

Presented to the House of Representatives in accordance with Standing Order 272

LEGISLATIVE STATEMENT: NATURAL HAZARDS INSURANCE BILL SECOND READING

Introduction

The Natural Hazards Insurance Bill (the Bill) will modernise the Earthquake Commission Act 1993 (EQC Act) and its associated natural hazard insurance scheme and governing Crown entity, the Earthquake Commission (EQC).

The proposals draw on lessons learned since the development of the current EQC Act and the report of the Public Inquiry into the EQC.

The proposals retain the current EQC insurance scheme. Key continuing features include:

- first loss natural hazard insurance cover on residential property, provided through cover attached to private fire insurance policies and payment of the associated levy
- levies are used to pay claims and running costs and otherwise accumulate in a fund
- a Crown funding guarantee provides assurance claimant entitlements will be met by the Crown if necessary, regardless of the financial state of the fund or entity, and
- the governing entity will continue to be a Crown agent under the Crown Entities Act 2004.

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

The following is a brief summary of the key policy measures contained in the Bill. This legislative statement largely repeats the legislative statement for the first reading, with the addition that each section is now followed by a summary of key amendments recommended by the Finance and Expenditure Committee.

Purposes and Objectives of the Natural Hazards Bill and Toka Tū Ake – Natural Hazards Commission

The purposes of the Bill are to:

- reduce the impact of natural hazards on people, property, and the community by providing first loss insurance cover, contributing to resilience, and encouraging the uptake of catastrophe insurance
- contribute to managing the financial risk to the Crown of providing natural hazard cover by continuing the fund, imposing a levy to contribute to the cost of providing natural hazard cover, and purchasing reinsurance and other risk transfer products in respect of natural hazard cover, and
- enable the Commission to, if required, facilitate (but not pay for) the purchase by the Crown of reinsurance or other risk transfer products in respect of other Crown risks.

The Bill proposes the purpose of natural hazard cover is to contribute to the replacement or reinstatement of dwellings that suffer natural hazard damage. Natural hazard cover also extends to residential land on which the building is situated, and certain surrounding land.

The primary objective for the Commission is *to reduce the impact of natural hazards on people, property, and the community*. This is supported by three subsidiary function-specific objectives for the Commission: claims management, fund management, and education, research and information functions.

Key amendments recommended by the Finance and Expenditure Committee:

- That the purpose and objectives provisions relating to the Commission’s research and education functions, be amended to better reflect the intended scope of the research and education functions.
- That provisions enabling the Minister to add a function for the Commission to facilitate the purchase by the Crown of reinsurance or other risk transfer products be clarified to make it clear that the reinsurance or risk transfer products would be in respect of Crown risks beyond those addressed in the Bill.

Natural hazards cover

The Bill retains the existing settings for building and land cover largely in their current form. Material changes include:

- **Mixed-use buildings:** A mixed-use building is a building with at least one dwelling where less than 50 percent of the building is used for residential purposes, for instance an office building that includes some apartments.¹ The Bill improves consistency between the rules used to determine if a building is mixed-use and the amount of cover provided for the building.
- **Monetary cap on building cover:** From 1 October 2022, the monetary cap on residential building cover increased from \$150,000 to \$300,000 per dwelling (both amounts excluding GST). This change has been made through regulations and is reflected in the Bill.

The Bill also proposes a raft of technical changes, modernisations, and improvements, including:

- defining (or providing more detailed definitions for) important terms such as appurtenant structure, service infrastructure, and the various kinds of natural hazards that are covered by the scheme,
- extending and standardising cover for items located beyond the boundary of the land on which the residential building is located, such as drains and other services, and retaining walls, bridges and culverts,
- extending the damage period for a volcanic activity event from 48 hours to 7 days (to reflect the fact that volcanic events can continue for extended periods), and
- updating exclusions and allowing some amendments to be made to the schedule of exclusions by Order in Council.

Key amendments recommended by the Finance and Expenditure Committee:

¹ Under the current and proposed scheme, a building that is 50 percent or more residential is entitled to full insurance cover up to the monetary cap.

- A raft of technical amendments, including to key definitions such as those of earthquake, flood, and storm.
- Several amendments to the meaning of the term “dwelling”, including clarifying scheme coverage for dwellings undergoing significant renovations, clarifying that accommodation provided in large institutions such as university hostels and boarding schools are excluded from cover, and providing for regulation-making powers relating to joint, common and shared property.
- Clarifying that gradual erosion is excluded from natural hazard cover.
- Specifying more clearly the basis for determining what potential future damage is “imminent damage” covered by the scheme.
- Clarifying and amending the list of excluded property (Schedule 2), including to clarify that liquid-containing tanks are covered by the scheme if they are primarily used for household purposes, and to exclude clothes lines, animal housing, and outdoor cooking facilities from property covered by the Bill.
- Clarifying that replacement cost does not include contingencies, as the Commission would be expected to pay any relevant additional costs for replacing or reinstating property as and when they occur (up to the relevant caps and limitations on natural hazard cover).
- Clarifying that claimants whose claims are settled on a diminution of value basis cannot be subsequently penalised for failing to carry out a repair (as diminution of value settlement is predicated on repair being infeasible, unlawful or disproportionately expensive).
- Requiring the Commission to consult with claimants before salvaging land by acquiring title to it.

Cover for retaining walls, bridges and culverts

EQC cover currently provides cover based on the indemnity (depreciated) value for damaged retaining walls, bridges, and culverts. To better meet the policy aims of the scheme, the Bill proposes replacing the indemnity value limit on cover of retaining walls, bridges, and culverts with a limit based on undepreciated value, up to monetary caps of \$50,000 per dwelling for retaining walls and \$25,000 per dwelling for bridges and culverts (both amounts excluding GST).

Claims excesses

The Bill proposes simplifying excesses on building and land claims. It proposes replacing the current excesses (which are calculated as a percentage of the amount of the claim) with a fixed flat-rate excess of \$500 (including GST) per dwelling on both building and land claims. The current \$5,000 (including GST) maximum excess per claim for land claims is retained.

Claims handling

The Bill proposes the Commission must participate in an approved dispute resolution scheme and act consistently with a *Code of Insured Persons' Rights* (the Code). The Bill also provides, under the complaint management procedure, an entitlement for insured persons to request an independent review of whether decisions made by the Commission have breached the Code.

The Bill proposes changes to facilitate contracting between the Commission and private insurers, including broadening the Commission's ability to delegate claims settlement functions to private insurers.

Key amendments recommended by the Finance and Expenditure Committee:

- Requiring the Commission to settle claims as soon as practicable, rather than within 1 year of determining the amount to be paid.
- Adding a new provision regarding the Commission's recovery of amounts paid in error, including protections for affected claimants.
- Removing the Commission's ability to impose a one-off charge to enable cover to continue after a claim is settled (so cover continues without any charge being imposed).

Information gathering and sharing

As introduced, the Bill largely retained the substance of existing powers. It also proposed several changes intended to clarify and strengthen the Commission's information gathering powers and facilitate more effective information sharing with government agencies and other persons with a proper interest in receiving it for law enforcement purposes or for performing their functions or exercising their powers.

Key amendments recommended by the Finance and Expenditure Committee:

- Removing the provision that provided for information sharing with other government entities through an override of the Privacy Act.
- Significant enhancements of the procedural safeguards associated with the Commission's exercise of its powers of entry.

Offences and penalties

The Bill proposes changes to update existing penalties and introduces a new offence for deliberate breaches of the obligation on insurance companies to pay levies to the Commission within the specified period.

Financial governance, roles, and sustainability

The Bill proposes a range of measures intended to update the financial governance of the Commission to reflect modern practice and to require periodic review of the scheme's key financial and risk management settings. Proposals include:

- specifying the purpose of and use of the Natural Hazard Fund, which is to cover the cost of insurance claims, and the cost of most of the Commission's functions,
- requiring the Minister to make a funding and risk management statement at least every 5 years, as part of which the Minister must review key financial settings, including the levy, and monetary cap for residential building cover, and
- introducing a statutory funding arrangement (the service agreement) to support the Commission when providing services to government (e.g. in cases where the Commission contributes to wider government priorities falling outside what may be covered by the Fund).

Capitalisation and funding

The Bill proposes financial changes to align the funding of the Commission, the relationship between the Minister, the Commission and the fund it manages, with current institutional design and legislative practice applying to other Crown agents. This includes:

- improved accounting and reporting for the Natural Disaster Fund (which becomes the Natural Hazard Fund) separate from the Commission
- discontinuing provisions in the EQC Act enabling the responsible Minister to require the EQC to make payments in lieu of tax, dividend payments, or payments in recognition of the Crown guarantee (Crown guarantee fee), and
- removing EQC's discretion to discount levies payable to EQC by private insurers.

Key amendments recommended by the Finance and Expenditure Committee:

Technical amendments to better reflect the policy intent regarding the operation of any statutory financial support the Government provides the Commission.

Commencement

The Bill, as introduced, proposed the Act enter into force on the latter of 1 December 2023 or 12 months after Royal Assent. The Bill also provided for the Governor-General to be able to, by Order in Council, defer commencement.

Amendments recommended by the Finance and Expenditure Committee:

The Act enter into force on the latter of 1 July 2024 or 12 months after Royal Assent. The provision enabling the Governor-General to be able to, by Order in Council, defer commencement, be deleted.