

# Reform of EQC

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# Dedicated to John Gillespie



# Basic points

## The EQC scheme:

- To some extent, a success.
  - About 90% of households in NZ insured for earthquake damage.
  - In California, only about 10%.
- Room for improvement.
- Current reforms (the Earthquake Commission Amendment Bill 2018) are a mixed bag, and could have gone further.

# Recent history

- Public Discussion Paper (1988) and White Paper (1989)
- Earthquake Commission Act 1993 (“ECA”)
- Canterbury earthquakes: September 2010 – December 2011
- Review of the ECA announced: September 2012
- Discussion document released: July 2015
- Earthquake Commission Amendment Bill introduced: March 2018

# The 2012 review

**The 2015 discussion document came out of the 2012 review of EQC, which considered:**

- What EQC insures
- How EQC prices its cover
- “Institutional design”
- The “financial management of the Crown’s risk exposure”

# The 2015 discussion document

## What should stay the same?

- Cover for residential homes only (but no cover for commercially-run residential accommodation).
- Perils insured against.
- Cover applies per-event.
- Separate cover for land which is totally lost or rendered useless as a building platform (based on a capped, site-specific valuation).
- Natural Disaster Fund and Crown Guarantee.

# The 2015 discussion document

## What should change?

- Excess – standardised to \$2,000 + gst per dwelling (and no excess on land claims).
- Claims to be lodged with the private insurer.
- No more cover for contents.

# The 2015 discussion document

## What should change?

- Building cover “cap” to increase to \$200,000 + gst.
- Increased flexibility in the pricing model.
- Better “alignment” between standard of repair under EQC scheme and private policy.
- Various aspects of the land cover regime.

# The 2015 discussion document

**Also lacking: a “clear statement” of the ECA’s purpose**

Proposed statement:

*That the purpose of the Act is to establish a Crown-owned natural disaster insurance scheme for residential buildings in New Zealand that:*

- *Supports, complements and is closely coordinated with the provision of effective private insurance services to the owners of residential buildings*
- *Recognises the importance of housing in supporting the recovery of communities after a natural disaster*
- *Supports improved resilience of NZ communities and an efficient approach to the overall management of natural hazard risk and recovery in NZ*

# The 2018 Bill

## Changes to be made:

- Contents cover to be removed.
- Building cover cap to increase by \$50,000 to \$150,000 + gst (and build-cost rate to increase from \$1,000 to \$2,500 per m<sup>2</sup>)
- Extension of time for making claims.
- New information-sharing rules which will allow claims to be lodged with and settled by the private insurer.

# The 2018 Bill

## What's missing?

- Statement of purpose.
- Premium pricing principles/review provisions.
- Standardised excess.
- Alignment of reinstatement standard.
- Changes to the land cover regime.

# Land cover

The 2015 discussion document:

- made a good case for the simplification/conceptual clarification of land cover;
- Put forward a coherent, detailed proposal to achieve that.

See also Tamara Jenkin “When the shaking stops” [2018] NZLJ 82-86:

- Argues that the current regime does not support disaster recovery as effectively as it might;
- Makes various suggestions for improvement.

# Remaining problems

- Per-event cover and apportionment.
- Cover for consequential (economic) loss – *O’Loughlin v Tower; Kraal v EQC*
- Collecting the EQC premium: is the scheme truly compulsory?
- Are EQC-managed repairs worth it?
- Investment of the Natural Disaster Fund (NDF).

# The NDF

## Where's the (our!) money?

- Shortly before September 2010, the NDF had a reported capital balance of approximately \$6 billion.
- However, \$4.1 billion of this was 'invested' in non-tradeable New Zealand government stock.
- This is a practice that seems to have been dictated by The Treasury, and connived in by various different governments.
- It dates back to before the 1993 reforms and its foolishness has been noted many times over the years.

# The NDF

- Michael Cullen (1993) – “excessively stupid” to hold most of the NDF’s reserves not only in New Zealand but in Wellington.
- The EQC’s 1993 annual report - EQC’s inadequately-funded liability “a monster lurking in the shadows, waiting to pounce when catastrophe strikes”
- Iain Hay (1995) – investment of NDF mainly in NZ government stock means that true market value unlikely to be achieved if the fund needs to be liquidated in a hurry.
- A parliamentary inquiry (1998) – the NDF just bits of paper swapped between different departments of the Crown, and the public is being given a false impression about how their EQC levies are handled.
- Susan Newberry (2014, 2016) – arguably the NDF is a myth: the majority of our EQC levies are not held separately and get swallowed up in government spending.

# Wider issues

- Cosgrove report: May 2009
- Report of Independent Ministerial Advisor on operational aspects of EQC: April 2018
- Canterbury Earthquakes Insurance Tribunal Bill introduced: August 2018