

Terms of Reference: Public Inquiry into the Earthquake Commission

12 November 2018

Background and status as a 'matter of public importance'

The Commission is a Crown entity established under the Earthquake Commission Act 1993 (the Act). Originally established in 1945 as the Earthquake and War Damages Commission following the 1942 Wairarapa earthquake, the Commission's role has changed significantly over time.

The Commission's statutory functions are set out in section 5 of the Act. It –

- provides natural disaster insurance for residential property (contents, dwellings, and some coverage of land);
- administers the Natural Disaster Fund, including its investments and reinsurance;
- funds research and education on natural disasters and ways of reducing their impact.

During 2010 and 2011, New Zealand experienced its most significant earthquake event sequence in recent times in the Canterbury region. This resulted in over 583,000 claims to the Commission for damage to approximately 168,000 residential dwellings. While the majority of claims have been addressed, multiple issues have arisen in relation to the Commission's operational practices.

There are still approximately 3,000 unresolved residential property claims. These mainly relate to land claims or remedial repair claims, such as repair claims that have been reopened due to poor workmanship, incomplete repair scope, or damage not identified in initial assessments. These unresolved claims have a significant impact on affected Canterbury residents as well as on continued confidence, including of the global insurance market, in New Zealand's ability to respond quickly and comprehensively to future natural disaster events.

Since the Canterbury earthquake events, the Commission has had to deal with a number of other events. These include –

- the 2013 earthquakes in Seddon and the Cook Strait;
- the Eketahuna earthquake in 2014;
- the Edgecumbe flooding in 2017;
- the November 2016 earthquake in the Kaikoura region.

The Commission's practices have evolved in response to each of these events, with a significantly different approach taken in responding to the Kaikoura event. This saw a Memorandum of Understanding signed with insurers allowing them to act as the Commission's agents in settling most building and contents claims. This different approach will provide a reference point for the inquiry, with its overall effectiveness not yet fully known.

Insurance, both public and private, makes a major contribution to the economic and social recovery from a natural disaster. The Commission plays a critical role in

underpinning the New Zealand residential dwellings insurance market. As a result, the public needs to be confident that the Commission has the capability and systems to meet its key responsibilities. It is a matter of public importance that the Commission, the wider industry, and the Government learn from the experience of dealing with claims from the Canterbury earthquake events to help ensure that the Commission is well placed to deliver in the future.

Order of reference

The inquiry will investigate and report on the lessons that can be learned from the application of the Commission's operational practices and the Commission's approaches to claims outcomes in relation to the Canterbury earthquake events and subsequent events. It will make recommendations to improve the Commission's readiness to respond to future events.

The inquiry's purpose is to ensure that lessons are learnt from these past experiences and that the Commission has the appropriate policies and operating structures in place for improved operational practices in the future.

The inquiry's scope includes the following:

Canterbury operational practice experiences

- the Commission's operational practices both before and after the Canterbury earthquake events, including the Commission's performance in scaling up appropriate resourcing to deal with these significant events:
- the Commission's customers' experience of its operational practices and claims outcomes:
- the interplay between the Commission and the other insurers with regard to operational practices including, as relevant to the performance of the Commission, the experiences of those other insurers:

Comparative experiences

- the benefits and shortcomings of the Commission's different approaches to claims outcomes such as cash settlement versus repair and rebuild:
- the Commission's application of learnings from its Canterbury experience to subsequent events:
- the key process differences between the operational processes used in Canterbury and the Kaikoura pilot approach, taking into account the different economic impact of the events:

Future strategies

- operational practices that have now been put in place by the Commission, or which are being implemented, to help ensure improved experiences and outcomes:
- any further improvements that can be made for any future events.

Inquiry matters requiring recommendations

The inquiry will make recommendations on –

- lessons that can be learned from the Canterbury earthquake events and subsequent events relating to the management of operational practices. This should include contingency planning, preparedness, and the Commission's responsiveness (and, as relevant to the Commission's performance, the responsiveness of other insurers):
- any changes or additions to operational practices as a result:
- any other matter which the inquiry believes may promote improved operational practices for future events and/or minimise the recurrence of any inadequacies in claims handling identified by the inquiry.

Exclusions from the inquiry

The inquiry is not to investigate, determine, or report on, in an interim or final way, or otherwise prejudice, any of the following matters:

- in accordance with section 11 of the Inquiries Act 2013, questions of civil, criminal, or disciplinary liability:
- the structural arrangements for central or local government:
- the Commission's funding structure (including levies):
- the resolution of actual claims that remain unresolved:
- specific cases that are subject to current mediation, litigation, or arbitration proceedings:
- the reopening of settled claims:
- legal precedents (with regard to actual insurance claims) that have been established by the courts:
- issues relating to insurance contract law, the Limitation Act 1950, the Limitation Act 2010, the Earthquake Commission Act 1993, other insurers, and reinsurers that are unrelated to the Commission's claims management operational practices and claims outcomes.

Consideration of other investigations by the inquiry

The inquiry may take account of the outcome of any other investigations into related matters (including, for example, the Ministry of Business, Innovation, and Employment's Review of Insurance Contract Law, which is considering whether there is a need for greater regulation of insurers' conduct including claims management and handling, and the Report of the Independent Ministerial Advisor to the Minister Responsible for the Earthquake Commission).

However, the inquiry is not bound in any way by the conclusions or recommendations of any such investigation.

Timing

The inquiry is to report its findings and recommendations by 30 June 2019.