EQC submission on the exposure draft of the Insurance Contracts Bill

Introduction

This document provides EQC's response to MBIE's consultation paper "Exposure draft Insurance Contracts Bill".

EQC's feedback focuses only on the aspects of the Insurance Contracts Bill (the "Bill") that may impact on the insurance for natural disaster damage provided by EQC to New Zealanders.

Summary

EQC welcomes the reform and modernisation of New Zealand's insurance contract law

EQC supports the objective of this reform programme to ensure insurance markets work well and individuals and businesses effectively protect themselves against risk. As people often have to call on their insurance in times of stress, ensuring policies are easy to understand at the time they are made is a critical aspect of consumer protection and ensuring an effective claim management process for all parties.

EQC does not consider that the Bill should cover natural disaster damage insurance provided by EQC

While not explicit in the exposure draft, our understanding is that MBIE's view is that the Insurance Contracts Bill does not include EQ Cover when provided consequent to a contract of fire insurance within its scope, but does include Voluntary EQ Cover.

We consider that the policy objectives for the Bill **do not** support including EQ Cover, whether provided consequent to a contract of fire insurance or as Voluntary EQ Cover, in the scope of the Bill. This position is based on:

- EQC's "contract terms" are the terms of the Earthquake Commission Act 1993 (EQC Act), including what is covered, how the settlement amount is calculated, how a claim should be lodged and on what grounds EQC may decline a claim. EQC does not impose any additional terms on customers for the purposes of voluntary EQ Cover, except in relation to customers being unable to access private insurance and reinstatement of property following previous settlements.
- EQC does not rely on a general duty of disclosure from customers. The information that is required from customers is set out in legislation and collected by private insurers (as EQC's agents). Unlike private insurers, there is no discretionary underwriting decision or ability to include conditions on cover other than those provided for in the EQC Act.

EQC sees there is an opportunity to voluntarily adopt some of the Bill's standards

While EQC does not consider the insurance contracts regime should apply to the legislative provision of EQ Cover, EQC does see value in it voluntarily adopting some of the business practices in the Bill for direct EQC cover where that will assist customers, for example on simplification of terms. EQC is

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therefore keen to look at ways to voluntarily incorporate some of the Bill's standards into EQC's practices.

Overview of EQC cover for natural disaster damage

EQC provides New Zealanders with first loss insurance cover for natural disaster damage

EQC provides first loss insurance, known as EQ Cover, up to an amount of $150,000 + GST (the "cap") to insure damage caused to residential property as a direct result of one of the natural disasters specified in the EQC Act. This cap will increase to $300,000 + GST from 1 October 2022, with policies adopting the new cap on a rolling basis as they are renewed over the following 12 months.

EQ Cover is mandatory when a residential homeowner agrees a contract of fire insurance with a private insurance provider (section 18 of the Earthquake Commission Act 1993).

The cost of EQ Cover is funded via a levy, which is set by regulations made under the EQC Act. This levy is collected by private insurers on behalf of EQC. It is included as part of an insured person's overall insurance premium.

EQ Cover is prescribed by the Act. The Act prescribes every aspect of EQ Cover, including:

- the natural disasters that are covered (s 2),
- the type of cover that EQC offers (building and land cover) (eg ss 18, 19),
- what is excluded from EQ Cover (Schedule 2),
- how to make a claim (including time periods to make a claim) (eg cl 7 of Schedule 3), and
- when a claim may be declined (in whole or in part) (cl3 of Schedule 3).

EQC introduced a new operating model for managing claims in June 2021. Under the Natural Disaster Response Model (NDRM), EQC has partnered with a range of New Zealand's private insurers so they act as EQC's agent in managing EQC claims for natural disaster insurance cover on behalf of EQC.

The NDRM enables residential homeowners to have a single point of contact for insurance following a natural disaster event. Customers can lodge an EQC claim directly through their private insurer who will assess, manage, and settle the entire claim – including the EQCover portion of a claim (on behalf of EQC) and the private insurance portion of the claim.

Further information on the NDRM can be found here: https://www.eqc.govt.nz/insurance-and-claims/natural-disaster-response-model/

Voluntary EQ Cover

Provision of voluntary EQ cover under the Earthquake Commission Act 1993

EQC cover is generally provided consequent to a contract of fire insurance purchased from a private insurer. Under section 22 of the EQC Act, a person with an insurable interest in any residential building or residential land may enter into a contract with EQC directly to insure that building or land.

EQC refers to insurance cover purchased by these customers as "Voluntary EQ Cover". While section 22 of the EQC Act gives EQC the ability to impose conditions on Voluntary EQ Cover, operationally

EQC does not use this power to impose conditions - Voluntary EQ Cover is provided on exactly the same terms and conditions as EQ Cover (outlined above), including on matters such as levies and extent of cover.

One exception to this is that we may limit the period of cover, i.e. an application for Voluntary EQ Cover may be approved for a specified period. All other aspects of Voluntary cover match EQ Cover.

Voluntary EQ Cover is only available to persons who can demonstrate to EQC that they are unable to obtain insurance from an insurer in the private market. EQC's policy requires evidence that the customer's application for insurance in the private insurance market has been declined by at least two insurers on an annual basis in order to reinstate the cover for the further 12 months.

How Voluntary EQ Cover is managed

Once Voluntary EQ Cover is confirmed, the customer with Voluntary EQ Cover will have insurance on the same terms as a customer who has EQ Cover. For example, the same considerations apply when deciding whether to accept or decline a claim notified by a Voluntary EQ Cover customer. EQC can only decline these claims as per the grounds for declinature drafted in Schedule 3of the EQC Act, which allows claims to be declined in whole or in part.

Where a residential building or land insured through Voluntary EQ Cover is the subject of an EQC claim settlement, EQC requires the reinstatement of the property to be completed within 12 months of the commencement of the Voluntary EQ Cover insurance period. If the reinstatement (ie repair) of the property is not completed in that time, EQC may refuse to provide Voluntary EQ Cover for a further period of time.

A small group of people contract with EQC directly for natural disaster insurance cover under this provision.

Voluntary cover under the Natural Hazards Insurance Bill

The Natural Hazards Insurance Bill, which has recently been referred to the Finance and Expenditure Select Committee for consideration, retains the ability for EQC to provide Voluntary EQ Cover, though it will be called "Optional insurance". Clause 46 of the Natural Hazards Insurance Bill clarifies aspects of Voluntary EQ Cover in line with current EQC practice.

Discussion on draft Insurance Contracts Bill

The policy rationale for the Bill does not support including EQC in the application of the Bill

In providing both EQ cover and Voluntary EQ cover, EQC differs from private insurers. EQC is bound by the prescriptive provisions of the EQC Act. Once cover is in place, it can only be cancelled as provided for in the Act. It does not have the flexibility to amend contracts annually and to alter the way it engages with customers in the same way that private insurers do.

EQC must act fairly and reasonably in all its dealings with its customers as part of the responsibility to administer legislation.

EQC therefore considers the policy rationale for the Insurance Contracts Bill does not apply to EQC in the same way it would to private insurers. In particular:

- EQC's "contract terms" are the terms of the EQC Act. EQC does not include any additional terms for the purposes of Voluntary EQ Cover, except in relation to customers' access to private insurance and reinstatement of property as set out above.

- EQC does not rely on a general duty of disclosure from customers. The information that is required from customers is set out in legislation and collected by private insurers (as EQC's agents). When a private policy for fire insurance brings a qualifying property within the scope of EQ cover, EQC has no discretionary underwriting decision or ability to include conditions on cover.
- The application process for Voluntary EQ Cover indicates the specific information EQC requires from the applicant. EQC relies on customers who are applying to provide all information required for us to assess their application, including: that cover is sought for a residential property that meets the dwelling criteria in the EQC Act, that they have an insurable interest, and why they are unable to obtain insurance through the private market. EQC does not rely on a more general duty of disclosure on the customer when considering an application for Voluntary EQ Cover.
- Provisions requiring the publication of information to help customers choose an insurance provider aimed at promoting transparency do not apply to EQC as EQC does not compete with private insurers and it is not possible for customers to exclude EQ Cover from their private insurance contracts.
- As a Crown entity, EQC is also bound by administrative law principles and the expectations on the public sector.

For these reasons, and because EQ Cover and Voluntary EQ Cover are provided on the same terms as set out in the Act, it is EQC's view that EQC (i.e. both types of EQ Cover) should be excluded from the scope of application of the Insurance Contracts Bill.

Adopting a hybrid approach where only Voluntary EQ Cover is included in the scope of the Bill would be complex to operationalise, and unnecessary in light of EQC's existing practices.

EQC sees value in voluntarily adopting some of the standards in the Bill (to the extent those standards are not already reflected in the way EQ Cover is managed)

EQC recognises that part of providing a good customer experience is ensuring that customers understand the cover that they have with EQC. As a Crown Entity, EQC also aims to exceed any of the customer care standards set for industry.

EQC therefore intends to review its application processes and customer care obligations for EQ Cover to ensure they align with or exceed the standards included in the Bill.

The Natural Hazards Insurance Bill includes provisions to introduce a Code of Insured Persons' Rights, which will set out the expectations for EQC's conduct in delivering a fair and timely settlement for customers.

Areas of specific comment

If Voluntary EQ Cover is included in the scope of the Bill, we would like to draw your attention to the following provisions:

1: Time limits to make claims

We note that the Insurance Contracts Bill (cl69) proposes to introduce time limits for making claims. This is an example of a matter that is already regulated by the EQC Act (and the Natural Hazards Insurance Bill) for EQC claims. The time limits proposed by the Bill are different from the time periods prescribed by the EQC Act. It is difficult to see how the time limits of the Insurance Contracts Bill could apply to EQC and will need further consideration if EQCover or Voluntary EQCover is included in the scope

2: Risk exclusions

Clause 71 of the Insurance Contracts Bill proposes to make changes to how risk exclusions can be applied by insurers. EQ Cover is regulated by the EQC Act, and the exclusions from EQ Cover is another example of an issue already prescribed by the Act. It is difficult to see in what circumstances clause 71 of the Bill will be relevant to EQC.

EQ Cover is only applicable if the damage is the direct cause of a natural disaster specified in the Act. The Act also already prescribes the conditions when EQC may decline a claim, including provision for partial declinature. Clause 71 would have to be considered against the grounds to decline an EQC claim in clause 3 of Schedule 3 of the Act.

3: Holding of premium monies by intermediaries

We note that Subpart 2 of Part 4 of the Bill contains provisions about the holding of premium monies by intermediaries that may conflict with the EQC Act.

EQC pays its claims and other expenses from the Natural Disaster Fund (NDF). The main source of funding for the NDF is EQC premiums collected on EQC's behalf by private insurers. The Act requires insurers to pay EQC levies to EQC within 2 months of making a contract of fire insurance as this helps to ensure the NDF has adequate funds.

While EQC does not have a view on the arrangements between insurers and insurance intermediaries with regards to levies, we propose that the obligation on insurers to make payment of EQC levies within 2 months of making a contract of fire insurance should be taken into consideration when determining the appropriate period of time intermediaries may hold premium monies before making payment to insurers. Alternatively, EQC levies could be excluded from the Bill's proposal.

4: Interwoven regulatory frameworks

If EQ cover or Voluntary EQ cover is included within the scope of the Insurance Contracts Bill, we note that all regulatory provisions would need to correspond with the legislative and regulatory frameworks supporting the EQC Act (soon to be the Natural Hazards Insurance Act).

Next steps

EQC would be happy to meet with MBIE officials to discuss this submission.