



# **INITIAL BRIEFING FOR THE PURPOSES OF THE INQUIRY**

## **- History of the Earthquake Commission**

*26 October 2018*

## TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>1</b>
<b>1929 – 2009</b>	<b>1</b>
Government response to the 1929 and 1931 earthquakes	1
Earthquake and War Damage Act 1944	2
Review and reform of the 1944 Act	3
Earthquake Commission Act 1993 (EQC Act)	3
Preparedness following the EQC Act	4
EQC claims mostly cash settled	5
Crown Entities Act 2004	6
<b>2010</b>	<b>6</b>
Position prior to the first Canterbury earthquake	6
4 September 2010 earthquake	7
Residential building claims	7
Residential land	8
Progress with Canterbury claims	8
Managing liabilities	9
EQC's role	10
<b>2011</b>	<b>10</b>
Cyclone Wilma	10
22 February 2011 earthquake	10
EQC's additional roles	11
Rapid Assessment	11
Emergency repairs	12
13 June 2011 earthquake	12
Canterbury Earthquake Recovery Authority - Zoning and Crown offers	13
Additional land remediation	13
High Court Declaratory Judgment – Reinstatement of cover	13
Progress with Canterbury claims	13
New Technical Categories (TC1, TC2 and TC3)	14
Relationship with private insurers	14
Staff and contractors	15
23 December 2011 earthquake	15
Residential land claims	15
Statement of Intent 2011-14	16
Reviews of EQC	16
<b>2012</b>	<b>17</b>
Progress with Canterbury claims	17
Canterbury Earthquake (Earthquake Commission Act) Order 2012	18
Royal Commission of Inquiry into Building Failure Caused by Canterbury Earthquakes	19
Unclaimed damage – Ministerial Direction	19
Nelson floods	19
Residential land damage	19
Managing liabilities	20
Reviews of EQC	20
<i>Review of EQC's 2012 Christchurch Recruitment Processes</i>	20
<i>EQC Response to Canterbury Events – Lessons learned</i>	21
<i>Report on EQC's Procurement Procedures for Contracting Resources to undertake Land Assessments</i>	21

<b>2013</b>	<b>21</b>
Progress with Canterbury claims	21
Health and safety	22
Privacy breach	22
Launch of the Residential Advisory Service (RAS)	22
New Chair of EQC	23
Seddon earthquakes	23
Ground Improvement Programme (GIP)	23
Reviews of EQC	24
<i>Auditor-General Report - "Earthquake Commission: Managing the Canterbury Home Repair Programme"</i>	24
<i>Joint report of the Chief Ombudsman and the Privacy Commissioner into EQC's handling of information requests in Canterbury</i>	24
<i>State Services Commission – Independent Review of EQC's Customer Satisfaction Survey</i>	25
<i>Human Rights Commission report – "Monitoring Human Rights in the Canterbury Earthquake Recovery"</i>	25
<b>2014</b>	<b>26</b>
Eketahuna earthquake	26
Progress with Canterbury claims	26
Canterbury residential land claims	27
<i>Complex land damage</i>	27
<i>Flood mitigation proposals</i>	27
<i>Potentially contaminated land</i>	27
<i>Communications and community engagement</i>	28
Reviews of EQC	28
<i>"EQC – Customer Interaction Review" report by Linking Strategy to Implementation (LSI)</i>	28
<i>WorkSafe New Zealand – Investigation into EQC's and Fletcher EQR's asbestos management practices</i>	29
Stakeholder survey	29
EQC engagement in addressing lessons learnt from Canterbury	29
<b>2015</b>	<b>30</b>
Progress with claims	30
Changes to the CHRP	30
Reviews affecting EQC	31
<i>Treasury Review of the EQC Act</i>	31
<i>MBIE report – "Earthquake Repairs to Canterbury Homes"</i>	31
<i>Auditor-General Report – 2015 follow up audit</i>	32
<i>Cosman Parkes report – Health and Safety Lessons Learnt from the Canterbury Earthquake Response</i>	33
<b>2016</b>	<b>33</b>
February 2016 earthquakes	33
Progress with Canterbury earthquakes 2010-2011 claims	34
<i>Residential building exposures</i>	34
<i>Residential land exposures</i>	34
<i>Drainage</i>	35
<i>Contents exposures</i>	35
Complaints and disputes	35
<i>Morrison Low report – "Managing Complaints About Staff Conduct"</i>	36
<i>EQC Action Group – Court proceedings against EQC settled and Joint Statement issued</i>	36
New Statement of Intent	37
Kaikōura earthquake	37

<b>2017</b>	<b>38</b>
Planned restructuring	38
New Chief Executive of EQC	39
Edgumbe flood – Ministerial Direction	39
Handing Canterbury overcap building exposures to private insurers	39
Finalisation of liabilities for Canterbury claims as between EQC and private insurers	40
Litigation	40
<i>IAG/Tower land litigation</i>	41
<i>High Court decisions</i>	41
Progress with Canterbury earthquakes 2010-2011 claims	41
Progress with Kaikōura earthquake claims	42
<b>2018</b>	<b>43</b>
Settlement of Christchurch Residential Red Zone claims with the Crown	43
Canterbury Business Unit (CBU)	43
Resignation of the Chair of EQC and new Chair appointed	43
Minister’s Letter of Expectations	44
Earthquake Commission Amendment Bill	44
Independent Ministerial Advisor Report	45
Statement of Intent 2018-22	46
Transition to Claims Management System version 8 (CMSv8)	46
Progress with Canterbury earthquakes 2010-2011 claims	47
Progress with Kaikōura earthquake claims	47
Canterbury Earthquakes Tribunal Bill	47
Greater Christchurch Claims Resolution Service	48
Funding	48
New Chair of EQC	48

# **INITIAL BRIEFING FOR THE PURPOSES OF THE INQUIRY**

## **- History of the Earthquake Commission**

*Prepared by the Earthquake Commission*

*26 October 2018*

### **INTRODUCTION**

- 1 The purpose of this paper is to set out a high level description of the history of the Earthquake Commission (EQC), with particular emphasis on the period since 4 September 2010, when the Canterbury earthquake sequence started.
- 2 The paper is divided into 10 sections, covering the period 1929 to 2009 and each of the years 2010 to 2018. It:
  - 2.1 describes the major natural disaster events that have occurred during that time and EQC's responses to them;
  - 2.2 outlines legislative, legal and policy developments related to EQC; and
  - 2.3 sets out the reviews of EQC that have been undertaken.
- 3 This paper does not specifically address the individual customer experiences of the claims that EQC has dealt with. Specific claims histories will be a part of the Inquiry, but are outside the scope of this initial briefing.
- 4 Documents referred to in this paper are referenced in the footnotes with hyperlinks.

### **1929 – 2009**

#### **Government response to the 1929 and 1931 earthquakes**

- 5 The 1929 Murchison earthquake and the 1931 Hawkes Bay earthquake prompted unprecedented government intervention to help restore people's lives. In the aftermath of the Hawkes Bay earthquake, government initiatives included financial assistance payments to persons who had suffered loss or damage; taxation relief for those who would suffer "serious hardship" in paying land or income tax; and loans to local authorities for the repair

of any earthquake damage. The government also passed legislation for the purpose of regulating the design of earthquake-resistant buildings.<sup>1</sup>

- 6 There was also a proposal for a levy on insurance to pay for the cost of the Hawkes Bay earthquake and future disasters of a similar nature. However, that proposal was heavily opposed due to perceived inequities in the method of levy collection.<sup>2</sup>

### **Earthquake and War Damage Act 1944**

- 7 In 1942, two major earthquakes struck the Wairarapa causing significant damage. Many properties were not insured against earthquake damage because premiums for earthquake insurance were too expensive at the time. In addition, wartime meant that the earthquake damage remained unrepaired for longer.<sup>3</sup>
- 8 The Wairarapa earthquakes were the catalyst for the enactment of the [Earthquake and War Damage Act 1944](#) (the 1944 Act). The Minister of Finance at the time, Hon Walter Nash, described the philosophy underpinning the 1944 Act as follows:

*The endeavour has been to work out a principle under which the whole loss is deemed to be a national loss, and under which those people who might be affected will subscribe towards a fund to meet losses which may come to any of them.*<sup>4</sup>

- 9 Under the 1944 Act, the War Damage Commission (which had been established in 1941 when New Zealand faced a threat of war damage) was renamed the Earthquake and War Damage Commission. The money in the War Damage Fund was transferred to a new Earthquake and War Damage Fund. Property (both commercial and residential) insured against fire was insured against both earthquake damage and war damage, with premiums paid into the Fund whenever a fire policy was made.
- 10 The legislation was amended over the following decades to cover disaster damage where caused by storm, flood, volcanic eruption and hydrothermal activity.
- 11 Following the landslide that occurred in 1979 when 69 homes were destroyed in the Dunedin suburb of Abbotsford, land damage was added to the natural disaster damage covered by the 1944 Act.<sup>5</sup> At that time, this land cover was unique in the world and has remained so since.

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<sup>1</sup> See [Nicholas Wood "After the 'quake: the legislative response" \(2010\) 146 \(1 October\) NZ Lawyer 18](#). See also [Belton-Brown, Greg "Revolution or Evolution? The Response of the Law to Earthquakes in New Zealand 1848-1948" \(2012\) 18 Canterbury Law Review 213 at 220-228](#).

<sup>2</sup> [Belton-Brown, Greg at 224-225](#).

<sup>3</sup> See ["Planning for Loss or Complexity? New Zealand's Earthquake Commission: The Story So Far"](#) at 3. This article was prepared by EQC at the request of EQC's Spanish equivalent, the Consorcio de Compensación de Seguros, for its digital magazine, "Conorseguros" (October 2016). See also [Belton-Brown, Greg at 228-231](#).

<sup>4</sup> [\(28 September 1944\) 266 NZPD 619](#). The speech of Hon Walter Nash is at [618-622](#).

<sup>5</sup> This change resulted from the financial hardship generated by the Abbotsford event for homeowners, who lost not only buildings but also complete use of their land. Land insurance was originally recommended by the Commission of Inquiry into the Abbotsford Landslip Disaster which reported in November 1980 (see ["Report of The Commission of Inquiry into the Abbotsford Landslip Disaster" \[1980\] AJHR H7 at 160-165](#)). The [Earthquake and War Damage \(Land](#)

- 12 The Earthquake and War Damage Commission used the resources of, and seconded staff from, the Government State Insurance Office. In 1988 the State Insurance Office was privatised, necessitating a new structure for the Earthquake and War Damage Commission.<sup>6</sup>

### Review and reform of the 1944 Act

- 13 The ongoing role of the Earthquake and War Damage Commission and the insurance provided under the 1944 Act was reviewed by the Fourth Labour Government in the late 1980s. Consistent themes in the reform proposals included a concern at the extent of the Crown's contingent liability under the 1944 Act and the issue whether to limit the scheme to residential property.
- 14 The review produced a public discussion paper in July 1988<sup>7</sup>, public consultation and the convening of a study group that generated a report in September 1988.<sup>8</sup> There followed a White Paper in May 1989 entitled *Disaster Insurance Policy*<sup>9</sup> and a draft Disaster Insurance Bill. A revised form of the Bill was introduced in November 1989, but was overtaken by the 1990 election.
- 15 In July 1991, the new National Government released a discussion paper entitled *The Government's Role and Responsibilities in Disaster Insurance*.<sup>10</sup> This paper proposed that commercial and other non-residential property insured against fire should cease to be automatically covered under the new scheme, but residential property would continue to be automatically insured, if insured against fire.
- 16 In December 1992, the Government introduced the [Earthquake Commission Bill](#). The introductory speech of the Hon Maurice McTigue, the Associate Minister of Finance,<sup>11</sup> outlined the intention behind the key changes in substantially the same terms as the 1991 discussion paper.

### Earthquake Commission Act 1993 (EQC Act)

- 17 The [EQC Act](#) came into force on 1 January 1994.

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[Cover\) Regulations 1984](#) promulgated wider cover than that proposed by the Commission of Inquiry. The Regulations provided that certain land should also be deemed to be insured for damage and defined that land in substantially the same terms as the [current definition of "residential land"](#) in the [Earthquake Commission Act 1993](#).

<sup>6</sup> Under the [Earthquake and War Damage Amendment Act 1988](#), the Earthquake and War Damage Commission was converted into a statutory corporation, with the Minister of Finance (on behalf of Her Majesty the Queen) as the sole shareholder. Staff who had been seconded from State became Earthquake and War Damage Commission employees.

<sup>7</sup> ["A Review of Earthquake Insurance: Public Discussion Paper"](#) (New Zealand Government, 1988).

<sup>8</sup> Disaster Advisory Group "Appendix 3: Summary of Submissions to earlier Discussion Document" (30 September 1988) in ["Disaster Insurance Policy: A White Paper"](#) (New Zealand Government, May 1989).

<sup>9</sup> ["Disaster Insurance Policy: A White Paper"](#) (New Zealand Government, May 1989).

<sup>10</sup> ["The Government's Role and Responsibilities in Disaster Insurance"](#) (Released by the Associate Minister of Finance, Hon. Doug Kidd, on 25 July 1991).

<sup>11</sup> (15 December 1992) 532 NZPD 13186-13189.

- 18 At that time the Earthquake and War Damage Commission was renamed the “Earthquake Commission”.<sup>12</sup> The new functions of the Earthquake Commission were to administer the insurance provided under the EQC Act; collect premiums; administer the Natural Disaster Fund; obtain reinsurance; and facilitate research and education about matters relevant to natural disaster damage.<sup>13</sup> These core functions have remained the same, but additional functions have been added by Ministerial Directions over the years.
- 19 The EQC Act provided (and continues to provide) natural disaster insurance for residential buildings, residential land and personal property (often called, and referred to in this paper as, contents).<sup>14</sup> The cover is available up to the specified amounts (caps) for each damage-causing natural disaster event, as long as there is a valid private insurance policy at the relevant time. The amount of damage over and above the caps may be covered by the private insurance in place.<sup>15</sup>
- 20 EQC insures residential buildings, residential land and contents against physical loss or damage (including some imminent damage) occurring as the direct result of earthquake, natural landslip, volcanic eruption, hydrothermal activity and tsunamis. It covers residential land against storm and flood. It also covers natural disaster fire resulting from any of these natural disasters.<sup>16</sup>
- 21 Residential buildings and residential land are covered on different bases, with buildings being covered on the basis of replacement value and land (including retaining walls, culverts and bridges) being covered on an indemnity basis.<sup>17</sup>
- 22 The EQC Act includes an extensive regulation-making power. The [Earthquake Commission Regulations 1993](#), which came into effect simultaneously with the EQC Act, regulated premiums, excesses and the reinstatement of insurance on payment of a claim. The regulation-making power has rarely been used since.

### **Preparedness following the EQC Act**

- 23 From 1993, EQC started to develop a suite of computer models combining geographical information and hazard and financial analysis. For individual events these models could provide projections of claim numbers for natural disaster events in terms of size, geographical spread and total value. The system could also analyse reinsurance strategies.<sup>18</sup>

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<sup>12</sup> See [section 4\(1\)](#) and [4\(5\)](#), [EQC Act](#). War damage was no longer covered under the new legislation.

<sup>13</sup> [Section 5](#), [EQC Act](#).

<sup>14</sup> [Sections 18, 19](#) and [20](#), [EQC Act](#).

<sup>15</sup> [Section 30](#), [EQC Act](#). However in practice, private insurance for residential land (aside from retaining walls and similar structures) is rarely (if ever) available.

<sup>16</sup> See definitions of “[natural disaster](#)”, “[natural disaster damage](#)”, “[natural disaster fire](#)” and “[physical loss or damage](#)”, [section 2](#), [EQC Act](#).

<sup>17</sup> See [sections 18](#) and [19](#), [EQC Act](#).

<sup>18</sup> See [D. A. Middleton, Earthquake Commission “EQC’s use of computer modelling in a catastrophe response” \(paper presented to the New Zealand Society for Earthquake Engineering \(NZSEE\) 2002 Conference, Napier, March 2002\)](#).



- 24 In 1994 a magnitude 6.7 earthquake struck Los Angeles, causing US\$12.5 billion in damage. Afterwards, EQC personnel visited California to investigate how insurance companies had coped with the claims load. The liaison between EQC and US insurers (in particular State Farm Insurance) was instructive for EQC's disaster planning.
- 25 EQC progressively developed its Catastrophe Response Programme (CRP) drawing on its learnings from the US experience, engagement with its network of other overseas connections, use of external consultants, and analysis derived from the purpose-built computer models.
- 26 The CRP set out how EQC would cope with the substantial increase in resources needed at the time of a natural disaster. As at May 2010, the CRP<sup>19</sup> included an alternative operations site in Brisbane (under an agreement with Gallagher Bassett Services) and the provision of additional staff, equipment and training programmes.<sup>20</sup>
- 27 The EQC Board commissioned an external review of the CRP, which was carried out in 2009<sup>21</sup> by a panel of experts, led by an expert in crisis management and business continuity. The Review report identified strengths of EQC's CRP and made strategic findings based on its observations. The Review report also set out recommendations, including regarding EQC's role expectations; resources versus timeliness; EQC's relationship to private insurers; statutory claims lodgement; claims processing; and communications.
- 28 EQC issued a response to the findings and recommendations of the Review report.<sup>22</sup> The response included EQC's plans to liaise with other agencies; to work on specific scenarios to test processes; to consider some new approaches to claims management; and to review existing plans for resourcing.

### **EQC claims mostly cash settled**

- 29 Before 2010, EQC had only occasionally taken on the responsibility for organising repairs to damaged residential buildings and residential land. Claims were mostly settled by cash payment.<sup>23</sup>
- 30 However, cash settlement was not without issues. For example, EQC cash settled the 6,000 claims arising from the 2007 Gisborne earthquake, including 800 related to chimney damage. Over the following six months the Gisborne District Council, private insurers, and local media expressed concerns that the cash settled claimants had not undertaken the chimney repairs. In particular, they believed that the unrepaired chimneys significantly increased the potential fire risk and compromised future insurance cover.

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<sup>19</sup> The CRP comprised a series of manuals, procedures and agreements - see [Appendix 4](#) of the "Review of New Zealand Earthquake Commission's Catastrophe Response Operational Capability" (May 2009).

<sup>20</sup> See [Earthquake Commission \(2010\) "Statement of Intent 2010-13"](#) at 6-7, 16-18. See also "Planning for Loss or Complexity? New Zealand's Earthquake Commission: The Story So Far" at 8.

<sup>21</sup> "Review of New Zealand Earthquake Commission's Catastrophe Response Operational Capability" (May 2009).

<sup>22</sup> See [Earthquake Commission "Review of EQC's Operational Capability" \(2009\)](#).

<sup>23</sup> See [Earthquake Commission \(2011\). "Annual Report 2010-11"](#) at 8. See also "Review of New Zealand Earthquake Commission's Catastrophe Response Operational Capability" (May 2009) at iv under the heading "Role expectations".

- 31 Although EQC claims were normally cash settled, there were exceptions. For example:
- 31.1 in some cases where residential land damage involved adjoining properties, EQC managed reinstatement on behalf of all customers;<sup>24</sup> and
  - 31.2 following the magnitude 7.2 earthquake that struck Te Anau in August 2003, EQC trialled the use of a project manager, Mainzeal, to oversee certain repair work and to carry out repairs itself if necessary. This initiative was in response to the wide dispersion of claims (covering all of Otago and Southland) together with a shortage of tradespeople.<sup>25</sup>

#### **Crown Entities Act 2004**

- 32 In January 2005, the [Crown Entities Act 2004](#) came into force and categorised EQC as the type of Crown entity known as a Crown agent. The 2004 Act enacted key governance provisions related to the role, accountabilities and duties of the EQC Board, as well as new financial and reporting obligations. Many bespoke governance provisions in the EQC Act were repealed as a result.
- 33 The Minister responsible for EQC was able to direct EQC (as a Crown agent) to give effect to Government policy.

## **2010**

#### **Position prior to the first Canterbury earthquake**

- 34 On 1 March 2010, Ian Simpson was appointed as the Chief Executive of EQC. The outgoing Chief Executive, David Middleton, had been the Chief Executive for 17 years.<sup>26</sup>
- 35 As at March 2010, EQC had 22 permanent staff in one office in Wellington. It also had 23 trained assessors around the country, available to work exclusively on EQC claims. The outsourced claims administration facility was in Brisbane, where it would be unaffected by a major disaster in New Zealand and could increase its staff numbers quickly if necessary.<sup>27</sup>
- 36 As at 30 June 2010, EQC had approximately \$5.9 billion in the Natural Disaster Fund and a \$2.5 billion catastrophe reinsurance programme in place for use to pay out on claims.<sup>28</sup>

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<sup>24</sup> For example, following a landslip in Tauranga in 2005, EQC repaired land damage for five adjoining properties after the landowners agreed to EQC's joint repair programme.

<sup>25</sup> See ["Earthquake Commission Catastrophe Response Programme - Te Anau Assurance Agreement"](#) (31 May 2005) which sets out an examination and audit of this trial.

<sup>26</sup> See [Earthquake Commission \(2010\). "Annual Report 2009–10"](#) at 7.

<sup>27</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 8.

<sup>28</sup> [At 8.](#)

- 37 Prior to the Canterbury earthquake sequence, EQC would in 'normal' times, handle about 4,000 to 5,000 claims a year. These mostly comprised landslip, storm and flood claims, with occasional earthquake, volcanic eruption and hydrothermal claims. The Inangahua earthquake of 1968 had generated the most claims from a single event with 10,500 claims. Immediately before the 4 September 2010 earthquake, EQC had 568 claims open.<sup>29</sup>

#### **4 September 2010 earthquake**

- 38 At 4:35am on 4 September 2010, a magnitude 7.1 earthquake struck Darfield in western Canterbury (4 September 2010 earthquake). This earthquake marked the beginning of a destructive sequence of earthquakes in the Canterbury region.
- 39 The 4 September 2010 earthquake was a contributing factor to one person's death, but there were relatively few casualties.<sup>30</sup>
- 40 On 16 September 2010, the local states of emergency in Christchurch City and in Selwyn and Waimakariri districts were lifted. On that day, and in the days that followed, a series of orders and regulations came into effect which among other things, enabled the Councils to take appropriate action in respect of dangerous or insanitary buildings and authorities to take emergency measures in relation to historic places.<sup>31</sup>

#### **Residential building claims**

- 41 Soon after the 4 September 2010 earthquake, the Government requested that EQC take direct responsibility for the repair of claimants' houses where the cost fell within the EQC "cap" of \$100,000 (plus GST), rather than settling by cash payment.<sup>32</sup>
- 42 After a tender process, EQC contracted Fletcher Construction to manage the repairs on its behalf. Initially a Memorandum of Understanding was signed between EQC and Fletcher Construction<sup>33</sup>, and a full contract was signed in 2011.<sup>34</sup> A retrospective probity audit of the tender process was carried out by McHale Group Limited.<sup>35</sup>

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<sup>29</sup> At 8.

<sup>30</sup> "September 2010 Canterbury (Darfield) earthquake" (Ministry for Culture and Heritage), updated 23 February 2016.

<sup>31</sup> See "Canterbury earthquake timeline: Government's and Parliament's response" (Parliamentary Library Research Paper, 9 November 2010).

<sup>32</sup> See Earthquake Commission (2011). "Annual Report 2010–11" at 3.

<sup>33</sup> Memorandum of Understanding – Canterbury earthquake: CE001 Reinstatement Project Management between EQC and The Fletcher Construction Company Limited dated 22 October 2010.

<sup>34</sup> PMO Services Agreement between EQC and The Fletcher Construction Company Limited (which was signed on 6 July 2011). This Agreement was varied over the years - see Addendum to PMO Services Agreement – EQR Technical Support Resource (which was signed in or about September 2011); Variation to the PMO Services Agreement dated 18 May 2015; 3rd Variation to PMO Services Agreement dated 18 August 2017.

- 43 A fast track process was put in place to cash settle claims for minor damage and contents of less than \$10,000.<sup>36</sup>
- 44 A process was also put in place for claims that involved damage to chimneys. EQC, initially working with the Energy Efficiency and Conservation Authority (EECA), offered the installation of a clean heat appliance as part of the repair.<sup>37</sup>

### **Residential land**

- 45 EQC's contracted engineers, Tonkin & Taylor, started assessing EQC liability for land damage to residential properties, including in areas with widespread liquefaction and damage to the earth crust.<sup>38</sup> They also developed land remediation options.<sup>39</sup>
- 46 In December 2010, the Minister of Finance signed a Ministerial Direction giving EQC additional functions in relation to additional land remediation.<sup>40</sup> The proposal was to construct extensive perimeter works around residential land in parts of Christchurch and Kaiapoi. EQC would prepare for and design these works, which would be separately funded by the Government. Without the Ministerial Direction, these functions were outside the scope of the EQC Act. In the end, the extensive land damage caused by the 22 February 2011 earthquake meant that these land remediation plans were not pursued.<sup>41</sup>

### **Progress with Canterbury claims**

- 47 On 4 October 2010, the [Earthquake Commission Amendment Regulations 2010](#) came into force. These regulations extended the period in which an EQC claim could be notified from 30 days to three months.

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Innovation and Employment (MBIE)). See [Report of the Controller and Auditor-General "Earthquake Commission: Managing the Canterbury Home Repair Programme" \(October 2013\)](#) at 16.

<sup>36</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 8. See also [Earthquake Commission "Briefing to the Incoming Minister" \(December 2011\)](#) at 12.

The threshold for cash settling minor building damage was later changed to "less than \$15,000".

<sup>37</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 8.

<sup>38</sup> See generally [Tonkin & Taylor Limited "Darfield Earthquake 4 September 2010 Geotechnical Land Damage Assessment & Reinstatement Report Stage 1 Report" \(October 2010\)](#).

<sup>39</sup> See generally [Tonkin & Taylor Limited "Darfield Earthquake 4 September 2010 Geotechnical Land Damage Assessment & Reinstatement Report Stage 2 Report" \(November 2010\)](#).

<sup>40</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 74-75.

<sup>41</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 4.

- 48 Following the 4 September 2010 earthquake (and its aftershocks<sup>42</sup>), over 185,000 EQC claims were notified.<sup>43</sup> These included 172,000 building exposures, 60,000 contents exposures and 28,000 land exposures.<sup>44</sup>
- 49 The Commerce Committee's 2009/10 financial review of the Earthquake Commission<sup>45</sup> noted that by three months after the earthquake, EQC had assessed about 56,000 claims, and was working through the rest at a rate of about 1,200 a day. It had brought in qualified loss adjusters from overseas to supplement those available in New Zealand, and had commissioned geotechnical work on over 25,000 properties.
- 50 By Christmas 2010, EQC had scaled up rapidly and was managing over 1,000 people.<sup>46</sup> Two additional Commissioners were appointed to the EQC Board effective 1 December 2010.<sup>47</sup>

### Managing liabilities

- 51 On 14 September 2010, the Minister of Finance issued a Ministerial Direction enabling EQC to modify its investment limits in order to maintain the liquidity it would require to meet its liabilities from claims arising from the 4 September 2010 earthquake.<sup>48</sup>
- 52 In December 2010, Melville Jessup Weaver (EQC's contracted actuaries) provided a valuation for EQC related to an estimate of its liabilities arising from the 4 September 2010 earthquake and aftershocks.<sup>49</sup> This was the start of the work that Melville Jessup Weaver

<sup>42</sup> In 2010, there were numerous aftershocks in Canterbury that EQC treated as new events – the magnitude 5.0 aftershock on 19 October, the magnitude 4.9 on 14 November, and the magnitude 4.9 on Boxing Day. By way of example, the Boxing Day magnitude 4.9 earthquake that struck near the Christchurch CBD generated over 19,000 claims.

<sup>43</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11" at 18](#). This figure does not include claims notified after the 22 February 2011 and 13 June 2011 earthquakes and their aftershocks.

<sup>44</sup> [At 18](#). An EQC claim can include damage to a residential building, residential land, and/or contents. Each one of these components is referred to as an "exposure". A single claim can contain all three exposures (for example, where the roof has collapsed, the land has cracked, and the glassware has smashed). The EQC customer does not need to give separate notice of each exposure (residential building, residential land and contents) within the three month time limit. For example, if the customer gives valid notice that the residential building has been damaged, that notice is sufficient for any damage that is later found to the residential land (associated with that building) as the direct result of the same event. Accordingly the number of exposures can increase after the initial notices of damage. These figures are as at 30 June 2011.

<sup>45</sup> [Report of the Commerce Committee "2009/10 financial review of the Earthquake Commission" at 3](#).

<sup>46</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11" at 8](#). See also [Earthquake Commission "Briefing to the Incoming Minister" \(December 2011\) at 7](#). EQC had called on trained assessment teams from around New Zealand and on outsourced Australian loss adjustment specialists (as distinct from estimators). See also [KSJ Associates "Earthquake Commission Review Report Christchurch 2012 Recruitment Processes" \(March 2012\) at 6–7](#).

<sup>47</sup> ["Appointments to the Earthquake Commission" \(23 December 2010\) 179 New Zealand Gazette 4459](#).

<sup>48</sup> Ministerial Direction given on 14 September 2010. See [Earthquake Commission \(2011\). "Annual Report 2010–11" at 72–73](#).

A new Ministerial Direction, continuing the effect of the 2010 direction, was issued on 13 September 2011.

See ["Ministerial Direction to the Earthquake Commission" \(12 December 2013\) 167 New Zealand Gazette 4559](#).

has continued over the years in providing information<sup>50</sup> (twice yearly) about EQC's insurance liabilities and reinsurance recoveries. This information is used in, among other things, EQC's financial reports and its reports to reinsurers.

### **EQC's role**

- 53 Neither the repair of damaged houses through the project management agreement with Fletcher Construction, nor the design of land remediation works outside the scope of EQC's existing statutory liability, was "core business" for EQC.<sup>51</sup>
- 54 As a result of the structural changes in the state sector in the late 1980s and early 1990s, the New Zealand Government no longer had a public works department. After the 4 September 2010 earthquake, the Government expanded EQC's role through a series of Ministerial directions and decisions.<sup>52</sup> These steps empowered EQC to help support the broader Canterbury recovery.

## **2011**

### **Cyclone Wilma**

- 55 On 29 January 2011, Cyclone Wilma struck the northern part of the North Island. This was the biggest natural landslip event that EQC had ever handled, with around 1,000 claims lodged. EQC opened a separate field office in Auckland to process these claims.<sup>53</sup>

### **22 February 2011 earthquake**

- 56 At 12:51pm on 22 February 2011, a magnitude 6.3 earthquake struck, with an epicentre 10km south of the Christchurch CBD (22 February 2011 earthquake).
- 57 The earthquake killed 185 people and there were several thousand injuries.<sup>54</sup>

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<sup>50</sup> These twice yearly reports (called the Insurance Liability Valuation Reports (ILVRs)) can be found here: <https://www.eqc.govt.nz/about-eqc/publications/reports>.

<sup>51</sup> This was recognised by the Commerce Committee in its "2009/10 financial review of the Earthquake Commission" at 4. See also [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 4 under the heading "EQC's Changing Role".

<sup>52</sup> See [The Treasury "New Zealand's Future Natural Disaster Insurance Scheme - Proposed changes to the Earthquake Commission Act 1993 - Discussion Document" \(July 2015\)](#) at 8.

<sup>53</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 9.

<sup>54</sup> "Christchurch earthquake kills 185" (Ministry for Culture and Heritage), updated 12 April 2017.

- 58 The 22 February 2011 earthquake caused widespread and severe building damage in the eastern suburbs and CBD of Christchurch. EQC assessments had to be started over again following this earthquake.<sup>55</sup> The processing of contents claims was put on hold.<sup>56</sup>
- 59 The 4 September 2010 earthquake and the 22 February 2011 earthquake were each among the five most damaging earthquakes in the world by insured losses.<sup>57</sup>

### **EQC's additional roles**

- 60 After the 22 February 2011 earthquake, EQC took on a number of additional roles that were beyond the scope of its core business. These included:
- 60.1 conducting a rapid assessment of all damaged residential properties (insured or uninsured);
  - 60.2 contributing to the social component of the recovery through identification of those people in greatest need of assistance;
  - 60.3 carrying out emergency repairs of all damaged residential properties (insured or uninsured);
  - 60.4 assisting the Canterbury Earthquake Recovery Authority (CERA), which was established as a Government Department in March 2011 to lead and coordinate the Government's response and recovery efforts;
  - 60.5 overseeing the design and supervision of additional land remediation activities (which were to be separately funded by Government).<sup>58</sup>
- 61 These roles are described below.

### **Rapid Assessment**

- 62 EQC developed a door-to-door assessment programme (Rapid Assessment) of all residential properties in metropolitan Christchurch, Lyttelton and affected parts of Selwyn and Waimakariri<sup>59</sup>, irrespective of whether the properties were insured.<sup>60</sup> With winter approaching, the purpose of the Rapid Assessment was to prioritise severely damaged properties for subsequent full assessments (i.e. fully assess the "worst first").

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<sup>55</sup> See [Earthquake Commission "Briefing to the Incoming Minister" \(December 2011\)](#) at 8.

<sup>56</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 5.

<sup>57</sup> [Earthquake Commission "Briefing to the Incoming Minister" \(December 2011\)](#) at 3.  
See also [The Treasury "New Zealand's Future Natural Disaster Insurance Scheme - Proposed changes to the Earthquake Commission Act 1993 - Discussion Document" \(July 2015\)](#) at 8.

<sup>58</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 10. See also [Earthquake Commission "Briefing to the Incoming Minister" \(December 2011\)](#) at 14-17.

<sup>59</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 15.

<sup>60</sup> This inspection of uninsured properties was outside the scope of EQC's usual functions and was mandated by Ministerial Direction dated 23 March 2011. See [Earthquake Commission \(2011\). "Annual Report 2010–11"](#) at 76-77.

- 63 The Rapid Assessment was rolled out over a two month period and comprised 182,000 assessments. The programme also allowed EQC to identify:
- 63.1 properties needing emergency repairs;
  - 63.2 vulnerable households;
  - 63.3 those seeking temporary accommodation (whose contact details were sent to the Canterbury Earthquake Temporary Accommodation Service (CETAS)); and
  - 63.4 residents who had lost their sole source of heating.
- 64 With its electronic in-field data capture and transfer processes, the Rapid Assessment gathered information that could also be passed to relevant Government agencies and inform the broader Government response.<sup>61</sup>

### **Emergency repairs**

- 65 The Minister for Canterbury Earthquake Recovery directed EQC to carry out emergency works to repair damage to dangerous or insecure residential premises arising from the 22 February 2011 earthquake. The Ministerial Direction was effective for the period 22 February to 30 April 2011 and applied to all residential premises, whether or not insured.<sup>62</sup>
- 66 By the time of the 22 February 2011 earthquake, the Fletcher Construction managed repair programme (known as Fletcher EQR) was underway, with 2,000 repairs in progress or completed. After the earthquake, Fletcher EQR's work was reprioritised to enable it to:
- 66.1 carry out emergency repairs to make homes safe, sanitary and secure (as required by the Ministerial Direction); and
  - 66.2 deliver the winter heat programme (including the installation of heat pumps and log burners). Fletcher EQR took over responsibility for this role from EECA.

### **13 June 2011 earthquake**

- 67 Two significant earthquakes struck on 13 June 2011, one of magnitude 5.7 and the other an hour later at 2:20pm of magnitude 6 (together the "13 June 2011 earthquake").<sup>63</sup>
- 68 The earthquakes were felt strongly in the southern and eastern suburbs of Christchurch and caused damage to vulnerable structures in the CBD and further cliff collapses on slopes in the Port Hills. Some EQC assessments, and in particular land assessments, had to be redone.<sup>64</sup>

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<sup>61</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11" at 15](#). See also [Earthquake Commission "Briefing to the Incoming Minister" \(December 2011\) at 13-14](#).

<sup>62</sup> See [Earthquake Commission \(2011\). "Annual Report 2010–11" at 76-77](#). See also ["Planning for Loss or Complexity? New Zealand's Earthquake Commission: The Story So Far" at 10-11](#).

<sup>63</sup> EQC treated the two earthquakes as one event.

<sup>64</sup> [Earthquake Commission "Briefing to the Incoming Minister" \(December 2011\) at 8](#).



### **Canterbury Earthquake Recovery Authority - Zoning and Crown offers**

69 After the 13 June 2011 earthquake, announcements about residential land zoning were brought forward.<sup>65</sup> CERA led the zoning process and subsequently the process of making Crown offers for the purchase of Residential Red Zone properties.<sup>66</sup>

70 EQC assisted CERA by:

70.1 providing key engineering advice to CERA to inform the zoning decisions; and

70.2 changing EQC's full assessment timetable to match CERA's priorities. This was so that EQC's information would help property owners in deciding on the Government offer for their Residential Red Zone properties.<sup>67</sup>

### **Additional land remediation**

71 In April 2011, EQC had been directed by the Minister for Canterbury Earthquake Recovery to carry out certain land remediation work in North Kaiapoi in advance of the approval of the Concept Design Report.<sup>68</sup> This work was to be separately funded by the Government. But this land remediation programme was cancelled after the zoning decisions in June 2011.

### **High Court Declaratory Judgment – Reinstatement of cover**

72 The multiple events of the Canterbury earthquake sequence gave rise to the issue whether EQC cover reinstates back to its full limit after natural disaster damage has happened. In September 2011, the High Court delivered a Declaratory Judgment ruling that EQC's insurance cover reinstates after each natural disaster event.<sup>69</sup>

73 Accordingly, EQC must attribute (apportion) damage to each specific earthquake event and manage it as a separate insurance claim. This means that, if a residential building and/or residential land is damaged by more than one earthquake and a claim is made each time<sup>70</sup>, EQC must determine the damage caused to both the residential building and residential land by each earthquake.

### **Progress with Canterbury claims**

74 By 24 November 2011, EQC had:

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<sup>65</sup> The four zones were Red (where the land has been so badly damaged that it's unlikely it can be built on over the short to medium term); Green (where damage can be addressed on an individual basis); Orange (requiring more research); White (yet to be designated).

<sup>66</sup> See [http://ceraarchive.dpmc.govt.nz/search/results/crown%20offers?tag&f\[0\]=im\\_field\\_tags%3A146](http://ceraarchive.dpmc.govt.nz/search/results/crown%20offers?tag&f[0]=im_field_tags%3A146).

<sup>67</sup> Earthquake Commission (2011). "Annual Report 2010–11" at 10.

<sup>68</sup> At 78–79.

<sup>69</sup> *Re Earthquake Commission* [2011] 3 NZLR 695 (HC). The EQC Board decided not to seek leave to appeal this decision.

<sup>70</sup> There are now some exceptions for unclaimed damage. See paragraphs 96 and 97 below.

- 74.1 completed 171,585 residential building assessments and 51,420 residential land assessments;<sup>71</sup>
  - 74.2 settled 84,965 residential building claims, 15,439 residential land claims and 106,455 contents claims;<sup>72</sup> and
  - 74.3 completed 6,129 residential building repairs and started repairs on a further 24,500 residential buildings.<sup>73</sup>
- 75 The completion of substantive residential building repairs managed by Fletcher EQR was ramped up around September 2011, when the emergency repair and winter heat programmes (which Fletcher EQR had prioritised) wound down.<sup>74</sup>

### **New Technical Categories (TC1, TC2 and TC3)**

- 76 In October 2011, the Department of Building and Housing announced three new technical categories (TC1, TC2 and TC3)<sup>75</sup> for residential foundation design as part of its guidance for repairing and rebuilding earthquake damaged homes in the Residential Green Zone.<sup>76</sup> Some building assessments were put on hold until the process of determining foundation requirements could be completed.<sup>77</sup>

### **Relationship with private insurers**

- 77 In 2011, EQC and private insurers looked for ways that they could better manage their “two tier”<sup>78</sup> insurance obligations for individual residential properties.
- 78 In November 2011, EQC and private insurers entered into a protocol that became known as “Protocol 1”.<sup>79</sup> This was designed to deal with the situation (among others) where the cost of the repair of a property by EQC through Fletcher EQR was initially thought to be under the EQC cap, but ended up going over cap. For this scenario, to ensure no disruption to the customer, Protocol 1 prescribed a procedure for:
- 78.1 EQC to continue the repair (even although the cost was going to go over the cap); and

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<sup>71</sup> Earthquake Commission “Briefing to the Incoming Minister” (December 2011) at 8. These figures exclude the 182,000 rapid assessments and earlier assessments prior to 22 February 2011.

<sup>72</sup> At 9.

<sup>73</sup> At 19.

<sup>74</sup> At 16.

<sup>75</sup> See CERA, Information Sheet: Green Zone Technical Category 1 (TC1); CERA, Information Sheet: Green Zone Technical Category 2 (TC2); CERA, Information Sheet: Green Zone Technical Category 3 (TC3).

<sup>76</sup> See MBIE “Building Performance – Questions and Answers”.

<sup>77</sup> Report of the Finance and Expenditure Committee “2010/11 financial review of the Canterbury Earthquake Recovery Authority and the Earthquake Commission” at 10.

<sup>78</sup> See paragraph 19 above.

<sup>79</sup> Canterbury Earthquake Protocol 1 signed by EQC and ICNZ (11 November 2011).

78.2 the private insurer to pay for that repair by reimbursing EQC later for the amount above the cap.

### **Staff and contractors**

79 To process the Canterbury claims and perform its various other roles, EQC had (as at 24 November 2011) nearly 1,600 staff, including 970 assessors and estimators. In addition, there were Fletcher EQR contractors, the Tonkin & Taylor contracted Land Damage Assessment Teams, and a further 250 claims processing personnel from third party providers.<sup>80</sup>

### **23 December 2011 earthquake**

80 A 5.8 magnitude earthquake struck east of Christchurch at 1:58pm on 23 December 2011. This was followed shortly afterwards by a 5.9 magnitude earthquake (together called the “23 December 2011 earthquake”).<sup>81</sup>

81 In the Canterbury earthquake sequence, there were four main earthquakes (4 September 2010, 22 February 2011, 13 June 2011 and 23 December 2011) which caused the majority of the damage. However, in 2010 and 2011, Canterbury also endured a further 11 earthquake events that EQC classified as damage-causing “events” for claims purposes, as well as thousands of lesser aftershocks.

### **Residential land claims**

82 Tonkin & Taylor, EQC’s engineers, were on the ground (and in the air<sup>82</sup>) assessing initial land damage after each of the four main earthquakes of 2010 and 2011. Preliminary “street by street” mapping information gathered after the events was progressively added to with more detailed assessment techniques.<sup>83</sup>

83 Land damage assessments for residential properties were split into two regions - the flat land of the Canterbury Plains, and the sloping land located on the Port Hills and wider Banks Peninsula area.<sup>84</sup>

84 The earthquakes caused widespread liquefaction of the loose, saturated soils beneath the Plains. There was visible damage to the land in the form of lateral spreading, land cracking, undulations, ponding, local settlement, groundwater springs and inundation by ejected sand

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<sup>80</sup> [Earthquake Commission “Briefing to the Incoming Minister” \(December 2011\)](#) at 38.

<sup>81</sup> EQC treated the two earthquakes as one event.

<sup>82</sup> High resolution aerial photographs of the most affected areas of Christchurch city and Waimakariri and Selwyn districts were taken in the days following each of the main earthquakes. Aerial LiDAR (Light Detection and Ranging) technology surveys that measure the height of the ground from the air were delayed until after the sand and silt (and snow) had been removed and were undertaken in September 2010, March 2011, May 2011, September 2011 and February 2012. See [Tonkin & Taylor “Earthquake Commission: Canterbury Earthquakes 2010 and 2011 - Land report as at 29 February 2012”](#) at 11.

<sup>83</sup> [At 1, 7-11.](#)

<sup>84</sup> [At 1 and 6.](#)

and silt. Further, as a result of land lowering, some land had become more vulnerable to future liquefaction and flooding effects.<sup>85</sup>

- 85 In the Port Hills, strong shaking has resulted in rock fall, large-scale cliff collapse and consequential inundation, as well as smaller land movement, ground cracking and retaining wall failures.<sup>86</sup>

#### **Statement of Intent 2011-14**

- 86 In June 2011 a new Statement of Intent (SOI) was put in place for the years 2011-2014.<sup>87</sup> The SOI set out three key high level objectives for EQC:

86.1 efficient management and settlement of claims;

86.2 efficient pricing and financing of risk; and

86.3 improving the current state of knowledge about New Zealand's natural hazards.<sup>88</sup>

- 87 These objectives were set against the backdrop of the expectations of an "Enduring Letter of Expectations" to Crown entities dated 22 December 2008 that set out expectations of all statutory Crown entities.<sup>89</sup>

#### **Reviews of EQC**

- 88 In 2011, several reviews of EQC's performance were carried out, including:

88.1 a report by Impac Risk & Safety Management Solutions on health and safety risks in the EQC Canterbury field offices. This report found that some hazard controls might need to be improved. Most notable of the hazards were stress, fatigue and associated factors,<sup>90</sup>

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<sup>85</sup> [At 1](#) and [6](#).

<sup>86</sup> [At 1](#) and [7](#).

<sup>87</sup> The SOI was provided in accordance with the requirements of Part 4 of the Crown Entities Act 2004.

<sup>88</sup> See [Earthquake Commission \(2011\) "Statement of Intent 2011-14"](#) at 15-17.

These objectives were retained in [Earthquake Commission \(2012\) "Statement of Intent 2012-15"](#) at 5 and in [Earthquake Commission \(2013\) "Statement of Intent 2013-16"](#) at 11.

<sup>89</sup> See [Enduring letter of expectations dated 22 December 2008](#) from Hon Bill English, Minister of Finance and Hon Tony Ryall, Minister of State Services to statutory Crown entity Chairs. See also [Earthquake Commission \(2011\) "Statement of Intent 2011-14"](#) at 15.

The [2008 Enduring letter of expectations](#) was replaced in July 2012 – see [Enduring letter of expectations](#) from Hon Bill English, Minister of Finance and Hon Dr Jonathan Coleman, Minister of State Services to statutory Crown entity Chairs.

- 88.2 an “EQC Claims Reporting Performance Review: Stage One” report prepared by Linking Strategy to Implementation (LSI). This report set out recommendations for a proposed framework for management level reports for EQC, with a particular focus on Canterbury earthquakes claims management;<sup>91</sup> and
- 88.3 an internal audit of EQC’s performance carried out by KPMG.<sup>92</sup>
- 89 In its Briefing to Incoming Minister delivered in December 2011, EQC itself made suggestions for the review of the EQC scheme.<sup>93</sup>

## 2012

### Progress with Canterbury claims

- 90 The 23 December 2011 earthquake added 48,000 claims to the total number received in relation to the Canterbury earthquake sequence.<sup>94</sup> By September 2012 EQC had received 460,000 Canterbury earthquake claims, which at that time represented 691,000 separate exposures for residential building, residential land and contents.<sup>95</sup>
- 91 In the 2009 review of EQC’s Catastrophe Response Plan (CRP), the review panel had assessed preparations against a worst case scenario of 80,000+ claims and anticipated a maximum loss scenario (a Wellington earthquake) of 150,000 claims.<sup>96</sup> The 460,000 claims generated from the Canterbury earthquake sequence was equivalent to over three times that maximum loss scenario.
- 92 During 2012 EQC took several steps to facilitate and expedite the resolution of Canterbury claims. For example, EQC:

9(2)(h)

<sup>93</sup> Earthquake Commission “Briefing to the Incoming Minister” (December 2011) at 22-34. For example, EQC suggested (at 32-33) that the residential building cap on cover (which had not been changed since 1993) should be reviewed.

<sup>94</sup> Earthquake Commission (2012). “Annual Report 2011–12” at 8.

<sup>95</sup> At 3.

<sup>96</sup> See “Review of New Zealand Earthquake Commission’s Catastrophe Response Operational Capability” (May 2009) at 2, 6 and 15.

- 92.1 brought its call centre and its claims processing centre<sup>97</sup> in-house in order to more closely manage performance and streamline processes and communications;<sup>98</sup>
- 92.2 implemented improvements to the process of re-inspection of dwellings with insurers;<sup>99</sup>
- 92.3 simplified the process of opting out of the Fletcher EQR programme for those customers who had the skills to project manage their own repairs;<sup>100</sup> and
- 92.4 signed an agreement with the Arbitrators' and Mediators' Institute of New Zealand (AMINZ) to set up a new independent mediation service (free of charge to EQC customers) to help resolve customer disputes.<sup>101</sup>

### **Canterbury Earthquake (Earthquake Commission Act) Order 2012**

93 In April 2012, the [Canterbury Earthquake \(Earthquake Commission Act\) Order](#) was made. This Order:

- 93.1 exempted EQC from the statutory settlement deadline of one year after the amount of the damage had been duly determined. The exemption only applied to Canterbury earthquake claims settled by EQC by way of reinstatement;<sup>102</sup> and
- 93.2 authorised the recovery of excess amounts due to EQC for claims settled by reinstatement. EQC later invoiced its customers for excess amounts.<sup>103</sup> The invoicing occurred where a repair had been carried out by EQC under the Fletcher EQR programme but no excess had been deducted from the amount EQC spent on the repair.

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<sup>97</sup> By August 2012, EQC and Gallagher Bassett Services Pty Ltd (GBS) were taking formal steps for GBS to disengage with respect to its claims administration of EQC's Canterbury earthquake sequence claims. A new EQC in-house claims management office opened in Hamilton in September 2012. The location was chosen to ensure business continuity in case of natural disasters in Canterbury and Wellington.

<sup>98</sup> [Earthquake Commission \(2012\). "Annual Report 2011–12" at 8.](#)

<sup>99</sup> [At 8.](#)

<sup>100</sup> [At 8.](#) This process, known as "Opt out", was developed in January 2011 and catered for customers who preferred not to have their repairs managed through Fletcher EQR. The terms of the "Opt out" programme were developed over the years, but broadly under the programme, the customer would choose their own contractor, obtain any necessary building consent, manage the repair themselves, and EQC would pay for the repair of the earthquake damage.

[9\(2\)\(h\)](#)

<sup>102</sup> This exemption was revoked in April 2016 – see [section 147\(1\)\(b\), Greater Christchurch Regeneration Act 2016](#).

<sup>103</sup> The programme for invoicing excess amounts began in April 2015.

## **Royal Commission of Inquiry into Building Failure Caused by Canterbury Earthquakes**

- 94 In October 2012, the Royal Commission of Inquiry into Building Failure Caused by Canterbury Earthquakes delivered Part Two of its Final Report.<sup>104</sup> The Royal Commission's recommendations included that section 32(4) of the EQC Act should be amended to allow for the disclosure of information that may affect personal safety.<sup>105</sup>
- 95 As a result of the Royal Commission's inquiry into a specific building failure, EQC had implemented a new policy in October 2011 that required EQC to notify territorial authorities and neighbours when it had concerns about the safety of a building.<sup>106</sup>

## **Unclaimed damage – Ministerial Direction**

- 96 On 20 December 2012, the Minister Responsible for the Earthquake Commission issued a Direction to EQC to perform the additional function of repairing or reinstating claimants' residential buildings for damage that had been apportioned by EQC to earthquake events in Canterbury for which the claimants had not made a claim.<sup>107</sup>
- 97 This Ministerial Direction specifically covered the scenario where the customer had given notice of damage for one of the Canterbury earthquakes but the residential building damage had been apportioned by EQC to another earthquake, for which the customer had not made a claim. The Direction was made so that the customer would not be disadvantaged in that scenario. A further Ministerial Direction covering the corresponding scenario for residential land was issued in 2015.<sup>108</sup>

## **Nelson floods**

- 98 Heavy rain in December 2012 caused flooding and landslip damage to properties in the Nelson/Tasman area. EQC received just under 1,000 claims for this event.<sup>109</sup>

## **Residential land damage**

- 99 During the 2012 year EQC's engineers (Tonkin & Taylor) started drilling on land in Canterbury within the Green Zone Technical Category 3 (TC3)<sup>110</sup>. The purpose was to help

<sup>104</sup> EQC's involvement at the Royal Commission of Inquiry related to the premises at Wicks Fish Shop. The co-owner of the business and a customer in the shop were killed when the western wall of the adjoining property at 391 and 391A Worcester Street collapsed through the shop roof in the 22 February 2011 earthquake. The building at 391 and 391A Worcester Street was inspected by an EQC assessor and estimator in early February 2011. See [Canterbury Earthquakes Royal Commission Final Report – Part Two \(Volume 4 Section 4.25\)](#).

<sup>105</sup> At [Section 4.25.4.3](#).

<sup>106</sup> At [Section 4.25.3](#).

<sup>107</sup> See [Earthquake Commission \(2013\), "Annual Report 2012–13" at 72-73](#). The Direction was amended in 2013 with the effect that no excess applied to these payments for unclaimed damage to a residential building. See ["Amendment to Direction to the Earthquake Commission" \(19 December 2013\) 172 New Zealand Gazette 4712](#).

<sup>108</sup> See ["Direction to the Earthquake Commission Pursuant to Section 112 of the Crown Entities Act 2004" \(20 October 2015\) 117 New Zealand Gazette 50](#).

<sup>109</sup> See [Earthquake Commission \(2012\), "Annual Report 2011–12" at 9](#).

<sup>110</sup> EQC carried out geotechnical investigations for approximately 10,500 residential properties in TC3. Land designated TC3 had the potential for moderate to significant liquefaction damage in future earthquakes. More information about EQC's drilling programme is set out here: [Earthquake Commission "Technical Category 3 \(TC3\) EQC](#)

ascertain localised soil conditions of the TC3 land. The drilling programme provided data necessary to specify the most suitable foundation design for houses in TC3.<sup>111</sup>

- 100 Data ascertained from the drilling programme was sent to the Canterbury Geotechnical Database (CGD). This online database was designed by Tonkin & Taylor and IT developers with the collaboration of EQC, CERA and Department of Building and Housing (now Ministry of Business, Innovation and Employment (MBIE)). EQC seeded the database with the \$30 million worth of data it had commissioned. The CGD was established in May 2012 and has been used since as a collaborative tool for professionals to share geotechnical data.<sup>112</sup>

### Managing liabilities

- 101 The 30 June 2012 actuarial valuation (ILVR) prepared by Melville Jessup Weaver<sup>113</sup> estimated the cost of outstanding claims to be \$8.6 billion. Offset by its assets, principally reinsurance recoveries, cash and investments, this meant that EQC now had net liabilities of \$1.6 billion. The Government guarantee<sup>114</sup> ensured that, despite its net liabilities, EQC would be able to pay out on all outstanding claims as EQC approved them.
- 102 To help rebuild the Natural Disaster Fund over time, EQC's premiums increased from 5 cents to 15 cents per \$100 of the amount insured from 1 February 2012.<sup>115</sup>

### Reviews of EQC

- 103 EQC was the subject of several reviews during 2012.

#### *Review of EQC's 2012 Christchurch Recruitment Processes*

- 104 KSJ Associates (KSJ) delivered a report in March 2012 on its review of EQC's management and application of the selection process for its 2012 field staff, to determine the fairness of the policies and processes that were used.<sup>116</sup> The catalyst for the review was concern expressed by some field staff (and media commentators) that the selection process was not entirely fair. Allegations of favouritism, bias and nepotism had been made.<sup>117</sup>

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[geotechnical investigations and assessments" \(September 2012\)](#). Drilling was completed on 21 December 2012, which was earlier than expected.

<sup>111</sup> See [Earthquake Commission \(2012\). "Annual Report 2011–12" at 8.](#)

<sup>112</sup> See [Tonkin + Taylor "Sketch on cardboard box results in world first and gold award" \(6 September 2016\)](#).

<sup>113</sup> See [Earthquake Commission \(2012\). "Annual Report 2011–12" at 11.](#) See also [Earthquake Commission Insurance Liability Valuation as at 30 June 2012](#).

<sup>114</sup> See [section 16, EQC Act](#). This guarantee remains unaltered. See also [paragraph 255](#) below.

<sup>115</sup> See [Earthquake Commission Amendment Regulations 2011](#). Premiums were increased again in November 2017. EQC's premiums are paid by insurers – see [sections 23 and 24, EQC Act](#).

<sup>116</sup> [KSJ Associates "Earthquake Commission Review Report Christchurch 2012 Recruitment Processes" \(March 2012\)](#). The report was commissioned by EQC.

<sup>117</sup> At [Appendix A, page 1](#).



- 105 The KSJ report (which was peer reviewed<sup>118</sup>) found that, given the environment EQC was operating in throughout 2011, the processes adopted by EQC were the logical ones to use. Further, KSJ found that EQC had gone to some lengths to ensure the processes were as fair as could be and there were no major causes for concern about the processes used.<sup>119</sup>

*EQC Response to Canterbury Events – Lessons learned*

- 106 EQC commissioned Martin, Jenkins & Associates Limited to review and provide a forward-looking report aimed to capture lessons learnt from the Canterbury earthquakes. The aim was to gather knowledge to improve future delivery of EQC services, while also providing useful insights to help the existing earthquake response. EQC received an early draft of the Martin Jenkins report in March 2012.<sup>120</sup> However, the report was never completed due to the announcement by Treasury of a review expected to cover much the same ground.<sup>121</sup>

*Report on EQC's Procurement Procedures for Contracting Resources to undertake Land Assessments*

- 107 In November 2012, EQC engaged Deloitte to assist with EQC's understanding of how the procurement procedures were implemented for certain of its contractors carrying out land assessment work.<sup>122</sup>

## 2013

### Progress with Canterbury claims

- 108 By 30 June 2013, EQC had repaired more than 40,000 homes in its Fletcher EQR programme and had committed to completing the rest by the end of 2014. The rate of completion of repairs was 60 a day or 1,800 a month. The repairs were carried out by 5,000 tradespersons working for 1,300 accredited contracting firms.<sup>123</sup>
- 109 By 30 June, a further 50,000 residential building claims had been cash settled.<sup>124</sup>

<sup>118</sup> See [letter dated 28 February 2012 from Inglis and Broughton Limited to State Services Commission](#) and [letter dated 1 March 2012 from the State Services Commission to EQC](#).

<sup>119</sup> KSJ Associates "Earthquake Commission Review Report Christchurch 2012 Recruitment Processes" at 4. See also 19 and 20.

<sup>120</sup> Martin, Jenkins & Associates Limited "EQC Response to Canterbury Events: Lessons learned" (Draft report, 1 March 2012).

<sup>121</sup> The Treasury "Terms of Reference for the Review of the Earthquake Commission Act 1993" (September 2012). The Review was led by the Minister of Finance and the Minister Responsible for the Earthquake Commission, with a cross-agency Governance Group to provide strategic guidance.

<sup>122</sup> Deloitte "Report on the Earthquake Commission's Procurement Procedures for Contracting Resources to Undertake Land Assessments with Mainland Claims Management Limited and Cerno Limited" (19 December 2012).

<sup>123</sup> See [Earthquake Commission \(2013\). "Annual Report 2012–13"](#) at 6-7.

<sup>124</sup> At 2. Some were cash settled because for example, the amount of damage was minor (see [paragraph 43](#) above) or the customer had chosen to opt out of the Fletcher EQR programme (see [footnote 100](#) above). Cash settlements were also facilitated where the customer's preference was not to repair the residential building because (i) the building was being demolished; or (ii) significant renovations were planned.

110 Progress in the completion of some land claims was delayed by complex legal and technical issues, including related to complex types of land damage on the flat land of the Plains; shared land; and retaining walls.<sup>125</sup>

111 By 30 June 2013, 91% of contents claims were completed.<sup>126</sup>

### **Health and safety**

112 During 2012 and 2013, EQC and Fletcher EQR increased their focus on workplace health and safety. In particular, in February 2013, they launched a joint initiative called “Safe6”, which centred on improving safety culture, skills and performance across the repair programme.<sup>127</sup>

### **Privacy breach**

113 In March 2013, the disclosure by EQC of an incorrectly addressed email triggered the temporary closure of EQC’s email systems, website, claims processing systems and social media channels. EQC issued an open letter of apology for the breach.<sup>128</sup> The Privacy Commissioner carried out an audit of internal processes and the resulting recommendations were implemented by EQC.

114 The shutdown affected EQC’s performance against some of its targets for the 2012-2013 financial year (including the completion of all Canterbury contents claims).<sup>129</sup>

115 After the disclosure, an anonymous blogger (hosted on a US site) offered to provide the same information to homeowners that was in the incorrectly addressed email. The High Court granted EQC interim orders preventing further distribution of the information.<sup>130</sup> In spite of the interim orders, the information was released online by the blogger. The High Court later issued a permanent injunction.<sup>131</sup>

### **Launch of the Residential Advisory Service (RAS)**

116 In May 2013, CERA, working alongside EQC, the Insurance Council of New Zealand (ICNZ) and the Christchurch City Council, established the Residential Advisory Service (RAS).

117 The RAS was an independent, free advice service designed to help property owners to (among other things) understand their insurance policies, deal with a range of different

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<sup>125</sup> At 60.

<sup>126</sup> At 60.

<sup>127</sup> At 3.

<sup>128</sup> See [Earthquake Commission “An open letter to EQC customers”](#). The incorrectly addressed email included a spreadsheet as an attachment. The spreadsheet had information on 83,000 properties in the Fletcher EQR programme (also known as the Canterbury Home Repair Programme (CHRP)).

<sup>129</sup> [Earthquake Commission \(2013\). “Annual Report 2012–13” at 9, 58 and 60.](#)

<sup>130</sup> [Earthquake Commission v Unknown Defendants \[2013\] NZHC 708.](#)

<sup>131</sup> [Earthquake Commission v Krieger \[2013\] NZHC 3140, \[2014\] 2 NZLR 547.](#)

parties; and identify where they were in the claim process and what questions to ask their insurers, EQC and other parties.<sup>132</sup>

### **New Chair of EQC**

- 118 Effective 1 August 2013, Sir Maarten Wevers was appointed Chair of the Earthquake Commission.<sup>133</sup> The outgoing Chair, Michael Wintringham, had been the Chair since July 2006.

### **Seddon earthquakes**

- 119 At 9:06 am on 19 July 2013, a 5.7 magnitude earthquake struck east of Seddon. This was followed two days later by a magnitude 6.5 earthquake 20 km east of Seddon. A further 6.6 magnitude earthquake southeast of Seddon struck on 16 August. Each of these earthquakes (Seddon earthquakes) was treated by EQC as a separate event for insurance purposes.
- 120 The Seddon earthquakes each gave rise to significant damage to buildings in Seddon and some land damage. In Wellington, there was moderate damage to some buildings. EQC opened over 13,500 residential building, residential land and contents exposures, making these earthquakes together (at that time) the second largest earthquake disaster that EQC had dealt with (after the Canterbury earthquake sequence).
- 121 EQC established a temporary base in Seddon and later in Blenheim as assessments progressed.<sup>134</sup> EQC cash settled individual exposures arising from the Seddon earthquakes.

### **Ground Improvement Programme (GIP)**

- 122 In 2013, EQC commenced a research project to inform appropriate solutions for ground improvement of land vulnerable to liquefaction. The project (known as the Ground Improvement Programme (GIP)) was co-ordinated by EQC's engineers, Tonkin & Taylor, and involved leading experts from New Zealand and around the world.
- 123 Results from the GIP made a key contribution to MBIE guidance for repairing and rebuilding houses on TC3 land in Canterbury. The land repair techniques were then piloted on 31 different residential properties. The aim was to ensure that the actual costs and complexities of the land repair could be understood by property owners, engineers, builders, private insurers, local authorities and central Government agencies in the building or rebuilding of houses on land vulnerable to liquefaction.<sup>135</sup>

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<sup>132</sup> See [CERA "Understanding Social Recovery" \(April 2016\)](#) at 45.

The RAS continues to provide services. The scope of its role has evolved over the years.

<sup>133</sup> See ["Appointments/reappointments to the Earthquake Commission" 83 New Zealand Gazette 2236](#).

<sup>134</sup> See [Earthquake Commission \(2014\). "Annual Report 2013–14"](#) at 70.

<sup>135</sup> [Earthquake Commission "Residential Ground Improvement – Findings from trials to manage liquefaction vulnerability" \(2015\)](#).

## Reviews of EQC

124 In 2013, four key reviews of EQC's performance were carried out by external agencies.<sup>136</sup>

### *Auditor-General Report - "Earthquake Commission: Managing the Canterbury Home Repair Programme"*

125 The Auditor-General delivered a report dated October 2013 on how EQC had performed in managing the Canterbury Home Repair Programme (CHRP).<sup>137</sup> The report concluded that EQC's performance had been mixed. It had performed well in managing repair costs and setting up the home repair programme quickly, but had not performed as well in dealing with homeowners.

126 Positive aspects included that homeowners had not had to compete for materials and tradespersons; some homeowners were very satisfied with the repairs; and there had been a focus on safe work practices.

127 However the report noted that EQC had not performed well in other aspects of the programme. For example, it was late in the programme before repair slots were actively allocated to the homes of vulnerable people; homeowners experienced inconsistency in information and processes; and some homeowners had been dissatisfied including with the quality of the repairs or the time taken to complete them. The report also noted that some important systems, controls, and support functions should have been in place and fully effective sooner, including controls to help manage risks to repair quality.<sup>138</sup>

128 The Auditor-General issued a follow up Report in November 2015.<sup>139</sup>

### *Joint report of the Chief Ombudsman and the Privacy Commissioner into EQC's handling of information requests in Canterbury*

129 By early 2013, EQC was routinely breaching requirements to respond to Official Information Act and Privacy Act requests within the statutory time limits. By late May, EQC was advising requesters that there would be a six to seven month delay before it could respond to information requests.

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<sup>136</sup> See [Chair's Report in Earthquake Commission \(2014\)](#), "Annual Report 2013–14" at 7:

*"Over the past year, EQC continued to face public scrutiny of its handling of claims and customer interactions. Four separate reviews were undertaken by external agencies (the Office of the Auditor-General, the Offices of the Ombudsman and the Privacy Commissioner, the State Services Commission and the Human Rights Commission) into aspects of EQC's response to Canterbury. In each case, EQC staff collaborated fully and constructively with reviewers, as we sought to address any matters of concern and improve our responses in various ways. Many recommendations from the four reviews about changes to EQC's processes and practices have been implemented, or are being taken into account in future organisational changes."*

<sup>137</sup> The Canterbury Home Repair Programme (CHRP) was the name given to the programme delivered by EQC through its contract with Fletcher Construction. The programme was also referred to as the "Fletcher EQR" programme.

<sup>138</sup> See [Report of the Controller and Auditor-General "Earthquake Commission: Managing the Canterbury Home Repair Programme" \(October 2013\)](#) at 5-6.

<sup>139</sup> See [paragraphs 168 and 169](#) below.

130 In 2013, the Chief Ombudsman and the Privacy Commissioner undertook a joint investigation into the reasons for this situation, with a view to establishing how it might be rectified as quickly and sustainably as possible.

131 By the time the joint report was published in December 2013<sup>140</sup>, EQC had already made improvements to its information request processing operations and was working on eliminating the backlog which stood at nearly 1,200 overdue requests. EQC accepted all of the 13 recommendations for improvement in the report.<sup>141</sup> By 30 April 2014 EQC had eliminated the backlog of information requests and was meeting all new customer information requests within the 20 day statutory deadline.<sup>142</sup>

*State Services Commission – Independent Review of EQC’s Customer Satisfaction Survey*

132 In December 2013, the State Services Commission delivered a report on an independent review into EQC’s handling of its customer satisfaction survey. The catalyst for the review was a report in the media that a customer was excluded from an EQC customer satisfaction survey.<sup>143</sup> The report concluded that EQC’s client satisfaction surveying processes and results were reliable.<sup>144</sup>

*Human Rights Commission report – “Monitoring Human Rights in the Canterbury Earthquake Recovery”*

133 Also in December 2013, the Human Rights Commission issued a report<sup>145</sup> which centred on the human rights aspects of the Canterbury recovery.

134 Section 4 of the report focussed on the CHRP and EQC’s and Fletcher Construction’s roles in it. Among other things, this section of the report commented on vulnerability criteria and their use in prioritisation of claims;<sup>146</sup> community perspectives on the progress of repairs;<sup>147</sup> and delays in claims processing.<sup>148</sup>

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<sup>140</sup> See [“Information fault lines – Accessing EQC Information in Canterbury - A joint report of the Chief Ombudsman and the Privacy Commissioner into the Earthquake Commission’s handling of information requests in Canterbury” \(December 2013\)](#).

<sup>141</sup> At 57-59.

<sup>142</sup> [Earthquake Commission \(2014\). “Annual Report 2013–14”](#) at 60.

<sup>143</sup> This media report coincided with a Question in the House to the Minister Responsible for the Earthquake Commission on whether the Minister had confidence in EQC. This in turn followed the release of the [Auditor-General’s report entitled “Earthquake Commission: Managing the Canterbury Home Repair Programme”](#). The latter report had included statistical information regarding EQC’s customer satisfaction surveys. The Minister asked the State Services Commission to review EQC’s handling of the customer satisfaction survey and the associated advice provided by EQC to the Minister which informed his answers in the House.

<sup>144</sup> [State Services Commission “Independent Review of EQC’s Customer Satisfaction Survey” \(December 2013\)](#) at 4. Among other things, the review also concluded that EQC had suitable protocols and processes in place to ensure the reliability of information being provided to the Minister. However, there were opportunities for improvement.

<sup>145</sup> See [Human Rights Commission “Monitoring Human Rights in the Canterbury Earthquake Recovery” \(December 2013\)](#).

<sup>146</sup> At 44-45.

<sup>147</sup> At 45-46.

<sup>148</sup> At 47-51.

## 2014

### Eketahuna earthquake

135 On 20 January 2014, a magnitude 6.2 earthquake struck, with an epicentre 15km east of Eketahuna (Eketahuna earthquake). The earthquake was widely felt in the North and South Islands, with strong shaking reported as far away as Palmerston North and Masterton.<sup>149</sup>

136 The Eketahuna earthquake generated more than 5,000 claims.<sup>150</sup> As with the Seddon earthquakes, EQC's approach was to cash settle individual exposures for this event.<sup>151</sup>

### Progress with Canterbury claims

137 In its October 2014 Briefing to the Incoming Minister<sup>152</sup>, EQC reported progress as at 30 September 2014 on Canterbury earthquake claims as follows.

	Lodged	Closed <sup>153</sup>	Open	Cumulative \$ Paid to 30 September 2014 (excl CHE <sup>154</sup> and GST)
Contents exposures	186,672	184,569	2,103	\$447,654,767
Land exposures	147,857	105,374	42,483	\$193,276,116
Building exposures (for 169,022 damaged residential properties)	424,866	241,756	183,110	\$6,230,526,966
<b>Total exposures</b>	<b>759,395</b>	<b>531,699</b>	<b>227,696</b>	<b>\$6,871,457,849</b>

138 As at 30 September 2014, EQC had completed 61,136 building repairs and 59,800 emergency repairs and installed 19,075 heating units through the Canterbury Home Repair Programme.<sup>155</sup>

<sup>149</sup> See [Geonet "M 6.2 Eketahuna Mon, Jan 20 2014 – Story"](#).

<sup>150</sup> See [Earthquake Commission \(2015\). "Annual Report 2014–15"](#) at 5.

<sup>151</sup> [At 41.](#)

<sup>152</sup> See [Earthquake Commission "Briefing to the Incoming Minister Responsible for the Earthquake Commission" \(October 2014\)](#) at 5.

<sup>153</sup> The term "closed" meant all exposures under the claim had been settled and resolved; managed repairs (if required) were complete; and the post-defects period (90 days) had expired. The term "open" meant claims or exposures that had not been closed.

<sup>154</sup> "CHE" means Claims Handling Expenses. These are the costs incurred in processing and administration of claims.

<sup>155</sup> [Earthquake Commission "Briefing to the Incoming Minister Responsible for the Earthquake Commission" \(October 2014\)](#) at 6.

## Canterbury residential land claims

### *Complex land damage*

- 139 EQC's engineers, Tonkin & Taylor had carried out considerable geotechnical work,<sup>156</sup> culminating in the identification of two new forms of land damage on the flat land arising from the Canterbury earthquakes. These new forms of land damage were:
- 139.1 Increased Flooding Vulnerability (IFV) land damage, where an earthquake causes changes to the residential land resulting in the property being more vulnerable to flooding; and
- 139.2 Increased Liquefaction Vulnerability (ILV) land damage, where an earthquake causes residential land to subside, bringing it closer to the water table, thereby increasing its vulnerability to liquefaction.
- 140 In December 2014, EQC obtained a Declaratory Judgment<sup>157</sup> confirming that IFV is a form of land damage that EQC could recognise. The High Court also decided that, in appropriate cases, EQC could settle land damage by paying the amount of the "Diminution of Value" (or "DOV"). DOV measures the reduction in market value of the property which has been caused by land damage, including IFV land damage.
- 141 While the main questions addressed by the Declaratory Judgment related to IFV, the High Court also confirmed that EQC could recognise ILV as a form of land damage.

### *Flood mitigation proposals*

- 142 During 2014, EQC worked with the Department of the Prime Minister and Cabinet (DPMC), CERA and the Christchurch City Council to consider potential opportunities for applying land claim settlement funding (from the IFV form of land damage) to some area wide flood mitigation works by the Council.<sup>158</sup> In the end this approach was not pursued and EQC settled IFV land damage with its customers in a way that was consistent with the Declaratory Judgment of December 2014.

### *Potentially contaminated land*

- 143 Some residential land in Canterbury was identified on the Hazardous Activities and Industries List (HAIL) on the Environmental Canterbury (ECan) Listed Land Use Register. In

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<sup>156</sup> See for example [Tonkin & Taylor Ltd "Liquefaction vulnerability study" \(February 2013\)](#).

<sup>157</sup> [Earthquake Commission v Insurance Council of New Zealand Incorporated and others \[2014\] NZHC 3138, \[2015\] 2 NZLR 381](#).

Following the Canterbury earthquakes, EQC had sought three Declaratory Judgments to provide clarity and certainty with respect to its settlement approach. The others were (1) the Declaratory Judgment ruling that EQC's insurance cover reinstates after each natural disaster event (see [paragraphs 72 and 73](#) above); and (2) the Declaratory Judgment on whether a boarding house was a residential building within the scope of the statutory EQC scheme ([Morley v Earthquake Commission \[2013\] NZHC 230](#)). See also [Justice Stephen Kós "Disaster & Resilience - The Canterbury earthquakes & their legal aftermath"](#) paragraphs 61-66 (paper for the Supreme & Federal Courts Judges Conference, Brisbane, 26 January 2016).

<sup>158</sup> [Earthquake Commission "Briefing to the Incoming Minister Responsible for the Earthquake Commission" October 2014 at 2 and 7](#).

May 2014, EQC sent a mail-out to the owners of around 11,000 Christchurch properties. These were properties that may have had soil contaminated by chemicals or hazardous substances remaining in the ground from a previous land use (such as use of the land as an orchard, market garden or landfill).

- 144 EQC made plain that EQC would fund the HAIL-related costs associated with an EQC land damage repair to the insured land. However, EQC was not responsible for addressing the effects of the site itself (for example, the contamination).<sup>159</sup>

#### *Communications and community engagement*

- 145 During 2014, EQC was communicating with its customers about the status of their complex land claims. Direct contact from EQC's call centre was used in conjunction with direct mail programmes to inform customers that their property potentially had IFV and/or ILV land damage.
- 146 In October 2014, a public education space known as the "In The Know" land hub was established, in which Government agencies (including EQC), geotechnical engineers and community advocates groups made themselves available in a church hall to provide information on land.<sup>160</sup> The land hub provided residents with information to better understand the changes to the flat land in their neighbourhood and across Christchurch.<sup>161</sup>

#### **Reviews of EQC**

- 147 In 2014, two key reviews of EQC's performance were carried out by external agencies.

#### *"EQC – Customer Interaction Review" report by Linking Strategy to Implementation (LSI)*

- 148 In November 2014, LSI delivered a report<sup>162</sup> on its review of EQC's customer interactions. The report was commissioned by EQC and was designed to learn from and improve customer experience in Canterbury. The report focused on customer touchpoints in EQC (customer enquiries, requests and complaints), but not on the whole claims process or on Fletcher EQR.<sup>163</sup> The key recommendations from the report related to the development and implementation of a realigned operating model, with specific customer centric components and employee positions that focused the entire organisation around the customer.<sup>164</sup>

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<sup>159</sup> See [Earthquake Commission \(2015\). "Annual Report 2014–15" at 31.](#)

<sup>160</sup> [At 7 and 32.](#)

<sup>161</sup> See [Earthquake Commission "What's happening to the land under Christchurch?" \(3 October 2014\)](#) The land hub proved successful and a more permanent information centre was set up under the "In The Know Hub" brand, at the Eastgate Shopping Centre in April 2015. See [Earthquake Commission "Winning hard yards with community advocates" \(17 November 2015\).](#)

<sup>162</sup> [Linking Strategy to Implementation \(LSI\) "EQC - Customer Interaction Report" \(November 2014\).](#)

<sup>163</sup> As to the details of the scope of the review, see above at 3.

<sup>164</sup> [At 4.](#) Eight basic building blocks were identified: customer solutions focused end to end management; customer centric risk assessment; tighter integration through the entire customer interaction process; enhanced governance and compliance framework; listening to the voice of the customer; expert availability, allocation of complaints based on customer needs and risk and customer care.



- 149 In response to this report, EQC introduced a bespoke case management framework, which increased the speed and frequency of customer contact throughout the complaints-handling process. EQC also took several initiatives to improve the standard of proactive formal communication with customers.<sup>165</sup>

*WorkSafe New Zealand – Investigation into EQC’s and Fletcher EQR’s asbestos management practices*

- 150 Like the housing stock in other parts of New Zealand, the age of some of the Canterbury houses meant that they comprised some asbestos-containing materials. In December 2014, WorkSafe New Zealand reported on its investigation into EQC’s and Fletcher EQR’s asbestos management practices in the CHRP.<sup>166</sup> WorkSafe found in its investigation that risks arising from non-identification of asbestos prior to repair work appeared to be very low for work involving textured coatings, plaster work, and plaster products. No significant risk to worker or public health was concluded.<sup>167</sup>
- 151 In response to the WorkSafe investigation, Fletcher EQR had commissioned an independent science-based review of the risk associated with asbestos<sup>168</sup>. This report provided a basis for EQC and Fletcher EQR being able to confirm that the risk of actual harm was very low.<sup>169</sup>

**Stakeholder survey**

- 152 In September 2014, Nielsen reported on the results of its first six-monthly survey of key EQC stakeholders nationally. The survey was commissioned by EQC in an effort to understand EQC’s performance.<sup>170</sup>

**EQC engagement in addressing lessons learnt from Canterbury**

- 153 In its October 2014 Briefing to the Incoming Minister, EQC noted that it was actively involved in a number of work programmes initiated across government to address some of the lessons learnt from Canterbury.<sup>171</sup> These work programmes included:

<sup>165</sup> [Earthquake Commission \(2016\). “Annual Report 2015–16” at 51. See also 2013/14 Annual review of the Earthquake Commission - Report of the Finance and Expenditure Committee at 4 and 16.](#)

<sup>166</sup> [WorkSafe New Zealand “Investigation report: Asbestos risks in the Canterbury Home Repair Programme” \(October 2014\).](#)

<sup>167</sup> [At 3.](#)

<sup>168</sup> [Noel Arnold & Associates “Investigation of Airborne Asbestos Exposure Related to Removal of Textured Coatings, Three Residential Properties, CHRP New Zealand” \(July 2014\).](#)  
See also [“Asbestos exposure in New Zealand: Review of the scientific evidence of non-occupational risks”, a report on behalf of the Royal Society of New Zealand and the Office of the Prime Minister’s Chief Science Advisor \(April 2015\) at 27-29.](#)

<sup>169</sup> See generally [Earthquake Commission \(2015\). “Annual Report 2014–15” at 37.](#)

<sup>170</sup> [9\(2\)\(h\)](#)

<sup>171</sup> [Earthquake Commission “Briefing to the Incoming Minister Responsible for the Earthquake Commission” \(October 2014\) at 9.](#)

- 153.1 work by the Ministry for the Environment (MfE) to consider what national level guidance may be required to better manage the risks from natural hazards;
- 153.2 a review of recovery legislation in the [Civil Defence and Emergency Management Act 2002](#) by the Ministry of Civil Defence and Emergency Management;
- 153.3 work by MfE and MBIE to address situations where existing buildings were identified as being at risk as a result of a change in the risk profile of land due to a hazard event/s, such as an earthquake, or where new information about hazard risk had become available;
- 153.4 work on infrastructure resilience by the National Infrastructure Unit in Treasury; and
- 153.5 early scoping of possible national approaches to resilience by DPMC.

## 2015

### Progress with claims

- 154 As at 30 June 2015, EQC had settled 99% of Canterbury contents exposures, 80% of land exposures and 96% of building exposures.<sup>172</sup>
- 155 In 2015, EQC also substantially concluded the management of claims for the Seddon earthquakes and the Eketahuna earthquake.<sup>173</sup>

### Changes to the CHRP

- 156 The project management agreement with Fletcher Construction was amended in May 2015 to extend the target for completing the CHRP. The amendment also introduced new incentives and performance measures for meeting time, cost and quality goals.<sup>174</sup>
- 157 In June 2015, the CHRP was closed to new repairs, except for those customers who had a confirmed start date for repairs, had a prior agreement with EQC or Fletcher EQR, or had land that might be subject to increased flooding vulnerability.<sup>175</sup>

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<sup>172</sup> [Earthquake Commission \(2015\) "Annual Report 2014–15" at 12.](#)

<sup>173</sup> [At 12.](#)

<sup>174</sup> [Variation to the PMO Services Agreement dated 18 May 2015 between EQC, The Fletcher Construction Company and Fletcher Building Limited. See also Report of the Finance and Expenditure Committee "2014/15 Annual review of the Earthquake Commission, and Report of the Controller and Auditor-General, Earthquake Commission: Managing the Canterbury Home Repair Programme – follow-up audit" at 4, 7 and 18-19.](#)

<sup>175</sup> [Earthquake Commission \(2015\). "Annual Report 2014–15" at 25.](#)

## Reviews affecting EQC

158 During 2015, there were four key reviews that affected EQC:

158.1 the Treasury-led review of the EQC Act;

158.2 the MBIE report on Building Code compliance of earthquake repairs to Canterbury homes;

158.3 the Auditor-General's report which tracked EQC's progress against the recommendations in the Auditor-General's 2013 report on the CHRP;<sup>176</sup> and

158.4 the Cosman Parkes report on health and safety lessons learnt from the Canterbury response.

159 These reviews are described below.

### *Treasury Review of the EQC Act*

160 In July 2015, The Treasury released a discussion document as part of a legislative review of the EQC Act.<sup>177</sup> The review was a "lessons learned" exercise, drawing on the (then 22 years) of the EQC scheme, but prompted by the Canterbury earthquake events.

161 The discussion document set out proposals for reform and sought submissions from the public. EQC was consulted fully on the proposals.

### *MBIE report – "Earthquake Repairs to Canterbury Homes"*

162 In August 2015, MBIE released a report into the Building Code compliance of earthquake repairs to Canterbury homes.<sup>178</sup>

163 The report followed an independent survey of 101 homes randomly selected from more than 2,700 addresses provided by EQC, Housing New Zealand, and two private insurers - Southern Response and IAG. For 90 of these randomly selected homes, structural repairs had been completed, but they were exempt from a building consent under the [Building Act 2004](#).

164 Because they were exempt, the structural repairs for these 90 properties were not subject to a Council inspection. Of the 90, MBIE found that 32 had structural repair work carried out

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<sup>176</sup> See [paragraphs 125 to 128](#) above.

<sup>177</sup> The Treasury "New Zealand's Future Natural Disaster Insurance Scheme - Proposed changes to the Earthquake Commission Act 1993 - Discussion Document" (July 2015). Currently, changes to the EQC Act are still pending (see [paragraphs 231 and 232](#) below).

<sup>178</sup> MBIE "Earthquake Repairs to Canterbury Homes - Home Inspection Survey Report" (August 2015). The Report received considerable media attention. See, for example, Cecile Meier "Survey of Canterbury quake repairs caned by critics and advocates" Stuff (19 August 2015). <https://www.stuff.co.nz/business/71252533/mbie-report-one-third-of-assessed-homes-noncompliant>

that was non-compliant with the Building Code.<sup>179</sup> An additional 23 homes were assessed as having minor repair defects.

- 165 A key finding from the survey was that 30 of the 32 homes with non-compliant repairs involved floor re-levelling using the 'jack and pack' repair method.
- 166 One of the report's recommendations was for agencies and their Project Management Offices (in EQC's case, Fletcher EQR) to rectify the issues identified.
- 167 In response to the recommendations contained in the MBIE Report, EQC and Fletcher EQR carried out a review of repairs undertaken as part of the CHRP which involved 'jack and pack' repairs, and where floor re-levelling was required across the entire house and required engineering or other specialist technical input. Necessary repair work commenced in 2016.<sup>180</sup>

*Auditor-General Report – 2015 follow up audit*

- 168 In November 2015, the Auditor-General published a follow up report<sup>181</sup> to the 2013 report on the performance of EQC in managing the CHRP. The follow up report included findings about the changes in the environment that EQC had been working in, and EQC's improvement activities, since 2013.
- 169 For various reasons, the Auditor-General found it is difficult to reach an overall conclusion on the performance of the CHRP in terms of efficiency, effectiveness and economy. The report noted EQC's effective management of repair cost inflation – meaning that repair costs appeared to be economic in the circumstances. But it also noted EQC's mixed performance in terms of customer interactions and experience – meaning that the programme had not been fully effective in the circumstances for some customers, including some vulnerable people.<sup>182</sup>

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<sup>179</sup> 74 of these homes had been repaired by EQC and 26 did not meet the Building Code. See MBIE ["Earthquake Repairs to Canterbury Homes - Home Inspection Survey Report" \(August 2015\)](#) at 14.

As at 19 January 2016, problems had been resolved with 22 of the 26 non-compliant properties - see [Report of the Finance and Expenditure Committee "2014/15 Annual review of the Earthquake Commission, and Report of the Controller and Auditor-General, Earthquake Commission: Managing the Canterbury Home Repair Programme – follow-up audit"](#) at 4.

<sup>180</sup> [Earthquake Commission \(2016\). "Annual Report 2015–16"](#) at 44.

<sup>181</sup> [Controller and Auditor-General "Earthquake Commission: Managing the Canterbury Home Repair Programme – follow-up audit" \(November 2015\).](#)

<sup>182</sup> Above at 17. See also [Report of the Finance and Expenditure Committee "2014/15 Annual review of the Earthquake Commission, and Report of the Controller and Auditor-General, Earthquake Commission: Managing the Canterbury Home Repair Programme – follow-up audit"](#) at 5-8, 12, 15-17.

*Cosman Parkes report – Health and Safety Lessons Learnt from the Canterbury Earthquake Response*

- 170 Also in November 2015, Cosman Parkes delivered a report assessing EQC’s performance in relation to ensuring the health and safety of its staff, contractors, customers and others since the 4 September 2010 earthquake.<sup>183</sup>
- 171 The report described a “game of two halves”, with evidence suggesting weak systems, poor demonstrable competence and inherently unsafe practices amongst residential building contractors pre-2012. But from 2012 onwards, good judgement, management and governance helped raise standards both within the CHRP and beyond.<sup>184</sup>
- 172 The report recommended developing a decision-making and procurement model (with health and safety as one element), which would help determine the optimal process for delivering a programme such as the CHRP for future natural disaster events.<sup>185</sup>

## 2016

### February 2016 earthquakes

- 173 On 14 February 2016, a 5.7 magnitude earthquake struck with an epicentre 10km east of Christchurch. A further magnitude 4.3 earthquake within 5km of Christchurch followed on 29 February 2016 (February 2016 earthquakes).
- 174 EQC set up a separate response team to handle the nearly 14,000 claims generated by these events. As there was no CHRP in place for new claims, EQC predominantly settled the claims from the February 2016 earthquakes by cash payment. To speed up the claims processing, EQC phoned customers to obtain information up front before conducting the damage assessment. For many claims, the damage assessment was phone based (meaning there was no need to visit the home).<sup>186</sup>
- 175 EQC also piloted a new agency model with Vero<sup>187</sup> for a group of 343 Vero/AA Insurance customers. Vero managed the assessment of, and provided settlement recommendations for, EQC claims for these customers. This pilot represented an early attempt by EQC to work

<sup>183</sup> Cosman Parkes “Health and Safety Lessons Learnt from the Canterbury Earthquake Response” (9 November 2015). This report was commissioned by EQC.

<sup>184</sup> At 4.

<sup>185</sup> At 5 and 6.

<sup>186</sup> Earthquake Commission (2016). “Annual Report 2015–16” at 53. See also Earthquake Commission “February 2016 Event Response Customer Factsheet No.3” (June 2016).

<sup>187</sup> Vero Insurance New Zealand Limited, a private insurer and one of the Suncorp group of companies.

closely with a private insurer to identify alternative ways to improve the customer experience related to natural disaster claims.<sup>188</sup>

## **Progress with Canterbury earthquakes 2010-2011 claims**

### *Residential building exposures*

- 176 By 30 June 2016, less than 600 properties with residential building exposures arising from the Canterbury earthquakes 2010-2011, still required a repair or cash settlement. However, this figure did not include requests for remedials – for example, work to rectify:

176.1 damage not included in the original scope of works;

176.2 damage included in original scope of works, but not repaired;

176.3 failure of materials or a repair solution for a building; or

176.4 failure of repair workmanship to meet the standard required under the EQC Act.

- 177 By 30 June 2016, EQC had received 10,500 requests for remedials<sup>189</sup> over the lifetime of the CHRP and about one third of those requests had been resolved. Up to this time, EQC had taken the approach of prioritising the repairs that were being done the first time around ahead of addressing the requests for remedials. But as the remaining first time repairs neared completion, resources were reallocated to remedials.<sup>190</sup>

### *Residential land exposures*

- 178 Of the around 155,000 residential land exposures that had been opened<sup>191</sup>, 22,800 were still to be resolved as at 30 June 2016.<sup>192</sup>
- 179 During 2016, EQC continued to focus on the settlement of complex land exposures involving IFV and ILV damage. EQC had finalised its policy for the settlement of IFV and/or ILV land

<sup>188</sup> In October 2016, EQC was announced the winner of the Continuous Improvement Project of the Year Award at the 8<sup>th</sup> Ci forum Annual Conference for its work following the February 2016 earthquakes. See [Earthquake Commission “EQC Winner of Continuous Improvement Award” \(10 October 2016\)](#).

<sup>189</sup> For the purposes of this figure, “remedials” also included work to rectify damage from earthquakes subsequent to repairs being completed.

<sup>190</sup> [Earthquake Commission \(2016\). “Annual Report 2015–16”](#) at 43. Not all requests resulted in remedials being carried out or a cash payment being made by way of settlement.

<sup>191</sup> Some additional exposures had been opened by EQC to allow for settlement of IFV and/or ILV land damage. EQC had confirmed that these were forms of damage that EQC could pay out on (see [paragraphs 139 to 141](#) above). However, these forms of damage were not visible to the customer. EQC settled these land exposures where:

(1) it assessed that there was IFV and/or ILV land damage on the customer’s insured land; and  
(2) either the customer had made a claim for the event, or the customer was eligible for a payment for unclaimed damage under the 2015 Ministerial Direction. See [“Direction to the Earthquake Commission Pursuant to Section 112 of the Crown Entities Act 2004” \(20 October 2015\) 117 New Zealand Gazette 50](#).

<sup>192</sup> [Earthquake Commission \(2016\). “Annual Report 2015–16”](#) at 45. These unresolved exposures mainly related to ILV and/or IFV damage and Crown-owned Residential Red Zone properties.

damage.<sup>193</sup> The policy was underpinned by detailed engineering<sup>194</sup> and valuation<sup>195</sup> assessment and settlement methodologies, which had been peer reviewed by experts.

#### *Drainage*

- 180 As at 30 June 2016, EQC also had 3,118 drainage claims to resolve (as part of the residential building exposures). EQC had also prioritised first time building repairs ahead of addressing drainage. In 2016, EQC established a contractor panel of registered drainlayers to help ensure customers received a timely settlement of these drainage claims.<sup>196</sup>
- 181 A Ministerial Direction of August 2016 directed EQC to pay for damage to, or replace or reinstate (at EQC's option), certain additional storm water and sewerage services and structures that suffered damage as the direct result of the 2010-2011 Canterbury earthquakes.<sup>197</sup>

#### *Contents exposures*

- 182 As at 30 June 2016, a very small number of contents exposures were still to be resolved (126 out of the over 187,000 arising from the 2010-2011 Canterbury earthquakes).<sup>198</sup>

### **Complaints and disputes**

- 183 EQC customers had several avenues of recourse where they had a complaint or dispute involving EQC:

183.1 escalation of the complaint within EQC;

183.2 recourse to the Ombudsman;<sup>199</sup>

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<sup>193</sup> See [Earthquake Commission "Increased Flooding Vulnerability \(IFV\) and/or Increased Liquefaction Vulnerability \(ILV\) Land Damage Consolidated Policy Statement" \(September 2016\)](#).

This Consolidated Policy Statement drew together the IFV settlement policy that had been confirmed in the 2014 Declaratory Judgment and the ILV settlement policy that had been finalised in October 2015. It also dealt with policies in relation to properties with both IFV and ILV land damage.

<sup>194</sup> See for example, [Tonkin & Taylor Ltd "Canterbury Earthquake Sequence: Increased Liquefaction Vulnerability Assessment Methodology" \(October 2015\)](#).

This report was peer reviewed by an expert review panel, comprising world-leading liquefaction researchers from several universities – Canterbury; California, Berkeley; California, Davis; and Cornell – see [Joint Report of the Expert Panel "Peer Review of the Increased Liquefaction Vulnerability Assessment Methodology" \(16 October 2015\)](#).

<sup>195</sup> See for example, ["Diminution of Value Methodology for Increased Flooding Vulnerability" \(April 2014, updated with Guidance notes and minor amendments as at March 2015\)](#).

The DOV assessments were made in accordance with methodologies, practices, and procedures developed by EQC's expert valuation advisors and endorsed by an independent Expert Valuation Panel nominated by the New Zealand Institute of Valuers and the Property Institute of New Zealand.

<sup>196</sup> [Earthquake Commission \(2016\). "Annual Report 2015–16" at 44.](#)

<sup>197</sup> ["Direction to the Earthquake Commission Pursuant to Section 112 of the Crown Entities Act 2004, as Permitted by Section 5\(1\)\(f\)\(ii\) of the Earthquake Commission Act 1993" \(9 August 2016\) 77 \*New Zealand Gazette\* 42.](#)

<sup>198</sup> [Earthquake Commission \(2016\). "Annual Report 2015–16" at 45.](#)

<sup>199</sup> Under the [Ombudsmen Act 1975](#). Between 1 July 2010 and 30 June 2018, the Ombudsman received nearly 3,000 complaints and other contacts related to EQC. Of these, just over 1,000 have been referred to EQC for a response. The balance were managed and resolved by the Ombudsman without input from EQC.

183.3 mediation under the free AMINZ mediation service;<sup>200</sup> and

183.4 litigation.<sup>201</sup>

- 184 A group of EQC customers had also sought recourse from the IPENZ Disciplinary Committee<sup>202</sup> against an individual engineer engaged by EQC to inspect earthquake damaged properties. The decisions of the IPENZ Disciplinary Committee (which found breach of the code of ethics and negligence) were quashed on appeal to the Chartered Professional Engineers Council (CPEC), which dismissed all complaints against the consulting engineer.<sup>203</sup>

*Morrison Low report – “Managing Complaints About Staff Conduct”*

- 185 In January 2016, Morrison Low issued a report assessing EQC’s practices on managing complaints about staff conduct.<sup>204</sup> The catalyst for the report was concerns expressed publicly in 2015 that customer complaints about EQC staff conduct were not appropriately followed up or investigated. The report recommended standardisation of processes and complaints systems; designated responsibility for complaints systems and processes; and improvements in oversight, communications and training.

- 186 EQC accepted that its overall processes for handling customer complaints about staff needed to be made more consistent and that communications with customers who complained about staff needed to be improved. EQC published its specific responses to the report’s recommendations.<sup>205</sup>

*EQC Action Group – Court proceedings against EQC settled and Joint Statement issued*

- 187 A group of 87 owners of houses that were damaged by the Canterbury earthquakes 2010-2011 started High Court proceedings against EQC in November 2015. These customers (known as the EQC Action Group) sought declarations to clarify the extent of the EQC’s liability under the EQC Act for the earthquake damage to their houses.

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<sup>200</sup> See [paragraph 92.4](#) above. Since the [AMINZ agreement was signed \(in 2012\)](#), 87 EQC claims have been referred to the AMINZ mediation service.

<sup>201</sup> As at 30 June 2016, EQC had 125 open litigation cases before the Courts relating to claims under the EQC Act. See [Earthquake Commission \(2016\). “Annual Report 2015–16”](#) at 96.

EQC had in some instances used Declaratory Judgment proceedings to resolve legal issues (see [paragraphs 72 and 140](#) above). EQC had also been party to particular cases that tested points of law (see e.g. [Kraal v Earthquake Commission & Allianz New Zealand Ltd \[2015\] NZCA 13](#), which dealt with the issue whether the loss of use of a house because of rockfall risk was covered by the EQC Act).

<sup>202</sup> IPENZ is the Institution of Professional Engineers New Zealand (now called Engineering New Zealand).

<sup>203</sup> See [Robinson v IPENZ as Registration Authority \(Chartered Professional Engineers Council, Appeal No. 29, 10 July 2015\)](#).

<sup>204</sup> [Morrison Low “Earthquake Commission - Managing Complaints About Staff Conduct” \(January 2016\)](#).

<sup>205</sup> See [Earthquake Commission “EQC’s Management Response to the Morrison Low review – Managing Complaints about Staff Conduct” \(April 2016\)](#).



- 188 After discussions, the two parties determined that there was no material disagreement between them and the litigation was settled in April 2016.<sup>206</sup> Both parties agreed on a joint statement<sup>207</sup> that responded to the concerns raised by the EQC Action Group. Among other things, the joint statement reaffirmed EQC’s position that it would reinstate earthquake damage to residential buildings to a condition substantially the same as “when new”, which includes complying with any applicable laws.

### **New Statement of Intent**

- 189 In July 2016, EQC issued an amended Statement of Intent<sup>208</sup> setting out a refreshed mission for EQC “to reduce the impact on people and property when natural disasters occur”, and a vision for EQC to be “the world’s leading national natural hazard insurance scheme”.<sup>209</sup>
- 190 The strategic objectives set by the Board for the period to 30 June 2018 were as follows:
- 190.1 New Zealanders have access to natural hazard insurance and reinsurance;
  - 190.2 claims made to EQC’s insurance scheme are managed fairly, transparently and in a timely way; and
  - 190.3 EQC is a leader in New Zealand on natural hazard risk reduction, delivering improved national resilience to natural hazards.<sup>210</sup>

### **Kaikōura earthquake**

- 191 At 12:02am, on 14 November 2016, a magnitude 7.8 earthquake struck 15km north-east of Culverden, North Canterbury, starting near the town of Waiau (Kaikōura earthquake). The earthquake was the most powerful in the North Canterbury area in over 150 years and is one of the most complex earthquakes ever recorded with modern instruments.<sup>211</sup>
- 192 Two people lost their lives as a result of the Kaikōura earthquake.<sup>212</sup>

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<sup>206</sup> See [Settlement Agreement between EQC Action Group and EQC dated 28 April 2016](#).

<sup>207</sup> [“Joint Statement between EQC Action Group and the Earthquake Commission” \(April 2016\)](#).

<sup>208</sup> See [Earthquake Commission \(20 July 2016\) Statement of Intent 2014–18](#). This amended Statement of Intent was submitted by the EQC Board in accordance with [section 148\(1\)](#) of the [Crown Entities Act 2004](#). It amended the original [Statement of Intent 2014–18 dated September 2014](#).

<sup>209</sup> [At 5](#). This mission and vision have remained unchanged - see [Earthquake Commission \(2018\) Statement of Intent 2018-22 at 4 and 6](#).

<sup>210</sup> See the strategy map in the [Statement of Intent 2014–18 at 13](#). These strategic objectives have also remained the same, except that the third objective now reads “EQC is a leader in New Zealand on natural hazard risk reduction” – see [Statement of Intent 2018-22 at 5-6](#).

<sup>211</sup> See [Geonet “M 7.8 Kaikōura Mon, Nov 14 2016”](#).

<sup>212</sup> [Eileen McSaveney “Historic earthquakes - Marlborough earthquakes – 2013 and 2016”, Te Ara - the Encyclopedia of New Zealand at 15](#).

- 193 There were around 40,000 EQC claims arising from the Kaikōura earthquake,<sup>213</sup> making it, at that time, the second largest earthquake disaster that EQC had dealt with after the 2010-2011 Canterbury earthquake sequence.
- 194 Drawing from lessons learnt from the Canterbury earthquakes 2010-2011 and the February 2016 earthquakes, EQC decided to pilot a new approach to claims resulting from the Kaikōura earthquake. In December 2016, EQC signed a Memorandum of Understanding (Kaikōura MOU) with eight private insurers to manage (as EQC's agents) the majority of Kaikōura earthquake EQC residential building and contents exposures.<sup>214</sup> The MOU stated that the parties wished to facilitate the provision of a good claim experience for people making residential building and contents insurance claims arising out of the Kaikōura earthquake.<sup>215</sup>
- 195 Under the Kaikōura MOU, EQC would reimburse the private insurers for the cash settlements of residential building and contents exposures (made in accordance with the EQC Act) and the insurers' respective handling costs.
- 196 The Kaikōura MOU provided that EQC would continue to manage:
- 196.1 EQC residential land exposures; and
  - 196.2 EQC claims relating to properties that already had an open claim from a previous event (for example, one or more of the Canterbury earthquakes).<sup>216</sup>
- 197 EQC also continued to manage EQC claims from customers of private insurers who did not sign the Kaikōura MOU.

## 2017

### Planned restructuring

- 198 In early 2017, EQC completed a planned restructuring,<sup>217</sup> involving a large number of staff changes. Approximately 380 people left EQC in December 2016 and recruitment processes were run for approximately 350 roles.

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<sup>213</sup> Earthquake Commission (2017). "Annual Report 2016-17" at 4.

<sup>214</sup> See Memorandum of Understanding Relating to Kaikōura Earthquake Claims Management between EQC and AA Insurance Limited, Farmers' Mutual Group and FMG Insurance Limited, IAG New Zealand Limited, Medical Insurance Society Limited, QBE Insurance (Australia) Limited, Tower New Zealand Limited, Vero Insurance New Zealand Limited and Youi NZ Pty Limited.

<sup>215</sup> At Background A.

<sup>216</sup> At section 7.

<sup>217</sup> See Earthquake Commission "EQC confirms shape of smaller organisation for 2017" (21 September 2016).

- 199 In January 2017, EQC had 545 staff in the new structure, as compared to 927 staff<sup>218</sup> employed at EQC as at 30 June 2016.

### **New Chief Executive of EQC**

- 200 Sid Miller was appointed as the Chief Executive of the Earthquake Commission with effect from 13 February, 2017. The outgoing Chief Executive, Ian Simpson, had been the Chief Executive for almost seven years.

### **Edgecumbe flood – Ministerial Direction**

- 201 The town of Edgecumbe was flooded in April 2017. Large amounts of debris and silt were left on several hundred properties after the flood waters receded.<sup>219</sup>
- 202 The Government directed EQC to support the clean-up process for affected residential and commercial properties, whether insured or not.<sup>220</sup> EQC worked closely with the Whakatane District Council, engaged with five local contractors and coordinated the clean-up project.

### **Handling Canterbury overcap building exposures to private insurers**

- 203 One of the challenges with the management of EQC building exposures has been the two-tier insurance model (with undercap amounts being covered by EQC and overcap amounts generally<sup>221</sup> being covered by private insurers).
- 204 Through 2016 and 2017, EQC and private insurers took steps to improve the customer experience by:
- 204.1 streamlining the process of agreeing whether a Canterbury earthquake building exposure was undercap or overcap; and
  - 204.2 co-ordinating the settling of Canterbury earthquake building exposures which were going (or were about to go) over cap.<sup>222</sup>
- 205 Specifically:
- 205.1 in September 2016, the Joint Accelerated Review Team (JART) was established. The JART initiative at first involved the development of reporting and operational protocols between EQC and private insurers at an industry level. Later the review

<sup>218</sup> [Earthquake Commission \(2016\). “Annual Report 2015–16” at 22.](#)

<sup>219</sup> [Earthquake Commission \(2017\). “Annual Report 2016–17” at 7.](#)

<sup>220</sup> “Direction to the Earthquake Commission Pursuant to Section 112 of the Crown Entities Act 2004, as Permitted by Section 5(1)(f)(ii) of the Earthquake Commission Act 1993” (1 May 2017) 58 *New Zealand Gazette* 40.

<sup>221</sup> See [section 30, EQC Act](#).

<sup>222</sup> An early example of such an initiative was the use of Protocol 1 – see [paragraph 78](#) above.

work involved establishing clarity around the status and “ownership” (as between EQC and the private insurer) of each claim;<sup>223</sup>

205.2 in May 2017, EQC entered into a Memorandum of Understanding (SRES MOU) with Southern Response Earthquake Services Limited. The parties wished to facilitate the prompt resolution of open Canterbury building exposures for Southern Response customers.<sup>224</sup> Under the SRES MOU, Southern Response, as agent for EQC, could assess and settle EQC residential building exposures for those customers, where they were likely to go over cap.

### **Finalisation of liabilities for Canterbury claims as between EQC and private insurers**

206 During 2017, negotiations continued between EQC and several private insurers in relation to determining final liabilities (as between EQC and each insurer) for Canterbury claims. This process is sometimes referred to as “insurer finalisation” or “wash up”.

207 In respect of overcap claims, some insurers argued that, for a range of reasons,<sup>225</sup> they were entitled to payments from EQC. Conversely, EQC also considered that it was entitled to reimbursement from insurers in relation to some claims.

208 In some cases, the focus by both EQC and the private insurer to settle their (mutual) customer’s claim, meant that they had deferred issues about the respective liability as between themselves (EQC and insurer) for the cost of the claim.

### **Litigation**

209 Year on year, the number of litigation cases increased significantly. As at 30 June 2017, EQC had 212 open litigation cases before the courts relating to claims under the EQC Act (as compared to 125 at 30 June 2016). All but three of the 212 cases related to the 2010-2011 Canterbury earthquake sequence.<sup>226</sup>

210 Later in the year, there was a spike in new proceedings served on EQC by customers who primarily sought to preserve their position against any Limitation Act defences.<sup>227</sup>

<sup>223</sup> See [Earthquake Commission “Briefing to the Incoming Minister Responsible for the Earthquake Commission” \(October 2017\)](#) at 12. This initiative built on an earlier joint approach to reviewing claims that were approaching the EQC cap.

<sup>224</sup> [Memorandum of Understanding Relating to Management of Outstanding Canterbury Earthquake Claims between EQC and Southern Response Earthquake Services Limited dated 9 May 2017](#), at [Background A](#) and [B](#).

<sup>225</sup> For example, disputes have arisen between EQC and private insurers regarding Protocol 1; costs attributable to EQC for remedials; and costs attributable where a review of the multiple claim payments leads to an apportionment adjustment. At the time of writing, the “Insurer finalisation” process has not concluded and is ongoing.

<sup>226</sup> [Earthquake Commission \(2017\). “Annual Report 2016–17”](#) at 78.

<sup>227</sup> For example, there was a large tranche of new litigation claims against EQC during September 2017. The timing of this litigation was likely as a result of homeowners seeking to preserve their position against potential Limitation Act defences that might have been run by their private insurers (co-defendants in the proceedings) following the 7th anniversary of the 4 September 2010 Canterbury earthquake. The Insurance Council of New Zealand (ICNZ) [had said that its members would not raise limitation defences in any case that was filed before 4 September 2017](#).

### *IAG/Tower land litigation*

- 211 On 20 January 2017, IAG New Zealand Limited and Tower Insurance Limited commenced High Court proceedings against EQC in respect of EQC’s policy for settling ILV land damage.<sup>228</sup>
- 212 This case led to “putting on hold” the settlement of over 300 EQC customer land exposures for ILV land damage. Many of these land claims had been assigned to insurers by the EQC customers.

### *High Court decisions*

- 213 Later in 2017, three High Court decisions<sup>229</sup>, involving alleged earthquake damage sustained to residential buildings, affirmed that EQC’s approach was correct for assessing and settling these claims for earthquake damage.
- 214 In these decisions, the High Court determined that the following elements must be satisfied in order for there to be “damage” that is covered by EQC:
- 214.1 there must be a material physical change to the building element;
  - 214.2 the material physical change must be the direct result of an earthquake; and
  - 214.3 the material physical change must impair the value and usefulness of the building element.

### **Progress with Canterbury earthquakes 2010-2011 claims**

- 215 In the first half of 2017, EQC settled 5,500 exposures (including land, drainage and remedials) arising from the Canterbury earthquakes 2010-2011. This almost halved the then recorded total – leaving 6,000 unresolved exposures.<sup>230</sup>
- 216 By 30 September 2017, the recorded number of unresolved exposures had decreased to 4,400.<sup>231</sup>

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EQC’s position on the Limitation Act was (and remains that) the six-year limitation period starts from the date when an individual claim is or was settled or declined under the EQC Act. For more detail see [Earthquake Commission, “Limitation legislation”](#).

<sup>228</sup> This case has not yet been heard.

<sup>229</sup> See *C & S Kelly Properties Limited v Earthquake Commission & Anor* [2017] NZHC 1583; *Sadat v Tower Insurance & Earthquake Commission* [2017] NZHC 1550; *He v Earthquake Commission* [2017] NZHC 2136. See also *Bligh v Earthquake Commission & IAG* [2018] NZHC 2102.

While some cases, including these, were decided by the Courts, the vast majority were settled before the case reached the hearing stage.

<sup>230</sup> [Earthquake Commission \(2017\). “Annual Report 2016–17”](#) at 4. As at 30 June 2017 the Annual Report recorded that there were 6,000 remaining. This number included additional remedial requests that had continued to come into EQC during the year.

<sup>231</sup> See [Earthquake Commission “Briefing to the Incoming Minister Responsible for the Earthquake Commission” \(October 2017\)](#) at 11.

- 217 The Kaikōura earthquake had impacted progress with Canterbury claims in two main ways:
- 217.1 responding to the Kaikōura earthquake required EQC to reprioritise some of its work away from Canterbury claims; and
  - 217.2 already scarce resources needed to settle complex claims (such as engineers and highly skilled assessors) were in high demand from private insurers and the general construction industry in response to the Kaikōura earthquake. An inability to access the required specialist resources when required meant that claim settlement in Canterbury was slower than expected.<sup>232</sup>
- 218 In 2017, the repairs as a result of the 2015 MBIE report (known as the CEDAR<sup>233</sup> building repairs) were managed through the CHRP. But other remedials were now resolved by EQC through its new In House Repair Programme (IHRP).<sup>234</sup>

### **Progress with Kaikōura earthquake claims**

- 219 By 30 September 2017:
- 219.1 EQC had assessed 98% of the Kaikōura earthquake claims that it was managing and settled 90%; and
  - 219.2 the eight private insurers (as EQC's agents) had together assessed 87% of the Kaikōura earthquake claims they were managing, and settled 54%.<sup>235</sup>
- 220 During the year, EQC issued an "EQC Claims Manual for Insurers", which set out policies on how EQC applied the EQC Act.<sup>236</sup> The Manual was not drafted exclusively for the Kaikōura MOU. It was also designed to apply to other agency arrangements between EQC and insurers in respect of other natural disasters (for example, the SRES MOU).

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<sup>232</sup> [Earthquake Commission \(2017\). "Annual Report 2016–17" at 23.](#)

<sup>233</sup> CEDAR stands for "Canterbury Earthquake Damage and Repair".

<sup>234</sup> [Earthquake Commission \(2017\). "Annual Report 2016–17" at 5.](#)

<sup>235</sup> See [Earthquake Commission "Briefing to the Incoming Minister Responsible for the Earthquake Commission" \(October 2017\) at 13-14.](#)

<sup>236</sup> See [Earthquake Commission "EQC Claims Manual for Insurers – Version as at 28/9/17"](#). In their agency roles, the insurers were entitled to rely on the policies in this Manual (as amended from time to time) for the purpose of acting in accordance with the EQC Act. However, the Manual did not act as a substitute for the EQC Act. (see [Section 1 of the Manual](#)).

## 2018

### Settlement of Christchurch Residential Red Zone claims with the Crown

- 221 Early in 2018, EQC materially finalised its settlement with Land Information New Zealand (LINZ) in respect of EQC Residential Red Zone land claims. These claims had been assigned by EQC customers to the Crown as part of the sale of their Residential Red Zone land to the Crown.<sup>237</sup>
- 222 This marked the material completion of EQC's settlements with the Crown for claims for damage to Residential Red Zone properties (both land and building). LINZ assumed management of the Crown-owned properties in the Residential Red Zone after CERA was disestablished in April 2016.

### Canterbury Business Unit (CBU)

- 223 The EQC Board was informed by Management that as at 31 January 2018 there were 2,600 outstanding exposures from the Canterbury earthquakes 2010-2011 that were able to be taken forward.<sup>238</sup> Some 400 Canterbury exposures were not able to be taken forward at that time for various reasons.<sup>239</sup>
- 224 Early in 2018, EQC Management was working on a range of options to speed up resolution of outstanding claims from the Canterbury earthquakes 2010-2011. One option which was being piloted was a case management claim model where each customer would have a dedicated EQC staff member to guide their claim through the process.
- 225 The output of that pilot, the Canterbury Business Unit (CBU)<sup>240</sup>, was announced in February 2018 and established in March. All EQC-managed remaining claims from the Canterbury earthquakes 2010-2011 were moved to the dedicated CBU.<sup>241</sup> This unit created new settlement specialist roles and was designed to deliver end-to-end case management and a single point of contact for customers with Canterbury claims.<sup>242</sup>

### Resignation of the Chair of EQC and new Chair appointed

- 226 On 23 February 2018, the Minister Responsible for the Earthquake Commission wrote to the EQC Chair stating that she was not happy with where EQC was at in respect of the

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<sup>237</sup> See [paragraph 69](#) above.

<sup>238</sup> This figure excluded the 311 Canterbury earthquakes 2010-2011 claims that were in litigation. It also excluded claims managed by Southern Response under the SRES MOU.

<sup>239</sup> Most of these were residential land exposures that were "on hold" pending the outcome of the IAG/Tower land litigation.

<sup>240</sup> The CBU has since been renamed "Canterbury Team".

<sup>241</sup> This did not include claims managed by Southern Response under the SRES MOU and claims in litigation.

<sup>242</sup> See [Michael Hayward "EQC introduces special unit for settling remaining Canterbury claims" Stuff \(26 February 2018\). <https://www.stuff.co.nz/business/101732457/eqc-introduces-special-unit-for-settling-remaining-canterbury-claims>](https://www.stuff.co.nz/business/101732457/eqc-introduces-special-unit-for-settling-remaining-canterbury-claims)

Canterbury earthquake work seven years on from the 22 February 2011 earthquake.<sup>243</sup> She considered that work had not moved fast enough or with what the Minister felt was a necessary sense of urgency to close out claims.

227 The Minister signalled that she would:

227.1 make fresh appointments to the EQC Board;

227.2 appoint a Ministerial advisor to work alongside the Board and Executive in order to form a view on a workable way forward;<sup>244</sup> and

227.3 ask Treasury to lead an independent accelerated audit of claims to establish certainty around liabilities and responsibilities on remaining claims.

228 On 23 February 2018, the Chair of the Board, Sir Maarten Wevers, resigned.<sup>245</sup>

229 With effect from 1 March 2018, Dame Annette King was appointed as Chair of EQC for a term of six months.<sup>246</sup>

### **Minister's Letter of Expectations**

230 On 6 March 2018, the Minister sent a letter to the new EQC Chair setting out her expectations for the 2018/19 financial year. The letter included expectations around EQC's engagement with any Inquiry; meeting targets for outstanding Kaikōura claims; completing Canterbury claims; a focus on customer service; the EQC Act review; the transformation of EQC; consultation with Treasury; and "no surprises".<sup>247</sup>

### **Earthquake Commission Amendment Bill**

231 On 22 March 2018, the Earthquake Commission Amendment Bill was introduced. The review of the EQC Act had been ongoing since 2012.<sup>248</sup> At the time of introduction of the Bill, it was recognised that a full-scale reform of the EQC Act would not be appropriate until after the proposed statutory Inquiry. However, there were some proposed legislative changes that could proceed before the Inquiry reported.

232 The Bill contained proposed amendments to:

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<sup>243</sup> [Letter from Hon Dr Megan Woods to the Sir Maarten Wevers, Chair of the Board of the Earthquake Commission dated 23 February 2018.](#)

<sup>244</sup> The Terms of Reference for the Independent Ministerial Advisor were issued on 1 March 2018. See [Hon Dr Megan Woods "Terms of reference for Independent Advisor's work released" \(1 March 2018\).](#)

<sup>245</sup> [Letter from Sir Maarten Wevers, Chair of the Board of the Earthquake Commission to Hon Dr Megan Woods dated 23 February 2018.](#)

<sup>246</sup> See ["Appointment to the Earthquake Commission" \(5 March 2018\) New Zealand Gazette No 2018-go1047](#). Dame Annette King's term as Chair was later extended to 31 October 2018.

<sup>247</sup> [Letter from Hon Dr Megan Woods to Dame Annette King, Chair of the Board of the Earthquake Commission dated 6 March 2018.](#)

<sup>248</sup> See [paragraph 106](#) above.



232.1 remove EQC cover for contents;

232.2 increase the EQC residential building cap from \$100,000 (plus GST) to \$150,000 (plus GST);

232.3 lengthen the EQC claim notification time limit; and

232.4 clarify EQC's ability to share and publish information, to improve claim settlement and for public good purposes.<sup>249</sup>

### **Independent Ministerial Advisor Report**

233 On 6 June 2018, the report of the Independent Ministerial Advisor (IMA) to the Minister was released.<sup>250</sup> The IMA report comprised advice to the Minister to speed up the resolution of outstanding EQC insurance claims arising from the Canterbury earthquakes 2010-2011.

234 The report noted that there were no "silver bullets" for the speedy resolution of these claims.<sup>251</sup> The report and its recommendations focused on actions that the Board and EQC management, together with certain government agencies, could take or were already taking, in the short term, to improve the claims process for the claimants.<sup>252</sup>

235 The report's recommendations were broad ranging, covering matters such as EQC's operational structure and practice; quality of data; communications with claimants; relationship with private insurers; performance metrics; monitoring arrangements; and litigation process.<sup>253</sup>

236 The recommendations also covered policy work required to address issues in connection with claims. These issues included temporary accommodation and other costs; extending Protocol 1; limitation periods; EQC's ability to discharge claims; and the fair and transparent resolution of on-sold damaged property claims<sup>254</sup>.

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<sup>249</sup> See [Earthquake Commission Amendment Bill 2018 \(37-2\)](#). At the time of writing, the Bill has been reported back from the Finance and Expenditure Committee.

<sup>250</sup> [Christine Stevenson, Independent Ministerial Advisor "Report of the Independent Ministerial Advisor to the Minister Responsible for the Earthquake Commission" dated 26 April 2018](#).

The IMA's review was not a statutory inquiry.

<sup>251</sup> [At 10](#).

<sup>252</sup> [At 11](#).

<sup>253</sup> See [5-7](#) for a summary of the recommendations.

<sup>254</sup> On-sold damaged property claims had been the subject of litigation against EQC in 2017 and 2018.

The report (at [20-21](#)) described on-sold damaged property claims as follows:

*"For the purpose of this report, an "on-sold property" is a property that has been sold by the original owner (that is, the owner at the time of the Canterbury Earthquake sequence) to another owner (and potentially a number of owners). There are several issues that can arise from on-sold properties:*

- *An EQC managed repair has been carried out that has now 'failed' or is 'not up to standard; and*
- *New earthquake damage is identified that requires a change to the original repair strategy. In some cases some of the earthquake damage was missed by the previous owner and during the assessments that EQC performed.*

- 237 EQC accepted the recommendations of the IMA and implemented a plan to address them. Other government agencies led work on some of the recommendations where appropriate.
- 238 EQC commissioned KPMG to carry out an audit of EQC's implementation of the IMA recommendations. The completion of KPMG's audit is pending at the time of writing.

### **Statement of Intent 2018-22**

- 239 EQC's new Statement of Intent (SOI) was issued in June 2018 for the period 1 July 2018 to 30 June 2022. The SOI responded to the Minister's expectations for EQC and recognised the need for an increased focus on customers.<sup>255</sup>
- 240 While EQC's strategic intentions largely remained the same,<sup>256</sup> the SOI described an operating model which reinforced a culture that:
- 240.1 put customers first; and
  - 240.2 shared data across government and industry groups to improve the understanding of natural hazard risks and the likely impacts on people, land and buildings.<sup>257</sup>

### **Transition to Claims Management System version 8 (CMSv8)**

- 241 In April 2018, the CBU's claims management processes were transitioned from Guidewire Claims Management System version 4 (CMSv4) to CMSv8.<sup>258</sup>
- 242 In the course of the transition, approximately 1,000 additional claims were identified that had previously not been reported to the EQC Board and the Minister.
- 243 In May, EQC commissioned KPMG to carry out an initial rapid assessment, and then a more comprehensive review, to assist in providing confidence of the claims data and reporting relating to the CBU. KPMG's overall assessment at the conclusion of their engagement was that a high level of confidence could be taken that the data was complete and that all open claims had been migrated to the new system.<sup>259</sup>

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*If and when it is agreed the further work is earthquake related, then the statutory cap can become important. If the property is under-cap then the EQC will re-open the claim and conduct the re-repair or settle with a cash payment. If the new work pushes the property over-cap then the EQC transfers the claim to the private insurer and the EQC is liable up to the cap. Depending on the private insurer in question and whether the claim has been assigned over to the new owner, a purchaser may not have the same entitlements as the original owner or any entitlement at all above EQC's cap or any entitlement at all."*

<sup>255</sup> See [Earthquake Commission \(2018\) "Statement of Intent 2018-22"](#) at 2 and 3.

<sup>256</sup> See [paragraph 190](#) above.

<sup>257</sup> [Earthquake Commission \(2018\) "Statement of Intent 2018-22"](#) at 8-11.

<sup>258</sup> CMSv4 had been an issue/activity-based application, whereas CMSv8 was a case-based application.

<sup>259</sup> [KPMG "Earthquake Commission – Independent Review of Christchurch Claims Data" \(11 July 2018\)](#) at 1.

### Progress with Canterbury earthquakes 2010-2011 claims

244 As at 30 June 2018, EQC had around 3,500 claims managed by the CBU. This did not include:

244.1 the claims in litigation;

244.2 the claims on hold because of the IAG/Tower land litigation; or

244.3 the claims being managed by Southern Response on behalf EQC under the SRES MOU.

245 The latest figures available (31 August 2018) indicated that there were around 3,250 outstanding Canterbury earthquake claims managed by the CBU. Of those 3,250, 12% pre-date March 2017; and over 50% were re-opened in 2018. All first time repairs<sup>260</sup> have now been settled.

### Progress with Kaikōura earthquake claims

246 As at 30 June 2018, 848 Kaikōura claims (approximately 2% of the total claims) remained to be settled (78 for EQC and 770 for private insurers).

247 The intention of the Kaikōura MOU pilot was to reduce double handling of claims (as between EQC and insurers) and to speed up settlements for earthquake affected customers. The Kaikōura MOU only applied to the Kaikōura earthquake and aftershocks<sup>261</sup>, and the intention was for EQC and insurers to assess the efficacy of the approach as the pilot progressed.<sup>262</sup>

248 EQC has commissioned four reviews of different aspects the Kaikōura MOU pilot. The completion of the last of these reviews is pending at the time of writing.

### Canterbury Earthquakes Tribunal Bill

249 On 1 August 2018, the Canterbury Earthquakes Insurance Tribunal Bill was introduced.<sup>263</sup> The purpose of the proposed tribunal is to provide speedy, flexible, and cost-effective services to help resolve insurance claims, including EQC claims for damage to residential buildings and residential land caused by the Canterbury earthquakes 2010-2011.

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<sup>260</sup> Not including remedials.

<sup>261</sup> The Kaikōura MOU was extended by [agreement in June 2017](#) to cover earthquakes in or around Kaikōura to and including 13 December 2017.

<sup>262</sup> See [Earthquake Commission “Briefing to the Incoming Minister Responsible for the Earthquake Commission” \(October 2017\)](#) at 13.

<sup>263</sup> See [Canterbury Earthquakes Insurance Tribunal Bill \(82-1\)](#).

250 The tribunal is designed to be an independent judicial body that will provide an alternative pathway to resolve these claims and, in doing so, assist EQC claimants to obtain some closure and help them get on with their lives.<sup>264</sup>

251 As at 30 June 2018, EQC had 394 litigation cases related to the Canterbury earthquakes 2010-2011.

### **Greater Christchurch Claims Resolution Service**

252 On 9 October 2018, the government launched the Greater Christchurch Claims Resolution Service (GCCRS), a new business unit to provide independent facilitation and advisory services to homeowners with outstanding or potential claims relating to the Canterbury earthquakes.

253 This new business unit, established pursuant to a Memorandum of Understanding (MOU) between MBIE, Southern Response and EQC, will provide access for customers to technical, legal and well-being support and expertise. It will also provide more direct access to claim information through a new customer portal. Assessment and settlement of EQC claims (for Southern Response customers) will remain with EQC and with Southern Response (as EQC's agent under the SRES MOU).

### **Funding**

254 By September 2018, the significant cost of the claims from the Canterbury and Kaikōura earthquakes had nearly depleted the Natural Disaster Fund.<sup>265</sup>

255 During 2018, EQC worked with Treasury to finalise operational arrangements which would apply when Crown payments commenced under the Crown's guarantee of EQC's liabilities. Under [section 16 of the EQC Act](#), that guarantee provides that the Crown will meet the deficiency if EQC's assets are not sufficient to meet its liabilities.

### **New Chair of EQC**

256 In October 2018, the Minister announced Sir Michael Cullen's appointment as the new Chair of EQC.<sup>266</sup> Sir Michael replaces Dame Annette King after the completion of her term as Chair on 31 October 2018.

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<sup>264</sup> At the time of writing, the Bill has had its First reading and has been referred to the Governance and Administration Committee.

<sup>265</sup> EQC continues to procure reinsurance. In 2018, EQC secured \$5.55 billion of reinsurance capacity placed for the 2018-19 year, up from \$4.83 billion purchased in 2017 for the 2017-18 year.

<sup>266</sup> See [Hon Dr Megan Woods "Sir Michael Cullen appointed as new chair of EQC"](#). See also ["Appointment to the Earthquake Commission" \(21 September 2018\) New Zealand Gazette 2018-go4988](#).