insurance Tribunal established

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

#### 53 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
- (b) inquisitorial in nature.

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

#### 54 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.
- (2) The Minister of Justice must recommend for appointment only people who, in the Minister's opinion, are suitable to be appointed as members, having regard to their knowledge, skills, and experience.
- (3) One member must be appointed by the Governor-General to be the chairperson of the tribunal.

## 55 Performance of functions of tribunal

The functions of the tribunal are performed by its members.

## 56 Further provisions relating to tribunal members

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

*Chairperson's responsibilities*

## 57 Assignment of member to act as tribunal

The chairperson-

- (a) must assign 1 member to act-
  - (i) as the tribunal for each claim; and
  - (ii) as the tribunal to decide whether all or some of the records relating to a claim for which a suppression order has been made should be available for public inspection under **section 63**; or
- (b) may assign themselves to do either of the things listed in **paragraph (a)**.

## 58 Orderly and efficient operation

The chairperson is responsible for making such arrangements as are practicable to ensure that they and each member performs their functions-

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

## 59 Delegation by chairperson

- (1) The chairperson may delegate any of their 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.
- (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.
- (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.

- (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*

60 Registrar and staff

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

Subpart 2-Miscellaneous provisions

61 Contempt of tribunal

- (1) ) A person commits an offence if the person-
- (a) wilfully insults or obstructs 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 insults or obstructs a person attending at a sitting of the tribunal ; or
- (c) wilfully interrupts, or otherwise misbehaves at, a sitting of the tribunal; or
- (d) wilfully and without lawful excuse disobeys an order or direction of the tribunal during the hearing of a claim; or
- (e) fails to-
- (i) attend at the tribunal after receiving a witness summons to do so; or
- (ii) produce any books, papers, documents, records, or things that the tribunal has required be produced.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$2,000.
- (3) The tribunal may order the exclusion of a person from a sitting of the tribunal if that person's behaviour, in the opinion of the tribunal, constitutes an offence against subsection (1), whether or not the person is charged with the offence.
- (4) An officer or staff member of the tribunal or a constable may take any steps that are reasonably necessary to enforce the exclusion.
- (5) [n this section, sitting includes a case management conference.

## 62 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
  - (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
  - (b) any words spoken or written at, or for the purposes of, a mediation or hearing of a claim; or
  - (c) anything in a notice given under this Act.

## 63 Tribunal records

- (1) The tribunal is responsible for ensuring the safe custody of the records and papers relating to an application or a claim under this Act.
- (2) The records and papers must be available for public inspection at all reasonable times, on payment of the fee payable (if any) for searching and accessing court records under the District Court Fees Regulations 2009.
- (3) Subsection (2) is subject to section 32 (which relates to confidentiality of information and documents relating to mediation).
- (4) If a suppression order has been made by the tribunal under section 48, the records and papers that relate to the claim may not be made available for public inspection except as permitted by the tribunal.

*Regulations and rules*

## 64 Regulations

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

- (a) prescribing fees for the purposes of this Act;
- (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.

**Note:** what fees are you expecting may need to be prescribed under para (a)?

## 65 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

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rules regulating the practice and procedure of the District Court or the High Court in proceedings under this Act.

- (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
  - (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).

*Consequential amendments*

- 66 Consequential amendment of Acts/enactments -need to check for other consequential
- (1) Amend the Acts specified in **Schedule 3** as set out in that schedule.
  - (2) Amend the legislative instruments? 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**

- 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 came into force.
- 2 Arbitration commenced or proceedings initiated or decided before or after section 17 in force  
Section 17 applies regardless of whether-
  - (a) the arbitration commenced before or after that section came into force;  
or
  - (b) the proceedings were initiated or decided before or after that section came into force.



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Schedule 2  
Further provisions relating to tribunal and members

ss 41 and 56

Part 1

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

*Procedure*

I Procedure

The tribunal may regulate its procedures as it sees fit, subject to--

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

2 Practice notes

(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 of case management conferences;
- (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

- (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 they would be if the representative was legally qualified.

#### 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~~-
- (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.

#### 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.

#### 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.

#### 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.

#### 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
  - (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
  - (iii) adjourn the hearing;
  - (b) must, if any of those orders are made or things are done, 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**-

- (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.

#### 11 Service of notices

- (1) Any notice or other document required to be served on, or given to, a person under this Act or any regulations made under this Act is sufficiently served or given **if**-
- (a) it is delivered to that person; or
  - (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 the person; or
  - (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;
  - (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 accordingly with all necessary modifications.

### *Evidence*

#### 13 Evidence

Any party may give and call evidence.

Consultation draft



- 14 Tribunal may take evidence on oath
- (1) The tribunal may take evidence on oath and a member 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 Tribunal may dispense with evidence if agreement by all parties
- When hearing a claim, the tribunal may dispense with evidence on any matters on which all parties have agreed.
- 16 Tribunal may draw inferences from party's failure to act and decide claim based on available information
- [if a party fails, without reasonable excuse, to do anything 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.

*Expert/ advisers*

- 17 Expert advisers not compellable witnesses
- An expert adviser appointed under sections 25(1)(f) and 38(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 in the course of hearing that claim.

*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
- (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.

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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
- (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.
- (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-
  - (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.

*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.
- (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;
  - (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.

- (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.

*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.
- (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

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;
- (c) guidelines on how and when parties may obtain information on the progress of their 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.
- (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 48** or statutory requirement that affects publication or continued publication;
  - (b) the decision is of limited public value;
  - (c) having taken into account the presumption in favour of publication, the tribunal nevertheless decides that publication of the decision or any part of it would be contrary to the interests of justice.
- (4) In this section, final written decision-

- (a) means a written decision that decides, or substantially decides, the outcome of a claim in the tribunal and is either of the following:
  - (i) a written reserved decision following an oral hearing;
  - (ii) a written decision for a claim considered on the papers;
- (b) does not include agreed terms of settlement recorded as a decision of the tribunal under section 34.

## Part 2 Tribunal members

### 26 Terms of appointment

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

### 27 Oath of office

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

### 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
  - (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.
- (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.

- (4) A member who has resigned or whose successor is appointed or who will not be replaced may continue in office to complete hearing 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)**.

#### 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.
- (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

- (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 should 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.
- (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.
- (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.
- (2) A party who agrees to a member hearing or continuing to hear a claim forfeits any right to object to the member doing so on the basis of the conflict of interest that was disclosed by the member.



### 32 Members not compellable witnesses

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

### 33 Salaries and allowances

- (1) All members of the tribunal must be paid and reimbursed, out of public money, without further appropriation than this section and in accordance with the fees framework-
- (a) a fee, a salary, an allowance, or any combination of those things:
  - (b) actual and reasonable expenses incurred in performing their functions as members.
- (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.

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

### Schedule 3

#### Consequential amendments

s 66

Courts Security Act 1999 (1999 No 115)

After section 3(5)U, insert:

Ua) the Canterbury Earthquakes Insurance Tribunal:

Legal Services Act 2011 (2011 No 4)

In section 4(I), 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

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