

Briefing to the Public Inquiry into the Earthquake Commission

Title	Resolving disputes with customers arising from the Canterbury earthquakes
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Resolving disputes with customers arising from the Canterbury earthquakes

Purpose

- 1 The purpose of this briefing is to provide a high-level view of how the Earthquake Commission (EQC) responded to customer complaints and legal disputes arising from Canterbury earthquake claims.
- 2 This briefing is split into three sections. Section One provides:
 - a an overview of the context EQC was working in;
 - b a history of the complaints and disputes processes;
 - c an overview of how EQC responded to the Canterbury earthquakes through its complaints and disputes processes;
 - d an overview of key government initiatives to assist in resolving disputes;
 - e a summary of court cases; and
 - f an overview of the costs to EQC of the litigation process over the past nine years.
- 3 Section Two outlines the key reviews and reports that provided recommendations on how EQC could improve its complaints and disputes processes. It then explains what EQC did in response to those reviews and reports.
- 4 Section Three contains a range of lessons that EQC has learnt in the past nine years, along with some thoughts on the future of dispute resolution.
- 5 For the purposes of this briefing, we define complaints and disputes separately:
 - a customer complaints – where a customer challenged EQC’s behaviour, responsiveness, or decision-making (including its failure to act or communicate). In these cases, the matter was referred to EQC’s customer complaints processes; and
 - b disputes – where EQC did not agree with the customer’s complaint, the customer did not accept EQC’s response, and EQC’s complaints processes did not resolve the matter. The customer sought a third party to resolve the matter ranging from the Ombudsman, to the EQC mediation service (after it was established in 2012), to the Disputes Tribunal or court processes.

- 6 The briefing focuses on both complaints and disputes because the two are linked. Furthermore, as this briefing will illustrate, success in resolving customer complaints early is key to minimising disputes.
- 7 **Appendix 1** contains a timeline showing the key events since 2010 in relation to customer complaints and disputes.

Executive Summary

- 8 Prior to the Canterbury earthquakes EQC received few complaints and managed few, if any, legal disputes. The volume of claims, complaints and legal issues that EQC faced post the Canterbury earthquakes was unexpected and EQC did not have the capacity or the processes to manage these.
- 9 Before the Canterbury earthquakes customers who disputed their claim with EQC could seek resolution through:
 - a direct negotiation with EQC;
 - b the Ombudsman; and/or
 - c the courts.
- 10 EQC did occasionally offer mediation on a case by case basis, but had no formal policy or process for doing so.
- 11 Following the Canterbury earthquakes, EQC was overwhelmed by demand. The organisation quickly found itself unable to adequately manage customer expectations about the timeliness of site visits, repairs and the type of repairs. It also struggled to put in place consistent processes to manage requests from customers. At its heart, this was a capacity issue, but from customers' perspective it drove a drop in public confidence and an increase in complaints, Official Information Act requests and, ultimately, litigation.
- 12 EQC's management of complaints and information requests from customers has been reviewed by a range of independent agencies including the Office of the Ombudsman, the Privacy Commissioner and the Auditor-General. EQC accepts that between 2010 and 2018 its processes were not adequately responsive. EQC also accepts that the way in which it communicated with customers led, in some cases, to frustration, anger, and protracted disputes.
- 13 Over the past eighteen months EQC has introduced a more customer focused operating model, **9(2)(h)** These have led to significant changes to both EQC's processes and its procedures. Since the first earthquake in 2010, approximately 830 cases have been lodged against EQC in the courts. Of these, approximately 635 include a private insurer alongside EQC.

- 14 As at 31 May 2019 there were approximately 310 EQC customer claims with litigation proceedings remaining in the court system. All but two of those customers have agreed to negotiate with EQC using either a settlement specialist or an alternative dispute pathway.
- 15 EQC recognises that the processes it used left customers taking court action for what was essentially a settlement dispute, and this led in some cases to customer frustration, stress and suffering. Litigation is a legal process, and should only be a last resort to clarify points of law, or where all reasonable settlement attempts have failed.

Customers' experiences

- 16 In the past nine years, customers' experiences of the claim process, from lodgement to settlement, has been highly changeable, both for Canterbury customers, and for customers of other events.¹ A lack of consistency, communication and clear expectation setting is likely to have contributed to customer frustrations.
- 17 Customers in Canterbury and in other locations often had very different interactions with EQC, even when their claims appeared to be of a similar nature to other customers. The unique characteristics of different types of exposures and locations, and of the event itself, could result in different pathways and experiences for customers.
- 18 Any two customers could have very different customer experiences. Disputes could arise at various points, including:
 - a disagreement with an assessment;
 - b time taken for receiving claim information;
 - c engineering disputes;
 - d disagreement about a repair strategy;
 - e lack of information over a sustained period (for land customers in particular); and
 - f disagreement over settlement amounts.
- 19 The vast majority of these disputes are not legal disputes. They are disagreements over approaches, information, or settlement offers. However due to the manner in which EQC managed these disputes, in some cases the claimants resorted to litigation.

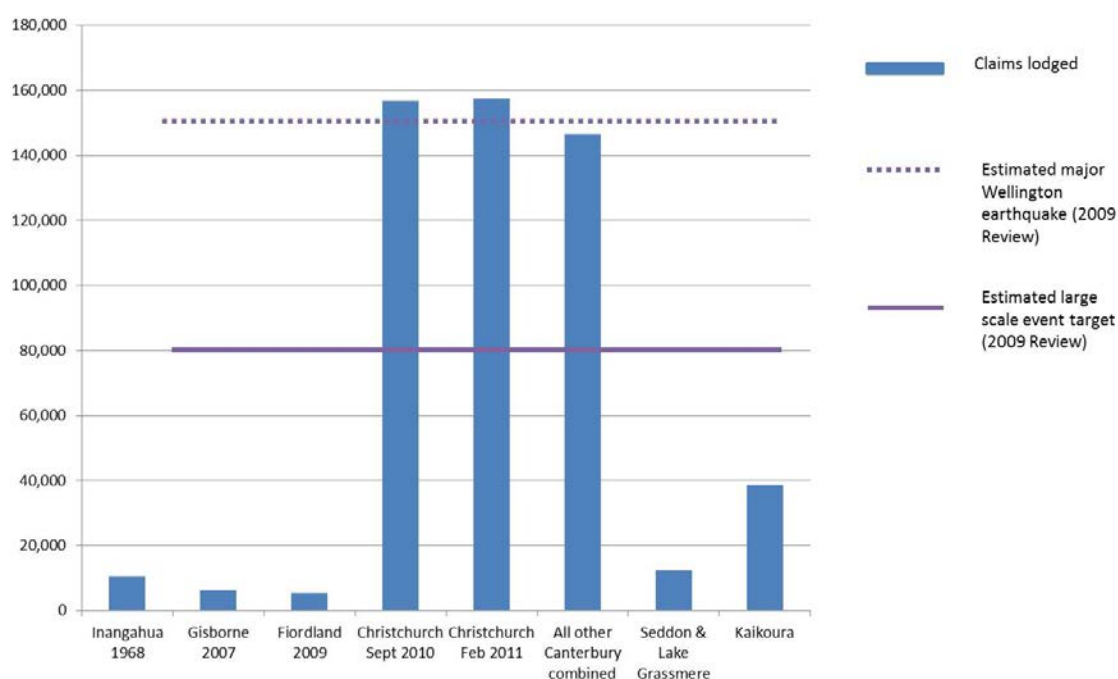
¹ See Briefing to the Public Inquiry into the Earthquake Commission, *Customers' Experience of the Earthquake Commission's Claims Management Processes* (17 July 2019).

- 20 EQC recognises that in any future event, clearer processes and initiatives to settle customer complaints and disputes will be a vital element of ensuring enduring settlements. Having better processes in place ahead of any event should provide customers with a more consistent experience.

Section One: Canterbury in context

- 21 Prior to the Canterbury earthquakes EQC's experience was limited to responding to a number of minor to moderate sized events, involving several hundred to several thousand claims. EQC's preference was to settle claims by cash payment rather than undertaking managed repairs.
- 22 The largest recent events prior to the Canterbury earthquake sequence were the 2007 earthquake near Gisborne that generated approximately 6,000 claims and the 2009 Tuatapere earthquake that generated approximately 5,000 claims. In 1968, the Inangahua earthquake had generated the most claims from a single event since the formation of EQC's predecessor, the Earthquake and War Damage Commission, with a comparatively few 10,500 claims.
- 23 Immediately prior to the Canterbury earthquakes, EQC estimated a "large scale" event to be one in which total claims exceeded 80,000, with a "major" event (such as a Wellington earthquake, a volcanic eruption in Auckland or a tsunami on the East Coast) resulting in as many as 150,000 claims.
- 24 **Figure 1** below shows that claim numbers for the 4 September 2010 Canterbury earthquake alone were comparable to the size of the largest event EQC had expected and planned for.

Figure 1: Historical Comparison of Event Size



- 25 EQC's previous experience, and therefore planning, was centred on there being one major event and a series of smaller aftershocks. EQC had no first-hand experience, nor had it observed from other international experiences, an earthquake sequence that included a series of major events in short succession.

Complaints management before the Canterbury earthquakes

- 26 Before the Canterbury earthquakes, EQC did not have a formal process for handling customer complaints. EQC received a (relatively) small number of claims each year. Its in-house claims management team (with external support from Gallagher Bassett Services, a contracted firm of loss adjusters in Brisbane) had the capacity and experience to address and resolve most EQC claims.
- 27 There was therefore generally no need for customer complaints to escalate to either the Parliamentary Ombudsman or the courts (the two avenues then available to customers for the resolution of EQC claims).

Dispute resolution before the Canterbury earthquakes

- 28 Prior to the Canterbury earthquakes, if a complaint between a customer and EQC could not be resolved, then the customer could seek the support of a third party to assist in the resolution of the dispute.
- 29 The formal options available were:
- a the Ombudsman; and/or
 - b the courts.
- 30 EQC did occasionally offer mediation on a case by case basis, but had no formal policy or process for doing so.

RECOURSE TO THE OMBUDSMAN

- 31 Under the Ombudsmen Act 1975, because disputes with EQC relate to matters of administration that affect the customer in their personal capacity, a customer can seek recourse from the Ombudsman about any claims decision by EQC.²

² See sections 13 and 16 of Ombudsmen Act 1975. EQC is an organisation named in Part 2 of Schedule 1 of that Act.

- 32 In considering a matter, the Ombudsman can make any recommendation they consider appropriate in the circumstances, for instance that an ‘omission’ should be rectified, a decision cancelled or varied, practices should change, laws should be reconsidered, or any other step should be taken. Although the recommendations of the Ombudsman are not binding, they are usually accepted.

Recourse to the courts

- 33 Recourse to the courts in the period before the Canterbury earthquakes was rare. In the decade leading up to the Canterbury earthquakes, there were only a handful of proceedings and only three of these proceedings required a hearing:
- a the *Coughlan* case – in which a customer unsuccessfully brought a judicial review challenging EQC’s inability to accept her claim for natural disaster damage. The customer had not given notice of the claim to EQC within the statutory time limit;³
 - b the *Winch* case – where EQC brought a declaratory judgment proceeding to test whether there was cover under the Earthquake Commission Act 1993 in respect of natural disaster damage to a right of way that the customers used over their neighbours’ land;⁴ and
 - c the *Doyle* case – a customer brought a proceeding to challenge EQC’s decision to decline his claim. The High Court decision was appealed and the customer and EQC were able to resolve the issues between them before the appeal to the Court of Appeal was heard.⁵

NO RECOURSE TO THE DISPUTES TRIBUNAL

- 34 It is not possible for customers to take a dispute about EQC’s settlement of their EQC insurance claims to the Disputes Tribunal.
- 35 The High Court has confirmed that the Disputes Tribunal has no jurisdiction under the Disputes Tribunals Act 1988 over disputes about how EQC has settled a claim made under the Earthquake Commission Act 1993.⁶

³ *Coughlan v Earthquake Commission* [2007] NZAR 532 (HC).

⁴ *Earthquake Commission v Winch* (2008) 9 NZCPR 827 (HC).

⁵ *Doyle v Earthquake Commission* [2009] NZRMA 546 (HC).

⁶ *Earthquake Commission v Disputes Tribunal* [1997] NZAR 115, (1996) 10 PRNZ 317 (HC).

Resolving customer complaints following the Canterbury earthquakes

- 36 At the time of the first Canterbury earthquake on 4 September 2010, EQC did not have a formal process for handling customer complaints.
- 37 By October 2010, two staff had been recruited to manage complaints, but no formal processes were in place. Complaints were referred to various teams around EQC, depending on relevance and capacity. By December 2010, a basic complaints handling process had been designed and implemented. This was followed by the establishment of a dedicated team.
- 38 In November 2010, EQC commissioned and received legal advice about setting up a web-based customer relationship management system that would facilitate the lodgement of complaints. The advice also recommended that EQC develop a staged complaint escalation pathway leading to a written decision from an EQC supervisor.⁷ However, recognising that it would take time to put the web-based customer relationship management system in place, the EQC Board opted for a simplified interim solution.⁸
- 39 By December 2010, a basic complaints handling process had been designed and implemented. Customers could make a complaint via EQC's website, post or phone.
- 40 In early 2011, a specific team was set up for the first time to respond to customer complaints. This was the EQC Customer Complaints and Resolution Team. By July 2011, formal processes regarding the receipt, lodgement and handling of complaints were established. This included capturing and reporting complaints in ClaimCenter, EQC's electronic claims management system.
- 41 Around the same time, Fletcher EQR also set up a complaints process relating to the Canterbury Home Repair Programme. That complaints process was separate to the EQC process, and the systems involved were not able to exchange information.⁹
- 42 While the majority of complaints were received directly from the customer, some customers used an advocate or external agency to manage the complaint on their behalf. These could be the Residential Advisory Service, the Canterbury Insurance Assistance Service, or the Office of the Ombudsman (see paragraphs 106–113 below).
- 43 The type of inbound complaints has changed from year to year as EQC has progressed different stages of claims settlement. For example, in 2011 apportionment and contents related complaints dominated, while assessment and repair complaints have been the focus more recently.

⁷ See EQC Board paper, *Complaints Management and Dispute Resolution* (10 November 2010).

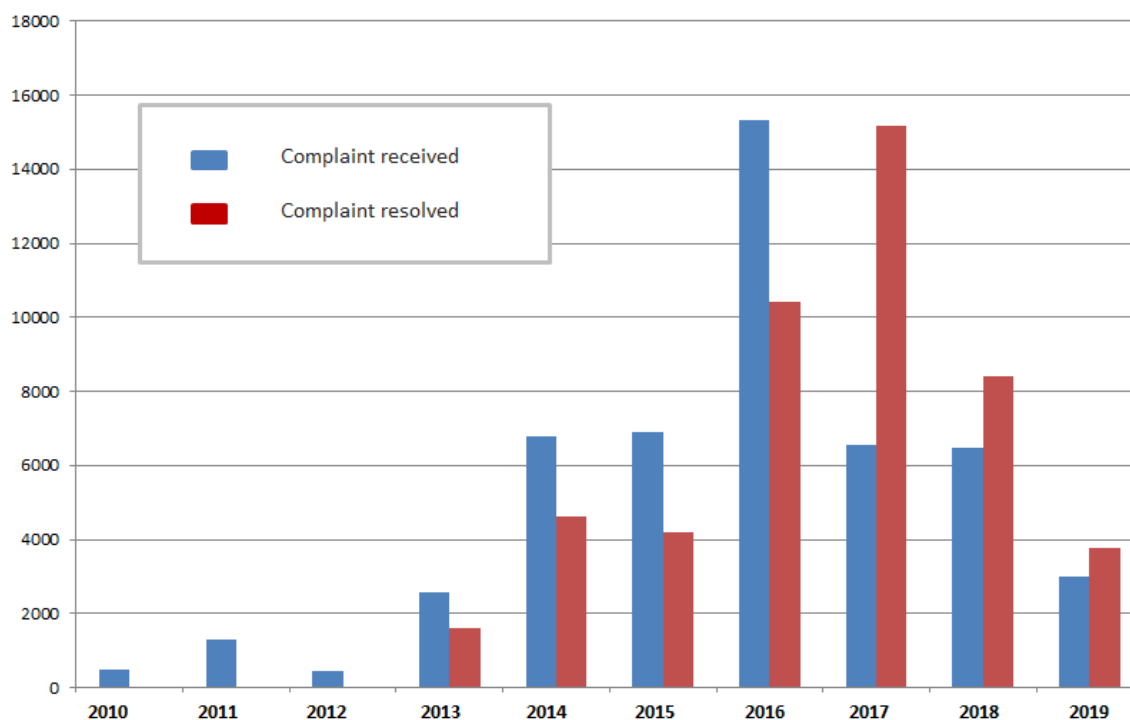
⁸ See Memorandum to the EQC Board, *Complaints /Disputes process – update* (26 November 2010).

⁹ See Briefing to the Public Inquiry into the Earthquake Commission, *Canterbury Home Repair Programme* (24 June 2019), page 69.

44 EQC does not have consistent data on the types of complaints it received following the Canterbury earthquakes. Until 2015 complaints data was held in multiple systems, teams and locations, making it hard to compile. In addition, until September 2015 EQC staff could only enter a single 'data point' regarding a complaint into the ClaimCenter system. This means there is limited data about the type of complaint prior to this time.¹⁰ From September 2015 onwards staff could enter a greater range of data points into the system to help describe the complaint type.

45 **Figure 2** below outlines the number of complaints that EQC recorded year on year from 2009 to 2019. It also includes the number of complaints that EQC closed in each of those years.

Figure 2: All complaints recorded and closed by EQC 2010 – 2019



46 In total, in the period from 1 January 2010 until 31 May 2019, EQC received 51,638 complaints relating to 34,734 unique properties. Of these, 49,637 (96%) were related to Canterbury earthquake claims, and only 2,001 (4%) were non-Canterbury complaints.¹¹

¹⁰ See EQC Board paper, *Overview of the Customer Complaints process and a break-down of complaints figures, Appendix 1 - History of complaints management in EQC* (10 September 2015), paragraph 35.

¹¹ An additional 1,743 complaints have not been included in this graph (but are included in the 51,638), as they were entered into the system without a valid date, meaning they cannot be assigned to a specific year.

- 47 From 2009 until the end of June 2019, complaints have been tracked by a variety of different processes and teams using numerous different methods. The data presented in **Figure 2** has been extracted from seven different data sources. It is therefore possible that some complaints have not been fully captured.
- 48 As **Figure 2** above shows, between 2011 and 2014 the number of inbound complaints slowly grew, with inbound weekly averages growing from around 25 a week to around 120 a week. During this period some of EQC's internal systems and processes did not facilitate the speedy resolution of open complaints. For example, changes to external communication processes, following a serious privacy breach by EQC in 2013, elongated the process to close complaints. This, combined with existing bottlenecks in many of EQC's settlement pathways, led to the number of open complaints increasing from 380 to 1,750 within a six-month period.
- 49 The Complaints Team was not able to recruit and train sufficient staff during this period to match this increase in volume, resulting in average caseloads exceeding 160 complaints per Investigator. The ability for investigators to maintain robust case load management practices was affected by the sheer number of customers they were managing, many of whom were vulnerable at the time.
- 50 From the start of 2014, the number of open complaints decreased steadily as the key focus shifted to closing complaints. This was driven by the implementation of monthly closure targets, monthly review targets (first contact with the customer), and the faster resolution of complaints. While more complaints were being closed during this period, the backlog of complaints remained high.
- 51 In June 2015, EQC completed a restructure of the Customer Complaints Resolution Team. Several functions which had operated independent of each other were combined under a single umbrella and renamed Customer Solutions. The Customer Solutions Team included staff in both Wellington and Christchurch, and incorporated technical advisors, investigators, legal personnel and face to face functionality.
- 52 In the 2016 year, the number of complaints received by EQC rose to 15,300 (or around 294 a week). The majority of these complaints were related to the Canterbury Home Repair Programme, and in total EQC has received just over 31,000 complaints relating to remedial repairs and the Canterbury Home Repair Programme.¹²
- 53 Currently EQC has a team of dedicated resolution specialists who manage complaints from customers, which can be lodged via the EQC website.¹³ In the 2019 year to date, EQC has received approximately 124 complaints per week.

¹² See Briefing to the Public Inquiry into the Earthquake Commission, *Canterbury Home Repair Programme* (24 June 2019), pages 55-59.

¹³ See the EQC website at: <https://www.eqc.govt.nz/contact-us/make-complaint>.

- 54 Based on information recorded in the seven data sources, only 2,001 (4%) of the total of 51,638 complaints received between 1 January 2010 until 31 May 2019 were not related to Canterbury earthquake claims. However, it is possible that there were other methods and sources that were used by other units of the business to manage complaints.
- 55 It is not possible to easily compare complaint numbers from the Canterbury earthquakes with other natural disasters that EQC dealt with in the past nine years, simply because the size and scale of the events are so different. Additionally, the majority of complaints from Christchurch related to remedial repairs from the Canterbury Home Repair Programme. EQC has not undertaken managed repair in relation to natural disaster events since the Christchurch events.

The Official Information Act process drives frustration

- 56 Customer dissatisfaction about EQC's communications with individual homeowners was a major theme in external reviews over the past nine years.¹⁴
- 57 From late 2011 onwards EQC began to receive increasing numbers of Official Information Act requests from customers who wanted copies of their claim information. EQC was not resourced to manage this increase in customer Official Information Act requests. Nor were its systems set up to provide the information that people were requesting. EQC's systems were designed to cash settle claims, not to readily extract all information and provide it to claimants. Information that claimants received was often technical or written for an internal EQC audience making little sense to someone not well versed in EQC's systems.
- 58 What this meant in practice was that many people did not know the status of their claim(s), the timeframes for any resolution, or have a clear understanding of the steps needed to resolve their claims. Part of the reason for the lack of clarity was simply the volume of claims that EQC was dealing with.
- 59 From early 2012, the Office of the Ombudsman and the Privacy Commissioner started receiving an increasing number of complaints from EQC customers about delays in EQC responding to requests for information. By the second half of that year, the Ombudsman was receiving an average of 10 complaints per month about delay (which compared with 12 complaints for the whole of 2011, and no complaints at all for 2010 and prior).
- 60 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 2013, EQC was advising requesters that there would be a six to seven month delay before it could respond to information requests.

¹⁴ See Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010* (4 March 2019), paragraphs 30-37.

- 61 To put this in context, in the three financial years immediately preceding the Canterbury earthquakes, EQC had received a total of 27 requests for information from customers. Between September 2010 and July 2012, EQC received 2,289 requests, with the rate of requests steadily building to 30 per week, which meant it was now receiving as many requests every week as it would normally have expected over a three year period.¹⁵
- 62 In May 2013, EQC estimated it would receive around 5,000 Official Information Act requests for the 2012/13 financial year.¹⁶

Evolution of formal disputes against EQC

- 63 As this briefing notes there were customers who did not agree with EQC's decisions and the way that those decisions were made. Many of these customers complained to EQC and, when these complaints were not satisfactorily resolved, they began to look at legal options for resolving their claims.
- 64 Until recently (when EQC changed its approach to dispute resolution), when a customer had tried all other avenues to resolve their disagreement with EQC, they were left with the option of taking legal proceedings.
- 65 In the period up to late 2015, EQC still had tens of thousands of claims to settle. In that environment, the organisational priority was on dealing with the largest number of claims as quickly and efficiently as possible.
- 66 However, for many individual customers, their own situation and the legal process was a difficult ordeal, as the issues involved were serious and personal. In some instances, customers felt EQC's approach did not allow them a speedy resolution.
- 67 A key contributor to the volume of litigation was the lack of a consistent alternative approach to the resolution of the disputes that led to proceedings. Various ideas were investigated and considered (see paragraphs 82 to 84d), some were even tried, but not in a concerted or ultimately effective way.
- 68 Since 2011, there have been approximately 830 court cases brought against EQC by customers, with around 310 of these still to be resolved.

¹⁵ Ombudsman and Privacy Commissioner, *Information fault lines – Accessing EQC Information in Canterbury* (December 2013), page 12 (report #19 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, External Reviews of the Earthquake Commission since 2010, dated 4 March 2019).

¹⁶ Earthquake Commission, *Official Information Act processing and Ombudsman's investigation* (May 2013).

MAJOR CAUSES OF DISPUTES

- 69 While no two claims, or disputes about claims, were identical, there are a range of causes for disputes. These include:
- a customer difficulties obtaining information and documents from EQC;
 - b disagreement about the damage caused by the earthquakes;
 - c disagreement about the strategy and cost of repairing the earthquake damage;
 - d quality of repair complaints; and
 - e complaints about the time taken to settle claims and complete repairs.
- 70 As well as disputes about the settlement of their insurance claims, the difference between what is covered under the Earthquake Commission Act 1993 and what is covered by a private insurer policy was in some cases a further source of tension leading to disputes. For example, the costs of temporary accommodation and loss of rents on investment properties may have been covered by private insurers, but such consequential losses are explicitly excluded from EQC cover.¹⁷
- 71 In the context of the Canterbury earthquake sequence, much of the interaction between EQC and private insurers, especially in relation to residential buildings, was centred on EQC's cap per event. A customer who had cover was often caught in the middle between the private insurer and EQC working out who was responsible for what, when and/or for what amount. In all cases EQC was confined to working within the Earthquake Commission Act 1993, and EQC acknowledges that it did not always communicate its process well.¹⁸

The four waves of litigation against EQC

- 72 EQC's litigation caseload arising out of the Canterbury earthquakes came as a series of waves.
- a *First wave: 2012-2013* – court process used to speed up EQC's settlement of residential building claims. Generally speaking, the first wave of litigation was from homeowners who were using the judicial process to speed up EQC's settlement of their residential building claims due to delays in processes;

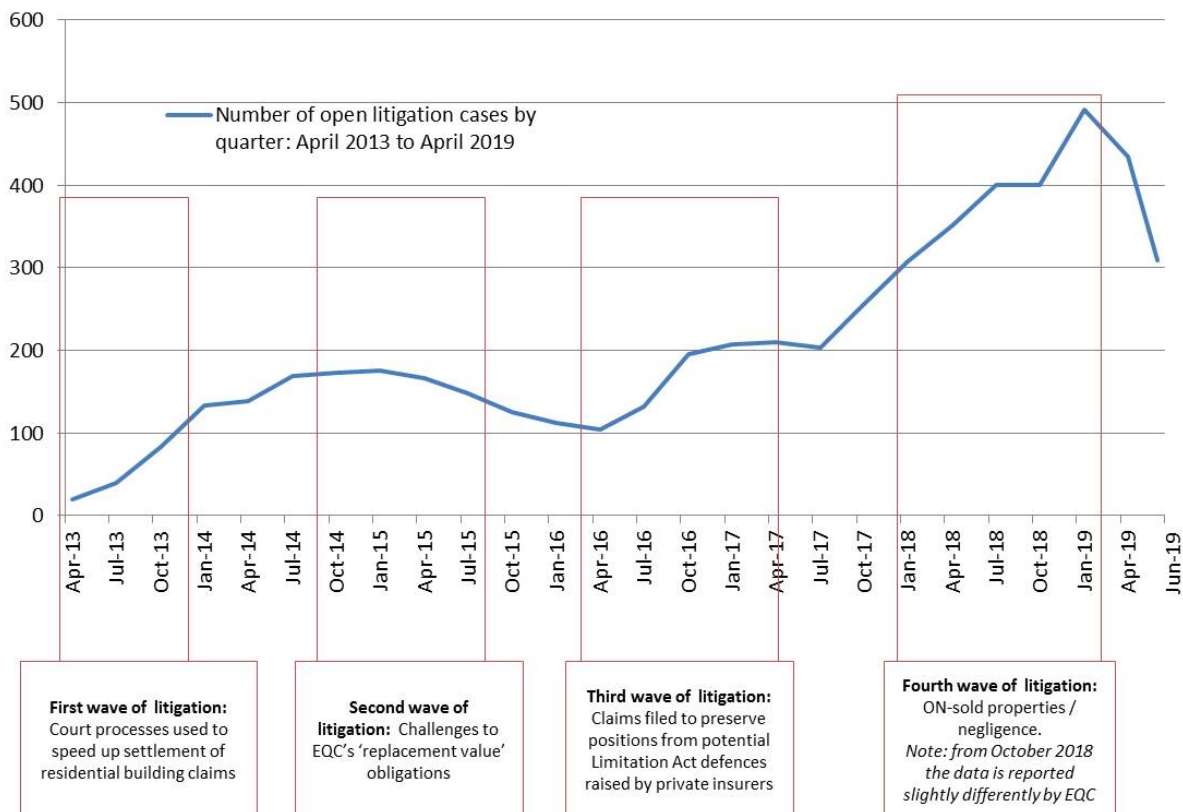
¹⁷ See Earthquake Commission Act 1993, Schedule 3, Clause 2.

¹⁸ See Briefing to the Public Inquiry into the Earthquake Commission, *Community Engagement and Communications* (4 July 2019).

- b *Second wave: 2014-2016* – Challenges to EQC’s “replacement value” obligations. The second wave of litigation claims filed against EQC focused on EQC’s compliance with its “replacement value” obligations. Generally, this would involve EQC taking a position that earthquake damage is, and the cost of repair was, within EQC’s statutory cap (usually \$100,000 plus GST per claim). The customer believed the extent of the earthquake damage required the house to be rebuilt and that the cost would exceed EQC’s cap;
- c *Third wave: 2016-2017* – Claims filed to preserve positions from potential Limitation Act defences raised by private insurers. For example, there was a large tranche of new litigation claims against EQC during September 2017. The timing of this litigation was likely due to homeowners seeking to preserve their position against private insurers’ arguments that there was a time limit for the customer issuing legal proceedings (called limitation defences). In this instance, the date of concern was the seventh anniversary of the 4 September 2010 Canterbury earthquake. The Insurance Council of New Zealand had said that its members would not raise these arguments in any case filed before 4 September 2017. Many of these types of proceedings were stayed while the parties continued to determine the extent of their liability outside the court process; and
- d *Fourth wave: 2017 and beyond* – On-sold properties/negligence. The fourth wave involved on-sold properties. These were claims by new property owners who purchased a property and had EQC claims assigned to them. In particular, where repairs were completed as part of the Canterbury Home Repair Programme and were later found to be inadequate, the new owner was left out of pocket if their private insurer chose to pay indemnity only for any costs above EQC’s cap (or not pay at all for over cap amounts). Approximately 30 customers have brought a case against EQC seeking funds to top up the cost to rebuild their property above EQC’s statutory cap. The damages sought are under the law of negligence, not monetary claims under the Earthquake Commission Act 1993.

73 **Figure 3** below shows each of these waves and the number of open litigation cases against EQC by quarter (April 2013 to April 2019).

Figure 3: Number of open litigation cases against EQC by quarter: April 2013 to April 2019¹⁹



The role of litigation funding

- 74 The majority of litigation cases against EQC have been taken by a small number of firms that specialise in litigation on a 'no win, no fee' basis. In those cases the vast majority of claims allege defective Canterbury Home Repair Programme repairs, or damage to foundations, and seek one or two cap payments for events arising out the Canterbury earthquake sequence.
- 75 The marketing of their services on a 'no win, no fee' basis, may have contributed to the number of litigation cases, and in some cases may have raised customers' expectations.
- 76 In September 2018, media reported that a Christchurch-based law firm is acting for 17 homeowners in a class action against one of the litigation funders.²⁰ According to media reports, the class action alleges that misrepresented services, costs and the qualifications and independence of experts used by the companies.

¹⁹ All data taken from reports to the EQC Board.

²⁰ The Press, *Earthquake Advocates sued by 17 former clients* (12 September 2018), <https://www.stuff.co.nz/the-press/news/106914959/earthquake-advocates-sued-by-17-former-clients>.

Evolution of EQC's response to customer disputes

- 77 A key contributor to the volume of litigation in **Figure 3** above was the lack of a consistent alternative approach to the resolution of the disputes that led to proceedings.
- 78 As the various reports and reviews discussed in Section Two of this briefing show, EQC did not consistently embed alternative approaches for customers to resolve disputes. This meant that the number of legal proceedings against EQC grew over time.
- 79 EQC responded to this litigation by increasing the size of its in-house legal team and adding technical advisers with specialist skills in building and repair costings. The exact size and shape of this team varied over time as various specialities and staff were added, or subsequently moved to other parts of EQC. This mixed-speciality team also called on external engineering and other specialists to address the issues that were raised in the proceedings.
- 80 From 2013/14 onwards, EQC also began relying to a greater extent on its single external legal provider (Chapman Tripp) to manage its litigation processes. This is shown in the large increase in fees charged to EQC by Chapman Tripp, which peaked in 2016/2017 at \$8.5 million. By 2017/18, 79% of Chapman Tripp's EQC work was recorded as being spent on litigation (approximately \$6.55 million).
- 81 As at 31 May 2019, EQC had settled approximately 520 out of approximately 830 proceedings served on it since September 2010. Of those, around 140 have been settled since the new approach to disputes resolution was introduced in October 2018.

Consideration of alternative dispute resolution options after the Canterbury earthquakes

- 82 After the September 2010 earthquake, the EQC Board recognised the potential for a significant number of disputes regarding customer claims and the need for EQC to implement an effective alternative dispute resolution process.
- 83 The EQC Chief Executive's report for January 2011 noted that, while EQC could not accurately forecast the number of earthquake-related disputes it might receive, EQC could expect somewhere in the region of 6,000 disputes, based on satisfaction ratings for the September 2010 earthquake claims.²¹

²¹ See EQC Board paper, *Chief Executive's Report* (January 2011), page 3.

- 84 Various models for dispute resolution were considered by EQC, including:
- a an adjudication model based on or linked to the Weathertight Homes Tribunal (see paragraph 87 below);
 - b an independent ombudsman model based on or linked to the Insurance and Savings Ombudsman (see paragraphs 89 and 90 below);
 - c an arbitration model (ideally implemented through an administrative centre and fast-track arbitration rules); and
 - d mediation services both by themselves or incorporated into any of the above models.
- 85 After the 22 February 2011 earthquake, EQC's focus turned to responding to that earthquake and to recalibrating its response to the Canterbury earthquakes to take into account that it was now dealing with tens of thousands of claims arising out of two separate large earthquakes (along with a number of smaller individual earthquakes).
- 86 EQC's decision to utilise alternative dispute resolution options coincided with the appointment of an EQC Disputes Resolution Manager in March 2012. The new manager was tasked with developing a mediation service for disputes from EQC customers.

Consideration of adjudication model linked to the Weathertight Homes Tribunal

- 87 By April 2012, EQC proposed a two-stream binding dispute resolution system, with one stream for disputes with insurers and another stream for disputes with customers. The proposal involved:
- a a process for resolving disputes between EQC and private insurers. It was envisaged that there would be a purely contractual agreement to use the Insurance and Savings Ombudsman's dispute resolution scheme; and
 - b a process for resolving disputes between customers and EQC (along with disputes between customers and Fletcher EQR). It was planned that EQC would be joined into the Weathertight Homes Tribunal system, administered by the Department of Building and Housing.
- 88 By mid-April 2012, discussions between EQC and the Department of Building and Housing had narrowed to looking at whether they could reach a formal arrangement by which EQC could use the existing Weathertight Homes mediation service only, not the adjudication service. Ultimately, no agreement could be reached. The Department saw difficulties with the proposal, and the lead-in time would have been too long from EQC's perspective.

Consideration of an ombudsman model – Insurance and Savings Ombudsman dispute resolution scheme

- 89 In May 2012, EQC met with the Insurance and Savings Ombudsman to discuss potential ways in which EQC might participate, formally or informally, in any dispute resolution process, with a view to facilitating the efficient resolution of Canterbury earthquakes disputes.
- 90 There were issues about the Insurance and Savings Ombudsman scheme adapting to EQC's needs. There were constraints imposed by the then terms of reference of the Insurance and Savings Ombudsman, and EQC decided not to continue exploring the use of the Insurance and Savings Ombudsman's dispute resolution scheme.

Developing an EQC process for dealing with disputes

- 91 By April 2012, EQC had decided that the resolution of customer complaints and disputes that evolved from those complaints would require a three-tiered response:
- a an internal complaints team as a first step for trying to address disputes;
 - b a mediation scheme to try to address disputes that the Complaints and Resolution Complaints Team could not resolve; and
 - c some form of alternative dispute resolution that could provide binding determinations for disputes that could not be resolved by either the Complaints Team or mediation.
- 92 Before 2013, there had been no immediate need for any third tier,²² which would have provided an alternative for customers to court proceedings. This was because there were very few court proceedings brought by customers against EQC before this date.
- 93 The number of proceedings filed against EQC however began to grow from 2013 as shown in **Figure 3** above.

EQC mediation scheme with the Arbitrators' and Mediators' Institute of New Zealand

- 94 By May 2012, EQC was in discussions with the Arbitrators' and Mediators' Institute of New Zealand about what role it could play in helping EQC establish an independent mediation service.

²² In December 2012, EQC Management considered a proposal from EQC's General Manager Customer Services on a binding dispute resolution service – but this proposal was not progressed.

- 95 EQC worked with the Arbitrators' and Mediators' Institute of New Zealand to create an invitation-only mediation process but decided not to pursue the idea of establishing an arbitration system to deal with unsuccessful mediations until the mediation scheme got off the ground.²³
- 96 As part of the process, EQC addressed issues regarding its power to set up and fund a mediation service operated by the Arbitrators' and Mediators' Institute of New Zealand.
- 97 In late June 2012, EQC and the Arbitrators' and Mediators' Institute of New Zealand signed an agreement establishing an independent mediation service for EQC's customers. EQC's decision to establish this scheme recognised that there were times when significant differences in perspective existed between customers and EQC. These issues were best resolved with the help of an independent facilitator.

KEY FEATURES OF MEDIATION SCHEME

- 98 The following were the key features of the mediation scheme:
- a the Arbitrators' and Mediators' Institute of New Zealand would provide administration services for the mediation scheme;
 - b all mediators participating in the scheme would be experienced practitioners;
 - c EQC would fund the scheme so that it would be free for EQC's customers to participate in it;
 - d EQC customers could select their preferred mediator from the Arbitrators' and Mediators' Institute of New Zealand website;
 - e the mediation service was not intended to deal with disputes surrounding the interpretation of the Earthquake Commission Act 1993 (which was a legal question). To that end, a "mediation panel" within EQC would determine which unresolved complaints were appropriate for inclusion in the mediation scheme; and
 - f if a settlement was reached between EQC and the customer at the mediation, an agreement would be signed that was contractually binding.
- 99 The EQC Mediation Service launched on 6 August 2012, when the Arbitrators' and Mediators' Institute of New Zealand website went live and media launches by the Institute and EQC were completed.

²³ The "arbitration model" was the third of the three models identified in legal advice obtained by EQC in October 2010, which gave options for binding alternative dispute resolution. As discussed above, EQC's exploration of the first and second models (the "ombudsman model" and the "adjudication model") with, respectively, the Insurance and Savings Ombudsman and the Department of Building and Housing did not result in EQC adopting either scheme.

DISPUTES SUBJECT TO THE MEDIATION SCHEME

- 100 The disputes that EQC considered suitable for mediation were those already dealt with by the EQC Customer Complaints Resolution Team and with one or more of the following elements:
- a a dispute concerning matters of opinion (e.g. engineering opinions which differed) that could be discussed and mediated;
 - b a disagreement with the assessed value of repairs, with an expert opinion to back it up; and
 - c a dispute over building damage which was assessed by EQC as pre-existing, and for which the customer had evidence which they believed disproved this.
- 101 Complaints about apportionment, the mode of settlement (i.e. whether EQC chose to settle by payment or by reinstatement),²⁴ and the interpretation of legislation were not covered as part of the mediation scheme.
- 102 Initially EQC had estimated a demand for between five and ten mediations per week, however those numbers did not eventuate. By the end of 2012, 50 complaints were considered, with 17 progressing.
- 103 By mid-2015 EQC analysis of all claims that had progressed to mediation showed there was a 91% settlement rate. By that point however, the number of claims progressing to mediation had fallen significantly. While EQC does not have complete records of the process through this period, documents indicate that EQC staff were not always aware that the mediation scheme could be relevant for their customers. Additionally, EQC did not actively refer as many claims as initially planned for.
- 104 In early 2018 EQC and the Arbitrators' and Mediators' Institute of New Zealand renewed their agreement, however very few claims were progressing to mediation by then as other external dispute resolution avenues had emerged. Other examples of external dispute resolution avenues include the Greater Christchurch Claims Resolution Service (see paragraphs 109 to 112 below) and the Canterbury Earthquakes Insurance Tribunal. Renewing the agreement with the Arbitrators' and Mediators' Institute of New Zealand has given EQC the option to use a mediation service that could meet any future needs that might arise.

²⁴ Under section 29(2) and clause 9(1) of schedule 3 of the Earthquake Commission Act 1993, it is EQC's option whether it settles a claim by payment, reinstatement or replacement.

Central and local government initiatives to assist in resolving disputes

- 105 Both central and local government agencies were aware that EQC was struggling to manage the levels of complaints and disputes against it. At various times in the past nine years, both central and local government agencies have been involved in assisting customers with measures to help resolve disputes with EQC. Examples are set out below.

Establishment of the Residential Advisory Service

- 106 In May 2013, the Canterbury Earthquake Recovery Authority, working alongside EQC, the Insurance Council of New Zealand and the Christchurch City Council, established the Residential Advisory Service.
- 107 The Residential Advisory Service 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 parties, and identify where they were in the claim process and what questions to ask their insurers, EQC and other parties.²⁵ EQC and Canterbury Earthquake Recovery Authority provided funding for the Residential Advisory Service.
- 108 From 1 July 2017 the Residential Advisory Service became fully funded and operationalised by the Ministry of Business, Innovation and Employment. By June 2018 the Minister Responsible for the Earthquake Commission stated that the Residential Advisory Service had helped to resolve 4,000 claims.²⁶

Greater Christchurch Claims Resolution Service

- 109 In October 2018, the government announced the establishment of the Greater Christchurch Claims Resolution Service as a business unit of the Ministry of Business, Innovation and Employment. The Greater Christchurch Claims Resolution Service facilitates the resolution of unresolved residential earthquake claims, including by mediation, and if necessary, by binding determination. The service is government-led with system-wide and cross-agency support. EQC is one of the participating agencies. Some of the key aspects of the service are as follows:
- a the service involves an independent Settlement Solutions Broker being allocated to each customer to act as a single point of contact to assist them with the resolution of their claim;

²⁵ See Canterbury Earthquake Recovery Authority, *Understanding Social Recovery* (April 2016), page 45, <https://www.eqcrecoverylearning.org/assets/downloads/res101-understanding-social-recovery.pdf>. The Residential Advisory Service continues to provide services. The scope of its role has evolved over the years.

²⁶ New Zealand Government media release, *Wide range of EQC reforms to speed up claims* (6 June 2018), <https://www.beehive.govt.nz/release/wide-range-egc-reforms-speed-claims>.

- b there is an online portal accessible by the customer, which contains technical documents and sets out the tasks being undertaken by the parties involved in resolution of the claim;
 - c the service is working with Engineering New Zealand to implement a range of tools to help resolve technical disagreements, and with the legal industry to design and implement a suite of tools to resolve legal or policy disputes; and
 - d the service also provides wellbeing and post-settlement services to customers requiring additional support.
- 110 In September 2018, EQC (and Southern Response) signed a memorandum of understanding with the Ministry of Business, Innovation and Employment (which administers the Greater Christchurch Claims Resolution Service) in which they agreed to work together to ensure the success of the service and the prompt, fair and correct resolution of all EQC insurance claims relating to the Canterbury earthquake sequence.
- 111 In February 2019, additional insurers (including IAG, Tower, Vero, FMG and MAS) signed up to the Greater Christchurch Claims Resolution Service scheme. This means that all services offered by the Greater Christchurch Claims Resolution Service are now made available to claimants dealing with those private insurers.
- 112 EQC understands that:
- a there is a small number of claims being referred to the Greater Christchurch Claims Resolution Service each week;
 - b around one sixth of the claims that have been created through the Greater Christchurch Claims Resolution Service had been closed by the beginning of April 2019; and
 - c of the claims that have been closed, a small number were claims that had previously been filed in court.
- 113 In total, since October 2018, the Greater Christchurch Claims Resolution Service team has requested documents from EQC relating to 653 individual claims.

Canterbury Earthquakes Insurance Tribunal Act

- 114 In May 2019, the Canterbury Earthquakes Insurance Tribunal Act was enacted. The purpose of the Act is to create a mediation service and a tribunal to provide fair, speedy, flexible, and cost-effective services for resolving disputes about insurance claims for physical loss or damage to residential buildings, property, and land arising from the Canterbury earthquakes. The Canterbury Earthquakes Insurance Tribunal will be a specialist disputes resolution body that will take an inquisitorial approach to proceedings brought before it.

- 115 EQC’s submission in support of the Canterbury Earthquakes Insurance Tribunal Bill stated that:
- a EQC considers that the establishment of the Tribunal should be a positive development for helping to settle unresolved customer claims;
 - b EQC supports the emphasis that the Tribunal will have on case management, the sharing of experts and encouraging the parties to work together to minimise costs; and
 - c EQC’s key concern was ensuring the Tribunal has sufficient capacity to be able to respond to the potential volume of claims in a “speedy, flexible and cost-effective” manner, particularly as regards independent expert advisors.

Overview of High Court proceedings

- 116 When customers could not agree with EQC’s decisions and the way that those decisions were made, they could choose to use the court system (see paragraph 63 above). The vast majority of cases brought by customers against EQC involved technical disputes, rather than disputes over points of law. However, EQC chose to respond with litigation.
- 117 The first High Court case was lodged against EQC in 2011. Only eight proceedings had been filed against EQC in the District Court by the end of 2012.
- 118 By late 2011 the judiciary had concerns that a critical mass of proceedings could build in the court system. That concern was borne out in 2013, when customers began to bring proceedings (in the District Court and High Court) against EQC in increasing numbers.

The development of the High Court Earthquake List

- 119 In response to this, by March 2012, the President of the Court of Appeal and the Chief High Court Judge began discussing the development of a special judicial resource for dealing with earthquake-related court cases.
- 120 Then in May 2012, the High Court began an Earthquake List as a test for case-managing proceedings filed in the Christchurch registry of the High Court relating to earthquake damage. A few months later the High Court went public with the system.
- 121 Justice Kós (one of the Judges who has run the Earthquake List) has described the case management of an Earthquake List claim as a “vigorous process”²⁷ as it requires a higher degree of preparation than usual and moves costs to the front end more than in the case of ordinary proceedings.

²⁷ Stephen Kós, *Disaster & Resilience: The Canterbury earthquakes and their legal aftermath*, Supreme & Federal courts Judges Conference, Brisbane (26 January 2016), paragraph 34, <https://www.courtsofnz.govt.nz/speechpapers/HJK3.pdf>.

Four High Court proceedings went to trial

122 Putting aside declaratory judgment proceedings and cases focused on a legal question (see paragraphs 208 to 211 below), only four proceedings entered on the High Court's Earthquake List with EQC as a defendant have been to trial:

- a *C & Kelly Properties Limited v Earthquake Commission & Southern Response Earthquake Services Limited*:²⁸ At trial, Mander J accepted EQC's position on the scope of works required to repair the earthquake damage to the superstructure of the customer's house, but did not accept either the customer's position (that a foundation rebuild was required) or EQC's position (that no re-leveling of the foundation was required). At a subsequent hearing, Faire J accepted EQC's scope of works for the foundation work required;
- b *Sadat v Tower Insurance Limited & Earthquake Commission*:²⁹ Naiti J did not accept the Sadats' claim that a rebuild of their home was necessary as a result of damage from the September 2010 earthquake;
- c *He v Earthquake Commission & Offshore Market Placements Limited*:³⁰ Dunningham J did not accept the customer's claims, except for a minor claim for repairs to plaster damage on a section of the perimeter foundation; and
- d *Bligh v Earthquake Commission & IAG New Zealand Limited*:³¹ Naiti J did not accept the customer's claim.

All Other High Court Proceedings were settled or remain unresolved

123 All proceedings (except the four in paragraph 122 above) filed against EQC in the High Court were settled before going to trial or remain unresolved. As at 31 May 2019, approximately 200 High Court proceedings remain open.

124 Of the cases that settled, almost all (close to 90%) were resolved when EQC adjusted its settlement offer upwards and the customer reduced their overall claims downwards. In many cases this settlement did not occur until the case had progressed a considerable way down the formal pre-trial path.

²⁸ *C & S Kelly Properties Ltd v Earthquake Commission* [2015] NZHC 1690; *C & S Kelly Properties Limited v Earthquake Commission* [2017] NZHC 1583.

²⁹ *Sadat v Tower Insurance Limited & Earthquake Commission* [2017] NZHC 1550.

³⁰ *He v Earthquake Commission & Offshore Market Placements Limited* [2017] NZHC 2136.

³¹ *Bligh v Earthquake Commission & IAG New Zealand Limited* [2018] NZHC 2102.

Overview of District Court proceedings involving EQC

- 125 The District Court is governed by the District Court Act, which sets out the scope of its jurisdiction.³² The District Court can generally consider claims up to \$350,000 + GST.³³ This amount increased from \$200,000 + GST³⁴ in March 2017.
- 126 The first District Court proceeding against EQC was brought in January 2012.³⁵
- 127 In total, there have been a little over 200 District Court proceedings against EQC. The majority of these have been filed since November 2017, and 109 remain open as at 31 May 2019. EQC is now managing all of these open cases either through its Settlement Specialists or through alternate dispute resolution processes (see paragraph 195 below).
- 128 Only one District Court matter has gone to a hearing.³⁶ In that proceeding, a settlement was reached part way through the hearing when the customer discontinued their case (which involved a claim for land damage only). No payment was made by EQC and no judgment was required.
- 129 As with High Court proceedings, many claims filed in the District Court were settled by EQC adjusting its settlement offer upwards and the customer also reducing their overall settlement expectations.

The costs to EQC of litigation processes

- 130 EQC has spent a significant sum defending litigation in the court system since the first cases were filed against it in 2012. The total costs incurred by claimants, both financial and personal, cannot be quantified.
- 131 For EQC, the financial costs include external legal fees, the growth of the internal legal team, and their combined time spent working on these issues.
- 132 Analysis undertaken in June 2017 by EQC of 168 closed litigation cases showed that the average cost to EQC of a closed High Court claim was \$38,609 per case in external legal fees.³⁷ This ranged from an average legal fee cost of \$65,000 for cases that were set down for a hearing, through to \$26,000 for cases that were not set down for a hearing.

³² District Court Act 2016.

³³ Section 74 of the District Court Act 2016.

³⁴ See section 29 of the (now repealed) District Courts Act 1947.

³⁵ *Tenenbaum v Earthquake Commission* CIV-2012-009-343.

³⁶ *Smith v Earthquake Commission* CIV-2012-009-746, the court hearing for which occurred in April 2013.

³⁷ Earthquake Commission, *Closed Litigation Report 2010 – 2016* (June 2017), page 11.

- 133 The average cost did not include cases where a claim was determined as being over cap. In those cases EQC was typically liable for half the costs incurred by the customer in bringing the litigation. It also did not include the internal EQC legal costs. Therefore the \$38,000 per case should be considered conservative in its estimate.
- 134 The analysis also found that in most cases the 168 cases of litigation involved technical disputes, not legal disputes, but that EQC had statutory responsibility under the Earthquake Commission Act 1993 to manage and apply the Natural Disaster Fund, and to ensure customers receive their correct statutory entitlement.
- 135 The various reviews of EQC's legal model have identified a number of cases where the legal fees have cost EQC more than the final settlement to the customer. While in some cases it may be appropriate to defend a claim, in general this is not a sustainable model for the future. There needs to be a better way of dealing with disputes over settlement decisions.

Section Two: Reviews and Reports into EQC

- 136 This section explains the range of reviews and reports that have provided recommendations for how EQC could better manage complaints processes and dispute resolution. It also describes what actions EQC has taken in response to these reviews and reports.
- 137 These reviews and reports include:
- a Auditor-General Report into the Canterbury Home Repair Programme (2013);
 - b Chief Ombudsman and Privacy Commissioner Report into EQC's Handling of Information Requests (2013);
 - c Linking Strategy to Implementation review of EQC's customer interactions (2014);
 - d Auditor-General follow-up report into the Canterbury Home Repair Programme (2015);
 - e Report of the Independent Ministerial Advisor (2018);

9(2)(h)



Controller and Auditor-General report: 'Earthquake Commission: Managing the Canterbury Home Repair Programme' (October 2013)

- 138 In 2013 the Controller and Auditor-General undertook an audit of how EQC had performed in managing the Canterbury Home Repair Programme – a topic that had come under intense public scrutiny.

- 139 For context, by June 2013, EQC had repaired more than 40,000 homes (just over half of the homes for which it was managing repairs) at a cost of about \$1.5 billion (including home-heating and emergency repair initiatives, which had cost about \$154 million).
- 140 The report concluded that EQC's performance in managing the Canterbury Home Repair Programme was mixed. EQC had set up the programme quickly and had generally managed repair costs well. However, EQC had not dealt with homeowners as well.
- 141 Five recommendations were made to help EQC give homeowners more certainty and improve the consistency of EQC's repair practices. The key recommendation for EQC's processes was to continue to improve communication with individual homeowners about their claims, giving homeowners as much certainty as possible as early as possible.

EQC'S RESPONSE TO THIS REPORT

- 142 In response to the report, EQC publicly stated it would implement all the recommendations, in particular that it would "continue [its] activities directed at improved communication with [its] customers and with managing risks in the Canterbury Home Repair Programme."³⁸
- 143 In a paper to the EQC Board in June 2014, it was noted that "targeted customer communication was undertaken. EQC has established a programme of continuous improvement and design for the future which includes lessons learned."³⁹

Ombudsman and Privacy Commissioner: 'Information fault lines: Accessing EQC information in Canterbury'

- 144 From early 2012, the Office of the Ombudsman and the Privacy Commissioner started receiving an increasing number of complaints from EQC customers about delays in EQC responding to requests for information (see paragraph 59 above).
- 145 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 2013, EQC was advising requesters that there would be a six to seven month delay before it could respond to information requests.
- 146 In 2013, the Chief Ombudsman and the Privacy Commissioner undertook a joint investigation into the reasons for the delays in EQC responding to customer information requests, with a view to establishing how this situation might be rectified as quickly and sustainably as possible.

³⁸ Earthquake Commission media release, *EQC implementing OAG recommendations* (5 November 2013), <https://www.eqc.govt.nz/news/eqc-implementing-oag-recommendations>.

³⁹ See EQC Board paper, *Statutory External Reviews* (12 June 2014).

- 147 The Auditor-General had been critical of EQC's complaints processes in the context of the Canterbury Home Repair Programme. In 2013, the Auditor-General's report stated that 1,265 complaints had been made to EQC between September 2012 and August 2013, of which 62% were about the quality of the repairs, and 21% were about the repair time frame. The complaints system between EQC and Fletcher EQR was not fully integrated, causing inconsistent claims processing.⁴⁰
- 148 The Auditor-General also saw a lack of clarity, consistency, and transparency in EQC's systems and decision-making that could negatively affect homeowners' experiences of the Canterbury Home Repair Programme.⁴¹

EQC'S RESPONSE TO THIS REPORT

- 149 EQC accepted all 13 of the report's recommendations. Progress towards implementation of these recommendations was reported to the Board throughout 2014.
- 150 By the time the joint report was published in December 2013,⁴² EQC had already made improvements to its information request processing operations and was working on eliminating the backlog that stood at nearly 1,200 overdue requests.
- 151 By 3 April 2014, a paper to the EQC Board noted that:

*Based on a review of updated received from management, the business has made good progress to address the backlog and meet statutory timeframes for new requests.*⁴³

- 152 By June 2014 the EQC Board was informed that:

*The business has focused on addressing the backlog and meeting statutory timeframes for new requests. The backlog was cleared prior to the target date of 30 April. Some progress has been made to address the guidance, policy and communications recommendations. Content updates for the EQC website are in draft and being circulated for review and approval.*⁴⁴

⁴⁰ Report of the Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme* (October 2013), page 52 (report #18 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

⁴¹ Report of the Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme* (October 2013), pages 54 to 56 (report #18 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

⁴² Ombudsman and Privacy Commissioner, *Information fault lines – Accessing EQC Information in Canterbury* (December 2013), page 12 (report #19 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

⁴³ See EQC Board paper, *External Reviews – recommendations and implementation* (3 April 2014).

⁴⁴ See EQC Board paper, *Statutory External Reviews* (12 June 2014).

Linking Strategy to Implementation Report

- 153 In November 2014, consultancy Linking Strategy to Implementation delivered a report on its review of EQC's customer interactions. The report, commissioned by EQC, was designed to improve the customer experience in Canterbury. The report focused on customer touch-points in EQC, namely customer enquiries, requests and complaints.⁴⁵
- 154 The Linking Strategy to Implementation report included detailed analysis of complaints.⁴⁶ For example, it found that:
- a analysis of 19,933 complaints by property address from January 2011 to September 2014 indicated that approximately one in nine complaints was referred as an Official Information Act request and one in 120 was referred for mediation;
 - b complaints from February 2014 to July 2014 averaged 96 per week with a peak of 189 in the first week of June. The busiest complaint codes were: disagree with assessment (798); EQR – quality of repairs (334); claim information requested (194); disagree with assessment – amount (136); EQR – timeframe for repairs (103).
- 155 As part of its review, Linking Strategy to Implementation interviewed an EQC customer and also met with external community groups. The customer was identified as a worst case scenario for customer interaction issues across the customer's four properties. The customer did mention some positive outcomes during the process (e.g. Fletcher EQR repair, opt out support), but their overall experience was significantly negatively impacted by the interactions with various parts of the EQC organisation.
- 156 The key conclusion of Linking Strategy to Implementation's discussions with this customer and with the community groups was the requirement to act quickly and implement change as rapidly as possible. The intention of the review was to identify opportunities for change in the next three to six months.⁴⁷
- 157 To that end, Linking Strategy to Implementation made ten key recommendations 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.

⁴⁵ See Linking Strategy to Implementation, *Consulting review of customer interactions* (November 2014) (report #24 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

⁴⁶ See Linking Strategy to Implementation, *Consulting review of customer interactions* (November 2014), page 18 and appendices (report #24 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

⁴⁷ See Linking Strategy to Implementation, *Consulting review of customer interactions* (November 2014), page 25 (report #24 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

- 158 Eight basic building blocks were identified in the report. They were customer solution(s) 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.⁴⁸

EQC'S RESPONSE TO THIS REPORT

- 159 In June 2015, EQC restructured the Customer Complaints Resolution Team. The new Customer Solutions Team combined multiple functions (including customer facing roles) and comprised Wellington and Christchurch staff (including technical advisors, investigators and legal personnel).
- 160 The Customer Solutions Team commenced implementing the recommendations from the November 2014 Linking Strategy to Implementation review. This involved a review of the Team's processes and operations to better reflect the customer centric recommendations. For this purpose the recommendations were grouped into four areas – communications, triaging, workflow and reporting.⁴⁹
- 161 Linking Strategy to Implementation was engaged by the Customer Solutions Team to initiate a complaints enhancement process. Its work included scoping a new case management framework, which consistently increased the speed and frequency of customer contact throughout the complaint-handling process.⁵⁰
- 162 As a result of the Linking Strategy to Implementation report, the Customer Solutions Team adopted several initiatives, including the following:
- a a quality assurance framework to drive consistency and assurance measures across Wellington and Christchurch personnel in the Team;
 - b a new escalation process with several levels of escalation:
 - i an independent peer review by a different complaints investigator;
 - ii a review by a Customer Solutions Team Leader; and

⁴⁸ See Linking Strategy to Implementation, *Consulting review of customer interactions* (November 2014), page 17 (report #24 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

⁴⁹ See Linking Strategy to Implementation, *Consulting review of customer interactions* (November 2014), pages 8 and 9 (report #24 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

⁵⁰ Earthquake Commission, *Annual Report 2015/16* (2016), page 51, https://www.eqc.govt.nz/sites/public_files/Annual%20Report%202015-16_Part1.pdf and https://www.eqc.govt.nz/sites/public_files/Annual%20Report%202015-16_Part2.pdf.

- iii a review by the Manager, Customer Solutions;
- c a full review and rewrite of complaints collateral;⁵¹
- d training and skills development for complaints investigators; and
- e individual Key Performance Indicators to drive a 30 day turnaround of complaints from allocation to closure. This shift in focus did drive up closure rates. The unintended consequence was a performance gap in addressing more complex complaints, or where a business decision was pending (for example, a Canterbury Home Repair Programme remedial repair).⁵²

Controller and Auditor-General report: 'Earthquake Commission: Managing the Canterbury Home Repair Programme – Follow-up audit'

- 163 In 2015, the Auditor-General undertook a follow up report on the performance of EQC in managing the Canterbury Home Repair Programme.
- 164 That report acknowledged a number of improvements made by EQC on how it managed complaints, but noted that EQC still:
- a could not separately identify some complaints about the Canterbury Home Repair Programme;
 - b had no formal process for using complaints information to improve its processes;
 - c had too much focus on closing rather than fully resolving complaints, with too many repeat or multiple complaints; and
 - d had not fully integrated complaints systems between EQC and Fletcher EQR.⁵³

⁵¹ Earthquake Commission, *Annual Report 2015/16* (2016), page 51, https://www.eqc.govt.nz/sites/public_files/Annual%20Report%202015-16_Part1.pdf and https://www.eqc.govt.nz/sites/public_files/Annual%20Report%202015-16_Part2.pdf.

⁵² See EQC Board paper, *Overview of the Customer Complaints process and a break-down of complaints figures* (10 September 2015), paragraph 18.

⁵³ Report of the Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme – follow-up audit* (November 2015), page 47 (report #31 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

EQC'S RESPONSE TO THIS REPORT

165 Immediately following the release of this report, EQC's Chief Executive stated that the areas highlighted in the report as needing more work included: timeliness, because the programme had taken longer than expected; the way complaints are managed; and the mixed performance experienced by some customers, including some vulnerable people. EQC acknowledged:

*We know we have to do better in many areas and work is underway to address these issues and further improve the programme.*⁵⁴

9(2)(h)



⁵⁴ Earthquake Commission media release, *Report lessons will help EQC better meet the needs of customers* (1 December 2015), <https://www.eqc.govt.nz/news/report-lessons-will-help-eqc-better-meet-the-needs-of-customers>.

9(2)(h)

Christine Stevenson, Independent Ministerial Advisor 'Report of the Independent Ministerial Advisor to the Minister Responsible for the Earthquake Commission'

- 172 In 2018, Christine Stevenson, Acting Chief Executive of New Zealand Customs was appointed by the Minister Responsible for the Earthquake Commission as the Independent Ministerial Advisor.
- 173 Her brief was to provide advice to the Minister to speed up the resolution of outstanding insurance claims to EQC arising from the earthquakes that struck in Canterbury between 4 September 2010 and December 2011.
- 174 The Independent Ministerial Advisor's report made a number of recommendations that were relevant to the settling of complaints and disputes.
- 175 These included recommendations that:
- a EQC hire another settlement team so that the case load for each team is approximately 100, which supports good familiarisation with each claim, and faster handling;
 - b The government extend the Residential Advisory Service for two more years to 30 June 2020 and expand its role to provide a "one-stop-shop" for claimants, incorporating psycho-social support for claimants;
 - c EQC improve its communication with claimants, including by ensuring all information on their file be available to claimants on request and the case management approach must include the development of communication standards for EQC with claimants, which set out that communications are respectful, empathetic, honest, timely, and that EQC staff do what they say they will do;

⁵⁵ See EQC Board paper, *Chief Executive's Report* (July 2016), page 10.

- d EQC continue to work with lawyers and claimants to identify appropriate test cases on issues of law where precedents would be helpful for resolving other claims and to fast track these where possible; and
- e The government give ongoing consideration to ensuring that further litigation process innovation is supported where appropriate.

EQC'S RESPONSE TO THIS REPORT

- 176 EQC accepted all the findings of this report, and began to implement them immediately.
- 177 In October 2018 EQC commissioned KPMG to undertake an independent review of progress against the recommendations. The November 2018 KPMG report found that all recommendations had actions against them and had either been addressed or had ongoing actions in progress.⁵⁶
- 178 The KPMG report noted that recommendations that had not yet been completed in full would be monitored and reported against as part of business as usual work rather than continuing to report separately on the Independent Ministerial Advisor's report recommendations.

9(2)(h)



⁵⁶ KPMG, *Tracking of Recommendations Raised in the Independent Ministerial Advisors Report* (September 2018) (report #45 in Appendix 1, Briefing to the Public Inquiry into the Earthquake Commission, *External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

9(2)(h)



9(2)(h)



9(2)(h)



9(2)(h)



9(2)(h)

9(2)(h)



⁶¹ See *How to make a complaint to EQC* on the EQC website, <https://www.eqc.govt.nz/contact-us/make-complaint>.

9(2)(h)

Other EQC initiatives to speed up dispute settlement

- 202 Over the past nine years, EQC has undertaken a range of initiatives to try to speed up specific groups of disputes. These include using the court system to clarify EQC's obligations under the Earthquake Commission Act 1993, and reaching settlements with groups of customers. These are described in more detail below.

Customer complaints regarding the Canterbury Land Programme

- 203 In late 2013, EQC set up the Land Review Team, which was responsible for responding to any issues raised by customers in relation to their EQC land settlements. From March 2015 the Land Review Team was also responsible for managing reviews of Increased Flooding Vulnerability and later Increased Liquefaction Vulnerability land damage settlement decisions.
- 204 In most cases, any issues were resolved by providing the customer with more information about the nature and scope of EQC land cover, and explaining the basis of the land settlement that the customer had received.
- 205 If the issues were not resolved by providing information, the Land Review Team would:
- a carry out a detailed review of the customer's land settlement, and all available information, including any further information provided by the customer;
 - b seek any input required from relevant experts, including engineers and valuers; and
 - c engage with the customer to resolve any issues, including amending the customer's land settlement where appropriate. The form of the engagement with the customer varied, but could include letters, phone calls or facilitating meetings with the customer and EQC's experts.

- 206 Most of the customer complaints and challenges referred to the Land Review Team were resolved within the Team. There have been very few instances of customer litigation concerning land settlements.⁶²

EQC's use of the court system for other issues

- 207 In several cases, EQC has used the court system to clarify its obligations under the Earthquake Commission Act 1993 regarding the “replacement value” standard. For example, EQC has:
- a initiated several declaratory judgment proceedings on points of law affecting multiple claims; and
 - b agreed on a test case that is intended to provide some legal clarity on EQC's liability for on-sold over cap customer claims.

DECLARATORY JUDGMENTS AND QUESTIONS OF LAW INVOLVING EQC

- 208 EQC initiated three proceedings seeking a declaratory judgment to clarify some aspect of cover under the Earthquake Commission Act 1993.
- 209 A declaratory judgment is a type of legal proceeding in which a person asks the High Court for a formal statement (a “declaration”) on a legal question. That formal statement of the legal position then becomes binding on the person who has asked the question. These proceedings have been used to obtain guidance from the court on legal issues that would allow EQC to resolve large numbers of otherwise contested claims.
- 210 The declaratory judgment proceedings were as follows:
- a in *Re Earthquake Commission*,⁶³ EQC, the Insurance Council of New Zealand, Vero and IAG co-operated to jointly bring a declaratory judgment. The proceeding sought to clarify whether the amount of EQC insurance available is an aggregate amount available during the period of insurance or whether the amount of the insurance was available for each occurrence of natural disaster damage during the period of insurance. The High Court that decided that amount of the insurance was available for each occurrence of natural disaster the full damage;

⁶² See Briefing to the Public Inquiry into the Earthquake Commission, *Canterbury Land Programme* (24 May 2019), paragraphs 302-305.

⁶³ *Re Earthquake Commission* [2011] 3 NZLR 695.

- b in *Morley v Earthquake Commission*,⁶⁴ EQC cooperated with two customers to initiate and fast-track two declaratory judgment proceedings to clarify whether six particular boarding houses were “residential buildings” within the meaning of (and therefore insured under) the Earthquake Commission Act 1993. The court found that the Morleys were owners of “dwellings” that fit the meaning of section 2 (1) of the Earthquake Commission Act 1993 and as such were insured;⁶⁵ and
- c in *Earthquake Commission v Insurance Council of New Zealand Inc.*,⁶⁶ EQC brought a declaratory judgment proceeding to confirm the approach EQC was taking to assessing and settling claims under the Earthquake Commission Act 1993 for Increased Flooding Vulnerability damage to residential land. Among other things, the court confirmed that payments made in accordance with EQC’s Increased Flooding Vulnerability policy would be lawful.

211 In addition, EQC successfully defended a proceeding (and subsequent appeal) brought by a customer against EQC, which dealt with the legal question whether the loss of use of a house because of rock fall risk was covered by the Earthquake Commission Act 1993.⁶⁷ There were at the time several hundred otherwise undamaged (or only lightly damaged) houses that had section 124 notices placed under the Building Act 2004 preventing occupation as a result of rock fall risk. EQC would have become liable to treat these houses as total losses if the customer’s case had succeeded.

9(2)(h)



9(2)(h)



9(2)(h)



Settlement with Earthquake Commission Action Group

219 In 2015, EQC settled a proceeding brought against it by a group called the Earthquake Commission Action Group.⁶⁸ The Action Group sought declarations in relation to EQC's obligations under the Earthquake Commission Act 1993 when reinstating or paying for the reinstatement of earthquake-damaged residential buildings to the "replacement value" standard. The proceeding was settled with the parties agreeing to issue a "joint statement" that avoided the need for EQC to take formal steps in the proceeding.

⁶⁸ *Earthquake Commission Action Group v Earthquake Commission* [2016] NZHC 1335. The High Court costs decision to EQC on the discontinuance recognised that the Action Group claim had not been successful. See Earthquake Commission media release, *EQC and Action Group agree settlement principles* (29 April 2016), <https://www.eqc.govt.nz/news/eqc-and-action-group-agree-settlement-principles>.

- 220 EQC's position was that the agreed statement:
- a reflected EQC's understanding of its insurance requirements, and
 - b did not change its understanding of its insurance requirements as a result of the proceeding.

Making use of the Disputes Tribunal

- 221 The Disputes Tribunal has jurisdiction to hear certain small claims, up to the value of \$15,000 + GST (or \$20,000 + GST with agreement).⁶⁹ The Disputes Tribunal's jurisdiction is also limited as regards the kinds of claims that it can hear.⁷⁰
- 222 Before the Canterbury earthquakes, the High Court held that the Disputes Tribunal did not have jurisdiction to hear claims from customers about their EQC insurance entitlements.⁷¹
- 223 Following the Canterbury earthquakes, customers did at times bring claims against EQC in relation to EQC insurance in the Disputes Tribunal. In such cases, EQC advised the customer and the relevant Disputes Tribunal referee that the Disputes Tribunal did not have jurisdiction. EQC also engaged with the customer regarding the substance of their claim where appropriate.
- 224 EQC engaged directly with the Principal Disputes Referee at the Disputes Tribunal to encourage them to ensure the referees were aware of the High Court decision that they did not have jurisdiction to hear claims regarding EQC insurance entitlements. This was so that this issue could be dealt with early in the Disputes Tribunal process, before unnecessary time and cost were incurred.
- 225 A small number of other disputes concerning EQC were appropriately heard by the Disputes Tribunal, including, for example, claims from contractors for amounts owing under alleged contracts with EQC.

⁶⁹ See section 10 of the Disputes Tribunal Act 1988. From 1 July 2020, the Disputes Tribunal will have jurisdiction to hear claims up to the value of \$30,000.

⁷⁰ See sections 10 and 11 of the Disputes Tribunal Act 1988.

⁷¹ *Earthquake Commission v Disputes Tribunal* (1996) 10 PRNZ 317 (HC). This case involved a claim under the Earthquake and War Damage Act 1944 (in relation to damage caused by an earthquake in 1992), but the reasoning is equally applicable to the Earthquake Commission Act 1993.

Section Three: Lessons Learned

226 The past nine years have illustrated that EQC could and should have managed customer complaints and disputes more effectively. This section outlines some of the lessons that EQC has learned, and offers some thoughts on the future of dispute resolution.

Some thoughts on the future of dispute resolution

227 Shortly after the Canterbury earthquakes, EQC could have put in place more initiatives for the resolution of complaints and disputes. For example, EQC could have established:

- a a flexible, creative complaints process that sought resolution of the customer complaint early in the process. Such a process would have resolved claims with the customer face to face, put the customer first, and focused on finding a solution to meet the customer's circumstances;
- b an effective alternative dispute resolution process, in the form of a third party arbitrator or tribunal (such as Disputes Resolution Services as used by the Accident Compensation Corporation scheme⁷²); and
- c a process that focused specific effort on resolving the dispute immediately at the commencement of court proceedings.

228 As explained in this briefing, EQC did not put any of these steps in place until more recently. In hindsight, the failure to act swiftly could be seen as a missed opportunity.

229 Set out below are some thoughts for improving the ability of EQC to respond to the complaints and disputes that will inevitably arise during future major natural disasters.

230 These thoughts address two strategies for reducing disputes:

- a removing as many potential causes of dispute as possible before they arise; and
- b ensuring that there are effective and already developed processes in place to resolve any disputes that do happen.

⁷² The model used by the Accident Compensation Corporation involves an independent, third party organisation helping to resolve a customer's dispute, through facilitation, mediation, conciliation, or review. The Accident Compensation Corporation covers the cost of the independent, third party's services, and the customer covers their own additional expenses should there be any.

- 231 The developed processes would include both EQC's own processes and as well as other external processes that EQC customers may access, including the Office of the Parliamentary Ombudsman and the court system. The effective interaction of the internal and external processes should also be considered. EQC's overriding expectation for all of the processes that are to be put in place is that they should put EQC's customer first and deal with any dispute fairly, efficiently, quickly and with empathy.

Remove the cause of disputes

- 232 The most direct and effective way to minimise disputes is to identify issues that are likely to cause disagreement and to address those issues before any dispute occurs.
- 233 The reviews already undertaken of aspects of EQC's response to the Canterbury earthquakes have identified a number of issues that have contributed to customer disputes. Major causes of dispute about the insurance response include:
- a customer difficulties obtaining information and documents from EQC;
 - b disagreement about the damage caused by the earthquakes;
 - c disagreement about the strategy and cost of repairing the earthquake damage;
 - d quality of repair complaints; and
 - e complaints about the time taken to settle claims and complete repairs.
- 234 As well as disputes about the settlement of their insurance claims, the difference between what is covered under the Earthquake Commission Act 1993 and what is covered by a private insurer policy may have been a source of tension leading to disputes.
- 235 EQC expects that other causes of disputes will be described through the process of this Inquiry. A key feature of the Recovery tier of EQC's operating model is to ensure that the lessons of Canterbury are embedded into future operations,⁷³ and this process should also reduce the potential for future disputes.

⁷³ See Earthquake Commission, *Statement of Intent 2018-22* (2018), pages 8-11, https://www.eqc.govt.nz/sites/public_files/documents/publications/EQC-SOI-2018-WEB.pdf. There are four tiers of the operating model: Resilience Building, Readiness, Response and Recovery.

Enhanced staff training and improved communications

- 236 Various external reviews that have looked at EQC's customer interactions support the view that enhanced staff training in claims management and resolution and improved customer communications and processes should reduce complaints and disputes.⁷⁴
- 237 A key part of the training and associated management will be to instil within EQC a culture of claims management and resolution that focuses on the customer receiving their full entitlement.⁷⁵ This customer centric culture should help reduce the numbers of disputes.
- 238 If EQC claims staff are able to explain confidently why a customer's claim needs to be treated in a certain way, how long it will take to resolve, why it will take that long, and why (once settlement is completed) the customer will have received their full and proper entitlement, then complaints and disputes will reduce (provided EQC is then able to deliver what it has promised).
- 239 Achieving these seemingly simple outcomes in the context of a major natural disaster requires sophisticated and complex pre-event development of all of EQC's systems and processes to support a claims process that can deliver in this way. EQC's ongoing preparation for future catastrophes is focused on transforming how EQC operates so that all claims made to EQC in the future are managed fairly, efficiently, quickly and with empathy.

Legislative improvement

- 240 The huge volume of claims arising from the Canterbury earthquakes has tested the EQC insurance under a myriad of factual scenarios – many of which could not have been foreseen by the drafters of the Earthquake Commission Act 1993 (and the associated regulations). This real life test-bed has inevitably flushed out a number of issues with the legislation that can be improved by amendment. Many of these issues could be improved by small changes to the wording.
- 241 More significant changes to the insurance could result in an even more substantial reduction in disputes. EQC has not adopted a preferred policy position on any substantial changes that might be made to the nature of EQC cover. But EQC's Canterbury (and subsequent) experiences do allow EQC to make the following observations. Some of these could potentially feed into amendments to the Earthquake Commission Act 1993.

Contestable opinions are a major source of dispute

- 242 In order to settle an EQC insurance claim, it is currently necessary to establish the precise scope of the damage, and the exact value of the resulting building or land repair. Added to this is the need to identify any pre-existing damage and to determine the correct standard of repair. These matters all require opinions to be formed and those opinions are a major source of disagreement. Disputes are an inevitable result.
- 243 Rather than trying to work out how best to minimise the scope for disagreement about these issues, it may be optimal for the Earthquake Commission Act 1993 to focus on an approach to the insurance that side-steps them completely. This could be done by providing a more formulaic approach to determining the customer's entitlement. For example, EQC could use a simple compensation formula such as "square metre repair costs".
- 244 There are potential problems to adopting a formulaic approach. Customers and insurers will have a view as to whether they have been under or over compensated. The time and certainty benefits from achieving a final result more quickly than otherwise may justify this trade-off.

Set up alternative dispute resolution in advance

- 245 Whatever steps are taken to reduce the likelihood of disputes, they will still arise. Optimally, customer-related complaints and dispute resolution processes should be set up by EQC in advance of a natural disaster event occurring, so that:
- a those processes can be activated immediately, recognising however that some adaptations may be necessary to take into account the scope and attributes of the specific event;
 - b customers, lawyers, advocates and (potential) litigation funders have immediate access to information about the type of recourse available for the customer, should a customer complaint or dispute arise;
 - c the interaction between EQC and insurers with respect to customer-related dispute resolution and complaints processes is clear from the outset; and
 - d other institutions involved in dispute resolution (the courts; the Ombudsmen) can plan accordingly, having regard to the type of alternative dispute resolution processes that are available.
- 246 The alternative dispute mechanisms that were set up in the years following the Canterbury earthquakes have been successful in resolving the disputes that have been brought before them.
- 247 In addition to meeting the direct needs of EQC's customers the approach outlined above may have the further benefit of deflecting the interest of litigation funders, who might otherwise see the opportunity to invest in promoting litigation against EQC.

- 248 By having an effective complaints and disputes resolution process in place (including a proactive communications strategy) customers may be supported to conclude that they do not need the assistance of litigation funders to achieve fair claims settlements. Both the customer and EQC will then avoid the cost of unnecessary litigation.

Making arrangements in the aftermath of a major disaster is not optimal

- 249 Trying to arrange complaints processes and disputes resolution alternatives in the aftermath of a major disaster is not optimal – because of:
- a *delays in set up* – Such delays will allow time for disputes to emerge before systems are in place putting immediate pressures on the organisation and deflecting it from taking the time to set up truly effective processes;
 - b *other priorities* – In a major event the organisation will inevitably be under enormous stress and responding to a complex range of priorities; and
 - c *the risk that existing services may not be fit for purpose* – There is a risk that any potentially appropriate existing dispute resolution services provided by other parties at the time of the event may not be fit for purpose (because of scale/location etc of the major event). That was EQC’s experience in the aftermath of the Canterbury earthquakes.

Litigation as a last resort

- 250 The dispute resolution and complaints processes that are put in place need to be sufficiently effective (timely, cost efficient, and trustworthy) to encourage aggrieved customers to use them rather than go to the courts. EQC’s strong preference, supported by the 9(2)(h) is that litigation should only be used as an absolute last resort because of its cost, slow speed, and tendency to encourage adversarial positions.
- 251 In order to achieve this goal EQC’s major event preparedness strategy will include a complaints process and claims management strategy. This strategy will have a plan that allows for systems and resources to be rapidly deployed to implement and communicate the complaints processes and disputes resolution alternatives when a major disaster strikes. The plan is expected to include appropriately scalable complaints and mediation processes.

Coordinating with established dispute resolution agencies

- 252 One aspect of planning for a future event is to ensure appropriate coordination between EQC and existing established dispute resolution agencies to ensure alignment in resourcing a new major event. That coordination will include EQC engaging with the Office of the Parliamentary Ombudsman and with the Ministry of Justice so that those organisations have the benefit of EQC's planning when they are considering their own resourcing and strategic plans.

Legislative change to embed the most effective dispute resolution processes

- 253 As part of its strategic planning EQC is considering what process would be most effective for resolving disputes that cannot be settled by agreement with the customer. The Canterbury Earthquakes Insurance Tribunal is expected to become operational shortly, but its jurisdiction is limited to disputes arising out of the Canterbury earthquakes. EQC will analyse its experiences from this tribunal.
- 254 EQC is currently participating in, and monitoring the effectiveness of, the new Greater Christchurch Claims Resolution Service, which incorporates its own Internal Dispute Resolution Service. The latter service provides for determination of claims that cannot be settled by retired High Court Judges making binding decisions. The jurisdiction of the Greater Christchurch Claims Resolution Service is currently limited to Canterbury earthquake claims.
- 255 It will be important for EQC that any amendments made to EQC's legislation in the future enable EQC to utilise the most effective and appropriate dispute resolution processes for the next major natural disasters.

APPENDIX 1: CUSTOMER COMPLAINTS AND DISPUTES TIMELINE

