2018

Report of the Independent Ministerial Advisor to the Minister Responsible for the Earthquake Commission

Advice to the Minister to speed up the resolution of outstanding insurance claims to EQC arising from the sequence of earthquakes that struck in Canterbury between 4 September 2010 and December 2011

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Acknowledgments

During the review process I met with a number of claimants and advocates. I would like to thank them for their time and for sharing their personal experiences with me. It was invaluable and allowed me to have some understanding of what they have experienced following the sequence of Canterbury earthquakes between September 2010 and December 2011.

I and members of my team also met with the Earthquake Commission (EQC) Board, EQC senior management and many staff members, private insurers, and staff at the Treasury, the Ministry of Business Innovation and Employment (MBIE), the Department of the Prime Minister and Cabinet (DPMC) and the State Service Commission (SSC). I would like to acknowledge and thank them all for their time and expertise and for their carefully considered suggestions about ways in which claims could be settled more quickly. I would also like to thank the EQC staff who provided logistical support for the many interviews and meetings and for supplying us with the documents we requested.

I carried out this review with the support of a 5-person team. I thank them for their hard work, enthusiasm, insights and ideas. I would also like to thank the Ministry of Business, Innovation and Employment, the Ministry of Justice and the New Zealand Police for making some of their people available to undertake this work.

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Executive Summary and Recommendations

The 2010 and 2011 Canterbury earthquakes represent the most significant earthquake events in New Zealand in recent times. The damage caused by these earthquakes was much larger in scale than the system was set up to deal with. In addition, they were a sequence of events rather than a one-off event which, arguably, the system was more geared towards dealing with.

The Canterbury earthquakes placed extraordinary demands on the EQC. A number of tough decisions had to be made quickly and were made with good intentions and in good faith and for good public policy reasons. EQC quickly scaled up in an unprecedented way; it grew significantly in size and took on substantial responsibilities.

As a result of the earthquakes, an overwhelming number of EQC claims were received; over 770,000 individual residential building, land, and contents claims were opened, for damage to around 168,000 residential buildings. Nearly all of these claims have now been settled and a comparatively small number of claims remain open. The large majority of the claims still sitting with the EQC are re-opened claims, many are complex in nature, and the process to resolution is not straight forward.

My short piece of work is targeted towards the unsettled claims currently sitting with EQC. Contained in this report are a series of recommendations which traverse the scope of my Terms of Reference. The recommendations fall into several broad categories: those that the EQC will have the responsibility for implementing, those that the Treasury and MBIE need to work on immediately in relation to EQC, and then those that are more future-facing, and which will need whole-of-system work.

They include recommendations to:

- strengthen the EQC's management of claims;
- focus on its communication with claimants and its relationship with stakeholders;
- improve EQC data quality;
- increase EQC's flexibility to make sensible settlements and payments ;
- address multifaceted policy and legislation issues which sit behind many of the current complex claims and anticipated future claims; and
- strengthen the monitoring arrangements for the EQC and provide assurance to Government on the remaining claims processes

It is my hope that these recommendations taken together should speed up the settlement of remaining claims so that claimants can move on with their lives knowing their earthquake damage has been dealt with "fairly, fully and finally".

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Summary of Recommendations

Operational Structure of EQC

a. EQC hires 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. EQC considers how they will manage drainage issues within the new case management approach.

Operational practice

a. A consistent operational practice model is urgently developed to ensure claims are dealt with to high standards across the Canterbury Business Unit.

Quality of Data

a. EQC immediately establish an expert data quality group led by the General Manager Technology;
b. EQC take a small team of experienced EQC staff, pull out all of the physical claims files relating to the remaining claims, and have the team sort, review, confirm and capture the key data; and
c. EQC publishes its ILVR semi-annually in a prominent place on its website, which includes context and explanations for any large movements in the ILVR since the previous set of numbers.

Claimant Reference Panel

a. EQC establish a Claimant Reference Group, comprised of claimants and community representative advocates who are paid for their time and expertise, and with whom EQC senior management meets regularly.

Communication with claimants

a. all information on their file be available to claimants on request;
b. 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;
c. the EQC's Canterbury specific webpage be reviewed to ensure it is easy to read and is updated on a regular basis.

Temporary accommodation and other costs

a. EQC and Treasury work together on a proposal that could be put to the Minister for her to determine whether she supports a Ministerial Direction that would allow EQC to reimburse certain legitimate claim-related costs in certain circumstances.

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Residential Advisory Service and Psycho-social support

a. the RAS is extended for two more years to 30 June 2020 and its role is expanded to provide a "one-stop-shop" for claimants, incorporating psycho-social support for claimants.

Relationship with private insurers

a. EQC senior management schedule regular, formal meetings with each private insurer to remove any barriers to resolving claims;
b. EQC share information about all claims with the relevant private insurer with the aim of settling claims more quickly.

Greater flexibility to make payments

a. EQC works with private insurers to extend the existing Protocol 1 to allow EQC to make cash settlements above the EQC cap, which would then be recovered from the private insurers.

Claims Management Consolidation

a. The Treasury continues to work with the insurance industry and EQC to test the viability of a new model which could see the management of all new Canterbury earthquake-related claims from insurance entities (EQC, Southern Response, other private insurers) consolidated into one vehicle from a future date.

Limitations

a. The Treasury and MBIE undertake policy work on whether the limitation period in respect of the Canterbury earthquakes could be clarified and made consistent across EQC and the various insurers.

EQC Ability to Discharge Cases

a. The Treasury includes the discharge of claims as part of its policy work on the EQC Act.

On Sold Properties

a. EQC management engage with Treasury to seek clarity on the Government's policy position and any potential response with regard to the fair and transparent resolution of on-sold damaged property claims;
b. Treasury work with EQC so that there is an agreed policy and legislative position for large scale insurance events in the future.

Test cases and litigation process

a. EQC continues 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;

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b. the Government give ongoing consideration to ensuring that further litigation process innovation is supported where appropriate.

Performance Metrics

a. EQC develop a more comprehensive set of layered measures, both quantitative and qualitative, for the main stages of the claims process;
b. EQC publishes these metrics on its website no less often than quarterly.

Monitoring Arrangements over EQC

a. that increased focus and resource should be directed to the monitoring function in Treasury related to service delivery; performance and future service risk, confidence by the public, institutional capability and its implementation of change;
b. MBIE and Treasury work on providing the Minister with advice on which government department in future is best placed to undertake such monitoring;
c. Treasury and MBIE meet jointly with the Minister at least quarterly to update her on their progress on the work arising from the recommendations in this report; and
d. EQC reports to the Minister on their progress with the implementation of the recommendations from this report that relate to EQC, to ensure that they are implemented in a timely fashion.

Scope and Purpose

I was appointed by the Minister Responsible for the Earthquake Commission (the Minister) as the Independent Ministerial Advisor. My brief is to provide advice to the Minister to speed up the resolution of outstanding insurance claims to the Earthquake Commission (EQC) arising from the earthquakes that struck in Canterbury between 4 September 2010 and December 2011.

The Minister requested that I consider and report on, and may make recommendations in relation to:

- options for possible improvement in the management of Earthquake Claims by EQC;
- any constraints faced by EQC that may prevent timely resolution of the Earthquake Claims, whether arising from operational, resourcing, policy or legislative settings, or otherwise;
- any constraints caused by processes of other government agencies or private insurers to the extent that EQC's ability to resolve the Earthquake Claims in a timely manner are dependent on those processes;
- ongoing monitoring of the resolution of the Earthquake Claims; and
- any other related matter.

The following were identified by the Minister as out of scope for the purposes of this report:

- any individual entitlements relating to a specific insurance claimant, or resolution of any specific insurance claims;
- the general governance arrangements of any agency;

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- any individual employment matter or decision taken within any agency;
- the performance of any specific individual;
- any matters that are subject to mediation, litigation or arbitration proceedings;
- the re-opening of settled claims;
- legal precedents (with regard to actual insurance claims) that have been established by the Courts; and
- any operational matters relating to any insurance claim other than the Earthquake Claims.

The purpose of this report is to advise the Minister of any recommended claims management, operational, resourcing, policy and legislative changes required to speed up the resolution of outstanding claims to EQC and ensure the claims are resolved in a manner which ensures timeliness, cost effectiveness and high professional standards.

The full Terms of Reference can be found in Appendix 1.

Introduction

The 2010 and 2011 Canterbury earthquakes represent the most significant earthquake events in New Zealand in recent times. As a consequence of these earthquakes, the EQC received over 770,000 individual claims for damage to around 168,000 residential buildings. In the absence of a major event, EQC expects to receive 5,000 to 8,000 claims per year. EQC had no comparable situations to draw direct experience and lessons from given the scale and complexity was unprecedented in New Zealand.

Seven years later, most claims have been settled, but as at February 28 2018, approximately 2,600 claims with unresolved issues remain open with EQC (refer to the EQC Canterbury Operations Performance Status of February 28, 2018). These remaining claims relate mostly to re-opened remedial repair claims or to land claims. Small numbers of claims are still being lodged with EQC even now.

Many of the claims are complex and the process to resolution is not straight forward. Complexities include multiple types of land damage, land remediation, dwelling repairs, and multiple earthquake events.

There are a number of additional claims which sit with private insurers. The private insurers I spoke to are keen to discharge the remainder of the Canterbury claims. For several of these insurance companies, there are considerable costs to having a small number of unresolved claims with associated case management and claims handling resources.

The Treasury and MBIE are currently working with private insurers on a possible transfer of Canterbury earthquake claims which would see the Crown take over the responsibility for claims management for all remaining Canterbury claims. The Treasury will report separately on this work to Ministers in due course.

There is a high personal and financial toll on a number of Canterbury residents with open claims. Some of these claimants have described the mental health and stress-related issues that they and their families are suffering from as a result of the prolonged claims process and the uncertain outcome.

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The challenges to settling these unresolved claims generally arise from one or more of the following factors:

- Over-cap, On-sold properties, where purchasers find missed earthquake damage or a change in the repair strategy, and/or a repair that is not up to standard or has "failed", and the cost to remediate which exceeds EQC's cap but where, in spite of valid assignment of the private insurance by the vendor, the purchasers may not have the same entitlement as the original owner. This may occur because in spite of a proper assignment of private insurance, the insurance company may only pay on an indemnity value basis, rather than replacement value. It may be that the terms of the EQC Act and the insurance policies leave the purchaser without cover;
- Defective repairs or missed damage discovered at a later date and/or disagreements between competing technical experts on the appropriate building repair solutions, which can affect both original home owners and on-sold homes;
- Time passing – it can become increasingly difficult to assess the cause of damage as the length of time between an event and a claim increases. For example, seven years after the Canterbury earthquakes, assessing what may be earthquake related damage as opposed to damage resulting from a poor quality repair or a pre-existing condition or deferred maintenance may be hard to do;
- The scope of insurance cover arising under the EQC Act – there is some prescription in the EQC's legislation where, for example, reimbursement to a homeowner for expenses in managing and justifying their claim, or provision of temporary accommodation, are not allowed as part of the scope of the insurance; and
- The policies of private insurers can also be prescriptive and tend to differ from company to company.

The human dimension of these unresolved claims should not be underestimated. Claimants that I spoke to told me of their frustration, the financial cost, and the enormous stress of living in houses that are in some cases non-compliant with the building code, and where the floors slope, the windows and roof leak, and the piles slump. A number of claimants have developed depression and other anxiety-related conditions.

These claimants were also very clear that although they welcome quick settlement of their claims, what is of greatest importance to them is proper resolution of their claims, "fairly, fully and finally".

Approach

Supported by a small team, comprised of Audrey Sonerson, Chris Bunny, Carl Crafar, James Hartley, and Marissa Quinn, we have done a variety of things to try to understand the issues, and the history and context. These have included:

- Reading a range of papers, including advice to the Minister, EQC Board papers, previous external reviews, EQC Annual Report and Statement of Intent;
- Meetings with the EQC Interim Chair and Board;
- Meetings with EQC senior management;
- Meetings with EQC staff in Christchurch and Wellington;

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- Meeting with claimants and some advocates in Christchurch, followed by further communications (emails, phone calls);
- Meetings with private insurers, bi-laterally, and together as the Insurance Council of New Zealand; and
- Meetings with staff at the Treasury, MBIE, DPMC and SSC.

Over recent months, the EQC management and Board have proposed a number of ways in which to speed up Canterbury earthquakes claims settlement. As well, a range of people, agencies and organisations with a desire to resolve these last unsettled claims "fairly, fully, and finally", have worked on ways in which to achieve that. These are individuals and groups who are very experienced in insurance matters, public policy development, the law and legislation, and technical experts including engineers and builders. They include claimants and their advocates.

The EQC itself has already been the subject of many reviews, including the Office of the Auditor-General Review of 2013 and the follow-up review in 2015. We have read these reviews and familiarised ourselves with the recommendations that were made.

I have drawn on the work that has already been done by these capable, experienced and motivated people. There are no "silver bullets" for speedy resolution of these claims. It was suggested to us by some that "you could change the EQC legislation" or "you could pay out all the remaining claims" as ways in which claims could be settled swiftly.

In my view, while initially attractive suggestions, in practice they come with difficulties. If legislative changes were made (to assist these last claims, the changes would have to be made with real urgency), they would have to be made retrospective to the Canterbury earthquakes in order to cover these claims. This would then present an opportunity to those with settled claims to revisit those arrangements and to possibly re-open them. There is also the risk that hasty legislative changes, albeit with good intent, may produce some unforeseen impacts. Even the swiftest legislation is unlikely to be formed, drafted and passed within 2018.

There is some validity to the idea of just paying out these remaining claims. By that I mean that for claims that are over the EQC cap, it may be sensible for EQC to settle the full claim and then to seek to wash-up the balance from private insurers. Indeed, this already happens under Protocol 1, where if the cost to repair a property is slightly over-cap, EQC can arrange and pay for the repair and then seek reimbursement from the private insurer. Several of the private insurers that I spoke to are supportive of this option. An extended variation on this idea could be for the Minister to direct EQC to settle on-sold claims, where the cost of remediation is over-cap but where the purchaser, through no fault of their own, has no recourse on the private insurer.

The EQC works closely with several government agencies, including the Treasury and MBIE. The Treasury provides independent policy advice to the Minister of Finance and the Minister Responsible for the Earthquake Commission and also perform a monitoring function (as they do for many Crown Owned Entities). MBIE has policy responsibility for the insurance sector, whilst the Treasury has policy responsibility for natural disaster insurance and the EQC framework.

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My short piece of work has been targeted to the approximately 2,600 unsettled claims currently sitting with EQC, and any similar future claims. This consequential report and its recommendations focuses on actions that the Board and management of EQC, together with the government agencies who have an interest in EQC, can take or are already taking, in the short term, to improve the claims process for the claimants

Using this existing work and applying our own knowledge and experiences, we have synthesised some existing ideas while also developing some different suggestions, and have come up with a range of recommendations. To those familiar with this area, I doubt that these will be new and I do not apologise for that. As a package, taken together, these recommendations will, in my opinion, assist in speeding up the resolution of claims.

Findings and Recommendations

Options for possible improvement in the management of the Earthquake Claims by EQC

Operational structure of EQC

Canterbury Business Unit (CBU)

EQC has recently introduced a new operational structure in Christchurch to manage existing and re-opened claims associated with the Canterbury earthquakes. It came into effect on 1 April 2018. This is a major structural change from the previous Christchurch-based unit. Of particular importance is the establishment of the specific settlement teams and the introduction of a Case Management approach within the Unit.

A case management approach is overdue and will bring significant advantages from a claimant's perspective. There will be a single point of contact for claimants (previously claims were passed from person to person dependent on the query) as well as the management of the claim from start to finish, versus it being managed by its individual components. I support the establishment of this unit.

Another important feature of the establishment of the CBU is that a larger proportion of staff have been employed in a permanent capacity. This will create certainty for staff regarding their employment arrangements meaning they can focus on the work itself rather than on whether they will have a job or not.

However, I am concerned that the case load for each team in the CBU is too high (at approximately 150 cases per settlement team) to allow for the highly personalised case management service that is envisaged by EQC. I recommend that the EQC hire one more settlement team, which would bring the case load down to approximately 100 cases, which is more manageable. Of course it will be important that the new staff have the right aptitude for this work, as well as skills and experience.

I also note that there is a small but increasing number of new claims associated with drainage issues in Canterbury. This in part has been driven by a public campaign by the Christchurch City Council (EQC were unaware of this campaign) advising residents to consider making claims to EQC if they had issues. Consideration should be given to how

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each settlement team will have access to drainage specialists to ensure the new case management approach is maintained.

The General Manager – Canterbury (and I support this position reporting directly to the Chief Executive and being a member of EQC's Executive Leadership Team) should have the authority to review this structure in 'real time' to ensure that it is fit for purpose and the ability to make changes if required. Specifically, this should include the ability to resource a further additional settlement team if warranted due to workloads.

Contact Centre

Currently the EQC National Contact Centres (based in Wellington and Oamaru) manage all incoming calls for existing and any new Canterbury claimants. EQC have plans to introduce a Christchurch-based Contact Centre team to deal specifically with Canterbury claims. I support this as it should provide higher service levels for Canterbury claimants because the staff will be more familiar with the processes of the CBU and will be able to complement the new case management approach.

Recommendations

I recommend that:

a. EQC hires 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. EQC considers how they will manage drainage issues within the new case management approach.

Operational practice

With the introduction of the new CBU and case management model, it is imperative that current operational practices are reviewed urgently and that a consistent practice model is introduced, with an emphasis on high quality claimant interactions, and the timely resolution of claims. If this does not occur, gains from the new structure and case management model may not be realised. The practice model needs to include communication standards with claimants (refer to the section below on Communication with Claimants) as well as what information and updates will be provided on a set, regular basis to claimants and other parties, such as private insurers. Operating standards should also be introduced and these should be monitored regularly. The quality of this monitoring is important and needs to be a part of the operational rhythm of the business unit.

Recommendation

I recommend that:

a. A consistent operational practice model is urgently developed to ensure claims are dealt with to high standards across the Canterbury Business Unit.

Quality of Data

Of considerable concern is the lack of confidence (including by EQC staff) in the various data sets that EQC have available regarding claims activity in Canterbury. Over time,

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multiple methodologies and processes appear to have been used to collect and report on claim numbers with 'no single source of truth'. There also appears to be limited ability to appropriately segment existing claims into various workstreams so that these can be effectively managed and reported on. This means staff and management, the Board, the monitoring agency and ultimately the Government do not have solid information on which to make decisions.

In particular, management have had a series of target timelines for claims resolution, but a lack of good quality data has meant that these have sometimes been unrealistic and plans to meet them have lacked appropriate resourcing. The Board and monitoring agency have not had the information to highlight that targets are likely to be missed before the targets are actually missed.

Another example of data issues at EQC is that recently there has been public discussion about the cost of re repairs arising from the Canterbury claims. It has been reported that as at April 4 2018, EQC had spent $170 million on remediation for repair work and another $100 million had been paid to claimants as cash settlements to address re repair costs. (By comparison, figures released in 2016 assessed these costs at around $70 million.) EQC struggled to provide the cash settlement information mentioned above in a timely fashion because of its difficulty in mining its own data.

As I have sought information for this review, I have been unable to obtain reliable data on the exact number and status of the claims left to be resolved arising out of the Canterbury earthquakes. As mentioned above, EQC has not been able to provide me with accurate segmentation of the remaining claims.

The number of claims to be settled arising out of the Canterbury earthquakes is now at a level where one simple and immediate way of getting an exact view of those claims would be to take a small team of experienced EQC staff, pull out all of the physical claims files relating to the remaining claims, and have the team sort, review, confirm and capture the key data.

EQC does recognise these problems with its data and is currently implementing changes that will strengthen the reporting team. The introduction of the case management approach and an upgraded Claims Management System due in late April 2018 will improve the ability of staff and management to see and understand the quantum and stage of the claims.

To complement this, I recommend the immediate establishment of a Data Quality group, led by the General Manager Technology. This group should have appropriate expertise (including external expertise if required) and should be tasked with:

- Ensuring reporting data is accurate and consistent over time ;
- Managing data sets and control data definitions and measurement methodology; and
- Ensuring interpretation of data is consistent with its definition and measurement.

EQC has commissioned regular independent actuarial assessments of the future cost of remedial work. These Insurance Liabilities Valuation Reports (ILVR) have been monitored by the Treasury and published on the EQC website in the past, albeit in a difficult-to-find section. I recommend that the EQC publishes its most up-to-date ILVR every six months in

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a prominent part of the EQC website, together with explanations for any large movements in the ILVR since the previous ILVR numbers.

Recommendations

I recommend that:

a. EQC immediately establish an expert data quality group led by the General Manager Technology;
b. EQC take a small team of experienced EQC staff, pull out all of the physical claims files relating to the remaining claims, and have the team sort, review, confirm and capture the key data; and
c. EQC publishes its ILVR semi-annually in a prominent place on its website, which includes context and explanations for any large movements in the ILVR since the previous set of numbers.

EQC's Relationship with Claimants

Claimant Reference Panel

As mentioned above, there are claimants who have been dealing with EQC and private insurers since the first Canterbury earthquake in September 2010. For some, the toll has been great. Claimants have described to me their lack of trust in EQC (and in some cases the private insurers) and their experience that promises made in the past have been broken repeatedly.

I am assured that the EQC Board and the EQC team are determined to put this right, but I acknowledge that rebuilding trust will take time as EQC embeds its new operational model and demonstrates that it is delivering to claimants what it has undertaken to do in a way that is respectful to and supportive of the claimants.

In order to progress the rebuilding of trust between EQC and claimants, I see value in the establishment of a Claimant Reference Group, comprised of claimants and community representative advocates, who are paid for their time and expertise. EQC senior managers should meet regularly with this group and use it to listen to claimants and advocates, explain and report on progress on claims settlement, as another channel of two-way communication, and to test and receive new ideas about resolving claims. It is not the intention that this reference group be a vehicle for discussing individual claims.

Recommendation

I recommend that:

a. EQC establish a Claimant Reference Group, comprised of claimants and community representative advocates who are paid for their time and expertise, and with whom EQC senior management meets regularly.

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Communication with claimants

The establishment of a case management approach and the development of consistent operational practices (which must include communication standards between EQC and claimants) should dramatically improve the information flow between parties and ensure that claimants are informed about the progress of their claims as well as any reasons for delay.

The communications standards that are developed as part of the operational practices will outline how EQC communicates with claimants. For example, these communications will be respectful, treat claimants with empathy and dignity, and EQC staff will fulfil any undertakings that they make. This is an important cultural dimension of helping to rebuild trust between the claimants and EQC.

Further to this, claimants should have full, open and immediate access to all information associated with their claims if they request it. They should not have to request their files under the Official Information Act, and the files should be made available without redactions or missing documents.

I note that there is a Canterbury specific section on EQC's website but the information contained within it is complex. I also note that the Canterbury specific updates are very irregular of late and there is limited uniformity regarding the information being provided or what, if any, progress is being made – such as the number of open claims as against the number finalised. The website content should therefore be reviewed to ensure that it is user friendly and also be updated regularly with information pertinent to claims within Canterbury. Consideration should also be given to a specific FAQ section within the page.

Recommendations

I recommend that:

a. all information on their file be available to claimants on request;
b. 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; and
c. the EQC's Canterbury specific webpage be reviewed to ensure it is easy to read and is updated on a regular basis.

Temporary accommodation and other costs

Under its current legislation, EQC is not able to reimburse claimants for some expenses such as temporary accommodation where people have to vacate their property in order that repairs can be carried out. EQC has been working within its own legislation where there are legal reasons, namely health and safety, for making payments for temporary accommodation costs in specific circumstances. For some claimants, it would make a tangible difference to their willingness to reach resolution of their claim if EQC was able to meet some of their costs incurred either through the repair process or in attempting to reach settlement of their claim (which might include short term alternative accommodation or technical fees).

This could be an area in which a Ministerial Direction would give EQC the mandate to pay selected and appropriate costs to claimants.

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Recommendation

I recommend that:

a. EQC and Treasury work together on a proposal that could be put to the Minister for her to determine whether she supports a Ministerial Direction that would allow EQC to reimburse certain legitimate claim-related costs in certain circumstances.

Residential Advisory Service (RAS)

The RAS is one of the organisations providing support and advisory services to assist people with outstanding insurance claims in Canterbury. It is funded by MBIE and provides a free and independent advisory service to claimants that includes the assistance of a broker who is able to convene meetings of the key parties involved in a claim. The service also includes access to legal support via Community Law, and technical expertise on engineering issues.

The RAS funding is currently due to expire at the end of June 2018, meaning that the service would close shortly thereafter in the absence of further financial support. However, I consider that the RAS continues to provide a useful and independent service and recommend that the Government considers extending the support for a further period of 2 years. I also recommend that consideration be given to consolidating the services provided by the different organisations by enhancing RAS's role to provide a "one-stop shop" for claimants seeking support and advice with their claims. The extension of RAS is supported by MBIE, the EQC, and some of the claimants and private insurers.

Psycho-social support

Currently there is limited psycho-social support available to EQC claimants. A number of claimants told me that access to an appropriately qualified multi-disciplinary team would be of real benefit to them. Specific funding should be provided through the RAS to a suitable non-government organisation to provide this support. This would mean that the support would be separate and independent from the EQC, and claimants could feel confident that the EQC had no knowledge of their private circumstances.

Recommendation

I recommend that:

a. the RAS is extended for two more years to 30 June 2020 and its role is expanded to provide a "one-stop-shop" for claimants, incorporating psycho-social support for claimants.

EQC's interaction with private insurers

Relationship with private insurers

A critical aspect of the claims-handling process is the relationship between EQC and private insurance companies.

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For the Canterbury building claims, under a standard (and somewhat simplified) model of claims management, EQC has performed an initial assessment of damage and then transferred the claim to the private insurer where the damage is over-cap, that is, generally over the $100,000 plus GST level that EQC covers. The claimant would then essentially begin another claims process with the private insurer, which would make its own assessment of the damage. In these situations, there has in effect been double-handling of the claim by different claim managers.

This has understandably been frustrating for some claimants. It has resulted in delays in claims assessment and claimants having to deal with multiple claims personnel across different organisations.

I have considered whether there may be ways for the interaction between EQC and private insurers to run more efficiently for the remaining claims in Canterbury. I note that a different process was used from the outset in the November 2016 Kaikoura earthquake, where under a Memorandum of Understanding, private insurers assessed most building claims on behalf of EQC. Those making claims dealt with their own private insurer and double handling of claims was largely avoided.

However, it would not make sense to implement this process in the Canterbury context given the stage of proceedings we are now at, where EQC is playing a key role in claims.

(Although beyond the scope of my work, it is noteworthy that all of the private insurers that I spoke to made a point of advocating strongly for the Kaikoura model to be adopted formally for future insurance events, while recognising that the approach taken with Kaikoura claims was that of a cash settlement basis, and for sum-insured properties. Also, the Kaikoura event gave rise to far fewer insurance claims than the Canterbury earthquakes and so the scalability of this different approach taken to Kaikoura has not been established. The EQC Board is undertaking a full evaluation of the model applied to the Kaikoura earthquake.)

I think that there is much to be gained by EQC senior management scheduling regular bi-lateral meetings with private insurers. There are two objectives to this - first to ensure that all claim files pertaining to that private insurer's customers are shared between EQC and the private insurer so that the private insurer knows with some certainty what claims there are and which may go over cap and which ones are not likely to. Next, it should enable any hold ups or blockages between EQC and the private insurer to be ironed out quickly.

Several private insurers offered to have an EQC staff member located in their offices for the next few months, again so that any tensions between insurers and EQC can be ironed out quickly. EQC may wish to consider this.

Some claimants who I spoke to raised issues regarding how their private insurer has handled their claim. Making recommendations on these issues is outside the scope of the terms of reference of this review. However, I note that MBIE has recently started a review of insurance conduct law, which will include an examination of the conduct of private insurers in relation to claims arising from the Canterbury earthquakes and the Kaikoura earthquake. The terms of reference for the review were released in March 2018 and an issues paper for public consultation will be released in the middle of this year. I encourage this review to engage closely with those people in Canterbury with experiences of dealing with private insurers.

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Recommendations

I recommend that:

a. EQC senior management schedule regular, formal meetings with each private insurer to remove any barriers to resolving claims; and
b. EQC share information about all claims with the relevant private insurer with the aim of settling claims more quickly. (Note that this recommendation overlaps with proposals in the EQC Amendment Bill that is currently before the Select Committee.)

Greater flexibility to make payments

It is current practice that once the repair costs of a property are deemed to exceed the EQC cap and the cap damage has been dealt with by EQC by cash settlement, that the claim is then transferred to the private insurer.

In some situations disputes can arise between the EQC and the private insurer about the work and whether it is over-cap. While EQC and the private insurer try to reach agreement, the claimant is left waiting for resolution. Where the dispute is small and the claim is likely to be not far over the cap, this seems like an unnecessary delay and duplication of effort. The cost of settling the disagreement will, in some cases, outweigh the cost of the work in dispute. The EQC may wish to come to an arrangement with private insurers to ensure these are settled more efficiently while ensuring private insurers continue to meet their liabilities in these circumstances.

EQC has had an arrangement, known as Protocol 1, in place with private insurers for several years. Under Protocol 1, where the cost of the repair that EQC carries out is slightly over-cap, the damage can be repaired and paid for by EQC, which then seeks reimbursement from the private insurer in a wash-up of costs.

If Protocol 1 could be extended to EQC making over-cap cash settlements and then recovering the over-cap amount from private insurers, this could assist in speeding up settlement. However, there is a risk that if EQC settles the costs without the agreement of the private insurer, there is no guarantee that EQC will be able to later recover the costs from the insurer.

Recommendation

I recommend that:

a. EQC works with private insurers to extend the existing Protocol 1 to allow EQC to make cash settlements above the EQC cap, which would then be recovered from the private insurers.

Claims Management Consolidation

In the long term, as the number of claims continues to decrease, it is worth considering if it is appropriate to consolidate all new Canterbury earthquake-related claims from insurance entities (EQC, Southern Response, other private insurers) into one organisation. The purpose of this would be to resolve claims more efficiently by pooling the remaining claims handling resource together. This would benefit claimants by providing a streamlined process

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for resolving their claim, in particular by removing “double-handling” by EQC and private insurers.

MBIE has already been facilitating discussions on this potential model with private insurers, EQC, and the Treasury. I consider that it holds some promise and some risks. However, I recommend that discussions continue to test the viability of this model. I anticipate that the Treasury will play the lead role from this point in representing the Crown in these discussions.

Recommendation

I recommend that:

a. The Treasury continues to work with the insurance industry and EQC to test the viability of a new model which could see the management of all new Canterbury earthquake-related claims from insurance entities (EQC, Southern Response, other private insurers) consolidated into one vehicle from a future date.

Policy and legislative issues for the Government and EQC to consider

Limitations

An important legal issue that has arisen in the last few years is the limitation period for claimants to bring litigation against EQC and/or private insurers where there is a dispute about insurance coverage. Limitation legislation provides for a 6 year time limit for starting litigation after the act or omission that gives rise to the court claim. There has been a difference of opinion over when the clock starts ticking. Is it the date the damage was caused by an earthquake (the private insurers’ position), the date an insurance claim was settled or declined, or some other date?

Some private insurers have taken positions of setting a deadline after which they reserve the right to raise limitation as a defence to insurance claims. IAG has a deadline of 30 June 2018 and Southern Response has a deadline of 4 September 2018.

EQC has taken the position that for claims under the EQC Act, EQC will approach the six-year limitation period for each land, building and contents claim from each earthquake, as running:

- where an EQC claim has been settled, from the date EQC settled that claim;
- where an EQC claim has not yet been settled, from the date when EQC settles or declines that claim; or
- where a claim is declined, from the date that EQC declines the claim.

The difference in position between entities may lead to claimants in similar fact situations being treated differently. This is clearly undesirable as it leads to considerable uncertainty and distress for claimants.

Limitation is of particular relevance to properties that are in situations where damage was missed when an assessment was done or where damage was inadequately repaired. It is possible that there will be damage discovered in these situations for some years yet,

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including by new owners of on-sold properties. The application of limitation to these situations is particularly complex.

It is likely that the interpretation of the limitation period that applies in different fact situations will be the subject of court judgments in the coming years that will set precedents for other cases. However, given the importance of this issue for the resolution of claims, I recommend that Treasury and MBIE undertake further policy work on whether there is scope to clarify the limitation period in respect of the Canterbury earthquakes. While clarification may not particularly speed up claims resolution, it will help to give more certainty for claimants. This work should include examining the option of setting a final date in legislation for all claims to be lodged by.

Recommendation

I recommend that:

a. The Treasury and MBIE undertake policy work on whether the limitation period in respect of the Canterbury earthquakes could be clarified and made consistent across EQC and the various insurers.

EQC Ability to Discharge Cases

Under the EQC legislation, there is no ability for EQC to discharge a claim (obtain agreement from the claimant that the case is finally and fully settled). In reality this means that even though EQC may have "closed" a claim, the claimant can seek to have the claim re-opened at any stage. This means that EQC can never fully finalise an event. The practice with a number of private insurers is that at the point of claim settlement, they seek a written discharge signed by the claimant. At this point, the claim is closed permanently (subject to the claimant signing a written discharge).

Recommendation

I recommend that:

a. The Treasury includes the discharge of claims as part of its policy work on the EQC Act.

On-Sold Properties

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

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

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If and when it is agreed the further work is earthquake related, then the statutory cap can become important. If the property is under-cap then the EQC will re-open the claim and conduct the re-repair or settle with a cash payment. If the new work pushes the property over-cap then the EQC transfers the claim to the private insurer and the EQC is liable up to the cap.

Depending on the private insurer in question and whether the claim has been assigned over to the new owner, a purchaser may not have the same entitlements as the original owner or any entitlement at all above EQC's cap or any entitlement at all.

A particular issue that is emerging is that in many instances the purchaser of the on-sold property has relied on the EQC assessment and repair of the earthquake damage. It has then subsequently come to light that the house requires repairs that are over-cap and which the private insurer will not cover. These situations raise questions about the responsibility of EQC to subsequent purchasers' properties that EQC has assessed or repaired.

A significant amount of the housing stock in Christchurch has been repaired. There are a number of competing policy objectives in this area including (but not limited to):

- ensuring that the pre-earthquake housing stock retains appropriate value and buyers and sellers can conduct transactions with confidence;
- ensuring that insurance settlements for earthquake damaged homes are used to carry out repairs to the housing stock and that these repairs are carried out in a professional and workmanlike way;
- ensuring families and individuals can buy and sell property as their needs change,
- ensuring that claims are resolved fairly and in a timely way;
- ensuring the Crown does not face liability that the private insurers should be facing; and
- ensuring insurance and mortgages can continue to be offered on repaired homes.

EQC Management has given advice to the EQC Board (in March 2018) that their preferred approach to resolving on-sold over-cap claims is for the Minister to consider making a Ministerial Direction. This is because a Ministerial Direction would allow for resolution of the on-sold over-cap claims, without the claimants having to undertake costly and lengthy court proceedings.

There are a range of risks that may arise from a Ministerial Direction to resolve over-cap on-sold claims. These include equity issues between those claimants who get resolution under the Ministerial Direction and those who have already settled. It is possible that some "settled" claims may be re-submitted to EQC. The Ministerial Direction may be perceived as the Crown stepping in where private insurers should be resolving these claims, and this may set a precedent for other situations which may not be appropriate.

Work by Treasury on any Ministerial Direction is needed. In order to address the risks, Treasury will need to engage with EQC on appropriate criteria as to which claims would qualify under the Ministerial Direction, and also for there to be a financial limit.

There are some very complex issues with on-sold properties which require substantially more policy work than can be covered in the six week timeframe available for this report. However this policy work is required urgently and is critical to resolving claims.

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Recommendations

I recommend that:

a. EQC management engage with Treasury to seek clarity on the Government's policy position and any potential response with regard to the fair and transparent resolution of on-sold damaged property claims; and
b. Treasury work with EQC so that there is an agreed policy and legislative position for large scale insurance events in the future.

Test cases and litigation process

Although the focus of claims management is settlement of claims, it is almost inevitable that some claims will end up in litigation. This can be for a number of reasons, including that there is a difference of position between the parties that is unable to be bridged or because the law is unclear and there is a difference in legal interpretation. The experience of litigation in Canterbury is that the parties will eventually settle most litigation prior to the case coming before the court.

Court judgments can provide useful precedent for helping to resolve further cases with similar facts. In this report there are two areas where this is likely to be so in the future. These are the limitation period, and the liability of EQC and others in respect of on-solds.

EQC has taken test cases and declaratory judgment proceedings in the past to help clarify areas of law that are uncertain. While recognising that priority should be given to settling litigation in a manner that is fair, full and final for claimants, it is sensible that EQC continues to work with lawyers and claimants to identify appropriate test cases on issues of law where precedents would be helpful for resolving other claims.

The court system has responded well to the Canterbury earthquakes, including the innovation of the creation of the Christchurch High Court Earthquake List. The Earthquake List has performed very well in having earthquake related litigation resolved as speedily as possible. Earthquake List cases receive fast track case management through to trial and priority is given to cases which are urgent or which raise issues with precedential value. Litigation process initiatives such as this, which ensure that the court processes are effective and timely will play a key ongoing role in the resolution of claims.

Recommendations

I recommend that:

a. EQC continues 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
b. the Government give ongoing consideration to ensuring that further litigation process innovation is supported where appropriate.

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Ongoing Monitoring of the Resolution of the Earthquake Claims

Performance Metrics

Performance metrics are crucial to ensure a line of sight for management, the Board and external monitors on performance. The thinking that 'we are nearly finished with the Canterbury claims' is one of the reasons why only now is investment being made by EQC in a solid, layered performance metrics regime.

Consistent with its delivery function, EQC has recently started to report on new customer satisfaction measures both externally in its annual report and internally to staff in its internal communications, 'The Voice'. These are welcome developments. I recommend that EQC build on these approaches by developing a more comprehensive set of layered indicators that it can used for management control and intervention in addition to the Board being able to better monitor performance. This approach will also assist external monitors to have a full range of sight over the business of the EQC.

This set of indicators needs to include a range of measures, including but not limited to, claim handling times, claimant satisfaction, volume and throughput, industry feedback and other qualitative feedback. These should relate closely to each high level stage of the claim handling process. Consideration should be given to metrics such as time to assess, time to notify claimants, time to notify private insurers, and end-to-end handling time.

In order to be open and transparent about overall performance, and to show the progress that has and will continue to be made, I recommend that these metrics are published on the EQC website no less often than quarterly. This approach will assist in building the trust of claimants and the public.

Recommendations

I recommend that:

a. EQC develop a more comprehensive set of layered measures, both quantitative and qualitative, for the main stages of the claims process; and
b. EQC publishes these metrics on its website no less often than quarterly.

Other Related Matters

Monitoring Arrangements* over *EQC

EQC is currently monitored by the Commercial Operations Group in the Treasury. This part of the Treasury has responsibility for monitoring a range of Crown-owned Companies and Crown Entities, including Crown Financial Institutions. The focus is on monitoring Crown financial risk. This is an important monitoring function, given the Crown guarantee of EQC liabilities in the EQC Act.

Over time, EQC has developed into a Crown Entity with a significant delivery service element; it has always been more than a Crown Financial Institution and a manager of Crown financial risk. In response to this change, the EQC has developed a number of service delivery KPIs which it reports on, including customer satisfaction measures (see

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EQC annual report). Many of these are recent so do not have a time series comparison, but are positive steps to recognise the importance of the service delivery of the entity.

These developments point to a requirement for more rounded monitoring of its performance to ensure all of the Crown's objectives are achieved now and into the future. Confidence in the EQC is essential to ensure that it is well prepared for any response to future major natural disasters. More fulsome monitoring of the entity should add to the confidence that New Zealanders have in the EQC to serve them in a natural disaster. Therefore, the current financial monitoring should be augmented with a focus on all-of-organisation performance. In particular, monitoring should focus on service delivery performance and future service risk, confidence in the institution by the public, institutional capability, and implementation of change.

Given the private-market insurance specialism in MBIE, along with its capability in Building and Construction, there is an argument that EQC could be better monitored from that department. Further work on the potential for moving the monitoring function should be considered.

This report recommends a range of work to be carried out by the Treasury and MBIE, through which these agencies can demonstrate their collective leadership in this insurance sector. I recommend that MIBE and the Treasury jointly meet the Minister at least quarterly to report on their progress.

I also note that there have been a number of reviews of the EQC in the past few years with a number of recommendations regarding how things can be improved. I believe that the recommendations adopted from this report that relate to EQC should be reported on by EQC to the Minister, to ensure they are implemented in a timely fashion.

Recommendations

I recommend that:

a. that increased focus and resource should be directed to the monitoring function in Treasury relating to service delivery performance and future service risk, confidence by the public, institutional capability and its implementation of change;
b. MBIE and Treasury work on providing the Minister with advice on which government department is best placed to undertake such monitoring in future;
c. Treasury and MBIE meet jointly with the Minister at least quarterly to update her on their progress on the work arising from the recommendations in this report; and
d. EQC reports to the Minister on their progress with the implementation of the recommendations from this report that relate to EQC, to ensure that they are implemented in a timely fashion.

Concluding remarks

As noted at the beginning of this report, the Canterbury earthquakes placed extraordinary demands on the EQC. While there have been a number of reviews into EQC's performance over the past seven years, there has been no definitive, cohesive review of how ready EQC was to manage the consequences of a catastrophic disaster, and its performance between 2010 and the present day. Also, the lessons learned from the Canterbury earthquakes, and

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subsequent events including the Kaikoura earthquake and the Edgecumbe flooding should be documented and examined, and proposals made to ensure that EQC has planned for and is equipped for future insurance events. This will also necessitate looking at how EQC and the private insurance sector best prepare for such events and work together. I support the announcement by the Minister responsible for the EQC that she is considering establishing an Inquiry into these matters, with the greatest focus being on the future arrangements.

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Appendix 1:

EQC - Terms of Reference

The independent Ministerial advisor is appointed by the Minister responsible for the Earthquake Commission to work with the EQC Board and Management 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 on or after 4 September 2010, including any aftershocks (the Earthquake Claims).

The purpose is to report to the Minister on operational changes needed for resolving any residual Earthquake Claims in a manner which ensures timeliness, cost effectiveness and high professional standards.

More specifically, the advisor, with input from the EQC Board and Management, will consider and report on, and may make recommendations in relation to:

- options for possible improvement in the management of the Earthquake Claims by EQC;
- any constraints faced by EQC that may prevent timely resolution of the Earthquake Claims, whether arising from operational, resourcing, policy or legislative settings, or otherwise;
- any constraints caused by processes of other government agencies or private insurers to the extent that EQC's ability to resolve the Earthquake Claims in a timely manner are dependent on those processes;
- ongoing monitoring of the resolution of the Earthquake Claims;
- any other related matter.

The independent Ministerial advisor will also work with MBIE on any related insurance issues, to coordinate advice to the Minister based on full information.

The advisor will not consider or report on, or make recommendations in relation to:

- any individual entitlement relating to a specific insurance claimant, or resolution of any specific insurance claims;
- the general governance arrangements of any agency;
- any individual employment matter or decision taken within any agency;
- the performance of any specific individual;
- any matters that are subject to mediation, litigation or arbitration proceedings;
- the re-opening of settled claims;
- legal precedents (with regard to actual insurance claims) that have been established by the Courts;
- any operational matters relating to any insurance claim other than the Earthquake Claims;

The timeframe for initial report to Minister will be 6 weeks from the date of appointment.

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