

Natural Hazards Insurance Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Natural Hazards Insurance Bill and recommends unanimously that it be passed. We recommend all amendments unanimously, except for one, in clause 2, which is recommended by majority.

Introduction

The bill seeks to replace the Earthquake Commission Act 1993 (the EQC Act) which continued the Earthquake Commission and provides natural hazards insurance cover for residential properties. The bill incorporates recommendations of the Public Inquiry into the Earthquake Commission, which reported in March 2020. The bill's overarching aims are to:

- make it easier for communities to recover from natural hazards
- clarify the role of the Commission and the cover provided by the legislation
- enhance the durability and flexibility of the legislation.

The bill provides for the continuation of the Commission and the current natural hazards insurance cover provided by the Act, while modernising and clarifying its scope. Parts of the Act would be updated to reflect modern drafting standards for legislation.

The bill would make targeted amendments intended to modernise the insurance scheme and its governing legislative framework. These amendments respond to lessons from the series of earthquakes in Canterbury in 2010 and 2011, and findings from the Public Inquiry into the Earthquake Commission. The amendments would clarify the insurance cover provided by the Commission to reduce legal ambiguity, and modernise the Commission's institutional structure.

The bill would also change the name of the Earthquake Commission to Toka Tū Ake—Natural Hazards Commission.¹ This would reflect the broad range of hazards covered by the bill and dealt with by the Commission.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation’s design to bring to the attention of the House.

Proposed amendments

This commentary discusses the main amendments we recommend to the bill as introduced. Although we are proposing several other changes, they are largely to improve the bill’s readability and are not substantive. We do not discuss minor or technical amendments.

Delaying commencement

As introduced, the bill would come into force on 1 December 2023 (clause 2). Many submitters told us that this would not give insurers enough time to implement operational changes that may be needed to give effect to the bill. We recommend amending clause 2 so that the legislation would come into force on the later of 1 July 2024, or 12 months after it received the Royal assent.

Clause 2 would also allow the bill’s commencement date to be deferred by Order in Council. We recommend removing this provision as we consider it unnecessary. If more time was needed, we believe the commencement date could be deferred by amending the legislation.

Purpose of the bill

Research and education function

Under clause 3(a)(ii), one of the bill’s purposes is to reduce the impact of natural hazards by “contributing to improving community resilience to natural hazards”. Clause 125(2)(c) as introduced would also include a specific objective for the Commission to contribute, through the performance of its functions under section 126(e) and (f), to:

- reducing the impact of natural hazard damage
- improving community resilience to, and recovery from, natural hazards
- reducing the cost of recovery from natural hazards.

¹ Toka Tū Ake means “the foundation from which we stand strong, together”. This reflects the organisation’s role in providing a solid foundation to help New Zealanders stand strong through adversity caused by natural hazards.

Supporting this, under clause 126(e)–(f), the Commission’s functions include facilitating research and education, contributing to sharing information, knowledge, and expertise in relation to a range of matters (for example, damage to residential buildings as a result of natural hazards), and supporting the Minister in performing their functions.

The Commission’s research and education functions were intended to be broad. However, we are concerned that the drafting of clauses 3(a)(ii) and 125(2)(c) may have the effect of narrowing the scope of the Commission’s functions in clause 126(e)–(f). This could constrain the Commission’s ability to exercise these functions, and may mean that the scope of its research and education function is narrower than under the current EQC Act.

We recommend amending clauses 3(a)(ii) and 125(2)(c) to broaden the purpose of the legislation and the objectives of the Commission to better reflect the scope of the research and education function in clause 126(e)–(f).

Arranging reinsurance

Several clauses in the bill refer to the Commission’s function to facilitate the “purchase” of reinsurance or other risk transfer products in respect of the bill’s natural hazard cover (see clauses 3(b)(iii), 125(2)(b), and 126(d)). Clause 126(h) would allow the Minister to add a function for the Commission to facilitate the “purchase” of reinsurance or other risk transfer products in respect of other Crown risks (see also clauses 3(c) and 125(2)(d)).

We note that a range of financial transactions or instruments related to risk transfer products may be required to achieve these functions. We are concerned that the term “purchase” may be too narrow to cover these different products. To allow the Commission operational flexibility to enter into the necessary financial arrangements, we recommend changing the word “purchase” to “arrangement” or “arrange”, as needed, throughout these clauses.

We also recommend amending clauses 3(c), 125(2)(d), and 126(h) to clarify that these provisions pertain to Crown risks beyond those covered in the bill.

Definitions used in the bill

Clause 5 of the bill is the interpretation clause. It contains (or refers to other sections that contain) definitions of key terms used throughout the bill. We recommend amendments to several definitions.

Earthquake

An earthquake is defined as a “sudden, rapid breaking and shifting of rock beneath the earth’s surface that results in ground shaking”. We think this definition is unclear and could lead to arguments over whether an earthquake has occurred. For example, it could be difficult to prove that rocks have shifted under the ground, or that shaking was the result of such action. We recommend making the definition more generalised,

placing greater focus on the ground shaking and the broader natural processes causing the event.

Flood

Clause 5 defines “flood” as “inundation of normally dry land by water due to a storm, a storm surge, a meteotsunami, or the escape or release of water from its normal confines, but not inundation due to a tsunami”. The term “meteotsunami” is uncommon. We recommend deleting it from the definition.

Storm

As introduced, clause 5 defines “storm” as a “violent” disturbance of the earth’s atmosphere. We recommend removing the term “violent” from the definition. For simplicity, we also redraft this definition to use common terms (for example, changing “high winds” to “strong winds”).

Dwelling

Clause 6 specifies what would be considered a dwelling under the bill. In the EQC Act, a dwelling can comprise more than 1 building. However, this is not made clear in the bill as introduced. We recommend maintaining the current position of the EQC Act, inserting this in the bill accordingly.

Clause 6 is also unclear as to whether holiday homes that are also used for short-term letting (such as Airbnb-style accommodation) would be covered by the bill’s definition of “dwelling”. We recommend making it clear that, if a building is “used by 1 or more persons as their holiday home”, or as their home, then it is not excluded as a dwelling just because it is also used to provide temporary accommodation.

On the other hand, we recommend specifying that large-scale accommodation such as university hostels or boarding schools would not be considered a “dwelling”.

We recommend adding clause 6(4) to make it clear that buildings would continue to receive cover in some situations where they temporarily ceased to meet the definition of “dwelling”. This includes where a building was under renovation. For situations where the repairs or renovations were so extensive that the building is practically being replaced, we considered whether some form of “bright-line test”² would be appropriate. Ultimately, we concluded that any proposed line would be imprecise and potentially confusing. Under new clause 6(4), the question would be whether, once the work was completed, the building was the same building as the one that was previously the dwelling.

² “Bright-line test” is defined as a standard or rule that avoids ambiguity by using objective points to test against.

Gradual erosion should not be considered a natural hazard

Clause 23(2) sets out that erosion resulting from the normal action of wind or water would not be considered a natural hazard under the bill as introduced. Insurable events are typically sudden and unforeseen. The kind of erosion set out in clause 23(2) is gradual in nature. Given that private insurers commonly exclude gradual damage from their policies, covering erosion in the bill could have significant implications for the alignment with private policies, and potentially for reinsurance. We recommend amending clause 23(2) to make it clear that erosion that causes gradual damage is excluded from being a natural hazard. However, sudden and significant change, even if caused by erosion, is not excluded.

Imminent damage

As introduced, clause 24(1)(b)(i) sets out that “natural hazard damage means physical loss or damage to a residential building or land that, in the opinion of the Commission, is imminent as a direct result of a natural hazard that has occurred”. We consider it important to define what is meant by “imminent damage”. We recommend amending clause 24(3) to state that “imminent damage” is damage that is more likely than not to occur within the next 12 months.

In addition, we recommend inserting clauses 33A and 45A. These would set out how to determine replacement and reinstatement costs for damaged buildings and land that are subject to imminent damage.

Some residential property would be excluded

Some forms of residential property would not be covered by the bill, and therefore would not receive natural hazard insurance.

Schedule 2 sets out what property is excluded from the bill. We recommend amending Schedule 2, clause 1 to specify that property would only be covered by natural hazard insurance when it is located at the insured address.

We recommend amending Schedule 2 to specifically exclude clothes lines, animal housing, and outdoor cooking facilities (such as pizza ovens) from property covered by the bill. We do not consider these structures to be fundamental parts of a residential building and believe that covering their replacement would go beyond the bill’s intent to provide a “first loss” insurance scheme.

We also believe the wording about swimming pools in Schedule 2 should be amended to align with the equivalent provision in the EQC Act.

Finally, we recommend amending the reference to tanks (such as water and septic tanks) in the list of excluded property in clause 2(2) of Schedule 2. Tanks could therefore be covered, so long as they are primarily being used for household purposes by the building owners or occupants.

Amending coverage of replacement costs

Clause 32 deals with replacement costs for damaged residential buildings. We are concerned that the bill as introduced could provide narrower coverage than under the EQC Act. This was not the intent. We recommend amending clause 32 to be consistent with the coverage in the EQC Act. We also consider that the provision should be amended to make it clearer that the Commission would only bear the cost of replacing or reinstating the damaged parts of a building—not the entire building.

We also recommend inserting clauses 32(4A), 40(6A), and 44(3) to make it clear that the replacement cost does not include contingencies. If additional costs were incurred, the Commission could reconsider its decision in light of new information, and could pay the extra costs under clause 55(4).

Cancellation of cover

The bill as introduced contains grounds for why an insured person's cover might be cancelled (clause 47). They include situations where an insured person received a settlement, but did not undertake repairs in a reasonable amount of time, or where the damaged property had not been replaced or reinstated "to the Commission's satisfaction". We think this should be an objective test. We recommend amending clause 47 to provide that an insured person's cover may be cancelled where there are reasonable steps that the insured person could take to replace or reinstate the damaged property, and sufficient time had passed to give them a reasonable opportunity to take those steps, but no steps have been taken.

Natural hazard land cover

Diminution of value payments

Payments to recognise diminution in a property's value as a result of natural hazard damage could be used as a settlement method under the bill. This would apply when the Commission judged repair to be unfeasible, unable to be undertaken lawfully, or disproportionately expensive to the diminution of value.

We consider that, if a claimant has received this kind of payment, the Commission should be unable to penalise the claimant for not taking steps to mitigate the risk of potential damage from a future hazard. Placing this kind of expectation on claimants would be inconsistent with the rationale for using this settlement method. We recommend amendments to clause 70 to achieve this.

We have also redrafted clause 41(2)(d) to make it simpler to understand.

Undepreciated value for structures

Clause 44 sets out what the undepreciated value of retaining walls, bridges, or culverts would be under the bill. That is, it would be the total cost of building a new structure, largely the same as the damaged one when it was new. Some submitters found the term "undepreciated value" novel and confusing. They suggested that other terms such as "reinstatement cost" or "present-day valuation" would be more suitable.

We are not recommending any changes to this terminology, but believe it is important to explain our position. Although the term “undepreciated value” is novel, it remains an appropriate term. Under existing law, insurers calculate an asset’s “indemnity value”. The undepreciated value follows the same calculation except it does not depreciate that value. Using the undepreciated value is therefore a benefit for insured persons. It is also a process that courts are familiar with applying.

Other methods for calculating asset values could result in excessive repair obligations. We consider that the “undepreciated value” calculation improves cover for these structures, while balancing these risks.

Claims management issues

Demonstrating direct damage and the damage period

In clause 51, the bill would provide cover for damage that occurs after an initial hazard event, within a specified “damage period”. “Further damage” outside this “damage period” would be covered as a new claim and new “damage period”. For clarity, we consider that this clause should better align with guidance in the EQC Claims Manual. We also recommend removing clause 51(6) and example 3 as we consider them unnecessary and believe they create uncertainty.

Enabling the Commission to recover money paid in error

Clause 55(4) would allow the Commission to reconsider any of its decisions and, if appropriate, change its decision in light of new information. We consider that the Commission should also be able to recover money it has paid in error, or recover money after new information arises.

We recommend amending clause 55 to this effect. We also propose inserting new clause 82A to detail a process for recovering overpayments that ensures that insured persons’ rights are protected.

Claims should be settled as soon as practicable

As introduced, clause 58(4) states that, if the Commission makes a settlement payment under clause 59(1)(a), it must “make the payment not more than 1 year after it decides on the amount to be paid”. We consider that the 1 year time frame could result in situations where homeowners are left “out of pocket”. We recommend amending clause 58(4) to require the Commission to settle claims as soon as practicable, rather than within 1 year.

Declining a claim where a person experiences no financial loss

The bill includes grounds to decline a claim under circumstances set out in clauses 65 to 74. In particular, clause 66 asserts the Commission’s ability to decline a claim where there is no financial loss to a person. We consider that, as introduced, clause 66 may be broader than necessary. We recommend inserting clause 66(a) and (b), along with two further examples, to narrow the application of this clause. These examples

would clarify the types of consideration that the Commission would take into account when applying this provision.

Salvaging land

Carried over from the EQC Act, the Commission would have a right to salvage land under the bill. Clause 81(1) of the bill as introduced states that the Commission may salvage land only if the claim against land cover is settled for an amount equal to, or greater than, the market value of the land that a residential building sits on. We note that some submitters were concerned about the timing of market valuation. We therefore propose amending clause 81(1) to refer to the “prior market value” of the land, as defined in section 43 of the bill.

We also recommend inserting clause 81(2A) to require the Commission to consult with the claimant before their land is obtained for salvage. This would serve to mitigate concerns about unreasonable decision-making on the salvaging of land.

Resolution of disputes about claims

The bill contains provisions relating to a proposed Code of Insured Persons’ Rights, and processes for dealing with complaints such as the dispute resolution scheme (Part 3, subparts 4 to 7).

Clause 90 details the steps that an independent reviewer would need to take when assessing an application for review of a decision made by the Commission under its complaints procedure for breaches of the Code. In the bill as introduced, clause 90(2) would allow a reviewer to reject an application without considering it, if allowed for by regulations. To provide certainty about the grounds for a reviewer rejecting an application without consideration, we recommend that the grounds be included in the primary legislation. Our proposed amendments to clause 90(2) would allow a reviewer to reject an application if:

- they were satisfied that it was frivolous or vexatious
- a reviewer had previously assessed and rejected an application relating to the same decision and the application did not meet criteria for review in clause 90(1)(a)
- a review of the decision to which the application relates has previously been carried out.

We also recommend amending the definition of “referable decision” in clause 100(6). This provision states what types of decisions are eligible to be referred to the dispute resolution scheme. As introduced, a decision made by the Commission under clause 58, to settle a valid claim using any of the methods in clause 59 (including by cash settlement, reinstatement, or replacement), would be referable. In our view, the settlement method is at the insurer’s discretion. Disputes of that nature would be more appropriate for judicial review, if needed, rather than dispute resolution. However, clause 100(6) should still allow the settlement amount to be referred to dispute resolution. We propose amendments to that effect.

Financial accountability matters

Natural Hazard Fund

The Natural Disaster Fund (the Fund) from the EQC Act would be continued, under clause 104 of the bill, but renamed the “Natural Hazard Fund”. The purpose of the Fund is to “provide for payment of claim settlement costs” and certain of the Commission’s costs. It would primarily be funded through levies, investment earnings, and payments made by the Minister.

Clause 108 would require the Minister to pay additional money into the Fund if the assets of the Fund were not sufficient to pay amounts payable out of the Fund. We recommend amending this clause to clarify when the Minister must make payments into the Fund, and to allow more flexibility for the Minister as to the value and timing of those payments.

Considering future withdrawals before investing the Fund

The Commission is responsible for investing the Fund, as stated in clause 111. We recommend inserting clause 111(1A) to require the Commission to invest the Fund having regard to the amounts required to be paid out of the Fund.

Removing the Commission’s ability to impose a one-off charge

Under clause 121, the Commission would be allowed to impose a one-off charge to enable cover to be continued after a claim is settled. We recommend deleting clause 121 from the bill, so that only one insurance premium would be charged per policy duration, regardless of whether a claim had been made.

Using an Order in Council to amend financial settings

Clause 132 states that an Order in Council could amend the monetary amounts specified for the building cover excess, building cover caps, land cover excess, and caps for retaining walls, bridges, or culverts. This is so that the amounts set can be kept up to date. We recommend retaining the ability for these financial settings to be changed by Order in Council, as this makes the legislation flexible. We recommend ensuring that monetary amounts for the building cover caps, and caps for retaining walls and bridges or culverts, cannot be reduced below the amounts specified in the bill. We recommend inserting clause 132(1A) to this effect.

Adding considerations to the Minister’s review

Under clause 137, the Minister may have regard to several matters when carrying out a review of financial or levy settings. We recommend amendments to add the following considerations:

- potential impacts that any change to these settings may have on levy payers and other stakeholders
- any amounts forecast to be paid from the fund under clause 107(1).

Procedural safeguards for provisions relating to powers of entry and information-gathering

We recommend making a series of amendments to clause 144, and inserting clauses 144A and B. Clause 144 would allow an authorised person to enter any land, building, or place for the purpose of obtaining information that the Commission reasonably needs to fulfil its functions. This power is carried over from section 32 of the EQC Act.

However, we are concerned that the power in the bill as introduced is too broad. Our recommended amendments would place appropriate procedural safeguards on this power, and balance the Commission's powers with the right to privacy under the New Zealand Bill of Rights Act 1990.

We also recommend inserting other amendments relating to appropriate information-sharing rules and record-keeping. These are reflected in clauses 140 (which we recommend deleting), 147, 148, and 150.

Goods and services tax

We make several changes throughout the bill to specify which figures in the bill are inclusive of goods and services tax (GST), and which are exclusive.

New Zealand National Party differing view

National supports the Natural Hazards bill. However, we are concerned that clause 2, as drafted, may not give the insurance industry sufficient time to implement operational changes, as outlined in submissions. It is the view of the National Party that the bill should come into force 18 months after receiving Royal assent, rather than 12 months.

Appendix

Committee process

The Natural Hazards Insurance Bill was referred to the committee on 30 March 2022.

We called for submissions on the bill with a closing date of 13 May 2022. We received and considered 26 submissions from interested groups and individuals. We heard oral evidence from 12 submitters at hearings in Christchurch and Wellington, and via videoconference.

We received advice on the bill from Te Tai Ōhanga—The Treasury, and our Independent Specialist Adviser, Peter Woods. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clauses 2, 132, and 155.

Committee membership

Barbara Edmonds (Chairperson)

Andrew Bayly

Glen Bennett

Shanan Halbert

Ingrid Leary

Anna Lorck

Damien Smith

Chlöe Swarbrick

Simon Watts

Helen White

Nicola Willis

Dr James McDowall, Greg O'Connor, Hon Eugenie Sage, Stuart Smith, and Dr Duncan Webb also participated in our consideration.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text inserted unanimously

~~text deleted by a majority~~

~~text deleted unanimously~~

Hon Dr David Clark

Natural Hazards Insurance Bill

Government Bill

Contents

		Page
1	Title	7
2	Commencement	7
	Part 1	
	Preliminary provisions	
3	Purposes of Act	7
4	Purposes of natural hazard cover	8
5	Interpretation	8
	<i>Dwelling, residential building, residential land, and related terms</i>	
6	Dwelling	12
<u>6</u>	<u>Dwelling</u>	<u>13</u>
7	Eligible building	15
8	Mixed-use building	16
9	Residential building	17
10	Number of dwellings	17
11	Appurtenant structure	17
<u>11</u>	<u>Appurtenant structure</u>	<u>18</u>
12	Service infrastructure	18
13	Common property	19
<u>13</u>	<u>Common property</u>	<u>21</u>
14	Joint property	22
<u>14</u>	<u>Joint property</u>	<u>23</u>
15	Shared property	25
16	Insured person's land	25
17	Residential land	26
18	Retaining walls and bridges or culverts	26

Natural Hazards Insurance Bill

18	<u>Retaining walls and bridges or culverts</u>	27
19	Common land, joint land, and shared land	27
20	Common ownership interest, joint ownership interest, and shared ownership interest	29
	<i>Fire insurance contract, fire insurer, and insured person</i>	
21	Fire insurance contract and fire insurer	31
22	Insured person	31
	<i>Natural hazards and natural hazard damage</i>	
23	Natural hazard	32
24	Natural hazard damage	32
24	<u>Natural hazard damage</u>	33
	<i>Other preliminary provisions</i>	
25	Transitional, savings, and related provisions	34
26	Act binds the Crown	34
27	Property outside New Zealand not covered	35
	Part 2	
	Natural hazard cover	
	Subpart 1—Insurance against natural hazard damage	
28	Natural hazard cover insures against natural hazard damage	35
29	When natural hazard cover commences and ceases	35
	Subpart 2—Building cover	
30	Building cover insures residential building on replacement cost basis	36
31	Building claim entitlement	36
32	Replacement cost	37
33	Proportionate costs for shared, common, or joint property	38
33A	<u>Replacement cost for imminent damage</u>	38
34	Building cover cap: specified replacement sum insured	39
35	Building cover cap: specified amount for natural hazard cover	40
36	Building cover cap: no specified amount	41
	Subpart 3—Land cover	
37	Land cover insures residential land on indemnity basis	41
38	Land claim entitlement	41
39	Actual loss suffered	42
40	Reinstatement cost	42
41	Diminution of value	44
42	Maximum land cover amount <u>Land cover cap</u>	45
43	Assessed market value	45
44	Undepreciated value of retaining walls, bridges, or culverts	46
45	Proportionate costs, values, and amounts for shared, common, or joint land	47

Natural Hazards Insurance Bill

45A	<u>Reinstatement cost for imminent damage</u>	47
	Subpart 4—Other provisions relating to natural hazard cover	
46	Optional insurance for property without natural hazard cover	48
47	Cancellation of cover	49
48	Limitation of liability for preventable repeat damage	50
49	Cancellation or limitation of liability to be recorded on land title	51
	Part 3	
	Claims	
	Subpart 1—Making claims	
50	Insured person may make claim	51
51	Claim covers all damage that occurs during damage period	52
52	Time for making claim	53
53	Providing further information	54
54	Updating information	54
	Subpart 2—Commission must assess, decide, and settle claims	
55	Commission must assess, decide, and settle claim	55
56	Commission may request further information	56
57	Commission must decide validity of claim	57
58	Commission must decide on settlement and settle claim	58
59	Methods available to settle claim	58
60	Date for determining amounts	59
61	Settlement payments if 2 or more persons entitled to payment	60
61	<u>Settlement payments if insured person is 2 or more persons</u>	60
61A	<u>Settlement payments if 2 or more persons entitled to payment</u>	61
62	Relocating residential building	61
63	Insured person must pay excess if non-monetary settlement	62
	<i>Declining claims</i>	
64	When Commission may decline claim	63
65	Claim may be declined if delay is prejudicial	63
66	Claim may be declined if no financial loss	63
67	Claim may be declined if condition not complied with	63
68	Claim may be declined if misleading information given to Commission or insurer	64
69	Claim may be declined for fraud	64
70	Claim may be declined for failure to protect property	64
71	Claim may be declined if damage due to intentional act, omission, or negligence	65
72	Claim may be declined if damage due to unlawful conduct	65
73	Claim may be declined if damage due to substandard construction	65
74	Claim may be declined if natural hazard notification on land title	65

Natural Hazards Insurance Bill

	Subpart 3—Other provisions relating to claims	
75	Assignment of benefit of claim	66
76	Insurance conditions in mortgage, etc, apply to natural hazard cover	66
77	Subrogation of rights	66
78	Ex gratia payments <u>if honest but mistaken belief that property has natural hazard cover</u>	67
79	Right to salvage	67
80	Salvage of property other than land	67
81	Salvage by acquisition of title to land	68
82	Dealing with salvaged property	68
<u>82A</u>	<u>Recovery of overpayments</u>	<u>68</u>
83	Claim entitlements reduced if other catastrophe insurance applies	69
	Subpart 4—Code of Insured Persons' Rights	
84	Purpose of Code of Insured Persons' Rights	69
85	Minister to make Code	70
86	Commission's obligations in relation to Code	70
	Subpart 5—Complaint management procedure	
87	Commission must have complaint management procedure	71
	Subpart 6—Review of complaint procedure decisions about breaches of Code	
88	Commission must have procedure for review of complaint procedure decisions about breaches of Code	71
89	Application for review of decision	72
90	Reviewer must assess application	72
91	Review of decision	73
92	Report of reviewer	73
93	Other proceedings	74
94	Commission must engage reviewers	74
95	Functions, powers, and duties <u>Powers and duties of reviewers</u>	74
96	Regulations as to fees and costs	75
	Subpart 7—Resolution of disputes about claims	
97	Commission must participate in dispute resolution scheme	75
98	Approval of dispute resolution scheme	75
99	Rules for scheme established by Commission	76
100	Referral of dispute and participation in resolution	76
101	Other proceedings	77
102	Enforcement of dispute resolution scheme	77
103	Appeals	78

Part 4

Natural Hazard Fund and levy

Subpart 1—Natural Hazard Fund

104	Natural Hazard Fund	78
105	Fund owned and managed on behalf of Crown	78
106	Amounts to be paid into Fund	79
107	Amounts to be paid out of Fund	79
108	Minister must make payments into Fund	80
109	Minister may make additional payments into Fund	80
110	Repayment of amounts paid by Minister	80
111	Investment of Fund	81

Subpart 2—Levy

112	Levy payable for natural hazard cover	82
113	Payment of levy	82
114	Insured person must pay amount of levy to fire insurer	82
115	Waiver or refund of levy if amount not recoverable from insured person	83
116	Unpaid or overpaid levy	83
117	Liability for levy if overseas insurer	83
118	Confidentiality of levy information	84
119	Levy amount to be stated separately	84
120	Brokerage not to be charged	84
121	Charge for continuation of natural hazard cover after claim	85

Part 5

Administration and enforcement

Subpart 1—Toka Tū Ake – Natural Hazards Commission

122	Toka Tū Ake – Natural Hazards Commission	85
123	Commission is Crown entity	85
124	Membership of Commission's board	85
125	Objectives of Commission	85
126	Functions of Commission	86
127	Delegation of claims management functions and powers	87
128	Directions by Minister	87

Subpart 2—Financial and accountability matters

129	Service agreement	88
130	Financial statements	89
131	Financial settings and levy settings	89
132	Orders in Council to amend financial settings	89
133	Funding and risk management statement	89
134	Making funding and risk management statement	90
135	Content of funding and risk management statement	90
136	Review of financial settings and levy settings	91

Natural Hazards Insurance Bill

137	Matters Minister may have regard to	91
	Subpart 3—Information and disclosure	
	<i>Collection and disclosure of information by Commission</i>	
138	Purposes for which Commission may collect information	92
139	Disclosure of information if serious threat to life, health, or safety	93
140	Disclosure to persons with proper interest	93
	<i>Information-gathering powers</i>	
141	Authorising persons to exercise information-gathering powers	93
142	Power to require information	93
143	Failure to comply	94
144	Power of entry	95
144A	<u>Power to enter home or marae</u>	96
144B	<u>Report on exercise of powers by authorised person required</u>	97
145	Power to enter if investigating offence	97
146	Obstructing authorised persons	98
147	Restrictions on recording or disclosing information	98
	<i>Fire insurers' information obligations</i>	
148	Record keeping	98
149	Auditing and reporting to Commission	99
	<i>Offences about information generally</i>	
150	Misleading information	100
151	Misleading information or damaging required records	100
	<i>Attribution of liability</i>	
152	Meaning of senior manager and worker	100
153	Attribution of offence committed by senior manager or worker	101
154	Attribution of state of mind of senior managers and workers	101
	Part 6	
	Miscellaneous provisions	
155	Regulations	101
156	Orders in Council to amend Schedule 2 Schedule 2	102
157	Commission may approve forms	102
158	Repeal and revocation	102
159	Consequential amendments	102
	Schedule 1	103
	Transitional, savings, and related provisions	
	Schedule 2	108
	Excluded property	
	Schedule 3	111
	Consequential amendments to other Acts	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Natural Hazards Insurance Act **2022**.

2 Commencement

- (1) This Act commences on the later of— 5
- (a) 1 July 2024 ~~December 2023~~; and
- (b) 12 months after Royal assent.
- ~~(2) However, the Governor General may, by Order in Council, defer commencement to a later date specified in the order.~~
- ~~(3) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~ 10

Part 1

Preliminary provisions

3 Purposes of Act

- The purposes of this Act are— 15
- (a) to reduce the impact of natural hazards on people, property, and the community by—
- (i) providing for first loss insurance for residential buildings and residential land against damage that is ~~the~~ a direct result of natural hazards for the purposes set out in **section 4**; and 20
- (ii) contributing to improving ~~community resilience awareness and understanding of matters relating to~~ natural hazards; and
- ~~(iia) contributing to improved natural hazard risk management; and~~
- ~~(iib) contributing to improved readiness for, resilience to, and recovery from natural hazards; and~~ 25
- (iii) encouraging the availability and uptake of catastrophe insurance for residential buildings; and
- (b) to contribute to the management of the financial risk to the Crown of providing natural hazard cover by—
- (i) continuing the Fund and providing for its management; and 30
- (ii) imposing a levy to contribute to the cost of providing natural hazard cover; and
- (iii) providing for the ~~purchase of~~ arranging reinsurance and other risk transfer products in respect of natural hazard cover; and

- (c) to enable the Commission to facilitate the purchase by the Crown of arranging reinsurance or other risk transfer products in respect of ~~other~~ Crown risks beyond those covered in this Act.

4 Purposes of natural hazard cover

- (1) The primary purpose of natural hazard cover is to contribute to the replacement or reinstatement of dwellings that suffer natural hazard damage. 5
- (2) Natural hazard cover extends beyond a dwelling to certain other parts of the building where the dwelling is located, other structures, and infrastructure (*see section 30* and the definitions in **sections 6 to 15**).
- (3) ~~Natural hazard cover extends to residential land that supports and maintains the integrity and usability of the residential building and access to it also extends to the land on which the building is situated and certain surrounding land~~ (*see section 37* and the definitions in **sections 16 to 19**). 10
- (4) Natural hazard cover provides cover for—
- (a) damage to residential buildings that is a direct result of an earthquake, hydrothermal activity, a landslide, a tsunami, or volcanic activity; or a ~~fire caused by another natural hazard that is a consequence of any of those hazards~~; and 15
- (b) damage to residential land that is a direct result of any of those hazards or a storm or a flood, or a fire that is a consequence of a storm or flood. 20

5 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- appurtenant structure**, in relation to a dwelling, has the meaning set out in **section 11** (in relation to common property and joint property, *see sections 13 and 14*) 25
- arrange**, in relation to reinsurance and other risk transfer products, includes to purchase those products
- assessed market value**, in relation to residential land, means the assessed market value determined under **sections 43 and 45**
- authorised person** means a person authorised under **section 141** to exercise any of the powers under **section 142, 144, 144A, or 145** 30
- bridge or culvert** has the meaning set out in **section 18**
- building claim entitlement** has the meaning set out in **section 31**
- building cover** means the component of natural hazard cover provided for by **subpart 2 of Part 2** 35
- capital expenditure** has the same meaning as in section 2(1) of the Public Finance Act 1989
- claim** means a claim made under **section 50**

claim handling costs means expenses and capital expenditure incurred by the Commission in administering a claim (such as those incurred in valuing property or establishing a reinstatement methodology, and legal expenses)

claim settlement costs means expenses and capital expenditure incurred by the Commission in settling a claim by using ~~the method~~ any of the methods set out in **section 59** or by making an ex gratia payment under **section 78** 5

Code means the Code of Insured Persons' Rights made under **section 85**

Commission means Toka Tū Ake – Natural Hazards Commission continued by **section 122**

Commission's website means an Internet site maintained by or on behalf of the Commission 10

common land, in relation to a residential building where the eligible building is a mixed-use building, has the meaning set out in **section 19**

common ownership interest has the meaning set out in **section 20**

common property, in relation to a residential building where the eligible building is a mixed-use building, has the meaning set out in **section 13** 15

complaint procedure means the internal complaint management procedure required by **section 87**

diminution of value, in relation to residential land, means the diminution of value determined under **sections 41 and 45** 20

dispute scheme means the dispute resolution scheme of which the Commission is a member or that is established and operated by the Commission in accordance with **section 97**

dwelling has the meaning set out in **section 6**

~~**earthquake** means a sudden, rapid breaking and shifting of rock beneath the earth's surface that results in ground shaking~~ 25

earthquake means ground shaking caused by seismic waves generated from tectonic processes or volcanic processes

eligible building has the meaning set out in **section 7**

excluded property means property of a kind described in **Schedule 2** as excluded property 30

expenses has the same meaning as in section 2(1) of the Public Finance Act 1989

financial settings has the meaning set out in **section 131**

fire insurance contract has the meaning set out in **section 21** 35

fire insurer has the meaning set out in **section 21**

flood means inundation of normally dry land by water due to a storm, a storm surge, ~~a meteotsunami~~, or the escape or release of water from its normal confines, but not inundation due to a tsunami

floor area means the internal floor area in square metres measured in accordance with the methodology (if any) set out in the regulations

Fund means the Natural Hazard Fund continued by **section 104**

funding and risk management statement means a statement made by the Minister under **section 133**

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GST means goods and services tax payable under the Goods and Services Tax Act 1985

hydrothermal activity means the release of energy, gas, or other matter due to sub-surface or surface processes involving the convection and movement of hot waters driven by magmatic or tectonic processes resulting in surface phenomena (including, for example, hydrothermal steam explosions)

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imminent damage has the meaning set out in **section 24(3)**

insured person has the meaning set out in **section 22**

insured person's land has the meaning set out in **section 16**

joint land, in relation to a residential building where the eligible building is a mixed-use building, has the meaning set out in **section 19**

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joint ownership interest has the meaning set out in **section 20**

joint property, in relation to a residential building where the eligible building is a mixed-use building, has the meaning set out in **section 14**

land does not include improvements

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land claim entitlement has the meaning set out in **section 38**

land cover means the component of natural hazard cover provided for by **sub-part 3 of Part 2**

landslide means movement (by way of 1 or more of falling, sliding, or flowing) of ground-forming materials (being 1 or more of natural rock, soil, or artificial fill) that, before they moved, formed an integral part of the ground, but not movement of the ground due to below-ground subsidence, soil expansion, soil shrinkage, or soil compaction (*but see section 23(2)*)

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levy means the levy imposed by **section 112**

levy settings has the meaning set out in **section 131**

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Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

mixed-use building has the meaning set out in **section 8**

natural hazard has the meaning set out in **section 23**

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natural hazard cover means the insurance against natural hazard damage provided for by **Part 2**

natural hazard damage has the meaning set out in **section 24**

- natural hazard fire** means fire occasioned by, through, or in consequence of any other natural hazard
- referable decision** has the meaning set out in **section 100**
- regulations** means regulations made under **section 155**
- reinstatement cost**, in relation to residential land, means the reinstatement cost determined under **sections 40 and 45** 5
- replacement cost**, in relation to a residential building, means the replacement cost determined under **sections 32 and 33**
- residential building** has the meaning set out in **section 9**
- residential land** has the meaning set out in **section 17** 10
- residential percentage**, in relation to a mixed-use building, has the meaning set out in **section 8**
- retaining wall** has the meaning set out in **section 18**
- review procedure** means the procedure required by **section 88** for reviewing decisions made under the complaint procedure in relation to breaches of the Code 15
- reviewer** means a person engaged under **section 94**
- service infrastructure**, in relation to a dwelling, has the meaning set out in **section 12** (in relation to common property or joint property, *see section 13 or 14*) 20
- shared land** has the meaning set out in **section 19**
- shared ownership interest** has the meaning set out in **section 20**
- shared property** has the meaning set out in **section 15**
- ~~**storm** means a violent disturbance of the earth's atmosphere that includes 1 or more of high winds, heavy falls of precipitation, thunder, and lightning (such as a tornado)~~ 25
- storm** means a disturbance of the earth's atmosphere that includes 1 or more of strong winds, heavy precipitation, and lightning (including, for example, a gale, hailstorm, snowstorm, or tornado)
- tsunami** means a wave, or series of waves, generated when a large volume of water in the sea or a lake is rapidly displaced by an earthquake, landslide, meteorite, or volcanic activity 30
- undepreciated value**, in relation to a retaining wall or bridge or culvert, means undepreciated value determined under **sections 44 and 45**
- volcanic activity** means the release of energy, gas, water, rock, magma, or other matter due to sub-surface volcanic processes resulting in surface phenomena (including, for example, volcanic explosions, lava flows, or lahars), but not ground shaking that constitutes an earthquake. 35

- (2) In this Act, a reference to a distance in metres means that distance measured in a horizontal line.

Dwelling, residential building, residential land, and related terms

6 Dwelling

What is a dwelling

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- (1) A building, or part of a building, is a **dwelling** if—
- (a) it is self-contained with the facilities necessary for day-to-day living on an indefinite basis (including somewhere to cook, sleep, live, wash, and use a toilet); and
 - (b) 1 or more of the following apply to it:
 - (i) it is used by 1 or more persons to live in as their home;
 - (ii) it is used by 1 or more persons as their holiday home;
 - (iii) it is capable of being, and is intended by its owner to be, used for a purpose set out in **subparagraph (i) or (ii)**.

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- (2) A building, or part of a building, is also a **dwelling** if it is used to provide long-term accommodation for the elderly.

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What is not a dwelling

- (3) However, property that would otherwise be part of a dwelling is not part of the dwelling if it is excluded property.
- (4) To avoid doubt, a building, or part of a building, is not a dwelling if—
- (a) it is used to provide temporary or transient accommodation, being accommodation that is ordinarily provided for periods of less than 28 days at a time (such as a hotel or motel); or
 - (b) it provides accommodation for persons who are not living there voluntarily (such as a prison); or
 - (c) it is used primarily for a purpose other than providing accommodation on an indefinite basis (such as a hospital or an emergency care facility).

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Dwelling that is not in building

- (5) A vehicle (including a motor vehicle, trailer, boat, or aircraft) or structure (or part of a vehicle or structure) that is not ordinarily considered to be a building is a **dwelling** if—
- (a) it is immovable; and
 - (b) it meets the criteria in **subsection (1)(a) and (b)**.

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Example

A caravan that is permanently fixed to piles and is connected to power, water, and sewerage services, and that is being used on an indefinite basis as a person's home, may be a dwelling.

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Regulations to clarify uncertainty

- (6) ~~However, if the regulations state that buildings, vehicles, or structures (or parts of them) of a particular class are or are not dwellings, a building, vehicle or structure in that class is, or is not, a dwelling (as the case may be).~~
- (7) ~~The Minister must not recommend the making of those regulations unless satisfied that doubt has arisen about whether that class of buildings, vehicles, or structures are dwellings and that it is desirable for regulations to clarify the matter.~~ 5

6 Dwelling

- (1) A building, or part of a building, is a **dwelling** if— 10
- (a) it is self-contained with the facilities necessary for day-to-day living on an indefinite basis (including somewhere to cook, sleep, live, wash, and use a toilet); and
- (b) 1 or more of the following apply to it:
- (i) it is used by 1 or more persons to live in as their home: 15
- (ii) it is used by 1 or more persons as their holiday home:
- (iii) it is capable of being, and is intended by its owner to be, used for a purpose set out in **subparagraph (i) or (ii)**.
- (2) A building, or part of a building, is also a **dwelling** if it is used to provide long-term accommodation for the elderly. 20
- (3) A building, or part of a building, that meets the criteria in **subsection (1) or (2)** is a dwelling even if it is used some of the time to provide temporary or transient accommodation.

Temporarily ceasing to meet criteria

- (4) A building, or part of a building, that met the criteria in **subsection (1) or (2)** but temporarily ceases to do so, remains a dwelling if— 25
- (a) the cessation is because of—
- (i) building work (as defined in section 7 of the Building Act 2004) being carried out in connection with the dwelling; or
- (ii) damage to the building or part of the building (whether as a result of a natural hazard or a sudden and unexpected event that is not a natural hazard); and 30
- (b) the owner intends that the building, or part of the building,—
- (i) will again meet those criteria; and

- (ii) will not be used for any other purpose before then.

Examples

Example 1

If a person is renovating their house and the work involves stripping out the kitchen and bathroom and replacing them, the house would probably not meet the criteria in **subsection (1)(a)** while that work was being done. However, it would still qualify as a dwelling under **subsection (4)**.

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Example 2

If a person knocks down their house to build a new one, **subsection (4)** would not apply to the new house while it is under construction because it is not the same building as the one that previously met the criteria in **subsection (1)**.

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Some facilities in separate building

- (5) A building, or part of a building, may meet the criteria in **subsection (1)(a)** even if some of the facilities referred to in that paragraph are in an appurtenant structure, provided that they are for the exclusive use of the owners or other occupants of the dwelling.

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Example

A holiday home whose toilet is in an outhouse may be a dwelling. A holiday home that is a cabin in a campground, where the occupants rely on a toilet in a shared ablution block, would not be a dwelling.

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Dwelling that is not a building

- (6) If a vehicle (including a motor vehicle, trailer, boat, or aircraft) or structure (or part of a vehicle or structure) that is not ordinarily considered to be a building is immovable,—
- (a) it is taken to be a building (or part of a building); and
- (b) is a **dwelling** if it meets the criteria in **subsection (1)**.

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Example

A caravan that is permanently fixed to piles and is connected to power, water, and sewerage services, and that is being used on an indefinite basis as a person's home, may be a dwelling.

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Large-scale accommodation

- (7) A building, or part of a building, is not a dwelling under **subsection (1)** (even if it meets the criteria in that subsection) if—
- (a) it is used to provide accommodation on a scale larger than is typical for use as the home of a single household; and

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- (b) it is not intended by the owner to be used as the home of a single household.

Examples

Example 1

A university or boarding school hostel that accommodates 100 people in dormitories with communal living and dining areas is on a scale larger than a typical family home, so is unlikely to be a dwelling.

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Example 2

A large family home that is the home for a single household would be a dwelling even if it has extensive facilities for visitors.

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Example 3

A house where occupants rent an individual room and share communal facilities is also likely to be a dwelling because it is on the scale of a single household home even though it is not currently being used as such.

Excluded property

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- (8) Property that would otherwise be part of a dwelling is not part of a dwelling if it is excluded property.

Clarifying uncertainty

- (9) However, if the regulations state that buildings, vehicles, or structures (or parts of them) of a particular class are or are not dwellings, a building, vehicle, or structure in that class is, or is not, a dwelling (as the case may be).

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- (10) The Minister must not recommend the making of those regulations unless satisfied that doubt has arisen about whether that class of buildings, vehicles, or structures are dwellings and that it is desirable for regulations to clarify the matter.

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- (11) To avoid doubt, a building, or part of a building, is not a home or holiday home (and is therefore not a dwelling) if—

- (a) it is used to provide temporary or transient accommodation, being accommodation that is ordinarily provided for periods of less than 28 days at a time (such as a hotel or motel); or
- (b) it provides accommodation for persons who are not living there voluntarily (such as a prison); or
- (c) it is used primarily for a purpose other than accommodation (such as a hospital or an emergency care facility).

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7 Eligible building

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- (1) If a building contains 1 or more dwellings and the whole building is insured under a single fire insurance contract, the building is an **eligible building**.
- (2) If—
- (a) a building contains 1 or more dwellings; and

(b)	part of the building, including at least 1 dwelling, is insured under a single fire insurance contract,—	
	that part of the building is an eligible building .	
(3)	If a vehicle or structure (or part of it) is a dwelling under section 6(5), this section applies as if the vehicle or structure were a building.	5
	Examples	
	<i>Example 1</i>	
	4.—If a building consists of 4 town houses, 3 of which 3 are insured under separate fire insurance contracts and the fourth is not insured, each of the 3 insured town houses is a separate eligible building but the fourth is not an eligible building.	10
	<i>Example 2</i>	
	2.—If the whole of a building consisting of apartments and shops is insured under a single fire insurance contract, the whole building is an eligible building. Depending on how much of the building is taken up by the apartments, the eligible building may also be a mixed-use building (see section 8).	15
8	Mixed-use building	
(1)	An eligible building is a mixed-use building if its residential percentage is less than 50%.	
(2)	An eligible building's residential percentage is calculated as follows:	
	$r = [(d + a + j) \div b] \times 100$	20
	where—	
r	is the eligible building's residential percentage	
d	is the floor area of the dwellings in the eligible building	
a	is the floor area of all appurtenant structures for the dwellings that are part of the eligible building	25
j	is the floor area of all appurtenant structures for any joint-owner premises (as defined in section 14(2) section 14(4)) that are part of the eligible building	
b	is the floor area of the whole of the eligible building, excluding any common property.	30
(3)	For the purposes of determining whether an eligible building is a mixed-use building, sections 13 and 14 (common property and joint property) apply as if the eligible building were a mixed-use building.	
	Guidance note	
	Common property is not included in calculating the building's residential percentage, but it is part of the residential building, so is covered by natural hazard cover to the extent of the dwelling-owners' interests in it (see section 33).	35

9 Residential building

- (1) A **residential building** means, ~~in the case of an eligible building that is not a mixed-use building,—~~
- (a) the whole of ~~the~~ an eligible building, other than any excluded property; and 5
 - (b) any other appurtenant structures and service infrastructure for the dwellings in the building.
- (2) ~~A **residential building** means, in the case of a mixed-use building,—~~ However, in the case of a mixed-use building, **residential building** means—
- (a) all of the dwellings in the eligible building; and 10
 - (b) all appurtenant structures and service infrastructure for those dwellings; and
 - (c) all the common property and joint property for the building.
- (3) A residential building—
- (a) includes fixtures and fittings (such as built-in cupboards, plumbed-in appliances, wired-in electrical appliances, and fixed carpets), unless they are excluded property; but 15
 - (b) does not include building contents or other personal property (such as curtains and blinds).

10 Number of dwellings 20

For the purposes of this Act, the number of dwellings in a residential building is—

- (a) the number of dwellings that were disclosed to the fire insurer when the fire insurance contract was entered into as dwellings to be insured under the contract; or 25
- (b) if no number was disclosed, 1.

11 Appurtenant structure

An **appurtenant structure** for a dwelling is property—

- (a) that—
 - (i) is part of the eligible building but is not part of the dwelling; or 30
 - (ii) ~~is, or is part of, a separate building or another immovable structure (such as a garage or garden shed); and~~
- (b) that is appurtenant to the dwelling; and
- (c) that—
 - (i) ~~is used by the owners or other occupants of the dwelling for household purposes (such as for parking or storage) or for access to the dwelling; or~~ 35

- (ii) ~~houses service infrastructure for the dwelling (such as a shed housing a pump that supplies drinking water to a house); and~~
- (d) ~~that is not excluded property; and~~
- (e) ~~that is not common property or joint property; and~~
- (f) ~~in which the insured person for the dwelling has an insurable interest.~~ 5

11 Appurtenant structure

- (1) Property is an **appurtenant structure** for a dwelling if the following **paragraphs (a), (b), and (c)** all apply to it:

- (a) the property—
 - (i) is part of the eligible building but is not part of the dwelling; or 10
 - (ii) is, or is part of, a separate building or another immovable structure (such as a garage or garden shed); and
- (b) the property is appurtenant to the dwelling; and
- (c) the property is used—
 - (i) by the owners or other occupants of the dwelling for household purposes (such as for parking or storage) or for access to the dwelling; or 15
 - (ii) to house service infrastructure for the dwelling (such as a shed housing a pump that supplies drinking water to a house).

- (2) However, property is not an appurtenant structure if— 20
- (a) it is excluded property; or
 - (b) it is common property or joint property; or
 - (c) the insured person for the dwelling does not have an insurable interest in the property.

12 Service infrastructure 25

- (1) The **service infrastructure** for a dwelling is infrastructure—

- (a) ~~that provides a service to—~~
 - (i) ~~the dwelling; or~~
 - (ii) ~~an appurtenant structure for the dwelling that is part of the eligible building; or~~ 30
 - (iii) ~~any other appurtenant structure for the dwelling; or~~
 - (iv) ~~the insured person's land; and~~
- (b) ~~that is in, or within 60 metres (in a horizontal line) of,—~~
 - (i) ~~if **paragraph (a)(i) or (ii)** applies, the eligible building; or~~
 - (ii) ~~if **paragraph (a)(iii)** applies, the appurtenant structure; or~~ 35

- (iii) if ~~paragraph (a)(iv)~~ applies, the eligible building or an appurtenant structure for the dwelling; and
- (e) that is not excluded property; and
- (d) that is not common property or joint property; and
- (e) in which the insured person for the dwelling has an insurable interest. 5
- (1) Property is **service infrastructure** for a dwelling if it is infrastructure and any of the following **paragraphs (a), (b), or (c)** apply to it:
- (a) the infrastructure—
- (i) provides a service to the dwelling or an appurtenant structure for the dwelling that is part of the eligible building; and 10
- (ii) is in, or within 60 metres of, the eligible building; or
- (b) the infrastructure—
- (i) provides a service to any other appurtenant structure for the dwelling; and
- (ii) is in, or within 60 metres of, the appurtenant structure; or 15
- (c) the infrastructure—
- (i) provides a service to the insured person's land; and
- (ii) is in, or within 60 metres of, the eligible building or an appurtenant structure for the dwelling.
- (1A) However, property is not service infrastructure for a dwelling if— 20
- (a) it is excluded property; or
- (b) it is common property or joint property; or
- (c) the insured person for the dwelling does not have an insurable interest in the property.
- (2) In this section,— 25
- infrastructure** means infrastructure used to provide a service to a building or structure, including—
- (a) pipes, cables, wires, poles, and drains; and
- (b) water tanks, water towers, ~~and~~ septic tanks, and tanks for storage of other liquids (such as fuel for heating); and 30
- (c) equipment and machinery (such as a pump, switchboard, or heating unit)
- service** means water supply, drainage, sewerage, gas, electricity, heating, or telecommunications.
- 13 Common property**
- (1) ~~If an eligible building is a mixed-use building, the common property for the residential building is any part of the residential building—~~ 35

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- (a) ~~that is available for use by, or is for the benefit of, the owners or other occupants of all the premises in the eligible building; and~~
- (b) ~~that is—~~
- (i) ~~an integral component of the eligible building (such as the roof and foundations); or~~ 5
 - (ii) ~~an appurtenant structure for the premises under **subsection (2)**; or~~
 - (iii) ~~service infrastructure for the premises under **subsection (3)**; or~~
 - (iv) ~~an area in the eligible building that is not part of any of the premises in the building (such as a store room for maintenance or cleaning supplies); and~~ 10
- (c) ~~that is not excluded property; and~~
- (d) ~~in which the owners of all the premises in the building have an insurable interest.~~
- (2) ~~An **appurtenant structure for the premises** is property—~~ 15
- (a) ~~that—~~
- (i) ~~is part of the eligible building but is not part of a dwelling; or~~
 - (ii) ~~is, or is part of, a separate building or another immovable structure; and~~
- (b) ~~that is appurtenant to all the premises in the building; and~~ 20
- (c) ~~that—~~
- (i) ~~is used by the owners or other occupants of the dwellings for household purposes (such as for parking, storage, or recreation) or for access to the dwellings; or~~
 - (ii) ~~houses service infrastructure for the premises.~~ 25
- (3) ~~The **service infrastructure for the premises** is infrastructure (as defined in **section 12**)—~~
- (a) ~~that provides a service (as defined in **section 12**) to—~~
- (i) ~~all the premises in the building; or~~
 - (ii) ~~an appurtenant structure for the premises or other common property that is part of the eligible building; or~~ 30
 - (iii) ~~any other appurtenant structure for the premises; or~~
 - (iv) ~~common land for the eligible building; and~~
- (b) ~~that is in, or within 60 metres (in a horizontal line) of,—~~
- (i) ~~if **paragraph (a)(i) or (ii)** applies, the eligible building; or~~ 35
 - (ii) ~~if **paragraph (a)(iii)** applies, the appurtenant structure for the premises; or~~

- (iii) if ~~paragraph (a)(iv)~~ applies, the eligible building or an appurtenant structure for the premises.

13 Common property

- (1) If an eligible building is a mixed-use building, the residential building may include common property. (There is no common property for a building that is not a mixed-use building.) 5
- (2) Part of the residential building is **common property** if—
- (a) that part of the building is available for use by, or is for the benefit of, the owners or other occupants of all the premises in the eligible building; and 10
 - (b) any of the following **subparagraphs (i) to (iv)** apply to it:
 - (i) it is an integral component of the eligible building (such as the roof and foundations); or
 - (ii) it is an appurtenant structure for the premises under **subsection (4)**; or 15
 - (iii) it is service infrastructure for the premises under **subsection (5)**; or
 - (iv) it is an area in the eligible building that is not part of any of the premises in the building (such as a foyer).
- (3) However, part of the building is not common property if— 20
- (a) it is excluded property; or
 - (b) the owners of any of the premises in the building do not have an insurable interest in that part of the building.
- (4) Property is an **appurtenant structure for the premises** if the following **paragraphs (a), (b), and (c)** all apply to it: 25
- (a) the property—
 - (i) is part of the eligible building but is not part of a dwelling; or
 - (ii) is, or is part of, a separate building or another immovable structure; and
 - (b) the property is appurtenant to all the premises in the building; and 30
 - (c) the property is used—
 - (i) by the owners or other occupants of the dwellings for household purposes (such as for parking, storage, or recreation) or for access to the dwellings; or
 - (ii) to house service infrastructure for the premises. 35
- (5) Property is **service infrastructure for the premises** if it is infrastructure and any of the following **paragraphs (a) to (d)** apply to it:
- (a) the infrastructure—

- (i) provides a service to all the premises in the building; and
 - (ii) is in, or within 60 metres of, the eligible building; or
- (b) the infrastructure—
 - (i) provides a service to an appurtenant structure for the premises or other common property that is part of the eligible building; and 5
 - (ii) is in, or within 60 metres of, the eligible building; or
- (c) the infrastructure—
 - (i) provides a service to any other appurtenant structure for the premises; and
 - (ii) is in, or within 60 metres of, the appurtenant structure; or 10
- (d) the infrastructure—
 - (i) provides a service to common land for the eligible building; and
 - (ii) is in, or within 60 metres of, the eligible building or an appurtenant structure for the premises.
- (6) In **subsection (5)**, **infrastructure** and **service** have the same meanings as in **section 12**. 15

14 Joint property

- (1) If an eligible building is a mixed-use building, the **joint property** for the residential building is any part of the residential building—
 - (a) ~~that is available for use by, or is for the benefit of, the owners or other occupants of some but not all premises in the eligible building (the **joint-owner premises**) at least 1 of which includes a dwelling; and~~ 20
 - (b) ~~that is—~~
 - (i) ~~an integral component of the eligible building (such as the roof and foundations); or~~ 25
 - (ii) ~~an appurtenant structure for the joint-owner premises under **subsection (2)**; or~~
 - (iii) ~~service infrastructure for the joint-owner premises under **subsection (3)**; or~~
 - (iv) ~~an area in the eligible building that is not part of any of the premises in the building (such as a store room for maintenance or cleaning supplies); and~~ 30
 - (c) ~~that is not excluded property; and~~
 - (d) ~~in which the owners referred to in **paragraph (a)** all have an insurable interest (whether or not the owners of any other premises in the building also have an insurable interest).~~ 35
- (2) ~~An **appurtenant structure for the joint-owner premises** is property—~~

- (a) that—
- (i) ~~is part of the eligible building but is not part of a dwelling; or~~
 - (ii) ~~is, or is part of, a separate building or another immovable structure; and~~
- (b) that is appurtenant to all the joint-owner premises; and 5
- (c) that—
- (i) ~~is used by the owners or other occupants of the joint-owner premises that are dwellings for household purposes (such as for parking, storage, or recreation) or for access to the dwellings; or~~
 - (ii) ~~houses service infrastructure for all the joint-owner premises.~~ 10
- (3) ~~The service infrastructure for the joint-owner premises is infrastructure (as defined in **section 12**)—~~
- (a) that provides a service (as defined in **section 12**) to—
- (i) ~~all the joint-owner premises; or~~
 - (ii) ~~an appurtenant structure for the joint-owner premises or other joint property that is part of the eligible building; or~~ 15
 - (iii) ~~any other appurtenant structure for the joint-owner premises; or~~
 - (iv) ~~joint land for the eligible building; and~~
- (b) that is in, or within 60 metres (in a horizontal line) of,—
- (i) ~~if **paragraph (a)(i) or (ii)** applies, the eligible building; or~~ 20
 - (ii) ~~if **paragraph (a)(iii)** applies, the appurtenant structure for the joint-owner premises; or~~
 - (iii) ~~if **paragraph (a)(iv)** applies, the eligible building or an appurtenant structure for the joint-owner premises.~~
- 14 Joint property** 25
- (1) If an eligible building is a mixed-use building, the residential building may include joint property. (There is no joint property for a building that is not a mixed-use building.)
- (2) Part of the residential building is **joint property** if—
- (a) that part of the building is available for use by, or is for the benefit of, the owners or other occupants of some but not all premises in the eligible building (the **joint-owner premises**) at least 1 of which includes a dwelling; and 30
 - (b) any of the following **subparagraphs (i) to (iv)** apply to it:
 - (i) it is an integral component of the eligible building (such as the roof and foundations); or 35

- (ii) it is an appurtenant structure for the joint-owner premises under **subsection (4)**; or
 - (iii) it is service infrastructure for the joint-owner premises under **subsection (5)**; or
 - (iv) it is an area in the eligible building that is not part of any of the premises in the building (such as a foyer); and 5
- (c) the owners referred to in **paragraph (a)** all have an insurable interest in it (whether or not the owners of any other premises in the building also have an insurable interest in it).
- (3) However, part of the building is not joint property if it is excluded property. 10
- (4) Property is an **appurtenant structure for the joint-owner premises** if the following **paragraphs (a), (b), and (c)** all apply to it:
 - (a) the property—
 - (i) is part of the eligible building but is not part of a dwelling; or
 - (ii) is, or is part of, a separate building or another immovable structure; and 15
 - (b) the property is appurtenant to all the joint-owner premises; and
 - (c) the property is used—
 - (i) by the owners or other occupants of the joint-owner premises that are dwellings for household purposes (such as for parking, storage, or recreation) or for access to the dwellings; or 20
 - (ii) to house service infrastructure for all the joint-owner premises.
- (5) Property is **service infrastructure for the joint-owner premises** if it is infrastructure and any of the following **paragraphs (a) to (d)** apply to it:
 - (a) the infrastructure— 25
 - (i) provides a service to all the joint-owner premises; and
 - (ii) is in, or within 60 metres of, the eligible building; or
 - (b) the infrastructure—
 - (i) provides a service to an appurtenant structure for the joint-owner premises or other joint property that is part of the eligible building; and 30
 - (ii) is in, or within 60 metres of, the eligible building; or
 - (c) the infrastructure—
 - (i) provides a service to any other appurtenant structure for the joint-owner premises; and 35
 - (ii) is in, or within 60 metres of, the appurtenant structure; or
 - (d) the infrastructure—
 - (i) provides a service to joint land for the eligible building; and

- (ii) is in, or within 60 metres of, the eligible building or an appurtenant structure for the joint-owner premises.

- (6) In **subsection (5)**, **infrastructure** and **service** have the same meanings as in **section 12**.

15 Shared property 5

(1AA) Any residential building may include shared property.

- (1) The **shared property**, ~~in relation to a residential building~~, is any part of the residential building in which a person who is not the insured person has an insurable interest.
- (2) To avoid doubt, in the case of a mixed-use building, property that is common property or joint property in relation to that building may also be shared property as between the insured person and another person. 10

Example

If an apartment block that is a mixed-use building shares a party wall with a neighbouring office block, all the owners of premises in the apartment block have an insurable interest in the wall, so it is common property for the apartment block. As all those owners are the insured person for the building, their interests in the wall do not make it shared property. 15

However, as the wall is shared by both buildings, it is shared property as between the insured person for the apartment block and the persons who have insurable interests in the office block. 20

16 Insured person's land

- (1) In relation to a residential building or residential land, the **insured person's land** means all the land that the estates and interest that make up the land holding within which a residential building is situated relate to. 25
- (2) The **land holding within which a residential building is situated** means—
- (a) the estate or interest held by the insured person in the land on which the residential building is lawfully situated; and
- (b) any other estate or interest in land held by the insured person that relates to land that is— 30
- (i) contiguous with the land referred to in **paragraph (a)**; and
- (ii) used, or intended to be used, with the land referred to in **paragraph (a)** as a single residential property; and
- (c) any other estate or interest in land that benefits an estate or interest referred to in **paragraph (a) or (b)**. 35
- (3) The land holding within which a residential building is situated does not include any non-proprietary right to use the land (such as a licence to occupy or an encroachment licence).

- (4) If 2 areas of land that would otherwise be contiguous are divided only by a watercourse, road, railway, or other access way, or a similar narrow area of separation, the 2 areas are taken to be contiguous for the purposes of **subsection (2)**.

17 Residential land 5

- (1) The **residential land**, in relation to a residential building, is—
- (a) ~~any part of the insured person's land that is 1 or more of the following:~~
 - (i) ~~land on which the residential building (other than external service infrastructure) is situated;~~
 - (ii) ~~land that is within 8 metres (in a horizontal line) of the residential building (other than external service infrastructure);~~ 10
 - (iii) ~~land that—~~
 - (A) ~~is part of, or supports land that is part of, the main access way from the boundary of the insured person's land to the residential building; and~~ 15
 - (B) ~~is within 60 metres (in a horizontal line) of the residential building (other than external service infrastructure); and~~
 - (a) the part of the insured person's land on which the residential building is situated; and
 - (aa) any other part of the insured person's land that is within 8 metres of the residential building; and 20
 - (ab) any other part of the insured person's land that—
 - (i) is part of the main access way from the boundary of the insured person's land to the residential building, or supports land that is part of that access way; and 25
 - (ii) is within 60 metres of the residential building; and
 - (b) any retaining walls for the residential building; and
 - (c) any bridges or culverts for the residential building.
- (2) However, land is not residential land if it is excluded property.
- (3) In this section, ~~external service infrastructure means a reference to the residential building does not include any~~ service infrastructure that is outside both the eligible building and the appurtenant structures. 30

18 Retaining walls and bridges or culverts

- (1) A ~~retaining wall~~ for a residential building means a retaining wall and its support system— 35
- (a) that are necessary to support or protect—
 - (i) the residential building (other than external service infrastructure);
 - or

- (ii) the residential land referred to in **section 17(1)(a)**; and
 - (b) that are within 60 metres (in a horizontal line) of the residential building (other than external service infrastructure), whether or not it is on the insured person's land; and
 - (e) in which the insured person for the residential building has an insurable interest. 5
 - (2) A **bridge or culvert** for a residential building means a bridge or culvert—
 - (a) that is in or on—
 - (i) land referred to in **section 17(1)(a)**; or
 - (ii) land that is outside the insured person's land but is otherwise land of the kind referred to in **section 17(1)(a)(i), (ii), or (iii)**; and 10
 - (b) in which the insured person for the residential land has an insurable interest.
 - (3) In this section, **external service infrastructure** has the same meaning as in **section 17**. 15
- 18 Retaining walls and bridges or culverts**
- (1) A **retaining wall** for a residential building means a retaining wall and its support system—
 - (a) that are necessary to support or protect—
 - (i) the residential building; or 20
 - (ii) the residential land referred to in **section 17(1)(a) to (ab)**; and
 - (b) that are within 60 metres of the residential building, whether or not it is on the insured person's land.
 - (2) A **bridge or culvert** for a residential building means a bridge or culvert that is on or in— 25
 - (a) land referred to in **section 17(1)(a) to (ab)**; or
 - (b) land that is outside the insured person's land but is otherwise land of the kind referred to in **section 17(1)(a) to (ab)**.
 - (3) However, property is not a retaining wall or a bridge or culvert for the residential building if the insured person for the residential land does not have an insurable interest in the property. 30
 - (4) In **subsection (1)(a)(i) and (b)**, a reference to the residential building does not include any service infrastructure that is outside both the eligible building and the appurtenant structures.
- 19 Common land, joint land, and shared land** 35
- (1) If an eligible building is a mixed-use building,—
 - (a) the **common land** is any part of the residential land—

-
- (i) ~~that is available for use by, or is for the benefit of, the owners or other occupants of all premises in the eligible building; and~~
 - (ii) ~~in which the owners of all of those premises have an insurable interest; and~~
 - (b) ~~the **joint land** is any part of the residential land—~~ 5
 - (i) ~~that is available for use by, or is for the benefit of, the owners or other occupants of some (including at least 1 dwelling) but not all premises in the building; and~~
 - (ii) ~~in which those owners have an insurable interest (whether or not the owners of any other premises in the building also have an insurable interest).~~ 10
 - (1) If an eligible building is a mixed-use building, the residential land may include common land or joint land, or both. (There is no common land or joint land for a building that is not a mixed-use building.)
 - (1A) The **common land** is any part of the residential land— 15
 - (a) that is available for use by, or is for the benefit of, the owners or other occupants of all premises in the eligible building; and
 - (b) in which the owners of all of those premises have an insurable interest.
 - (1B) The **joint land** is any part of the residential land—
 - (a) that is available for use by, or is for the benefit of, the owners or other occupants of some of the premises in the building (including at least 1 dwelling) but not all of those premises; and 20
 - (b) in which those owners have an insurable interest (whether or not the owners of any other premises in the building also have an insurable interest). 25
 - (1C) Any residential land may include shared land.
 - (2) ~~The **shared land** in relation to residential land,~~ is any part of the residential land in which a person who is not the insured person has an insurable interest.
 - (3) To avoid doubt, where the eligible building is a mixed-use building, land that is common land or joint land in relation to the residential building may also be shared land as between the insured person and another person. 30

Example

If the residential land for a mixed-use building shares a retaining wall with neighbouring land, all the owners of premises in the mixed-use building have an ownership interest in the wall, ~~so it is~~ and it is for the benefit of those owners, it would be common land. 35

However, as the wall is shared by both buildings, it is shared land as between the insured person for the apartment block and the persons who have insurable interests in the neighbouring land.

20 Common ownership interest, joint ownership interest, and shared ownership interest

- (1) If an eligible building is a mixed-use building, the **common ownership interest** for the residential building or residential land is—
- (a) the percentage of the ~~beneficial~~ interest in the residential building's common property or common land (or in the entity that owns that property or land) that is held by the owners of the dwellings in the eligible building by reason of their ownership of the dwellings; or 5
 - (b) if that percentage is not ascertainable, the eligible building's residential percentage. 10

Examples

Example 1

4.—In a unit title building consisting of dwellings and shops, if the owners of the dwellings have ownership interests of 360 out of a total of 1000, the common ownership interest would be 36% (see section 38 of the Unit Titles Act 2010). 15

If the owner of one of the dwellings also owns some of the shops, the common ownership interest would still be 36% because that person's interest in the common property as a result of owning the shops is not counted.

Example 2

2.—In a residential building that is owned by a flat or office owning company to which subpart 6 of Part 3 of the Land Transfer Act 2017 applies, if the owners of the dwellings own 500 out of a total of 2000 shares in the company, the common ownership interest would be 25%. 20

Example 3

3.—In a residential building held under a cross-lease title arrangement, if the owners of the dwellings own two-fifths of the title to the land on which it is built, the common ownership interest would be 40%. 25

Example 4

4.—If a residential building consists of a flat above a shop and the whole building is a single undivided title, **subsection (1)(b)** would apply. If the floor areas are 70 m² for the flat and 130 m² for the shop, the common ownership interest would be 35%. 30

- (2) If an eligible building is a mixed-use building, the **joint ownership interest** for joint property or joint land is—
- (a) the percentage of the repair responsibility held by the owners of the joint-owner premises that are dwellings; or 35
 - (b) if that percentage is not ascertainable, the percentage of the ~~beneficial~~ interest in the joint property or joint land that is held by the owners of the joint-owner premises that are dwellings by reason of their ownership of the dwellings.
- (3) The percentages in **subsections (1)(a) and (2)(a) and (b)** are to be determined as percentages of the total ~~beneficial~~ interest or repair responsibility held by the owners of all of the premises in the eligible building. 40

- (4) An insured person's **shared ownership interest** in shared property or shared land is,—
- (a) if the insured person is the only person with repair responsibility, 1; or
 - (b) if 2 or more persons share repair responsibility, the insured person's percentage of the repair responsibility; or 5
 - (c) if that percentage is not ascertainable, the percentage of the total of all insurable interests in the shared property or shared land that is held by the insured person.

Examples

Example 1

1.—If there are 2 semi-detached dwellings that share a party wall and the insured persons for the dwellings share equal responsibility to replace or reinstate the wall, their shared ownership interest in the party wall would be 50% each.

Example 2

2.—However, if the insured person for 1 of the dwellings is solely responsible for replacing or reinstating the wall, that person's shared ownership interest would be 100% and the other insured person's interest would be 0%.

Example 3

3.—If a house and a shop have a retaining wall on the boundary of their land and share equal responsibility for it, the insured person's shared ownership interest in the retaining wall would be 50%. The other 50% interest is not covered under this Act because the shop is not a residential building.

- (5) ~~However, if **section 22(3)** applies, the shared ownership interest of the insured person is to be determined in accordance with the regulations.~~

- (5) A common ownership interest, joint ownership interest, or shared ownership interest, or a person's repair responsibility or anything else that needs to be determined in order to determine an ownership interest must be determined in accordance with any requirements in the regulations relating to—

- (a) how the interest, responsibility, or other thing is to be determined; and
- (b) the matters to be taken into account in making the determination.

- (6) In this section,—

joint-owner premises has the same meaning as in **section 14**

repair responsibility means the responsibility to replace or reinstate, or to contribute to the cost of replacing or reinstating,—

- (a) for **subsection (2)**, the damaged joint property or joint land; and
- (b) for **subsection (3)**, the damaged shared property or shared land.

*Fire insurance contract, fire insurer, and insured person***21 Fire insurance contract and fire insurer**

- (1) **Fire insurance contract** means a contract of insurance under which an insurer (the **fire insurer**) insures 1 or more dwellings against physical loss or damage by fire, other than— 5
- (a) a contract of reinsurance; or
 - (b) a contract that insures against physical loss or damage by natural hazard fire but not other fire.
- (2) A contract of insurance is not prevented from being a fire insurance contract only because— 10
- (a) it insures other property in addition to dwellings; or
 - (b) it does not insure against loss or damage that is ~~the~~ a direct result of a natural hazard fire.
- (3) For the purposes of this Act, a contract of insurance that is renewed is taken to be a new contract entered into when cover under the renewed contract commences. 15
- (4) The **fire insurance contract**, in relation to all or part of a residential building, is the fire insurance contract under which that property is (or was at the relevant time) insured.

22 Insured person 20

- (1) The **insured person**, in relation to all or part of a residential building or residential land, means the person who is, or all of the persons who are, entitled to the benefit of the fire insurance contract for—
- (a) the residential building; or
 - (b) the residential building situated on the residential land. 25
- (2) ~~However, In addition, in~~ **sections 15(1), 19(2) and 20(4), insured person** includes the holder of a mortgage or other charge granted by the insured person over the relevant part of the residential building or residential land (other than a mortgage or charge of a kind specified in the regulations). 30
- (3) If the insured person for an eligible building (**building A**) also has an insurable interest in a building or part of a building (**building B**) that contains a dwelling or other premises but is not, and is not part of, building A, then— 35
- (a) the person in their capacity as the insured person for building A (and the rest of the residential building that building A is part of and its residential land); and
 - (b) the person in their capacity as a person with an insurable interest in building B (and any other building or land associated with it),—
- are taken to be 2 separate persons.

*Natural hazards and natural hazard damage***23 Natural hazard**

- (1) Each of the following is a **natural hazard**:
- (a) an earthquake:
 - (b) hydrothermal activity: 5
 - (c) a landslide:
 - (d) a tsunami:
 - (e) volcanic activity:
 - (f) a flood:
 - (g) a storm: 10
 - (h) a natural hazard fire.
- (2) However, ~~erosion that is the result of the normal action of the wind or water~~ the normal action of the wind or water causing gradual erosion (including, for example, coastal erosion, bank erosion, and sheet erosion) is not a natural hazard. 15

24 Natural hazard damage

- (1) **Natural hazard damage** means physical loss or damage to a residential building or residential land—
- (a) that occurs as a direct result of—
 - (i) a natural hazard; or 20
 - (ii) measures taken under proper authority to mitigate the consequences of a natural hazard; or
 - (b) that,—
 - (i) in the opinion of the Commission, is imminent as a direct result of a natural hazard that has occurred; and 25
 - (ii) would, if it occurred, be natural hazard damage under **paragraph (a)**.
- (2) However, physical loss or damage to a residential building is not natural hazard damage if it occurs solely as a direct result of 1 or more of a storm, a flood, or a natural hazard fire resulting from a storm or a flood. 30
- (3) Physical loss or damage is not natural hazard damage under **subsection (1)(a)** if, before it occurred, it was natural hazard damage under **subsection (1)(b)**.
- (4) **Subsection (1)(a)(ii)** applies—
- (a) whether the physical loss or damage is intentional or accidental; but 35
 - (b) only if no compensation for the physical loss or damage is payable under another Act.

- (5) ~~Physical loss or damage that is natural hazard damage under **subsection (1)(a)(ii)** is taken to occur as a direct result of the natural hazard in relation to which the measures were taken.~~
- (6) ~~Physical loss or damage that is natural hazard damage under **subsection (1)(b)** is taken to occur at the time it becomes imminent.~~ 5

Example

~~If a landslide on a hill above a house exposes the house to a risk of damage from more rocks sliding down the hill and the Commission considers that damage to the house is imminent, natural hazard damage of the kind referred to in **subsection (1)(b)** would be taken to have occurred (even though actual damage to the house may not have occurred).~~ 10

24 Natural hazard damage

- (1) Physical loss or damage to a residential building or residential land is **natural hazard damage** if—
- (a) it occurs as a direct result of a natural hazard; or 15
- (b) it occurs as a direct result of measures taken under proper authority to mitigate the consequences of a natural hazard; or
- (c) it is imminent damage.
-

Example

If an earthquake causes cracks in the roof of a house, the cracks let water in when it rains, and the water damages the ceiling and walls, both the damage to the roof and the damage done by the water are a direct result of the earthquake and so both are natural hazard damage. 20

Mitigation damage

- (2) Loss or damage referred to in **subsection (1)(b)**— 25
- (a) is natural hazard damage regardless of whether it is intentional or accidental; and
- (b) is taken to occur as a direct result of the natural hazard in relation to which the measures were taken.
-

Imminent damage 30

- (3) Physical loss or damage to a residential building or residential land that has not yet occurred is **imminent damage** if—
- (a) a natural hazard has occurred (**event 1**); and

- (b) the Commission is of the opinion that, as a direct result of event 1, the loss or damage is more likely than not to occur within 12 months after event 1 first occurred.

Example

A landslide on a slope below a house and garden shed creates a risk of further land falling down the slope, which could undermine support for the house and shed. The Commission considers that in the next 12 months, at least some further land will fall down the slope. The shed is close to the slope, and the Commission considers it more likely than not that the shed will be undermined within 12 months, unless it is relocated away from the slope. The house is further away from the slope, and the Commission considers it more likely than not that the house will not be undermined within 12 months. In that case, the possible future damage to the shed is imminent damage, but the possible future damage to the house is not imminent damage. The further land damage that the Commission considers will more likely than not occur in the next 12 months is also imminent damage.

- (4) Imminent damage is taken to have occurred at the time event 1 first occurred.
What is not natural hazard damage
- (5) However, loss or damage is not natural hazard damage if any of the following paragraph (a), (b), or (c) apply to it:

- (a) it is loss or damage to a residential building and occurs as a direct result of a storm, a flood, a natural hazard fire occasioned by, through, or in consequence of a storm or flood, or a combination of them; or
- (b) it is loss or damage referred to in **subsection (1)(a)** but before it occurred it was imminent damage for which a claim has been made; or

Example

In the **example** for **subsection (3)**, if the insured person makes a claim for the imminent damage and the expected damage does in fact occur, that actual damage is not natural hazard damage.

- (c) it is loss or damage referred to in **subsection (1)(b)** but compensation for the loss or damage is payable under another Act.
- (6) **Subsection (5)(b)** applies regardless of when the actual loss or damage occurs.

Other preliminary provisions

25 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

26 Act binds the Crown

This Act binds the Crown.

27 Property outside New Zealand not covered

This Act does not apply to a dwelling or other property that is situated outside New Zealand.

Part 2

Natural hazard cover

5

Subpart 1—Insurance against natural hazard damage

28 Natural hazard cover insures against natural hazard damage

- (1) This Act provides insurance against natural hazard damage (**natural hazard cover**) for the dwellings in an eligible building and certain other related property. 10
- (2) Natural hazard cover has the following 2 components:
 - (a) building cover, which insures the residential building (*see subpart 2*):
 - (b) land cover, which insures the residential land (*see subpart 3*).
- (3) Natural hazard cover does not include insurance against consequential loss (such as temporary accommodation costs, loss of profits, loss or damage as a result of theft, vandalism, or business interruption, or loss of intangible property). 15

29 When natural hazard cover commences and ceases

- (1) Natural hazard cover for a residential building—
 - (a) commences when the insurance cover under the fire insurance contract for the dwellings in the eligible building commences; and 20
 - (b) continues while the dwellings remain insured under the fire insurance contract, unless the natural hazard cover is cancelled under **section 47** or otherwise ceases under this Act.
- (2) Natural hazard cover is not interrupted or affected by— 25
 - (a) the occurrence of natural hazard damage; or
 - (b) the making or settling of a claim; or
 - (c) any failure to pay the levy or an amount payable under **section 114-or 121**.

Effect of becoming or ceasing to be dwelling 30

- (3) If a dwelling is insured under a fire insurance contract but ceases to be a dwelling during the period of the contract, this Act continues to apply as if it were still a dwelling until the insurance cover under the fire insurance contract ceases or is renewed.
- (4) If— 35

- (a) property that does not include a dwelling is insured under a contract of insurance against physical loss or damage by fire; and
- (b) all or part of the property becomes a dwelling during the period of the contract,—

that contract is not a fire insurance contract for the purposes of this Act, but if it is renewed, the renewed contract is a fire insurance contract. 5

Guidance note

A contract of insurance that is renewed is taken to be a new contract entered into when the renewal occurs (see **section 21**).

Subpart 2—Building cover 10

30 Building cover insures residential building on replacement cost basis

- (1) Building cover provides insurance for a residential building on a replacement cost basis.
- (2) However, building cover is subject to—
 - (a) the other provisions of this Act (such as **section 47** (cancellation of cover), **section 48** (limitation of liability for preventable repeat damage), and **section 64** (when Commission may decline claim)); and 15
 - (b) any conditions imposed by the regulations.

Guidance note

Excluded property listed in **Schedule 2** is not covered by building cover. 20

31 Building claim entitlement

- (1) If a residential building suffers natural hazard damage, the ~~maximum~~ amount that may be paid for a claim made in respect of building cover is the building claim entitlement.
- (2) The **building claim entitlement** is— 25
 - (a) the lesser of—
 - (i) the replacement cost of the damaged parts of the residential building; and
 - (ii) the building cover cap for the residential building determined under **sections 34 to 36**; minus 30
 - (b) the building cover excess, being the number of dwellings in the residential building multiplied by \$500 (including GST).
- (3) However, if the building cover excess is greater than the amount calculated under **subsection (2)(a)**, the building claim entitlement is zero.

Guidance note

All natural hazard damage that occurs during a damage period is the subject of the same claim (see **section 51**).

32 Replacement cost

- (1) The **replacement cost** of the damaged parts of the residential building is the total cost that would reasonably be incurred to replace or reinstate the damaged property parts of the building to a condition substantially the same as, but not better or more extensive than, ~~its condition when it was new, but with the property~~ their condition when they were new, but—
 - (a) modified as necessary to comply with all applicable laws (such as the Building Act 2004 and the building code under that Act); and
 - (b) replaced or reinstated using materials and methods that are currently in common use.
- (2) The **total cost** to replace or reinstate the damaged ~~property parts of the building~~ means—
 - (a) the costs of all replacement or reinstatement work (which may include work that needs to be done to undamaged parts of the residential building in order for the damaged parts to be replaced or reinstated or relocating parts of the residential building); and
 - (b) ~~the cost~~ costs of demolition and removal of debris to the extent that is reasonably required to ~~enable the damaged property to be replaced or reinstated~~ carry out the replacement or reinstatement work; and
 - (c) the costs of complying with all applicable laws; and
 - (d) other fees or costs payable in the course of ~~replacing or reinstating the damaged property carrying out the replacement or reinstatement work~~ (for example, architects' fees and fees payable to local authorities); and
 - (e) GST.
- (3) If any of the natural hazard damage to the residential building is natural hazard damage under **section 24(1)(b)**, the replacement cost for that damage may include the cost that would reasonably be incurred to mitigate the risk to the residential building of the imminent damage actually occurring.
- (4) The replacement cost does not include—
 - (a) ~~the cost of modifying the damaged property to comply with an applicable law if, immediately before the natural hazard damage occurred, the insured person had a legal obligation to make the modification (whether at the time or in the future); or~~
 - (b) ~~claim handling costs.~~
- (4) If, immediately before the natural hazard damage occurred, the insured person had a legal obligation under an applicable law to modify any property (whether

at the time or in the future), the replacement cost does not include the cost of modifications required to comply with that law.

(4A) The replacement cost also does not include—

(a) claim handling costs; or

(b) any allowance for contingencies.

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(5) ~~However, this section is subject to **section 33**.~~

(5) However, this section is subject to—

(a) **section 33**, if any of the damaged parts of the building are shared property, common property, or joint property:

(b) **section 33A**, if any of the natural hazard damage is imminent damage.

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Guidance note

If a claim is settled by payment of the replacement cost and the actual replacement cost is more than expected, and the insured person gives further information about those costs the Commission, the Commission can reconsider its decision and may pay the extra costs (see **section 55(4)**).

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33 Proportionate costs for shared, common, or joint property

(1) This section applies for the purpose of determining the replacement cost of any of the damaged property that is shared property, common property, or joint property.

(2) In respect of shared property, the replacement cost is the amount that would be the replacement cost in the absence of this section multiplied by the insured person's shared ownership interest.

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(3) In respect of common property, the replacement cost is the amount that would be the replacement cost in the absence of this section multiplied by the residential building's common ownership interest.

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(4) In respect of joint property, the replacement cost is the amount that would be the replacement cost in the absence of this section multiplied by the joint property's joint ownership interest.

(5) If the damaged property is—

(a) shared property and common property, **subsection (2)** applies and then **subsection (3)** applies (with any necessary modifications); or

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(b) shared property and joint property, **subsection (2)** applies and then **subsection (4)** applies (with any necessary modifications).

33A Replacement cost for imminent damage

(1) This section applies for the purpose of determining the replacement cost of any parts of the residential building to the extent that they are the subject of imminent damage.

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- (2) The replacement cost in respect of the imminent damage must be determined using the future replacement cost under **subsection (3)**, the mitigation cost under **subsection (4)**, or a combination of both as the Commission considers appropriate.
- (3) The **future replacement cost** is the cost that would be the replacement cost under **section 32** if the imminent damage had in fact occurred. 5
- (4) The **mitigation cost** is the total cost that would reasonably be incurred to carry out the work required to mitigate the risk of the imminent damage occurring (which might include relocating parts of the residential building, *see the example in **section 62***)). 10
- (5) In deciding whether, or to what extent, to use the future replacement cost or mitigation cost, the Commission must take into account the following:
- (a) whether, or to what extent, mitigation—
 - (i) is technically feasible; and
 - (ii) could lawfully be carried out; and 15
 - (iii) is likely to be effective:
 - (b) the relative costs of future replacement and mitigation:
 - (c) if the residential land has also suffered natural hazard damage, whether, or to what extent, measures taken to mitigate the risk to the residential building— 20
 - (i) might need to be taken to reinstate the damaged land; or
 - (ii) might also mitigate the risk of imminent damage to the land:
 - (d) any other matters specified in the regulations.
- (6) If **subsection (5)(c)** applies, the Commission must apportion the cost of the mitigation measures between the replacement cost of the damaged building and the reinstatement cost of the damaged land in accordance with the regulations. 25

34 Building cover cap: specified replacement sum insured

- (1) This section applies if the fire insurance contract specifies a replacement sum insured for the residential building (or 2 or more sums covering different parts of the residential building). 30
- (2) The building cover cap for the residential building is the lesser of—
- (a) the specified replacement sum insured (or the total of those sums); and
 - (b) the number of dwellings in the residential building multiplied by \$300,000 plus GST.
- (3) If a fire insurance contract insures 2 or more eligible buildings, this section applies in relation to any one of those buildings only if the contract specifies a replacement sum insured in relation to that building and that sum does not cover any other eligible building. 35

Guidance note

For the number of dwellings in a building, see **section 10**.

35 Building cover cap: specified amount for natural hazard cover

- (1) This section applies if—
 - (a) **section 34** does not apply; and 5
 - (b) the fire insurance contract specifies an amount for which the residential building is to be insured under this Act.
- (2) The building cover cap for the residential building is—
 - (a) the greater of—
 - (i) the specified amount; and 10
 - (ii) the insured floor area multiplied by \$2,500 plus GST; or
 - (b) the number of dwellings in the residential building multiplied by \$300,000 plus GST, if that is less than the amount determined under **paragraph (a)**.
- (3) If a fire insurance contract insures 2 or more eligible buildings, this section applies in relation to any one of those buildings only if the contract specifies a ~~replacement sum insured~~ an amount in relation to that building and that ~~sum amount~~ amount does not cover any other eligible building. 15
- (4) The **insured floor area** for a residential building (except for a mixed-use building) is the sum of— 20
 - (a) the floor area of the whole of the eligible building; and
 - (b) the floor area of all appurtenant structures for the dwellings that are not part of the eligible building but are, or are part of, a different building.
- (5) The **insured floor area** for a residential building where the eligible building is a mixed-use building is calculated as follows: 25

$$f = d + a + j + (c \times r \div 100)$$

where—

- | | | |
|---|--|----|
| f | is the insured floor area | |
| d | is the floor area of the dwellings in the residential building | |
| a | is the floor area of all appurtenant structures for the dwellings that are, or are part of, a building | 30 |
| j | is the floor area of all appurtenant structures for any joint-owner premises (as defined in section 14(2) section 14(4)) that are, or are part of, a building | |
| c | is the floor area of any common property that is, or is part of, a building | 35 |
| r | is the eligible building's residential percentage. | |

Guidance note

For the number of dwellings in a building, see **section 10**.

36 Building cover cap: no specified amount

If neither of **sections 34 and 35** applies, the building cover cap for the residential building is the number of dwellings in the residential building multiplied by \$300,000 plus GST. 5

Guidance note

For the number of dwellings in a building, see **section 10**.

Subpart 3—Land cover

37 Land cover insures residential land on indemnity basis 10

- (1) Land cover provides insurance for the residential land for a residential building on an indemnity basis.
- (2) However, land cover is subject to—
 - (a) the other provisions of this Act (such as **section 47** (cancellation of cover), **section 48** (limitation of liability for preventable repeat damage), and **section 64** (when Commission may decline claim); and 15
 - (b) any conditions imposed by the regulations.

Guidance note

Excluded property listed in **Schedule 2** is not covered by land cover.

38 Land claim entitlement 20

- (1) If residential land suffers natural hazard damage, the ~~maximum~~ amount that may be paid for a claim made in respect of land cover is the land claim entitlement.
- (2) The **land claim entitlement** is—
 - (a) the lesser of— 25
 - (i) the actual loss suffered (determined under **section 39**); and
 - (ii) the ~~maximum land cover amount~~ land cover cap (determined under **section 42**); minus
 - (b) the land cover excess, being the lesser of—
 - (i) the number of dwellings in the residential building multiplied by \$500 (including GST); and 30
 - (ii) \$5,000 (including GST).
- (3) However, if the land cover excess is greater than the amount calculated under **subsection (2)(a)**, the land claim entitlement is zero.

Guidance notesNote 1

For the number of dwellings in a building, see **section 10**.

Note 2

All natural hazard damage that occurs during a damage period is the subject of the same claim (see **section 51**). 5

39 Actual loss suffered

- (1) The **actual loss suffered** is the actual loss suffered—
 - (a) by the person who was the insured person for the residential land at the time the natural hazard damage occurred; and 10
 - (b) as a direct result of the natural hazard damage to the residential land, but not including any consequential loss (see **section 28(3)**).
- (2) To the extent that the actual loss suffered can be reasonably quantified using reinstatement cost or diminution of value, or a combination of both, the Commission must quantify the loss in that way. 15
- (3) Which method is used to quantify the actual loss suffered depends on all the circumstances, including—
 - (a) whether, or to what extent, reinstatement—
 - (i) is technically feasible; and
 - (ii) could lawfully be carried out; and 20
 - (iii) would be disproportionately expensive compared with the diminution of value if the land were not reinstated; and
 - (b) whether, or to what extent, the person referred to in **subsection (1)** has reinstated the land or intends to do so.

40 Reinstatement cost 25

- (1) The ~~reinstatement cost~~ of residential land (or part of it) is the total cost that would reasonably be incurred to reinstate the ~~damaged residential land (or that part of it)~~—
 - (a) ~~in a way that would be reasonably sufficient in the circumstances; and~~
 - (b) ~~so that the land is—~~ 30
 - (i) ~~able to be used for substantially the same purpose as it was used for before it was damaged; and~~
 - (ii) ~~not materially more or less valuable than it was before it was damaged.~~
- (2) However, in the case of reinstatement of the residential land (or part of it) only to a limited extent, **subsection(1)(b)** does not apply. 35

- (1) The **reinstatement cost** of residential land (or part of it) is the total cost that would reasonably be incurred to reinstate the damaged residential land (or that part of it) in a way that would be reasonably sufficient in the circumstances.
- (2) The reinstatement may be full reinstatement, partial reinstatement, or a combination of both in respect of different parts of the damaged land. 5
- (2A) **Full reinstatement** means reinstatement so that the land—
- (a) is able to support or protect the residential building and access to it to substantially the same extent as it did before the land was damaged; and
 - (b) is able to be used for substantially the same purpose as it was used before it was damaged; and 10
 - (c) is not materially more or less valuable than it was before it was damaged.
- (2B) **Partial reinstatement** means reinstatement to some extent so that 1 or both of the following are improved:
- (a) the land's ability to support or protect the residential building and access to it; 15
 - (b) the usability of the land for the purpose for which it was used before it was damaged.
- (3) ~~To the extent that the natural hazard damage consists of the accumulation of earth, rock, or other debris on the land, reinstating the land is limited to removing the debris.~~ 20
- (3) If the natural hazard damage includes the accumulation of earth, rock, or other debris on the residential land, the reinstatement cost in respect of that accumulation is the cost of removing the debris.
- (4) ~~If any of the natural hazard damage to the residential land is natural hazard damage under **section 24(1)(b)**, the reinstatement cost for that damage may include the cost that would reasonably be incurred to mitigate the risk to the residential land of the imminent damage actually occurring.~~ 25
- (5) The **total cost** to reinstate the damaged residential land means—
- (a) the costs of all reinstatement work (including the cost of any work that needs to be done to undamaged parts of the residential land in order for the damaged land to be reinstated); and 30
 - (b) the costs of complying with all applicable laws; and
 - (c) ~~other fees or costs payable in the course of reinstating the damaged residential land (for example, architects' fees and fees payable to local authorities); and~~ 35
 - (c) other fees or costs payable in the course of carrying out the reinstatement work (for example, architects' fees and fees payable to local authorities); and
 - (d) GST. 40

-
- (6) The reinstatement cost does not include—
- (a) ~~the cost of modifying the damaged residential land to comply with an applicable law if, immediately before the natural hazard damage occurred, the insured person had a legal obligation to make the modification (whether at the time or in the future); or~~ 5
 - (b) ~~claim handling costs.~~
- (6) If, immediately before the natural hazard damage occurred, the insured person had a legal obligation under an applicable law to modify any property (whether at the time or in the future), the reinstatement cost does not include the cost of modifications required to comply with that law. 10
- (6A) The reinstatement also does not include—
- (a) claim handling costs; or
 - (b) any allowance for contingencies.
- (7) ~~However, this section is subject to **section 45**.~~
- (7) However, this section is subject to— 15
- (a) **section 45**, if any of the damaged land is shared property, common property, or joint property:
 - (b) **section 45A**, if any of the natural hazard damage is imminent damage.
-
- Guidance note**
- If a claim is settled by payment of the reinstatement cost and the actual reinstatement cost is more than expected, and the insured person gives further information about those costs the Commission, the Commission can reconsider its decision and may pay the extra costs (see **section 55(4)**). 20
-
- 41 Diminution of value**
- (1) The **diminution of value** is the loss of value (including any GST) of the residential land, or the residential land and residential building, as a direct result of the natural hazard damage to the damaged residential land. 25
- (2) To avoid doubt, the diminution of value does not include any loss of value resulting from any of the following (whether occurring as a direct result of the natural hazard or otherwise): 30
- (a) damage to the residential building:
 - (b) changes in the value of the residential building (other than changes that are a direct result of the natural hazard damage to the damaged residential land):
 - (c) damage to, or changes in the value of, other land or buildings: 35
 - (d) ~~changes in market perception of the safety or desirability of the residential building or residential land:~~
 - (d) any general stigma arising from the natural hazard:

-
- (e) ~~other~~ changes in market conditions:
- (f) regulatory changes.
- (3) However, this section is subject to **section 45**.
- 42 ~~Maximum land cover amount~~ Land cover cap**
- (1) The ~~maximum land cover amount~~ land cover cap for the residential land is— 5
- (a) the assessed market value; plus
- (b) if there are any damaged retaining walls for the residential building, the lesser of—
- (i) the undepreciated value of the damaged retaining walls; and 10
- (ii) the number of dwellings in the residential building multiplied by \$50,000 plus GST; plus
- (c) if there are any damaged bridges or culverts for the residential building, the lesser of—
- (i) the undepreciated value of the damaged bridges or culverts; and 15
- (ii) the number of dwellings in the residential building multiplied by \$25,000 plus GST.
- (2) However, this section is subject to **section 45**.
-
- Guidance note**
- For the number of dwellings in a building, see **section 10**. 20
-
- 43 Assessed market value**
- (1) If the area of the damaged part of the residential land is less than or equal to the area cap, the **assessed market value** is the prior market value of that part of the residential land.
- (2) If the area of the damaged part of the residential land is greater than the area cap, the **assessed market value** is the prior market value of a hypothetical area of residential land that, to the extent that is practicable,— 25
- (a) has an area equal to the area cap; and
- (b) is situated in the same place as the residential land; and
- (c) has all of the same features as the residential land. 30
- (3) The **prior market value** of land is the amount that would have been the market value of the land immediately before the natural hazard damage occurred (including any GST).
- (4) The valuation must be made using per square metre market rates, applying (where appropriate) different rates for different areas of the land based on their different utility (but so that the sum of the values of the different areas equates to the value of the land being valued as a whole). 35

- (5) However this section is subject to **section 45**.
- (6) In this section,—
- area cap** means,—
- (a) if there is a district plan minimum area, the lesser of—
 - (i) the district plan minimum area; and 5
 - (ii) 4,000 square metres; or
 - (b) if there is no district plan minimum area, 4,000 square metres
- district plan** means the operative district plan (as defined in section 43AA of the Resource Management Act 1991) for the district where the damaged residential land is situated 10
- district plan minimum area** means the minimum area (in square metres) allowable under the district plan for land that is used for the purpose for which the damaged residential land was being used at the time the natural hazard damage occurred.
- 44 Undepreciated value of retaining walls, bridges, or culverts** 15
- (1) The **undepreciated value** of a damaged retaining wall, bridge, or culvert is the total cost that would reasonably be incurred to construct a structure that is substantially the same as, but not better or more extensive than, the damaged one was when it was new (even if a structure of that kind would not comply with current building standards or applicable laws). 20
- (2) The **total cost** of constructing the structure means—
- (a) the cost of all construction work; and
 - (b) the costs of complying with all applicable laws, other than any requirements in the current building standards or other laws that would require modification of the structure from when it was new; and 25
 - (c) other fees or costs payable in the course of constructing the structure (for example, architects' fees and fees payable to local authorities) as if the structure did comply with current building standards and applicable laws; and
 - (d) GST. 30
- (3) The undepreciated value does not include—
- (a) the cost of carrying out any work other than the actual construction of the structure, even if that work would be necessary to enable the structure to be constructed (such as removing the damaged structure or removing or rebuilding other structures to provide access to the construction site); or 35
 - (b) ~~claim handling costs~~; costs; or
 - (c) any allowance for contingencies.

45 Proportionate costs, values, and amounts for shared, common, or joint land

- (1) This section applies for the purpose of determining the following (each a **relevant amount**):
 - (a) the reinstatement cost of any of the damaged residential land that is shared land, common land, or joint land: 5
 - (b) any part of the diminution of value of residential land that relates to shared land, common land, joint land, shared property, common property, or joint property:
 - (c) the assessed market value of any residential land that is shared land, common land, or joint land: 10
 - (d) the undepreciated value of any retaining wall or bridge or culvert that is shared land, common land, or joint land.
- (2) In respect of shared land, each relevant amount is the amount that would be the relevant amount in the absence of this section multiplied by the insured person's shared ownership interest. 15
- (3) In respect of common land, each relevant amount is the amount that would be the relevant amount in the absence of this section multiplied by the residential land's common ownership interest.
- (4) In respect of joint property, each relevant amount is the amount that would be the relevant amount in the absence of this section multiplied by the joint land's joint ownership interest. 20
- (5) If the damaged land is—
 - (a) shared land and common land, **subsection (2)** applies and then **subsection (3)** applies (with any necessary modifications); or 25
 - (b) shared land and joint land, **subsection (2)** applies and then **subsection (4)** applies (with any necessary modifications).

45A Reinstatement cost for imminent damage

- (1) This section applies for the purpose of determining the reinstatement cost of any of the damaged residential land to the extent that it is the subject of imminent damage. 30
- (2) The reinstatement cost in respect of the imminent damage must be determined using the future reinstatement cost under **subsection (3)**, the mitigation cost under **subsection (4)**, or a combination of both as the Commission considers appropriate. 35
- (3) The **future reinstatement cost** is the cost that would be the reinstatement cost under **section 40** if the imminent damage had in fact occurred.
- (4) The **mitigation cost** is the total cost that would reasonably be incurred to carry out the work required to mitigate the risk of the imminent damage occurring.

- (5) In deciding whether, or to what extent, to use the future reinstatement cost or mitigation cost, the Commission must take into account the following:
- (a) whether, or to what extent, mitigation—
 - (i) is technically feasible; and
 - (ii) could lawfully be carried out; and 5
 - (iii) is likely to be effective:
 - (b) the relative costs of future reinstatement and mitigation:
 - (c) if the residential building has also suffered natural hazard damage, whether, or to what extent, steps taken to mitigate the risk to the residential land— 10
 - (i) might need to be taken to replace or reinstate the damaged building; or
 - (ii) might also mitigate the risk of imminent damage to the building:
 - (d) any other matters specified in the regulations.
- (6) If **subsection (5)(c)** applies, the Commission must apportion the cost of the mitigation measures between the reinstatement cost of the damaged land and the replacement cost of the damaged building in accordance with the regulations. 15

Subpart 4—Other provisions relating to natural hazard cover

- 46 Optional insurance for property without natural hazard cover** 20
- (1) The Commission may, on application, provide insurance (**direct cover**) against natural hazard damage for a building that is (or would be if it were insured under a fire insurance contract) a residential building and its associated residential land.
 - (2) A person may apply for direct cover only if they have an insurable interest in the property. 25
 - (3) Direct cover—
 - (a) may be provided—
 - (i) for property that does not have natural hazard cover; or
 - (ii) instead of natural hazard cover that would otherwise cover the property; and 30
 - (b) may only be provided for both the residential building and its residential land.
 - (4) Direct cover is to be provided by a contract of insurance—
 - (a) between the Commission and the applicant; and 35
 - (b) on the terms and for a period, set out in the contract, that the Commission considers appropriate, but subject to **subsection (5)**.

- (5) If direct cover is provided for property, this Act applies (with any necessary modifications) as if the cover were natural hazard cover, except to the extent that the contract expressly provides otherwise.
- (6) If **subsection (3)(a)(ii)** applies, while the direct cover is in force, the property is not covered by natural hazard cover. 5
- (7) Premiums paid for the direct cover must be paid into the Fund.

47 Cancellation of cover

- (1) This section applies if—
- (a) a claim is settled by payment of a building claim entitlement or a land claim entitlement, or both; and 10
- (b) ~~in the case of a claim relating to a residential building, the building claim entitlement was calculated based on the building cover cap referred to in **section 31(2)(a)(ii)**; and~~
- (c) ~~in the case of a claim relating to residential land,—~~
- (i) ~~the land claim entitlement was calculated using the assessed market value; and~~ 15
- (ii) ~~the area of the damaged part of the residential land is equal to or greater than the area cap (as defined in **section 43**) or is the whole of the residential land; and~~
- (b) either or both of the following subparagraphs (i) and (ii) apply: 20
- (i) if the claim includes a claim against building cover, the building claim entitlement was calculated based on the building cover cap referred to in **section 31(2)(a)(ii)**:
- (ii) if the claim includes a claim against land cover,—
- (A) the land claim entitlement was calculated using the assessed market value; and 25
- (B) the area of the damaged part of the residential land is equal to or greater than the area cap (as defined in **section 43**) or is the whole of the residential land; and
- (d) ~~sufficient time has elapsed since the claim was settled to give the insured person reasonable opportunity to replace or reinstate the damaged property; and~~ 30
- (e) ~~the damaged property has not been replaced or reinstated to the satisfaction of the Commission.~~
- (c) if there are reasonable steps that the insured person could take to replace or reinstate the damaged property— 35
- (i) sufficient time has elapsed since the claim was settled to give the insured person reasonable opportunity to take such steps; and
- (ii) no such steps have been taken.

- (2) The Commission may cancel building cover, land cover, or both for the residential building and residential land by giving the insured person written notice of the cancellation and the reasons for it.
- (3) The cancellation takes effect when the notice is given and continues until the cover is reinstated under **subsection (6)**. 5
- (4) Cover may be cancelled for a residential building and its residential land even if the prior settlement related to only 1 of them.
- (5) Cancellation of cover for the residential land for a residential building applies only to the residential land for that building (and not to any other parts of the insured person's land on which there are other residential buildings). 10
- (6) The Commission must reinstate cancelled cover if, on application by a person affected by the cancellation, it considers that the cancellation should no longer apply.
- (7) To avoid doubt, the cancellation is not affected by—
 - (a) a new fire insurance contract being entered into; or 15
 - (b) any change of the insured person or persons having an insurable interest in the property.

48 Limitation of liability for preventable repeat damage

- (1) This section applies if—
 - (a) either— 20
 - (i) a residential building has suffered natural hazard damage as a direct result of a landslide; or
 - (ii) residential land has suffered natural hazard damage as a direct result of a landslide, flood, or storm; and
 - (b) the Commission considers that— 25
 - (i) ~~it is likely that the residential building or residential land (or part of it) will suffer substantially the same natural hazard damage in the future (**future damage**); and~~
 - (i) it is likely that in future the residential building or residential land will suffer further natural hazard damage (**future damage**) of substantially the same kind as that referred to in **paragraph (a)**; and 30
 - (ii) the insured person could take reasonable steps to mitigate the risk of future damage.
- (2) The Commission may limit its liability for future damage to the residential building or residential land (or both) by giving the insured person written notice that claims for future damage may be declined under **sections 64 and 70** and the reasons for the Commission's decision. 35
- (3) The limitation takes effect when the notice is given to the insured person and continues until it is removed under **subsection (4)**.

- (4) The Commission must remove the limitation if, on application by a person affected by the cancellation, it considers that the limitation should no longer apply.
 - (5) To avoid doubt, the limitation is not affected by—
 - (a) a new fire insurance contract being entered into; or 5
 - (b) any change of the insured person or persons having an insurable interest in the property.
- 49 Cancellation or limitation of liability to be recorded on land title**
- (1) This section applies if the Commission—
 - (a) cancels building cover or land cover under **section 47**; or 10
 - (b) limits its liability for future damage under **section 48**.
 - (2) The Commission must give a certificate to the Registrar-General of Land stating that the Commission has cancelled the cover or limited its liability (as the case requires).
 - (3) If the Commission reinstates cancelled cover under **section 47(6)** or removes the limitation of liability under **section 48(4)**, the Commission must give a notice to the Registrar-General of Land discharging the certificate. 15
 - (4) A certificate or notice given to the Registrar-General of Land must—
 - (a) be in the form, and include the information required, by the regulations; and 20
 - (b) be given as soon as practicable after the notice is given under **section 47(2) or 48(2)** or the cover is reinstated or limitation is removed (as the case requires).
 - (5) The Registrar-General of Land must (without charge) register the certificate (or any amendment to it) or discharge on the record of title for the land to which it relates. 25

Part 3 Claims

Subpart 1—Making claims

- 50 Insured person may make claim** 30
- (1) If a residential building or residential land (or both) suffers natural hazard damage, the insured person may make a claim against the property's natural hazard cover.
 - (2) The claim must include—
 - (a) the insured person's name and contact details; and 35
 - (b) the address or location of the damaged property; and

- (c) any other information required by the regulations.
- (3) The claim must be made in the way required by the regulations.
- 51 Claim covers all damage that occurs during damage period**
- (1) This section applies if a residential building, residential land, or both (the **insured property**)— 5
- (a) suffers natural hazard damage (**initial damage**); and
- (b) during the damage period, suffers more natural hazard damage (**subsequent damage**).
- (2) The initial damage and subsequent damage (to the extent that any claim is made in relation to them) are the subject of the same claim. 10
- (3) If, after the expiry of the damage period, the insured property suffers more natural hazard damage (**further damage**), this section applies again, with the further damage being the initial damage for the purpose of another damage period.
- (4) In this section, **damage period** means the period— 15
- (a) beginning at the time the initial damage occurs (the **start time**); and
- (b) ending,—
- (i) if the initial damage is ~~the~~ a direct result of an earthquake, a flood, hydrothermal activity, a landslide, a storm, or a tsunami, 48 hours after the start time; or
- (ii) if the initial damage is ~~the~~ a direct result of volcanic activity or a natural hazard fire, on the seventh day after the day on which the initial damage occurs and at the same time on that seventh day as the start time. 20
- (5) For the purposes of this section, it does not matter whether the initial damage, subsequent damage, and further damage are ~~the~~ a direct result of— 25
- (a) 1 natural hazard that occurs over a period of time or 2 or more separate natural hazards; or
- (b) the same kind of natural hazard or 2 or more different kinds of natural hazards.
- (6) If ~~the initial damage is the direct result of 2 or more natural hazards,—~~ 30
- (a) ~~if 1 or more of the natural hazards are volcanic activity or a natural hazard fire, **subsection (4)(b)(ii)** applies; or~~
- (b) ~~otherwise, **subsection (4)(b)(i)** applies.~~

Examples

Example 1

4.—If a house is damaged by an earthquake, the natural hazard damage that occurs at the time of that earthquake is initial damage and is the subject of a single claim.

If the house is damaged again by a second earthquake 12 hours later, that is subsequent damage and part of the same claim.

Example 2

2.—If a house is damaged by volcanic activity at 3 pm on a Sunday, the damage period continues until 3 pm on the following Sunday. So if the land is damaged by a flood in the morning of the second Sunday, the flood damage is part of the same claim as the volcanic damage. However, if the flood occurs in the evening of that Sunday, the flood damage is the subject of a separate claim. 5

~~3.—If volcanic activity triggers a landslide and both damage a house, this is initial damage resulting from both events. Because one of them is volcanic activity, the damage period is 7 days. If the volcanic activity continues for more than 7 days, the first damage that occurs on the eighth day is separate initial damage and starts a second damage period of 7 days.~~ 10

52 Time for making claim

(1) A claim may be made— 15

- (a) on or before the standard claim date; or
- (b) after the standard claim date but on or before the extended claim date; or
- (c) after the extended claim date if that is permitted by **subsection (2)**.

(2) A claim may made after the extended claim date if—

- (a) the regulations allow late claims to be made; and 20
- (b) either or both of the following apply:

- (i) the damage could not reasonably have been discovered in time to enable the insured person (acting reasonably promptly) to make a claim on or before the extended claim date;
- (ii) the insured person is unable to make a claim on or before the extended claim date because of absence, incapacity, or other disability; and 25

(c) the claim is made both—

- (i) as soon as practicable after the damage is discovered or as soon as the insured person is reasonably able to make the claim (as the case requires); and 30
- (ii) within the period required by the regulations.

(3) In this section,—

extended claim date means the date that is 2 years after the date on which the earliest damage included in the claim occurs, or any later date allowed by the regulations 35

standard claim date means the date that is 3 months after the date on which the earliest damage included in the claim occurs, or any later date allowed by the regulations.

Guidance note

The Commission may be able to decline a claim made after the standard claim date (see **section 65**).

53 Providing further information

- (1) As soon as practicable after making the claim, the insured person must give to the Commission sufficient details about the following to enable the claim to be assessed, decided, and settled: 5
 - (a) the damaged property:
 - (b) the natural hazard:
 - (c) the natural hazard damage: 10
 - (d) the fire insurance contract and any other insurance contract under which any of the damaged property is insured:
 - (e) any other persons who have an insurable interest in the damaged property:
 - (f) any other matters set out in the regulations. 15
- (2) The Commission may specify (in a particular case or for any class of cases or all cases) the details that are required under **subsection (1)**.
- (3) The information must be obtained (if the insured person does not already have it) and given to the Commission at the insured person's expense.
- (4) The Commission may defer taking any action in relation to the claim until it is given the required information. 20

54 Updating information

- (1) This section applies if the insured person becomes aware of—
 - (a) any material change in any information relating to the claim that—
 - (i) the insured person has given to the Commission; or 25
 - (ii) the insured person knows, or ought reasonably to know, that the Commission has obtained from another source; or
 - (b) any new information that is relevant to the claim.
- (2) The insured person must give the changed or new information to the Commission as soon as practicable after becoming aware of it (whether or not the claim has been settled). 30
- (3) If the Commission is aware of information that ought to have been given to it but has not been, the Commission may defer taking any action in relation to the claim until it is given the required information.

Examples***Example 1***

If an insured person has made a claim for damage resulting from a landslide and later discovers more damage that is the result of the same landslide, they should give that information to the Commission and it would form part of the same claim (see **section 51**).

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Example 2

The Commission obtains an engineer's report to assess earthquake damage to a residential building and gives a copy of the report to the insured person. If the insured person realises that the engineer has included damage to a shed that had in fact fallen down before the earthquake (so should not be included in the claim), the insured person must tell the Commission about the mistake.

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Guidance note

After being given changed or new information, the Commission may reconsider any decision it has made in relation to the claim (see **section 55(4)**).

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Subpart 2—Commission must assess, decide, and settle claims

55 Commission must assess, decide, and settle claim

- (1) When a claim is made, the Commission must—
 - (a) decide whether to accept it as a valid claim (in whole or part) (see **section 57**); and
 - (b) if (or to the extent that) it accepts the claim,—
 - (i) assess the claim; and
 - (ii) decide how to settle the claim (see **section 58**); and
 - (iii) settle the claim.
- (2) The Commission must assess, decide, and settle the claim—
 - (a) in accordance with, and to the extent to which it is liable to do so under, this Act; and
 - (b) as soon as practicable after the claim is made.
- (3) The Commission—
 - (a) is not required to determine whether there is any damage to the residential building or residential land beyond that identified by the insured person; but
 - (b) if it becomes aware of any such damage, must notify the insured person of that damage.
- (4) If, after making any decision in relation to a claim, the Commission obtains further information relevant to the decision (under **section 54 or 56** or otherwise), the Commission may reconsider, and, if appropriate, change, the deci-

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sion in light of the new information and, if it is reasonable to do so, change the decision.

Guidance note notes

Note 1

The Commission may decline a claim in certain circumstances (see **section 64**). 5

Note 2

If the Commission changes a decision so as to reduce the amount payable to settle a claim, the Commission may be able to recover any overpayment under **section 82A**.

- 56 Commission may request further information** 10
- (1) The Commission may, by written notice, request the insured person to give or produce to the Commission any information, document, or other thing that the Commission believes on reasonable grounds that it needs to assess, decide, or settle the claim.
 - (2) The notice may— 15
 - (a) relate to information, documents, or things that are within the insured person's possession or control or that later come into their possession or control; or
 - (b) require the insured person to obtain the information, documents, or things if they do not already have them. 20
 - (3) The notice may do 1 or more of the following:
 - (a) specify the form and manner in which information, documents, or things must be provided:
 - (b) specify a reasonable period within which information, documents, or things must be provided: 25
 - (c) require the insured person to provide a statutory declaration as to the truth of information given by the person:
 - (d) otherwise specify how anything required by the notice must be done.
 - (4) The information, documents, or things must be obtained (if the insured person does not already have them) and given or produced to the Commission at the insured person's expense. 30
 - (5) The regulations may also impose requirements of the kind referred to in **subsection (3)**.
 - (6) After giving the notice, the Commission may defer taking any action in relation to the claim until the insured person has complied with the notice and any requirements in the regulations. 35
 - (7) This section applies even if the claim has been settled, if the Commission becomes aware of matters relevant to the claim that were not taken into

account when it was settled or that information that ought to have been given to it has not been.

Guidance note

There is also a power to enter land, buildings, or places for the purpose of obtaining information (see **sections 144 and 144A**).

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57 Commission must decide validity of claim

- (1) After receiving a claim, the Commission must,—
 - (a) if (or to the extent that) it is satisfied that the claim meets the criteria in **subsection (2)**, accept it as a valid claim; or
 - (b) if (or to the extent that) it is not so satisfied, reject it as an invalid claim. 10
- (2) The criteria for a valid claim are all of the following:
 - (a) the claim is made in accordance with **section 50** and within the period allowed by **section 52**;
 - (b) the property the claim relates to—
 - (i) is a residential building, residential land, or both; and 15
 - (ii) is covered by natural hazard cover:
 - (c) the property has suffered natural hazard damage:
 - (d) the claimant—
 - (i) has an insurable interest in the property; and
 - (ii) is the insured person for the property. 20
- (3) However, the Commission is not required to decide the validity of a claim if, before doing so, it declines the claim under **section 64**.
- (4) ~~If the Commission rejects a claim (in whole or part), or declines a claim~~ After making a decision under **subsection (1)**, or declining a claim (in whole or part) before deciding its validity, the Commission must notify the insured person of— 25
 - (a) the Commission's decision; and
 - (b) the reasons for the decision; and
 - (c) the insured person's rights to refer disputes about referable decisions to the dispute scheme, and any information about that scheme required by the regulations. 30
- (5) If a person who has made a claim lodges another claim in relation to other damage that occurred during the same damage period (as defined in **section 51**), the later claim is taken to be further information provided under **section 53** in respect of the first claim. 35

58 Commission must decide on settlement and settle claim

- (1) The Commission must settle a valid claim as the Commission considers appropriate—
 - (a) using one of the methods set out in **section 59** that are applicable to the case; or 5
 - (b) ~~using a combination 2 or more~~ of those methods to settle different parts of the claim in different ways.
- (2) The Commission must decide which method or methods to use as soon as practicable after the claim is made.
- (3) After making its decision, the Commission must— 10
 - (a) notify the insured person of the decision; and
 - (b) settle the claim to the extent to which it is liable to do so under this Act.
- (4) If the Commission decides to settle the claim (in whole or part) by making a payment referred to in **section 59(1)(a)**, it must make the payment ~~not more than 1 year after it decides on the amount to be paid.~~ as soon as practicable after making that decision. 15
- (4A) If the Commission decides to settle the claim (in whole or part) using one of the methods set out in **section 59(1)(c) or (d)**, it must do so as soon as practicable after making that decision, having regard to the nature and scale of the natural hazard and the damage. 20
- (5) The Commission and the insured person must comply with any procedural requirements in the regulations relating to settling claims.
- (6) The notice under **subsection (3)(a)** must set out—
 - (a) the Commission's decision; and
 - (b) the reasons for the decision; and 25
 - (c) the insured person's rights to refer disputes about referable decisions to the dispute scheme, and any information about that scheme required by the regulations.
- (7) Nothing the Commission does before giving the notice under **subsection (3)(a)** is to be taken as evidence that the Commission has made any decision under this section. 30

59 Methods available to settle claim

- (1) The methods for settling a claim are the following:
 - (a) paying the building claim entitlement and land claim entitlement to the insured person (or to another person who is lawfully entitled to it) *(see also ~~section 61~~ sections 61 and 61A):* 35
 - (b) if the building claim entitlement and land claim entitlement are zero, notifying the insured person of that fact:

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- (c) replacing or reinstating the damaged property to the standard described in **section 32 or 40**;
 - (d) relocating the residential building under **section 62**;
 - (e) declining the claim under **section 64**.
- (2) If a claim relating to damage to a residential building and residential land is settled by relocating the building under **section 62(1)(b)**,— 5
- (a) the relocation and reinstatement of the building settle the claim in relation to the residential building; and
 - (b) the transfer of the estate or interest in the new site to the insured person under **section 62(4)** settles the claim in relation to the residential land. 10

Guidance note

Section 58(1) allows the whole of the claim to be settled using 1 method or for different methods to be used to settle different parts of the claim.

60 Date for determining amounts

- (1) If the Commission decides to settle a claim (or part of it) in a way that requires the calculation of the replacement cost or reinstatement cost of damaged property, the Commission must calculate the replacement cost or reinstatement cost— 15
- (a) as at the date on which it decides the amount of the replacement cost or reinstatement; or 20
 - (b) if the Commission is satisfied that the circumstances of the case justify doing so, as at an earlier date (but not before the date on which the damage occurred).
- (2) If the Commission decides to settle a claim (or part of it) in a way that requires the calculation of the assessed market value of land or the undepreciated value of damaged property, the Commission must calculate the assessed market value or undepreciated value— 25
- (a) as at the date on which the damage occurred; or
 - (b) if, because of circumstances relating to the cause of the damage, the claim cannot be settled promptly, as at a later date determined by the Commission. 30

Example

If an insured person intentionally gives the Commission misleading information that results in settlement of a building cover claim taking longer than would otherwise have been the case, that may justify the Commission assessing the replacement cost as at the date on which the claim would likely have been settled if correct information had been given. 35

61 Settlement payments if 2 or more persons entitled to payment

- (1) This section applies if—
- (a) ~~the Commission decides to settle a claim by making a payment referred to in **section 59(1)(a)**; and~~
 - (b) ~~2 or more persons are entitled to all or part of the amount (**entitled persons**).~~ 5
- (2) ~~If any of the entitled persons are not the insured person, the Commission must first pay them the amounts to which they are entitled under the contract (such as an assignment or a document referred to in **section 76**) or law under which they are entitled.~~ 10
- (3) ~~The Commission must pay the remainder of the amount to the insured person.~~
- (4) ~~If 2 or more persons are together the insured person, the Commission must,—~~
- (a) ~~if all of them agree on whom the amount is to be paid to or how it is to be divided between them, pay the amount as agreed; or~~
 - (b) ~~otherwise, divide the amount between them in the same proportions as—~~ 15
 - (i) ~~their respective responsibilities to replace or reinstate the damaged property; or~~
 - (ii) ~~if the extent of their responsibilities cannot be ascertained, their respective insurable interests in the damaged property.~~
- (5) ~~In deciding how to divide the amount under this section, the Commission must comply with any requirements in the regulations relating to—~~ 20
- (a) ~~how the amount is to be divided; and~~
 - (b) ~~the matters that are to be taken into account in deciding how the amount is to be divided.~~

61 Settlement payments if insured person is 2 or more persons 25

- (1) This section applies if—
- (a) the Commission decides to settle a claim by making a payment referred to in **section 59(1)(a)**; and
 - (b) the insured person consists of 2 or more persons (*see **section 22(1)***).
- (2) If both or all of those persons have agreed on whom the amount is to be paid to or how it is to be divided between them, the amount payable to the insured person must be paid as agreed. 30
- (3) If not, the Commission must divide the amount between them in the same proportions as—
- (a) their respective responsibilities to replace or reinstate the damaged property; or 35
 - (b) if the extent of their responsibilities cannot be ascertained, their respective insurable interests in the damaged property.

- (4) In deciding how to divide the amount under this section, the Commission must comply with any requirements in the regulations relating to—
- (a) how the amount is to be divided; and
 - (b) the matters that are to be taken into account in deciding how the amount is to be divided.

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61A Settlement payments if 2 or more persons entitled to payment

- (1) This section applies if—
- (a) the Commission decides to settle a claim by making a payment referred to in **section 59(1)(a)**; and
 - (b) there are 1 or more persons who—
 - (i) are not the insured person; but
 - (ii) are entitled to all or part of the payment under a contract (such as an assignment or a document referred to in **section 76**) or another law.
- (2) The Commission must pay the amount—
- (a) first, to each of the persons referred to in **subsection (1)(b)** according to their respective rights under their contracts or the other law; and
 - (b) if any amount remains, to the insured person.
- (3) In deciding how to divide the amount under this section, the Commission must comply with any requirements in the regulations relating to—
- (a) how the amount is to be divided; and
 - (b) the matters that are to be taken into account in deciding how the amount is to be divided.

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Guidance note

If a person other than the insured person has an insurable interest in the property, there may be shared, common, or joint property or land. If so, that may affect the claim settlement amount (see **sections 13 to 20, 33, and 45**).

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62 Relocating residential building

- (1) A claim may be settled by relocating all or part of a residential building (whether damaged or not) from the site where it was situated immediately before the natural hazard occurred (the **original site**) to another site (the **new site**)—
- (a) on the insured person's land; or
 - (b) ~~if, as a result of~~ because of the natural hazard damage, that land is no longer suitable for that purpose, on other land.
- (2) The new site must be reasonably equivalent in all material respects to the original site.

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- (3) The relocated property must be reinstated (including by replacing or reinstating any property damaged during the relocation) to the standard described in **section 32**.
- (4) If property is relocated under **subsection (1)(b)**,—
 - (a) the Commission must ensure that the insured person is given an estate or interest in the new site that is equivalent to, or greater than, their estate or interest in the original site; and
 - (b) the land at the original site is then salvageable property for the purposes of **sections 79 to 82**.
- (5) The Commission and the insured person must comply with any requirements in the regulations relating to how their rights and obligations under this section are to be exercised or complied with.

Example

If a residential building includes a garden shed and an earthquake occurs that does not damage the shed but leaves it at imminent risk of damage from landslides, it may be appropriate to relocate the shed rather than undertake mitigation work to prevent damage from future landslides.

63 Insured person must pay excess if non-monetary settlement

- (1) This section applies—
 - (a) if the Commission decides to settle a claim (in whole or part) using the method set out in **section 59(1)(c) or (d)**; and
 - (b) the replacement, reinstatement, or relocation has been completed.
- (2) The insured person must, on receiving an invoice from the Commission, pay to the Commission an amount equal to,—
 - (a) if the claim relates to a residential building, the building cover excess referred to in **section 31(2)(b)**; and
 - (b) if the claim relates to residential land, the land cover excess referred to in **section 38(2)(b)**.
- (3) However, if the Commission decides to settle part of the claim using the method set out in **section 59(1)(c) or (d)** and in part by making a payment referred to in **section 59(1)(a)**, the Commission—
 - (a) must reduce the total amount for which the claim is settled by an amount equal to the building claim excess and land claim excess applicable to the claim; but
 - (b) may do so by deducting the excesses under **sections 31 and 38** or by issuing an invoice under this section, or by a combination of the two.
- (4) Any amount paid under this section must be paid into the Fund.

*Declining claims***64 When Commission may decline claim**

- (1) The Commission may decline a claim (in whole or part) if it is satisfied that grounds to do so exist under **sections 65 to 74**.
- (2) The Commission may decline the claim at any time regardless of any action the Commission has taken towards assessing, deciding, or settling the claim. 5
- (3) If the Commission declines a claim (in whole or part) after making any payment in respect of the claim (or that part of the claim), **section 82A** applies in relation to that payment.

65 Claim may be declined if delay is prejudicial

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There are grounds to decline a claim if—

- (a) the claim is made after the standard claim date under **section 52(1)(b) or (c)**; and
- (b) the lapse of time before the claim was made materially prejudices the Commission's ability to assess the claim. 15

66 Claim may be declined if no financial loss

There are grounds to decline a claim if the natural hazard damage has not caused, and is not likely to cause, financial loss to the insured ~~person~~ person because—

- (a) the damaged property has been, or will be, reinstated by a third party at no cost to the insured person; or 20
- (b) before the natural disaster damage occurred, the insured person intended to demolish the damaged property.

ExampleExamples**Example 1**

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If, before a natural hazard occurred, an insured person was in the process of demolishing their house in preparation for building a new one in its place, any natural hazard damage to the house is unlikely to cause the person any financial loss.

Example 2

If an insured person intended to demolish a dilapidated shed but the whole residential building was damaged in an earthquake, there would be grounds to decline a claim to the extent that it related to the shed. 30

Example 3

If drains on residential land are damaged but are repaired by the local authority when it is repairing drains along the road at no cost to the insured person, the damage to the drains is unlikely to cause the insured person any financial loss. 35

67 Claim may be declined if condition not complied with

There are grounds to decline a claim if—

(a)	regulations imposing a condition (referred to in section 30 or 37) state that non-compliance with the condition is a ground for declining a claim; and	
(b)	the condition is not complied with.	
68	Claim may be declined if misleading information given to Commission or insurer	5
(1)	There are grounds to decline a claim if the insured person knowingly gives misleading information—	
(a)	to the Commission or an authorised person for the purposes of this Act; or	10
(b)	to the fire insurer in relation to the fire insurance contract or any claim made under it.	
(2)	In this section, misleading information means information that is false, misleading in a material particular, or misleading because of the omission of a material particular.	15
69	Claim may be declined for fraud	
	There are grounds to decline a claim if it (or any part of it) is fraudulent.	
70	Claim may be declined for failure to protect property	
(1)	An insured person must—	
(a)	take reasonable steps to mitigate the risk of natural hazard damage to the residential building and residential land; and	20
(b)	if the residential building or residential land suffers natural hazard damage, take reasonable steps to mitigate the risk of any further damage.	
<u>(1A)</u>	<u>Subsection (1) applies only to the extent that there are reasonable steps that the insured person could take to mitigate the risk.</u>	25
(2)	There are grounds to decline a claim if—	
(a)	the insured person has failed to comply with subsection (1) ; and	
(b)	the natural hazard damage to which the claim relates occurred because of (or was exacerbated by) that failure.	
(3)	This section applies whether or not the Commission has limited its liability in relation to the damage under section 48 .	30
	ExampleExamples	
	A claim for damage to the foundations of a house is settled by payment of the reinstatement cost, but the insured person has not repaired it (despite having had enough time to do so). If another natural hazard causes more damage to the house that would not have occurred had the foundations had been repaired, the Commission may be able to decline a claim for the later damage.	35

Example 1

A claim for damage to a chimney is settled by payment of the replacement cost. There are reasonable steps that could be taken to repair the chimney. The insured person has had sufficient resources and time to make repairs but has not done so. If another natural hazard causes the chimney to fall and damage the roof, the Commission may be able to decline a claim for the later damage.

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Example 2

If a land cover claim relating to increased liquefaction vulnerability is settled for an amount calculated using diminution of value because the Commission considers that reinstating the land is not technically feasible, **subsection (1A)** would likely mean that the insured person is not required to take steps to mitigate the risk of further damage (because there are no reasonable steps that could be taken).

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71 Claim may be declined if damage due to intentional act, omission, or negligence

There are grounds to decline a claim if the natural hazard damage occurred because of (or was exacerbated by) an intentional act or omission of, or the negligence of,—

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- (a) the insured person; or
- (b) a previous owner or occupier of the property, if the insured person was aware of the act, omission, or negligence when they acquired their insurable interest in the property.

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72 Claim may be declined if damage due to unlawful conduct

There are grounds to decline a claim if the natural hazard damage occurred because of (or was exacerbated by) a failure by the insured person to comply with any law or legal requirement.

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73 Claim may be declined if damage due to substandard construction

- (1) This section applies if a claim relates to damage to—

- (a) any part of a residential building that is not an integral-part component of the eligible building; or
- (b) a retaining wall, or a bridge or culvert.

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- (2) There are grounds to decline the claim (to the extent that it relates to that damage) if—

- (a) the damaged property was not constructed in accordance with standards considered appropriate for that property at the time it was constructed; and
- (b) the damage occurred because of (or was exacerbated by) the failure to comply with those standards.

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74 Claim may be declined if natural hazard notification on land title

- (1) There are grounds to decline a claim if—

- (a) the record of title for residential land (or any part of it) contains an entry under section 74 of the Building Act 2004 in relation to a building consent granted under section 72 of that Act; and
 - (b) the notice relates to a natural hazard (as defined in section 71 of the Building Act 2004) that is also a natural hazard as defined in **section 23** of this Act; and 5
 - (c) the claim relates to damage that is ~~the~~ a direct result of a natural hazard of the kind that the notice relates to.
- (2) **Subsection (1)** applies (with any necessary modifications) to an entry on a record of title under section 36(2) of the Building Act 1991 or section 641A of the Local Government Act 1974. 10

Subpart 3—Other provisions relating to claims

75 Assignment of benefit of claim

- (1) The right of an insured person to the benefit of the natural hazard cover for property that has suffered natural hazard damage is a thing in action (which can be assigned under subpart 5 of Part 2 of the Property Law Act 2007). 15
- (2) To avoid doubt, this section does not affect—
 - (a) any right the insured person may have to assign the benefit of a claim under the fire insurance contract; or
 - (b) any other rights of assignment the insured person may have. 20

76 Insurance conditions in mortgage, etc, apply to natural hazard cover

- (1) If a mortgage, lease, or other document includes an express or implied covenant, condition, or power relating to the insurance against physical loss or damage by fire of a residential building or residential land, the covenant, condition, or power applies (with any necessary modifications) in relation to the natural hazard cover for the residential building or residential land. 25
- (2) However, **subsection (1)** is subject to any express provision to the contrary in the mortgage, lease, or other document or any regulations.

77 Subrogation of rights

- (1) The general law of subrogation as it relates to contracts of insurance applies in relation to natural hazard cover as if it were insurance provided under a contract of indemnity between the Commission and the insured person. 30
- (2) The insured person must (at the Commission's expense) do anything reasonably required by the Commission to enable it to exercise or enforce any subrogated rights or remedies. 35

78 Ex gratia payments if honest but mistaken belief that property has natural hazard cover

- (1) The Commission may make an ex gratia payment to a person in relation to natural hazard damage to property if—
 - (a) the property is not part of a residential building or residential land; but 5
 - (b) the person has paid the amount referred to in **section 114** in relation to the fire insurance contract for the property in the honest but mistaken belief that it was insured under this Act.
- (2) The amount of the ex gratia payment must not exceed what would have been payable under this Act in respect of the natural hazard damage if the property had been covered by natural hazard cover. 10

79 Right to salvage

- (1) To the extent that a claim is settled by a method set out in **section 59(1)(a), (c), or (d)**, the Commission has a right to salvage property in accordance with this section and **sections 80 to 82**. 15
- (2) Before salvaging any property, the Commission must take reasonable steps to give the insured person and the fire insurer reasonable notice of its intention to do so.
- (3) The Commission and the insured person must comply with any requirements in the regulations relating to how their rights and obligations under this section and **sections 80 to 82** are to be exercised or complied with. 20
- (4) The regulations may provide that those rights and obligations may be enforced as if they were contractual rights and obligations.
- (5) The Commission—
 - (a) is not required to salvage any damaged property; and 25
 - (b) does not acquire title to, and has no obligation to remove or dispose of, damaged property that it chooses not to salvage (even if that property is abandoned by the insured person).
- (6) Nothing done by the Commission in the exercise, or purported exercise, of its rights under this section and **sections 80 to 82**— 30
 - (a) gives rise to any liability of the Commission to the insured person; or
 - (b) affects any other rights or obligations of the Commission or the insured person under this Act or the regulations.

80 Salvage of property other than land

- (1) The Commission may salvage any part of the property to which the settlement relates (other than land) that is not required for the purposes of reinstating or replacing that property by taking possession of it. 35

- (2) The Commission must carry out any salvage work reasonably and, as far as is practicable, in a way that is co-ordinated with the reinstatement or replacement of the damaged property.

81 Salvage by acquisition of title to land

- (1) The Commission may salvage land only if the claim against land cover is settled for an amount equal to or greater than the ~~market value~~ prior market value (as defined in **section 43**) of the ~~land holding within which a residential building is situated~~ insured person's land (as defined in **section 16**). 5
- (2) The Commission may, by written notice, require the insured person to transfer their title to that land ~~holding~~ to the Commission. 10
- (2A) Before giving the notice, the Commission must consult the insured person about its intention to do so and give the person a reasonable opportunity to make submissions on the proposal.
- (3) The insured person must comply with the notice.
- (4) After title has been transferred, the Commission must pay compensation to the insured person for the value of any improvements on the land that are not salvageable under **section 80** and for which no other compensation is payable. 15

82 Dealing with salvaged property

- (1) When the Commission salvages property, it becomes the property of the Commission, and any person who acquires it from the Commission acquires good title to it. 20
- (2) The Commission must divide the proceeds of any sale of salvaged property (less costs and any compensation paid under **section 81(4)**) between itself, the fire insurer, and any other insurers who have an interest in the property in proportion to their respective interests in the property. 25
- (3) Any proceeds retained by the Commission must be paid into the Fund.

82A Recovery of overpayments

- (1) This section applies—
- (a) if, because of a miscalculation or other error, the amount paid to a person to settle a claim is more than the person was entitled to; or 30
- (b) if an amount has been paid to a person to settle a claim and the Commission subsequently changes its decision (under **section 55(4)**) and decides to decline the claim or reduce the amount payable to settle the claim; or
- (c) if the Commission declines a claim (under **section 64(3)**) after an amount has been paid in respect of the claim; or 35
- (d) if an amount is otherwise paid to a person out of the Fund in error.

- (2) The Commission may, by written notice, require the person to repay the overpayment or amount paid in error within the time specified in the notice (which must give the person reasonable time to comply).
- (3) However, the Commission cannot require repayment of an amount if the recipient— 5
- (a) did not intentionally contribute to the error or overpayment; and
- (b) received the payment in good faith; and
- (c) has so altered their position in reliance on the validity of the payment that it would be inequitable to require repayment.
- (4) Any amount not repaid in the time allowed is recoverable by the Commission under **section 105(5)**. 10
- (5) Any amount repaid or recovered must be paid into the Fund.

83 Claim entitlements reduced if other catastrophe insurance applies

- (1) This section applies if—
- (a) a residential building or residential land is insured by an insurer other than the Commission under a contract of insurance against 1 or more natural hazards (a **contract**); and 15
- (b) the contract is not limited to insuring the residential building or residential land only to the extent that the amount of any damage exceeds the building claim entitlement or land claim entitlement for the damage; and 20
- (c) the residential building or residential land suffers natural hazard damage.
- (2) For the purposes of **section 31 or 38**, the building claim entitlement or land claim entitlement for the claim is reduced to an amount calculated as follows:

$$r = n - (c + e)$$

where— 25

- r is the reduced building claim entitlement or land claim entitlement
- n is the amount that would be the building claim entitlement or land claim entitlement under **section 31 or 38** if this section did not apply
- c is the amount payable under the contract in respect of the damage (or that would be payable if a claim were made) 30
- e is the total of any excess or other amounts to be borne by the insured person in relation to a claim under the contract in respect of the damage.

Subpart 4—Code of Insured Persons' Rights

84 Purpose of Code of Insured Persons' Rights

- (1) There must be a Code of Insured Persons' Rights. 35
- (2) The purpose of the Code is to set out the rights of insured persons to have their claims managed and settled in a fair and timely manner.

- (3) For that purpose, the Code must—
- (a) confer rights on insured persons, and impose obligations on the Commission, in relation to how the Commission is to deal with insured persons, particularly in relation to the timeliness of managing claims and the fair treatment of insured persons; and 5
 - (b) provide remedies for a breach of the Code; and
 - (c) explain an insured person's rights—
 - (i) to have complaints to which the complaint procedure applies dealt with in accordance with that procedure; and
 - (ii) to have decisions made by the Commission under the complaint procedure in relation to breaches of the Code dealt with in accordance with the review procedure; and 10
 - (iii) to refer disputes about referable decisions to the dispute scheme.
- (4) The rights conferred on insured persons by the Code are in addition to any other rights they may have, and do not affect their entitlements and responsibilities under this Act, other legislation, or the general law. 15

85 Minister to make Code

- (1) The Minister must make a Code of Insured Persons' Rights for the purposes set out in **section 84**.
- (2) For the purpose of doing so, the Minister— 20
- (a) must request the Commission to prepare a draft Code and provide it to the Minister; and
 - (b) may request the Commission to make amendments to it.
- (3) The Minister must not make the Code unless satisfied that—
- (a) adequate public consultation has been undertaken in relation to the draft Code; and 25
 - (b) interested persons have been given a reasonable opportunity to make submissions on the draft Code, and any submissions have been taken into account.
- (4) The Code is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 30

86 Commission's obligations in relation to Code

- (1) In all its dealings with insured persons, the Commission must ensure that its actions—
- (a) are consistent with the Code; and 35
 - (b) uphold the rights of insured persons under the Code.
- (2) The Commission must—

- (a) publish the Code on the Commission's website; and
- (b) make the Code accessible to, and promote awareness of it among, insured persons and the public generally (*see also* **section 87**).
- (3) The obligations imposed on the Commission by the Code are in addition to its other obligations under this Act, other legislation, and the general law. 5

Subpart 5—Complaint management procedure

87 Commission must have complaint management procedure

- (1) The Commission must have a procedure in place for managing complaints by insured persons.
- (2) The procedure must provide for managing complaints about breaches of the Code. 10
- (3) The complaint procedure must be consistent with this subpart, the Code, and any requirements in the regulations.
- (4) The Commission must publish the complaint procedure, make it accessible, and promote awareness of it, along with the Code (*see* **section 86**). 15
- (5) The Commission must manage complaints in accordance with the complaint procedure.

Subpart 6—Review of complaint procedure decisions about breaches of Code

88 Commission must have procedure for review of complaint procedure decisions about breaches of Code 20

- (1) The Commission must have a procedure in place for independent persons to review decisions made by the Commission under the complaint procedure in relation to a breach of the Code.
- (2) The review procedure must— 25
 - (a) be consistent with this subpart, the Code, and any requirements in the regulations; and
 - (b) provide for decisions to be reviewed in a way that is independent of the Commission (other than its obligations under **sections 89 and 94**).
- (3) The Commission must publish the review procedure, make it accessible, and promote awareness of it, along with the Code (*see* **section 86**). 30
- (4) The Commission must engage persons to be reviewers in accordance with **section 94**.

89 Application for review of decision

- (1) A person aggrieved by a decision made by the Commission under the internal complaints procedure in relation to a breach of the Code may apply for an independent review of that decision.
- (2) An application must— 5
 - (a) be made to the Commission in the way, and within the period, required by the regulations; and
 - (b) include the information required by the regulations.
- (3) On receiving an application, the Commission must allocate it to a reviewer in accordance with any requirements in the regulations. 10
- (4) The Commission must not allocate the application to a reviewer who it is aware has any previous involvement in the matter under review or any other conflict of interest.
- (5) If, after allocating an application, the Commission becomes aware of any such prior involvement or conflict, it must reallocate the review to another reviewer. 15
- (6) If the regulations require a reviewer to transfer the application to another reviewer (for example, because of a conflict of interest), the reviewer must do so.

90 Reviewer must assess application

- (1) On receiving an application, the reviewer must— 20
 - (a) assess whether the application—
 - (i) relates to a decision made by the Commission under the complaint procedure in relation to a breach of the Code; and
 - (ii) is made in accordance with **section 89(2)**; and
 - (b) if they decide it does meet those criteria, review the decision in accordance with **section 91**. 25
- (2) ~~However, if the regulations allow a reviewer to reject a claim without considering it (because, for example, it is frivolous or vexatious), the reviewer may reject the claim without complying with **subsection (1)**.~~
- (2) However, a reviewer may reject the application without complying with **subsection (1)** if— 30
 - (a) they are satisfied that the application is frivolous or vexatious; or
 - (b) a reviewer has previously assessed and rejected an application relating to the same decision, and the criteria in **subsection (1)(a)** have not been met; or 35
 - (c) a review of the decision to which the application relates has previously been conducted.

- (3) If the reviewer decides that the application does not meet the criteria in **subsection (1)(a)** or decides to reject the claim under **subsection (2)**, they must notify the applicant and the Commission in writing of that decision and the reasons for it.
- (4) If the reviewer decides that the application does not meet the criteria in **subsection (1)(a)** but considers that the application relates to a referable decision, the notice under **subsection (3)** must explain the applicant's right to refer disputes about referable decisions to the dispute scheme. 5
- 91 Review of decision** 10
- (1) The reviewer must carry out the review—
- (a) within the period set by, and in accordance with any other requirements in, the regulations; and
 - (b) in accordance with the ~~principles of natural justice~~ requirements in **section 95(1A) and (2)**; and
 - (c) otherwise in an informal, timely, and practical manner as the reviewer thinks fit. 15
- ~~(2) In carrying out the review, the reviewer must—~~
- ~~(a) act independently of the Commission; and~~
 - ~~(b) exercise due diligence.~~
- 92 Report of reviewer** 20
- (1) After completing the review, the reviewer must prepare a written report setting out—
- (a) the reviewer's decision on the application and their reasons for it; and
 - (b) the reviewer's decision on whether the Commission must provide any of the remedies available under the Code (as required by **section 84(3)(b)**); and 25
 - (c) any other recommendations to the Commission; and
 - (d) any matters required by the regulations; and
 - (e) any other matters the reviewer considers appropriate.
- (2) The reviewer must give the report to the applicant, the Commission, and any other person as required by the regulations. 30
- (3) If the reviewer decides that the Commission should provide a remedy available under the Code and the regulations state that decisions in relation to that remedy are binding, the Commission must provide the remedy.
- (4) The reviewer and any person to whom the report is given must comply with any requirements in the regulations about the confidentiality of reviewers' reports. 35

93 Other proceedings

- (1) Applying for a review under this subpart does not affect any right any person may have to refer a dispute to the dispute scheme or to commence proceedings in any court or tribunal.
- (2) However, if such other proceedings are commenced in relation to the matters under review, the review proceedings are stayed until the other proceedings are determined and all appeal rights exhausted (unless a court or tribunal orders otherwise). 5

94 Commission must engage reviewers

- (1) The Commission must engage as many persons as it considers necessary to be reviewers. 10
- (2) Reviewers must be engaged in accordance with any requirements (including as to the terms of their engagement) in the regulations.
- (3) The Commission must not engage an individual as a reviewer if they are any of the following: 15
 - (a) a member of the Commission's board;
 - (b) a worker of the Commission;
 - (c) a delegate referred to in **section 127** or a worker of a delegate;
 - (d) a person specified in the regulations.
- (4) The Commission must not engage a body corporate as a reviewer unless satisfied that none of the body corporate's workers who will be involved in carrying out reviews are persons referred to in **subsection (3)**. 20
- (5) The Commission must not include in its contract with a reviewer any term or condition that could have the effect, directly or indirectly, of influencing the reviewer in favour of the Commission. 25
- (6) A person is a **worker** of another person (**person B**) if the person carries out work for person B as an employee, an agent, or in any other capacity.

95 ~~Functions, powers, and duties~~ Powers and duties of reviewers

- (1) ~~A reviewer has the functions, powers, and duties conferred on reviewers by the regulations (in addition to those conferred by this subpart).~~ 30
- (1) A reviewer has the powers that are reasonably necessary to enable them to carry out their functions under this Act (in addition to the other powers conferred on them by this Act).
- (1A) When performing their functions or exercising their powers, a reviewer must—
 - (a) act independently of the Commission; and 35
 - (b) exercise due diligence; and
 - (c) act in accordance with the principles of natural justice.

- (2) A reviewer to whom a review is, or is to be, allocated must inform the Commission of any prior involvement in a matter under review, or any other conflict of interest,—
- (a) before the application is allocated (if the prior involvement or conflict is known at the time); or 5
 - (b) as soon as practicable after they become aware of the prior involvement or conflict.

96 Regulations as to fees and costs

- (1) The regulations may provide for—
- (a) the payment of fees in respect of a review; and 10
 - (b) the payments of costs incurred by parties to a review in relation to the review.
- (2) If the regulations provide for a reviewer to make orders as to costs, any such order may be enforced by a court of competent jurisdiction as if it were a judgment of the court. 15

Subpart 7—Resolution of disputes about claims

97 Commission must participate in dispute resolution scheme

- (1) The Commission must be a member of a dispute resolution scheme approved by the Minister for resolving disputes about the Commission's decisions on the validity or settlement of claims. 20
- (2) If there is no approved dispute resolution scheme, the Commission must establish and operate a scheme with scheme rules made by the Minister under **section 99**.

98 Approval of dispute resolution scheme

- (1) The Minister may approve a dispute resolution scheme for the purposes of this subpart. 25
- (2) The Minister must not approve a scheme unless satisfied that—
- (a) it is based on the following principles:
 - (i) accessibility:
 - (ii) independence: 30
 - (iii) fairness:
 - (iv) accountability:
 - (v) efficiency:
 - (vi) effectiveness; and
 - (b) it provides for the resolution of disputes about referable decisions; and 35

- (c) adequate public consultation has been undertaken in relation to the scheme.
- (2A) **Subsection (2)(c)** does not apply to the approval of minor or technical amendments to the scheme.
- (3) An approval granted under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 5
- (4) The Commission must publish on the Commission’s website—
- (a) a copy of the scheme rules (as amended from time to time); or
 - (b) a link to another Internet site where the rules are published.
- 99 Rules for scheme established by Commission** 10
- (1) For the purposes of **section 97(2)**, the Minister may make rules for a dispute resolution scheme that is to be established and operated by the Commission.
- (2) For the purpose of doing so, the Minister—
- (a) must request the Commission to prepare draft rules and provide them to the Minister; and 15
 - (b) may request the Commission to make amendments to the draft.
- (3) The Minister must not make rules unless satisfied that ~~the scheme will meet the criteria set out in **section 98(2)**.~~—
- (a) the scheme will meet the criteria set out in **section 98(2)**; and
 - (b) adequate public consultation has been undertaken in relation to the draft rules. 20
- (3A) **Subsection (3)(b)** does not apply in relation to minor or technical amendments to the rules.
- (4) Rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 25
- 100 Referral of dispute and participation in resolution**
- (1) If the Commission has made a referable decision about a claim, an affected person who disputes the decision may (but is not required to) refer the dispute to the dispute scheme.
- (2) The Commission is a party to dispute resolution proceedings and must participate in the resolution of the dispute. 30
- (3) All parties to the dispute resolution proceedings must comply with the scheme rules.
- (4) A court of competent jurisdiction may, on application, order a party to the proceedings to comply with the scheme rules. 35
- (5) An application to the court may be made by a party to the proceedings or the person conducting the proceedings.

(6) In this section,—

affected person means—

- (a) the insured person for the residential building or residential land that the claim relates to; or
- (b) any other person who is lawfully entitled to all or part of any building claim entitlement or land claim entitlement payable on the settlement of the claim 5

referable decision means a decision made by the Commission—

- (a) under **section 57** as to whether, or to what extent, a claim is valid; or
- (b) under **section 58** as to how the extent to which a claim is to be, or has been, settled,— 10

but not a decision of a kind specified in the regulations as not suitable for resolution under the dispute scheme.

101 Other proceedings

- (1) The referral of a dispute to the dispute scheme does not affect any right any person may have to commence proceedings in any court or tribunal. 15
- (2) However, if such proceedings are commenced in relation to the matters that are the subject of the dispute resolution proceedings, the dispute resolution proceedings are stayed until the other proceedings are determined and all appeal rights exhausted (unless the court or tribunal orders otherwise). 20

102 Enforcement of dispute resolution scheme

- (1) This section applies if a dispute is resolved under the dispute scheme—
 - (a) by an order or other decision of an adjudicator or other decision maker; or
 - (b) by mediation or other process the outcome of which the parties have agreed will be binding. 25
- (2) The outcome of the dispute resolution proceedings—
 - (a) is binding on the parties to the proceedings; and
 - (b) may be enforced by a court of competent jurisdiction.
- (3) An application to the court may be made by— 30
 - (a) a party to the proceedings; or
 - (b) if **subsection (1)(a)** applies, the adjudicator or other decision maker.
- (4) If **subsection (1)(a)** applies, an order or a decision that requires the payment of money may be enforced as if it were a judgment of the court.
- (5) If ~~**subsection (1)(b)** applies and the court is satisfied that the terms on which the dispute was resolved are manifestly unreasonable, the court may modify those terms before enforcing them.~~ 35

103 Appeals

- (1) A person (including the Commission) aggrieved by a decision referred to in **section 102(1)(a)** may appeal to a court of competent jurisdiction.
- (2) An appeal must be brought—
 - (a) in accordance with the rules of the court; and 5
 - (b) within—
 - (i) 20 working days after the date of the decision; or
 - (ii) any further time allowed by the court (on application made before or after that period expires).

Part 4

10

Natural Hazard Fund and levy**Subpart 1—Natural Hazard Fund****104 Natural Hazard Fund**

- (1) The Natural Disaster Fund under the Earthquake Commission Act 1993 is continued with the name Natural Hazard Fund. 15
- (2) The purpose of the Fund is to provide for payment of claim settlement costs and the other amounts referred to in **section 107**.
- (3) The primary sources of funding for the Fund are—
 - (a) the levy; and
 - (b) earnings from the investment of the Fund; and 20
 - (c) payments made by the Minister (which are required by **section 108** if the assets of the Fund are not sufficient to pay the amounts payable out of the Fund under **section 107**).

105 Fund owned and managed on behalf of Crown

- (1) All assets in the Fund are owned by the Commission on behalf of the Crown. 25
- (2) The Commission is not a trustee, or a constructive trustee, in relation to the performance of its functions or any other matter.
- (3) The Fund is managed by the Commission on behalf of the Crown.
- (4) All money payable into the Fund must be paid to the credit of a bank account established under section 158(1) of the Crown Entities Act 2004 (and section 65U of the Public Finance Act 1989 does not apply). 30
- (5) All money owing in respect of the Fund is recoverable by the Commission in a court of competent jurisdiction as a debt due to the Commission.
- (6) The Commission must comply with any requirements in the regulations relating to how payments out of the Fund are to be made. 35

106 Amounts to be paid into Fund

The following must be paid into the Fund:

- (a) levy payments under **subpart 2**:
- (b) money payable by the Minister under **section 108 or 109**:
- (c) money accruing from the investment of the Fund under **section 111**: 5
- (d) money received from reinsurance or other risk transfer products referred to in **section 126(d)**:
- (e) fines imposed for offences against this Act:
- (f) any other money lawfully payable into the Fund.

107 Amounts to be paid out of Fund 10

(1) The following must be paid out of the Fund:

- (a) claim settlement costs:
- (b) expenses and capital expenditure incurred by the Commission in performing its functions under any of paragraphs (a) to (d), (f), and (g) of section 126 ~~section 126(a) to (d) or (g)~~: 15
- (c) expenses and capital expenditure incurred by the Commission in undertaking any other activity in the performance of its functions if the Commission believes on reasonable grounds that the activity has the potential to—
 - (i) provide a benefit to insured persons (whether or not the activity also has the potential to provide a benefit to persons who are not insured persons); or 20
 - (ii) reduce the future cost of providing natural hazard cover:
- (ca) expenses and capital expenditure incurred by the Commission in undertaking activities to which subsection (2A)(a) applies: 25
- (d) repayments (with any applicable interest) of—
 - (i) amounts paid into the Fund under **section 108** on terms that require them to be repaid; and
 - (ii) amounts required to be repaid under **section 110**:
- (e) refunds payable under **section 115 or 116**. 30

(2) If an expense or a capital expenditure is incurred in undertaking an activity only part of which is within the scope of **subsection (1)**, only the part of the expense or capital expenditure that is attributable to that part of the activity must be paid out of the Fund.

(2A) When conferring a function on the Commission referred to in **section 126(1)(h)(ii)**, the Minister must determine whether expenses and capital expenditure incurred by the Commission in undertaking any activities in the performance of the function are to be paid— 35

- (a) from the Fund; or
 - (b) out of money—
 - (i) appropriated by Parliament for that purpose; and
 - (ii) provided under a service agreement entered into under **section 129.** 5
 - (2B) The Minister may only choose the option specified in **subsection (2A)(a)** if the Minister believes on reasonable grounds that the activity has the potential to—
 - (a) provide a benefit to insured persons (whether or not the activity also has the potential to provide a benefit to persons who are not insured persons); or 10
 - (b) reduce the future cost of providing natural hazard cover.
 - (3) No payment may be made out of the Fund other than those permitted by this section.
- 108 Minister must make payments into Fund** 15
- (1) If the assets of the Fund are not sufficient to pay the amounts forecast to be due and payable out of the Fund under **section 107** in any upcoming 12-month period, the Minister must make 1 or more payments ~~pay~~ into the Fund that are sufficient, and are timed, to enable all amounts payable in the 12-month period to be paid. ~~sufficient money to enable those amounts to be paid.~~ 20
 - (2) The amount payable by the Minister is to be paid—
 - (a) by way of loan or grant; and
 - (b) on terms (including as to the payment of interest) that the Minister considers appropriate; and
 - (c) out of public money and without further appropriation than this section. 25
- 109 Minister may make additional payments into Fund**
- (1) The Minister may pay into the Fund money that is additional to that required under this Act.
 - (2) The amount is to be paid—
 - (a) on terms (including as to the payment of interest) that the Minister considers appropriate; and 30
 - (b) out of money appropriated by Parliament for that purpose.
- 110 Repayment of amounts paid by Minister**
- (1) The Minister may, in writing, require the Commission to repay out of the Fund any amount paid into the Fund by the Minister. 35
 - (2) The amount is to be repaid on terms (including as to the payment of interest) that the Minister considers appropriate.

- (3) However, the Minister cannot require an amount to be repaid if making the repayment as required would result in the Minister being required to make a payment into the Fund under **section 108**.
- (4) The Commission must comply with a requirement made by the Minister, unless doing so would result in the Minister being required to make a payment into the Fund under **section 108**. 5
- (5) Before requiring repayment under this section, the Minister must consult the Commission.
- (6) This section—
 - (a) does not apply to amounts paid into the Fund by way of grant under **section 108** of this Act or section 16 of the Earthquake Commission Act 1993; but 10
 - (b) applies to all other amounts paid into the Fund by the Minister, whether under **section 108 or 109**, the Earthquake Commission Act 1993, or otherwise, and whether paid before or after the commencement of this Act. 15

111 Investment of Fund

- (1) The Commission is responsible for investing the Fund.
- (1A) The Commission must invest the fund having regard to the amounts required to be paid out of the Fund under **section 107**. 20
- (2) Subject to **subsection (1A)**, the The Commission must invest the Fund as required by—
 - (a) any direction by the Minister under section 103 of the Crown Entities Act 2004; and
 - (b) the funding and risk management statement (*see **section 133***). 25
- (2A) If there is a conflict between a direction referred to in **subsection (2)(a)** and the funding and risk management statement, the direction prevails.
- (3) Subject to **subsections (1A) and (2)**, the Commission must invest the Fund on a prudent, commercial basis that is consistent with—
 - (a) best-practice portfolio management; and 30
 - (b) maximising return without undue risk to the Fund as a whole; and
 - (c) avoiding prejudice to New Zealand's reputation as a responsible member of the world community.
- (4) Section 100 of the Crown Entities Act 2004 does not apply in relation to the Fund. 35

Subpart 2—Levy

112 Levy payable for natural hazard cover

- (1) A levy is payable in respect of a residential building that is insured under a fire insurance contract.
- (2) The rate of the levy is the rate set out in, or determined using the method set out in, the regulations. 5
- (3) The levy is payable by the fire insurer.
- (4) If there are 2 or more fire insurance contracts for a residential building, the liability for the levy is to be apportioned between the insurers in accordance with any requirements in the regulations. 10

Guidance note

If the fire insurer is an overseas insurer, any insurance intermediary and the insured person may also be liable to pay the levy under **section 117**.

113 Payment of levy

- (1) A fire insurer must pay the levy to the Commission— 15
 - (a) within 2 months after the end of the month in which the fire insurance contract is entered into, or within any other period set out in the regulations; and
 - (b) in the way required by the regulations.
- (2) When making the payment, the fire insurer must give to the Commission a statement, certified by an officer or agent of the insurer, that according to the insurer's records and to the best of the person's knowledge and belief, the payment is correct. 20
- (3) A person who intentionally fails to comply with this section—
 - (a) commits an offence; and 25
 - (b) is liable on conviction,—
 - (i) in the case of an individual, to imprisonment for a term not exceeding 2 months or a fine not exceeding \$25,000 (or both); and
 - (ii) in any other case, to a fine not exceeding \$50,000.

114 Insured person must pay amount of levy to fire insurer 30

- (1) On entering into a fire insurance contract, the insured person must pay an amount equal to the amount of the levy to the fire insurer in accordance with the fire insurance contract.
- (2) The amount payable is a debt due by the insured person to the fire insurer and is recoverable by the fire insurer. 35

- (3) If, before the amount is paid, another person becomes the insured person (or becomes 1 of the persons who are together the insured person), that person also becomes liable for the outstanding amount.
- (4) If 2 or more persons are liable for an amount under this section, they are jointly and severally liable for the amount. 5

115 Waiver or refund of levy if amount not recoverable from insured person

The Commission may waive a fire insurer's obligation to pay all or part of the levy in relation to a fire insurance contract, or refund an amount paid, if satisfied that,—

- (a) at the time the insurer is required by **section 113** to pay the levy, the insured person has not paid the amount payable under **section 114**; and 10
- (b) the fire insurer is unlikely to be able to recover that amount.

116 Unpaid or overpaid levy

- (1) Any unpaid levy is recoverable by the Commission under **section 105(5)**.
- (2) The Commission may refund any overpayment of the levy to the fire insurer. 15
- (3) The fire insurer must in turn refund the same amount to the insured person (unless the insured person has not complied with **section 114**).

117 Liability for levy if overseas insurer

- (1) This section applies if a fire insurer—
 - (a) is not a licensed insurer; and 20
 - (b) does not carry on insurance business in New Zealand; and
 - (c) does not carry on business in New Zealand.
- (2) If the contract is negotiated (directly or indirectly) by an insurance intermediary who carries on business in New Zealand,—
 - (a) the insurance intermediary is liable (jointly and severally with the fire insurer) to pay the levy; and 25
 - (b) **sections 113 to 116, 148, and 149** apply as if the insurance intermediary were a fire insurer.
- (3) If the contract is negotiated (directly or indirectly) by an insurance intermediary who does not carry on business in New Zealand, the insurance intermediary and the insured person are liable (jointly and severally with each other and the fire insurer) to pay the levy. 30
- (4) If the contract is not negotiated by an insurance intermediary, the insured person is liable (jointly and severally with the fire insurer) to pay the levy.
- (5) If the insured person is liable under **subsection (3) or (4)**,— 35
 - (a) **sections 113(1) and (3) and 116(1) and (2)** apply as if the person were a fire insurer; and

- (b) **section 114** does not apply.
- (6) For the purposes of this Act, a fire insurance contract to which this section applies is to be treated as being governed by New Zealand law.
- (7) In this section,—
- carry on business**, in New Zealand, has the same meaning as in section 332 of the Companies Act 1993 5
- carry on insurance business in New Zealand** has the same meaning as in section 8 of the Insurance (Prudential Supervision) Act 2010
- licensed insurer** has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010 10
- insurance intermediary** has the same meaning as in section 2(1) of the Insurance Intermediaries Act 1994.
- 118 Confidentiality of levy information**
- (1) The Commission, a member of the Commission's board, or a worker must not disclose information obtained under **section 113** other than— 15
- (a) for the purposes of this Act; or
- (b) as permitted by **subsection (2)**.
- (2) The Commission may disclose the amount of levy payments received and cover provided under this Act in a manner that does not enable the amounts paid by, or attributable to, a particular fire insurer to be identified. 20
- (3) A board member or worker who intentionally fails to comply with **subsection (1)**—
- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding,— 25
- (i) in the case of an individual, \$25,000; and
- (ii) in any other case, \$50,000.
- (4) In this section, **worker** means a person who carries out work for the Commission as an employee, an agent, or in any other capacity.
- 119 Levy amount to be stated separately**
- In any invoice, demand, or statement of account relating to a fire insurance contract, the fire insurer must set out the amount of the levy separately from any premium or other amount. 30
- 120 Brokerage not to be charged**
- No person may require payment of any brokerage, commission, or other fee in respect of natural hazard cover, the levy, or an amount payable under **section 114**. 35

121 Charge for continuation of natural hazard cover after claim

- (1) ~~When a claim is settled, the Commission may charge the insured person an amount set out in, or determined using the method set out in, the regulations for the continuation of natural hazard cover for the residential building and residential land.~~ 5
- (2) ~~An amount charged under this section may be—~~
- ~~(a) deducted from any amount payable to the insured person to settle the claim; or~~
 - ~~(b) recovered from the insured person and paid into the Fund.~~

Part 5 10**Administration and enforcement****Subpart 1—Toka Tū Ake – Natural Hazards Commission****122 Toka Tū Ake – Natural Hazards Commission**

The Earthquake Commission under the Earthquake Commission Act 1993 is continued with the name Toka Tū Ake – Natural Hazards Commission. 15

123 Commission is Crown entity

- (1) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) That Act applies to the Commission except to the extent that this Act expressly provides otherwise. 20

124 Membership of Commission's board

The board of the Commission consists of at least 5, and not more than 9, members appointed by the Minister under section 28 of the Crown Entities Act 2004.

125 Objectives of Commission 25

- (1) The Commission's primary objective is to reduce the impact of natural hazards on people, property and the community.
- (2) The Commission's more specific objectives are—
- (a) to administer natural hazard cover, in particular by managing and settling claims, in a fair and timely manner in accordance with this Act (including the Code): 30
 - (b) to contribute to the management of the financial risk to the Crown of providing natural hazard cover by managing the Fund, collecting the levy, and ~~purchasing~~ arranging reinsurance or other risk transfer products: 35

- (c) to contribute, primarily through the performance of its functions under **section 126(e) and (f)**, to—
- (i) ~~reducing the impact of natural hazard damage:~~ improved awareness and understanding of matters relating to natural hazards, including— 5
 - (A) the impacts of natural hazards; and
 - (B) damage as a result of natural hazards, including how that damage may be prevented or reduced; and
 - (C) natural hazard cover and the operation of this Act:
 - (ii) ~~improving community resilience to, and recovery from, natural hazards:~~ improved natural hazard risk management: 10
 - (iii) improved readiness for, resilience to, and recovery from, natural hazards, including by reducing the cost of recovery from natural hazards:
 - (d) to facilitate the ~~purchase arrangement~~ by the Crown of reinsurance or other risk transfer products in respect of ~~other Crown risks~~ Crown risks beyond those covered in this Act. 15

126 Functions of Commission

The Commission has the following functions:

- (a) to administer natural hazard cover, in particular by managing and settling claims: 20
- (b) to manage the Fund, including by investing the Fund, in accordance with this Act:
- (c) to collect the levy in accordance with this Act:
- (d) to ~~purchase arrange~~ reinsurance or other risk transfer products in respect of all or part of natural hazard cover: 25
- (e) to facilitate research and education, and to contribute to the sharing of information, knowledge, and expertise (with the Crown, public and private entities, and the public generally), including in relation to—
 - (i) natural hazards and their impacts: 30
 - (ii) damage to residential buildings, residential land, and other property as a result of natural hazards, ~~including methods of reducing or preventing such damage~~ how that damage might be prevented or reduced:
 - (iii) community resilience to natural hazards: 35
 - (iv) natural hazard ~~and~~ risk management:
 - (v) planning for, and recovering from, natural hazards:
 - (vi) natural hazard cover and the operation of this Act:

- (f) to support the Minister in performing the Minister's functions, including by providing information, knowledge, and expertise (whether in relation to the matters set out in **paragraph (e)** or in relation to other matters):
- (g) to monitor compliance with this Act, investigate possible offences against this Act, and enforce this Act: 5
- (h) any other functions conferred on it—
 - (i) under this or any other Act; or
 - (ii) by the Minister under section 112 of the Crown Entities Act 2004 (including the function of facilitating the purchase-arrangement by the Crown of reinsurance or other risk transfer products in respect of ~~other Crown risks~~ Crown risks beyond those covered in this Act). 10

Guidance note

There is also a duty on the Minister to determine how a function conferred under **paragraph (h)(ii)** will be funded (see **section 107**).

127 Delegation of claims management functions and powers

- (1) The Commission may delegate any of its functions and powers—
 - (a) under **subparts 1 and 2 of Part 3** to a licensed insurer; or
 - (b) under those subparts, other than **sections 55(1)(b)(ii) and (iii) and 58 to 62**, to any other person. 20
- (2) The power of delegation in **subsection (1)** is in addition to the power in section 73 of the Crown Entities Act 2004.
- (3) However, a delegation made under **subsection (1)** has effect as if it had been made under section 73 of the Crown Entities Act 2004.
- (4) To avoid doubt, a delegation may be made to any person (whether an individual, a body corporate, or otherwise). 25

128 Directions by Minister

- (1) Before giving a direction, the Minister must (if practicable) consult the persons likely to be affected by the direction.
- (2) In giving a direction in relation to the Commission's functions under **section 126(b) and (d)**, the Minister may take the following into account: 30
 - (a) the purposes of this Act and natural hazard cover set out in **sections 3 and 4**:
 - (b) the Crown's current and possible future overall financial position, having regard to the Minister's obligations under **section 108**: 35
 - (c) the Crown's current and possible future overall financial position, taking into account the interests of the Crown in the entities referred to in section 27(3) of the Public Finance Act 1989:

- (d) the Fund's current and possible future overall financial position.
- (3) In a direction in relation to the Commission's functions under **section 126(b) and (d)**, the Minister may specify detailed requirements or prohibitions, or both, to which the Commission must give effect.
- (4) In this section, **direction** means a direction given by the Minister to the Commission under section 103 of the Crown Entities Act 2004. 5

Subpart 2—Financial and accountability matters

129 Service agreement

- (1) This section applies—
 - (a) in relation to goods and services provided by the Commission to any person (including the Crown) in the performance of the Commission's functions; and 10
 - (b) if the expenses and capital expenditure incurred in providing the goods and services are not payable out of the Fund under **section 107**.
- (2) The Minister and the Commission may enter into 1 or more agreements setting out— 15
 - (a) the goods and services to be provided; and
 - (b) which of the Commission's functions enables the Commission to provide the goods and services; and
 - (c) the terms and conditions on which the Commission must or may provide the goods and services; and 20
 - (d) the payment to be made by the Minister to the Commission for the provision of the goods and services.
- (3) Payments by the Minister to the Commission under the agreement must be made out of money appropriated by Parliament for that purpose. 25
- (4) Before providing goods or services to which this section applies, the Commission must take reasonable steps to ensure that there is an agreement in place under this section requiring the Minister to pay all expenses and capital expenditure incurred by the Commission in providing those goods or services.
- (5) The Commission must publish the agreement on the Commission's website. 30
- (6) However, the Commission is not required to publish an agreement (or part of it) if satisfied on reasonable grounds that good reason for withholding the agreement (or part of it) would exist under the Official Information Act 1982, in which case the Commission must publish that reason and the grounds supporting it. 35

130 Financial statements

- (1) The Commission's financial statements required to be prepared under section 154 of the Crown Entities Act 2004 must include a statement of revenue and expenditure for the Fund.
- (2) The Commission must keep the financial records of the Fund separately from the Commission's own financial records. 5
- (3) The Commission may appoint a qualified auditor (as defined in section 35 of the Financial Reporting Act 2013) to be an auditor of the Fund or Commission (or both) in addition to the Auditor-General (*see* section 14 of the Public Audit Act 2001). 10
- (4) The Commission may appoint an additional auditor only with the approval of the Minister and after consulting the Auditor-General.

131 Financial settings and levy settings

- (1) The **financial settings** are the monetary amounts specified in the following provisions: 15
 - (a) **section 31** (building cover excess):
 - (b) **sections 34, 35, and 36** (building cover caps):
 - (c) **section 38** (land cover excess):
 - (d) **section 42** (caps for retaining walls and bridges or culverts).
- (2) The **levy settings** are the rate of the levy, or the method for determining the rate of the levy, set out in the regulations made for the purposes of **section 112**. 20

132 Orders in Council to amend financial settings

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister after carrying out a review under **section 136**, amend 1 or more of the provisions referred to in **section 131** to change the financial settings. 25
- (1A) However, the Order in Council must not amend **section 34, 35, 36, or 42** to reduce the financial setting to less than that specified in that section when this Act received the Royal assent. 30
- (2) The Order in Council may also make consequential amendments to **Schedule 1** (transitional, savings, and related provisions).
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

133 Funding and risk management statement

- (1) At least once every 5 years the Minister must make a funding and risk management statement for the next 5 years. 35
- (2) The purpose of a funding and risk management statement is to—

- (a) support public confidence in the costs of claims being met by providing transparency about how those costs will be shared between the Fund and the Crown; and
- (b) provide transparency about how financial settings and levy settings are determined; and 5
- (c) communicate the Crown's financial strategy in relation to the funding of those costs and its impact on the financial settings and levy settings; and
- (d) set out requirements relating to the investment of the Fund that the Commission is required to comply with under **section 111(2)(b)**; and
- (e) provide guidance to the Commission in performing its functions under **section 126(b) and (d)**. 10

134 Making funding and risk management statement

- (1) For the purpose of preparing the funding and risk management statement, the Minister must—
 - (a) review the financial settings and levy settings in accordance with **section 136**; and 15
 - (b) consult—
 - (i) the Commission; and
 - (ii) any other persons as the Minister considers appropriate.
- (2) A funding and risk management statement remains in force until it is replaced by a new statement (even if that results in the statement remaining in force for more than 5 years). 20
- (3) As soon as practicable after a funding and risk management statement is made,—
 - (a) the Minister must present it to the House of Representatives; and 25
 - (b) the Commission must make it available on the Commission's website.

135 Content of funding and risk management statement

A funding and risk management statement must set out the following:

- (a) the financial settings and levy settings at the time the statement is made and any changes proposed to be made to them: 30
- (b) financial projections showing estimates of the cost of providing natural hazard cover, the amount in the Fund, and the financial implications of any changes to the financial settings or levy settings:
- (c) the methodology, assumptions, and forecasts used in preparing the financial projections: 35
- (d) the policy considerations taken into account by the Minister in conducting the review and preparing the statement:

- (e) the current and projected allocation of risk between the Crown and the Fund:
- (f) the Government's strategy to reduce or finance any deficiency in the Fund:
- (g) a copy of any directions or letters of expectation relating to the Commission's functions under **section 126(b) and (d)** given by the Minister under the Crown Entities Act 2004. 5

136 Review of financial settings and levy settings

- (1) The Minister must review the adequacy and appropriateness of the financial settings and levy settings— 10
 - (a) when required for the purposes of **section 134**; and
 - (b) at any other time the Minister considers appropriate.
- (2) In carrying out a review, the Minister—
 - (a) may have regard to the matters set out in **section 137**; and
 - (b) must consult the Commission; and 15
 - (c) may consult any other persons as the Minister considers appropriate.
- (3) When carrying out a review under **subsection (1)(b)**, the Minister must also review, and if appropriate update, the funding and risk management statement if—
 - (a) the review under **subsection (1)(b)** will be completed more than 12 months before the end of the 5-year period covered by the current funding and risk management statement; and 20
 - (b) as a result of the review, the Minister proposes to recommend the making of either or both of the following:
 - (i) an Order in Council under **section 132** to make a material change to any of the financial settings: 25
 - (ii) an amendment to the regulations to make a material change to the levy settings.

137 Matters Minister may have regard to

- In carrying out the review, the Minister may have regard to the following: 30
- (a) the purposes of this Act and natural hazard cover set out in **sections 3 and 4**:
 - (b) the current financial settings and levy settings:
 - (ba) the impact that any change to the current financial settings and levy settings may have on insured persons, fire insurers, the Crown, and other persons likely to be affected by the change: 35
 - (c) the Crown's current and possible future overall financial position, including—

- (i) the Minister's obligations under **section 108**; and
 - (ii) the Crown's interests in the entities referred to in section 27(3) of the Public Finance Act 1989:
- (d) the current and possible future financial position of the Fund, including— 5
 - (i) the amount in the Fund; and
 - (ii) any amounts that are forecast to be paid from the Fund under **section 107(1)**~~repayable under **section 110**~~; and
 - (iii) the Commission's risk modelling and known and expected claims; and 10
 - (iv) the Commission's ability to ~~purchase~~arrange reinsurance or other risk transfer products:
- (e) the current funding and risk management statement:
- (f) the impact that any change to the financial settings and levy settings may have on the availability, affordability, and uptake of catastrophe insurance for residential buildings: 15
- (g) the benefit to the public of minimising volatility in the financial settings and levy settings:
- (h) any other matter the Minister considers appropriate.

Subpart 3—Information and disclosure 20

Collection and disclosure of information by Commission

138 Purposes for which Commission may collect information

- (1) The Commission may collect information for the purpose of performing its functions under this Act.
- (2) If property-related information is collected for that purpose, it is taken to have also been collected for the purpose of making the information available (including to the public). 25
- (3) This section does not limit the Privacy Act 2020 or any other right the Commission may have to collect or disclose information.
- (4) In this section, **property-related information** means information about property (whether generally or in relation to 1 or more identified properties), including information about— 30
 - (a) natural hazard damage to the property; and
 - (b) any claims made under this Act in relation to the property (including information about the assessed cost of replacing or reinstating damaged property, reinstatement methods, and settlement amounts). 35

139 Disclosure of information if serious threat to life, health, or safety

- (1) The Commission may disclose (including to the public) any information in its possession if it believes on reasonable grounds that doing so is necessary to prevent or lessen a serious threat to public health or public safety or to the life or health of any individual. 5
- (2) This section does not limit the Privacy Act 2020 or any other right the Commission may have to collect or disclose information.
- (3) In this section, **serious threat** has the same meaning as in section 7(1) of the Privacy Act 2020.

140 Disclosure to persons with proper interest 10

~~The Commission may disclose any information (including personal information as defined in section 7(1) of the Privacy Act 2020) in its possession—~~

- ~~(a) to the Crown, a Crown entity (as defined in section 7 of the Crown Entities Act 2004), or an Office of Parliament (as defined in section 2(1) of the Public Finance Act 1989); or~~ 15
- ~~(b) if the Commission believes on reasonable grounds that the recipient has a proper interest in receiving it—~~
 - ~~(i) for performing their functions or exercising their powers; or~~
 - ~~(ii) for law enforcement purposes.~~

Information-gathering powers 20**141 Authorising persons to exercise information-gathering powers**

- (1) The Commission may authorise an individual to exercise any of the powers under **sections 142, 144, 144A, and 145**.
- (2) The authorisation must— 25
 - (a) be made in writing; and
 - (b) state that it is made under this section; and
 - (c) set out the following:
 - (i) the name of the individual;
 - (ii) the powers they are authorised to exercise;
 - (iia) any conditions or limitations on the exercise of the powers: 30
 - (iii) the purpose for which they may exercise them;
 - (iv) the duration of the authorisation (which may be until it is revoked).

142 Power to require information

- (1) An authorised person may, by written notice, require a person (the **recipient**) to— 35

-
- (a) give or produce to an authorised person any information, document, or other thing that the Commission reasonably needs for the purpose of performing its functions; and
 - (b) allow an authorised person to inspect and examine, and to copy or make other records of, the information, document, or thing. 5
 - (2) However, this section cannot be used to obtain information, documents or things from an insured person for the purposes of assessing, deciding, or settling a claim made by the person (*see instead section 56*).
 - (3) The notice may relate to information, documents, or other things that are within the recipient's possession or control or that later come into their possession or control. 10
 - (4) The notice must specify a reasonable period within which it must be complied with.
 - (5) The notice may do 1 or more of the following:
 - (a) specify the form and manner in which information, documents, or things must be provided: 15
 - (b) require the insured person to provide a statutory declaration as to the truth of information given by the person:
 - (c) otherwise specify how anything required by the notice must be done.
 - (6) The regulations may also impose requirements of the kind referred to in **sub-section (5)**. 20
 - (7) The recipient of a notice has the same privileges in relation to things required by the notice as a witness has in proceedings before a court.
-

Guidance note

The privileges of a witness include the privilege against self-incrimination and the other privileges set out in subpart 8 of Part 2 of the Evidence Act 2006. 25

143 Failure to comply

The recipient of a notice under **section 142** who fails, without lawful excuse, to comply with the notice or any regulations made for the purposes of that section— 30

- (a) commits an offence; and
 - (b) is liable on conviction to a fine not exceeding,—
 - (i) in the case of an individual, \$5,000; and
 - (ii) in any other case, \$25,000.
-

Guidance note

Giving misleading information is an offence under **section 150**. 35

144 Power of entry

- (1) ~~For the purpose of obtaining information that the Commission reasonably needs for the purpose of performing its functions, an authorised person—~~
- (a) ~~may, at any reasonable time, enter any land, building, or place (the **target place**); and~~ 5
 - (b) ~~having done so, inspect and examine the target place and anything found on or in it.~~
- (1) An authorised person may, at any reasonable time, enter any land, building, or place (a **place of entry**) for the purpose of obtaining information that the Commission reasonably needs for the purpose of performing its functions. 10
- (1A) An authorised person who enters a place of entry in accordance with **subsection (1)** may—
- (a) conduct examinations, tests, inquiries, and inspections; and
 - (b) take photographs and measurements and make sketches and recordings.
- (1B) For the purposes of **subsections (1) and (1A)**, an authorised person may— 15
- (a) be accompanied and assisted by any other person; and
 - (b) bring onto the place of entry any equipment necessary to carry out their functions.
- (2) Before the authorised person enters the ~~target place~~, place of entry, unless it is impracticable to do so, the occupier and the owner must be given reasonable notice (orally or in writing) of the intended entry ~~unless it is impracticable to do so, stating—~~ 20
- (a) that entry to the place of entry is authorised by this section; and
 - (b) the purpose for which entry is required; and
 - (c) how and when entry is to be made; and 25
 - (d) the Commission’s telephone number, email address, or physical or postal address.
- (3) If notice is not given before entry and the occupier is not present when entry occurs, the occupier must be given written notice of the entry as soon as practicable after it occurs, stating— 30
- (a) that entry to the place of entry is authorised by this section; and
 - (b) the purpose for which entry was made; and
 - (c) how and when entry was made; and
 - (d) the authorised person’s identity; and
 - (e) the authorised person’s telephone number, email address, or physical or postal address; and 35
 - (f) what was done at the place of entry.
- (4) ~~A notice under **subsection (2) or (3)** must state—~~

- (a) ~~that entry to the target place is authorised by this section; and~~
- (b) ~~the purpose for which entry is required or was made; and~~
- (c) ~~how and when entry is to be, or was, made.~~
- (5) An authorised person entering the ~~target place~~ place of entry must—
 - (a) have with them evidence of their identity and their authorisation under **section 141**; and 5
 - (b) produce that evidence to the occupier,—
 - (i) if practicable, when first entering the ~~target place~~ place of entry; and
 - (ii) subsequently, if reasonably requested by the occupier. 10
- (5A) An authorised person must not exercise a power under this section to obtain information if the Commission may reasonably obtain the information by other means.
- (6) This section does not apply in circumstances in which ~~—section 145 applies.~~
 - (a) **section 144A or 145** applies; or 15
 - (b) a person enters a place of entry with the consent of an occupier.

144A Power to enter home or marae

- (1) An authorised person may only enter a home, a marae, or a building associated with a marae (a **place of entry**) for the purpose of obtaining information that the Commission reasonably needs for the purpose of performing its functions at a reasonable time, and— 20
 - (a) with the consent of an occupier; or
 - (b) under a warrant issued under **subsection (2)**.
- (2) An authorised person may apply to an issuing officer (as defined in the Search and Surveillance Act 2012) for a warrant to enter the place of entry. 25
- (3) The issuing officer may issue a warrant if satisfied that there are reasonable grounds to believe that there is information in the place of entry that the Commission—
 - (a) reasonably needs for the purpose of performing its functions; and
 - (b) may not reasonably obtain by other means. 30
- (4) An authorised person who enters a place of entry in accordance with **subsection (1)(b)** may, for the purpose of obtaining that information, exercise the powers specified in **section 144(1A) and (1B)**.
- (5) Before the authorised person enters the place of entry in accordance with **subsection (1)(b)**, the occupier must be given reasonable notice (orally or in writing) of the intended entry, unless the warrant allows otherwise. 35
- (6) A notice under **subsection (5)** must state—

-
- (a) that entry to the place of entry is authorised by a warrant issued under this section; and
- (b) the purpose for which entry is required; and
- (c) how and when entry is intended to be made.
- (7) An authorised person entering the place of entry in accordance with **subsection (1)(b)** must— 5
- (a) have with them—
- (i) a copy of the warrant issued under this section; and
- (ii) evidence of their identity; and
- (iii) evidence of their authorisation under **section 141**; and 10
- (b) produce the items described in **paragraph (a)** to the occupier,—
- (i) if practicable, when first entering the place of entry; and
- (ii) subsequently, if reasonably requested by the occupier.
-
- Guidance note**
- Subpart 3 of Part 4 of the Search and Surveillance Act 2012 applies in relation to this section. 15
-

144B Report on exercise of powers by authorised person required

If an authorised person exercises a power under **section 144 or 144A**, they must, as soon as practicable after exercising the power, give to the Commission a written report on the exercise of the power, including— 20

- (a) the reasons for exercising it; and
- (b) the circumstances in which it was exercised; and
- (c) an account of what was done at the place of entry.

145 Power to enter if investigating offence

- (1) An authorised person must not enter any land, building, or place for the purpose of— 25
- (a) ascertaining whether an offence against this Act has been committed; or
- (b) obtaining evidential material in relation to an offence or a suspected offence against this Act,—
- except with the consent of an occupier or under a search warrant. 30
- (2) An authorised person may apply to an issuing officer (as defined in the Search and Surveillance Act 2012) for a warrant.
- (3) The issuing officer may issue a warrant if satisfied that there are reasonable grounds to believe that—
- (a) an offence against this Act has been, is being, or is intended to be committed; and 35

- (b) there is evidential material in relation to the offence on or in the land, building, or place.

Guidance note

Part 4 of the Search and Surveillance Act 2012 (other than sections 118 and 119 and subpart 8) applies in relation to this section.

5

146 Obstructing authorised persons

- (1) A person must not intentionally obstruct, resist, hinder, or deceive an authorised person in the exercise of a power under **section 142, 144, 144A, or 145**.
- (2) A person who fails to comply with this section— 10
- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding,—
- (i) in the case of an individual, \$25,000; and
- (ii) in any other case, \$50,000.
- (3) However, the person has the same privileges in relation to the exercise by the authorised person of their powers as a witness has in proceedings before a court. 15

147 Restrictions on recording or disclosing information

An authorised person must not make a record or copy of, or disclose, information obtained in the exercise of a power under **section 142, 144, 144A, or 145** other than— 20

- (a) to the Commission; or
- (b) for a purpose for which a power may be exercised that is set out in the authorised person's authorisation under **section 141(2)(c)(iii)**; or
- (b) ~~for an authorised purpose; or~~ 25
- (c) for the purposes of any legal proceedings; or
- (d) if required or permitted to do so under this or any other Act.

Fire insurers' information obligations

148 Record keeping

- (1) A fire insurer must keep records of their fire insurance contracts. 30
- (2) For each contract, the records must include the following:
- (a) the name of the insured person:
- (b) details identifying the building and dwellings insured under the contract:
- (c) if the contract insures more than 1 dwelling,—
- (i) the number of insured dwellings; and 35

- (ii) if the insured dwellings are in more than 1 building, the number of them in each building:
 - (d) the date on which the insurance cover started and each renewal date:
 - (e) the information necessary to enable the building cap under **sections 34 to 36** (as applicable) to be calculated: 5
 - (f) the amount and date of payment of each levy payment made in respect of the contract:
 - (g) details of any property that ~~is not insured under the contract but would be part of the residential building if it were insured~~ specifically identified and excluded from cover under the contract but would be part of the residential building if it were covered by the contract: 10
 - (h) any other information required by the regulations.
 - (3) The records must be kept—
 - (a) ~~for 25~~ 7 years after the expiry of the contract, or any other period required by regulations; and 15
 - (b) in the way required by the regulations.
 - (3A) However, if a claim has been made, the records for the fire insurance contract must be kept for 25 years after the expiry of the contract.
 - (4) A fire insurer who fails, without lawful excuse, to comply with this section—
 - (a) commits an offence; and 20
 - (b) is liable on conviction to a fine not exceeding,—
 - (i) in the case of an individual, \$5,000; and
 - (ii) in any other case, \$25,000.
- 149 Auditing and reporting to Commission**
- (1) A fire insurer must comply with any requirements in the regulations relating to— 25
 - (a) the auditing of the information the fire insurer is required to keep under this Act; and
 - (b) giving reports or other information about the fire insurer's contracts of fire insurance to the Commission. 30
 - (2) A fire insurer who fails, without lawful excuse, to comply with this section—
 - (a) commits an offence; and
 - (b) is liable on conviction to a fine not exceeding,—
 - (i) in the case of an individual, \$5,000; and
 - (ii) in any other case, \$25,000. 35

*Offences about information generally***150 Misleading information**

- (1) A person must not give misleading information to the Commission or an authorised person.
- (2) A person who fails to comply with this section— 5
 - (a) commits an offence; and
 - (b) is liable on conviction to a fine not exceeding,—
 - (i) in the case of an individual, \$25,000; and
 - (ii) in any other case, \$50,000.
- (3) In this section, **misleading information** means information that is false, misleading in a material particular, or misleading because of the omission of a material particular. 10

151 Misleading information or damaging required records

- (1) A person must not intentionally— 15
 - (a) include misleading information in a required record; or
 - (b) alter a required record so that information in it becomes misleading information.
- (2) A person must not intentionally damage or destroy a required record.
- (3) A person who fails to comply with this section— 20
 - (a) commits an offence; and
 - (b) is liable on conviction to a fine not exceeding,—
 - (i) in the case of an individual, \$25,000; and
 - (ii) in any other case, \$50,000.
- (4) In this section,— 25

misleading information means information that is false, misleading in a material particular, or misleading because of the omission of a material particular

required record means a record of information that a person is required to keep under this Act.

*Attribution of liability*30**152 Meaning of senior manager and worker**

- (1) This section applies for the purposes of **sections 153 and 154**.
- (2) A person (**person A**) is a **senior manager** of another person (**person B**) if any of the following applies:

- (a) person A is a director of person B (as defined in section 6(1) of the Financial Markets Conduct Act 2013):
- (b) person A occupies a position in relation to person B that allows person A to exercise significant influence over the management or administration of person B (for example, a chief executive or a chief financial officer): 5
- (c) person A is otherwise able, whether directly or through 1 or more interposed entities, to exercise significant influence over the management or administration of person B.
- (3) A person (**person A**) is a **worker** of another person (**person B**) if person A carries out work for person B as an employee, an agent, or in any other capacity. 10

153 Attribution of offence committed by senior manager or worker

- (1) If a senior manager or worker of a person (**person B**) commits an offence in the course of carrying out their duties or work, and the act or omission constituting the offence occurred with person B's authority, permission, or consent, person B is taken to have also committed the offence. 15
- (2) This section does not apply if person B is the Commission.

154 Attribution of state of mind of senior managers and workers

- (1) This section applies in a prosecution for an offence against this Act if—
 - (a) the prosecution relates to conduct engaged in by a person (**person B**); 20
 - and
 - (b) it is necessary to establish the state of mind of person B.
- (2) It is sufficient to show that a senior manager or worker of person B, acting within the scope of their actual or apparent authority, had that state of mind.
- (3) However, this section does not apply if person B is an individual. 25

Part 6

Miscellaneous provisions

155 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations— 30
 - (a) providing for anything that this Act says may or must be provided for by regulations:
 - (b) exempting any class of residential building or residential land from the application of any provision of this Act or the regulations:
 - (c) providing for anything incidental that is necessary for carrying out, or 35
- giving full effect to, this Act.

-
- (1A) The Minister must not recommend the making of regulations in relation to the review procedure (see **subpart 6 of Part 3**) unless satisfied that adequate public consultation has been undertaken.
- (1B) **Subsection (1A)** does not apply to regulations that are minor or technical in nature. 5
- (2) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- 156 Orders in Council to amend ~~Schedule 2~~ Schedule 2**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend **Schedule 2** (excluded property). 10
- (2) However, an Order in Council cannot amend **Schedule 2** to include in the schedule property that is part of a dwelling.
- (3) The Minister must not recommend that an Order in Council be made unless satisfied that the amendment is necessary or desirable to do 1 or more of the following: 15
- (a) remove ambiguity about whether property of a particular kind is or is not excluded property:
 - (b) modernise the kinds of property that is or is not excluded property (for example, as a consequence of technological changes):
 - (c) make other changes of a minor or technical nature. 20
- (4) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- 157 Commission may approve forms**
- (1) The Commission may approve forms for use under this Act.
- (2) If a form is approved for doing a thing, the thing must be done using that form. 25
- 158 Repeal and revocation**
- (1) The Earthquake Commission Act 1993 (1993 No 84) is repealed.
- (2) The Earthquake Commission Regulations 1993 (SR 1993/345) are revoked.
- 159 Consequential amendments**
- Amend the enactments specified in **Schedule 3** as set out in that schedule. 30

Schedule 1

Transitional, savings, and related provisions

s 25

Contents

Page

Part 1

Provisions relating to this Act as enacted

1	Interpretation	103
	<i>Cover and claims</i>	
2	Act applies to natural hazard damage occurring on or after commencement date	104
3	EQC Act applies to prior natural disaster damage	104
4	Cancellation and limitation of liability	104
5	Declining a claim	105
6	Insurance conditions in mortgage, etc, apply to natural hazard cover	105
	<i>Fund and levy</i>	
7	Money, investments, and assets of Fund	105
8	Amounts to be paid into or out of Fund	105
9	Debts, liabilities, and obligations	105
	<i>Commission</i>	
10	Ministerial directions	106
11	Share capital of EQC	106
	<i>Financial and accountability matters</i>	
12	Funding and risk management statement	106
	<i>Information and disclosure</i>	
13	Information collected before commencement	106
14	Fire insurers' duty to keep records	106
	<i>Other matters</i>	
15	References to EQC Act or defined terms	107
16	FENZ levy for FENZ transitional period	107
17	<u>Consultation on secondary legislation</u>	<u>107</u>

Part 1

Provisions relating to this Act as enacted

5

1 Interpretation

In this Part,—

commencement date means the date on which this Act commences under **section 2**

EQC Act means the Earthquake Commission Act 1993

natural disaster has the same meaning as in the EQC Act

natural disaster damage has the same meaning as in the EQC Act. 5

Cover and claims

2 Act applies to natural hazard damage occurring on or after commencement date

- (1) This Act—
 - (a) applies in relation to natural hazard damage that occurs on or after the commencement date; and 10
 - (b) does not apply in relation to natural disaster damage that occurred before the commencement date, unless this Part provides otherwise.
- (2) If property suffers natural disaster damage before the commencement date, any further damage to the property that occurs after the commencement date but before the expiry of the applicable period under clause 1 of Schedule 3 of the EQC Act is, for the purposes of **clause 3(1)**, taken to have occurred before the commencement date. 15

3 EQC Act applies to prior natural disaster damage

- (1) The EQC Act continues to apply (as if it had not been repealed by **section 158**) in relation to natural disaster damage that occurred before the commencement date (including damage that is deemed by **clause 2(2)** to have occurred before that date). 20
- (2) **Subparts 4 to 6 of Part 3** of this Act apply (with any necessary modifications) in relation to anything that is done or occurs after the commencement date in relation to a claim made under the EQC Act. 25
- (3) **Subpart 7 of Part 3** of this Act does not apply in relation to claims made—
 - (a) before the commencement date under the EQC Act; or
 - (b) after the commencement date under the EQC Act as continued by this Part. 30

4 Cancellation and limitation of liability

If, before the commencement date,—

- (a) the Commission had—
 - (i) cancelled cover for a residential building or residential land under clause 4 of Schedule 3 of the EQC Act; or 35
 - (ii) limited its liability for future natural disaster damage under clause 5 of Schedule 3 of the EQC Act; and

- (b) as at the commencement date the cover had not been reinstated or the limitation had not been removed,—

the cancellation or limitation continues on and after the commencement date as if it had been effected under **section 47 or 48**.

5 Declining a claim 5

- (1) If the criteria in **sections 65 to 74** giving rise to grounds to decline a claim include something being done or occurring, the criteria include a reference to the thing having being done or occurred before the commencement date.
- (2) For the purposes of **subclause (1)**, those sections are to be read with any necessary modifications. 10

6 Insurance conditions in mortgage, etc, apply to natural hazard cover

Section 76 applies in relation to a mortgage, lease, or other document whether executed or made before, on, or after the commencement date.

Fund and levy

7 Money, investments, and assets of Fund 15

- (1) All money and other investments that form part of the Fund immediately before the commencement date continue to be part of the Fund.
- (2) However, on the commencement date, any other assets of the Commission cease to be part of the Fund (but continue to be assets of the Commission).

8 Amounts to be paid into or out of Fund 20

An amount must be paid into or out of the Fund if—

- (a) it became payable under the EQC Act before the commencement date or becomes payable on or after that date under that Act as continued by this Part; and
- (b) it would have been payable into or out of the Fund under section 14 or 15 of the EQC Act. 25

9 Debts, liabilities, and obligations

- (1) All debts, liabilities, and other obligations owed by or to the Commission immediately before the commencement date continue to be owed on and after that date. 30
- (2) To the extent that the EQC Act applied in relation to a debt, a liability, or an obligation, it continues to apply on and after the commencement date despite the repeal of that Act by **section 158**.

Example

If a fire insurer enters into a contract of fire insurance before the commencement date but has not yet paid the premium under sections 23 and 24 of the EQC Act, 35

the liability to pay the premium continues on and after that date and the EQC Act continues to apply in relation to it.

Commission

10 Ministerial directions

A direction that is given to the Commission by the Minister under the Crown Entities Act 2004 for the purposes of the EQC Act and that is in force immediately before the commencement date continues in force (with any necessary modifications) as a direction for the purposes of this Act. 5

11 Share capital of EQC

On the commencement date, all shares in the Commission (referred to in section 7 of the EQC Act) are cancelled and the Commission ceases to have any share capital. 10

Financial and accountability matters

12 Funding and risk management statement

- (1) The first funding and risk management statement under **section 133** must take effect on the commencement date. 15
- (2) In relation to that statement,—
 - (a) **section 134(1)(a)** does not apply; and
 - (b) the reference in **section 134(1)(b)** to consultation includes consultation undertaken before the commencement date. 20

Guidance note

Section 43 of the Legislation Act 2019 allows certain powers in an Act to be exercised before the Act commences.

Information and disclosure

13 Information collected before commencement 25

Subpart 3 of Part 5 applies to information collected by the Commission before the commencement date, or after that date for the purpose of performing the Commission's functions under the EQC Act as continued by this Part, as if that information had been collected by the Commission for the purpose of performing its functions under this Act. 30

14 Fire insurers' duty to keep records

- (1) **Section 148** applies to the records of contracts of fire insurance that an insurance company was required to keep under section 26 of the EQC Act.

- (2) However, those records need not include any of the details referred to in **section 148** that were not required to be included under section 26 of the EQC Act.
- (3) This clause does not affect any other obligation a fire insurer may have to keep records.

5

Other matters

15 References to EQC Act or defined terms

- (1) On and after the commencement date, an existing reference to the EQC Act is taken to include a reference to this Act.
- (2) On and after the commencement date, an existing reference to something using a term defined in the EQC Act is taken to include a reference to the thing referred to by the equivalent term as defined in this Act.
- (3) This clause applies unless the context otherwise requires.
- (4) In this clause, **existing reference** means a reference in a document or other information that was made or recorded before the commencement date and that, as at the commencement date, had ongoing effect.

10

15

Example

If an insurance policy made before the commencement date refers to natural disaster damage (as defined in the EQC Act), on and after the commencement date it is taken to also refer to natural hazard damage (as defined in this Act).

20

16 FENZ levy for FENZ transitional period

For the purposes of clause 28(1) of Schedule 1 of the Fire and Emergency New Zealand Act 2017, if a residential building has natural hazard cover under this Act, it is taken to be insured under section 18 of the EQC Act as if that Act had not been repealed.

25

17 Consultation on secondary legislation

The reference to consultation in the following sections includes consultation undertaken before the commencement date of the section:

- (a) **section 85(3)(a):**
- (b) **section 98(2)(c):**
- (c) **section 99(3)(b):**
- (d) **section 155(1A).**

30

Schedule 2

Excluded property

ss 5, 6, 9, 11, 12, 13, 14, 17

1 ~~Uninsured property excluded~~

~~Property that would, but for this schedule, be part of a residential building is excluded property if it is not insured under the fire insurance contract for the residential building.~~ 5

1 Uninsured property excluded

(1) If property that would otherwise be part of a residential building is not insured under a fire insurance contract, it is excluded property. 10

(2) If property that was part of a residential building or residential land ceases to be a fixture or fitting or is removed from the address or location that is insured under the fire insurance contract, it becomes excluded property.

2 **Property excluded except in limited circumstances**

(1) The property listed in table 1 is excluded property unless— 15

- (a) it is an integral component of an eligible building; or
- (b) it is an integral component of, but does not constitute the main use and purpose of, property that is an appurtenant structure, service infrastructure, common property, or joint property.

Examples 20

1. A free-standing mailbox at the end of a driveway would be excluded under **item 2 of table 1**, but a mailbox that is built into the wall of a garage (which is an appurtenant structure) would not be excluded because of **subclause (1)(b)**.

2. If a rotary hoist clothes line is an appurtenant structure, a pole that is an integral part of it would not be excluded under **item 6 of table 1**. 25

3. If a tank holding water used to water a garden is an integral part of a garage, the tank would not be excluded under **item 8 of table 1** because the garage is an appurtenant structure and the tank is not the main purpose for the garage. However, if the tank is part of a shed the whole purpose of which is to house the tank, the tank would be excluded under **item 8 of table 1**. Further, once the tank is excluded, the shed would not meet the definition of appurtenant structure and so would not be covered by natural hazard cover. 30

(1) The property listed in **table 1** is excluded property unless—

- (a) the property is an integral component of an eligible building; or
- (b) the property— 35
 - (i) is an integral component of an appurtenant structure, service infrastructure, common property, or joint property; but

- (ii) does not constitute the main use and purpose of the property referred to in **subparagraph (i)**.

(1A) If property—

- (a) is excluded property under **subclause (1)**; and
- (b) is an integral component of property that would otherwise be an appurtenant structure, service infrastructure, common property, or joint property; and 5
- (c) constitutes the main use and purpose of the property referred to in **paragraph (b)**,—
- the property referred to in **paragraph (b)** is also excluded property. 10

(2) A vehicle (including a motor vehicle, trailer, boat, or aircraft) is excluded property unless—

- (a) it is a dwelling under ~~section 6(5)~~ **section 6(6)**; or
- (b) it would, but for this schedule, be an appurtenant structure, common property, or joint property. 15

Example

If a cable car structure that provides access to a house is an appurtenant structure, the moving cable car is not excluded by **subclause (2)** because it is part of the appurtenant structure.

Table 1

Item	Excluded property
1	Fences
2	Mailboxes
<u>2A</u>	<u>Clothes lines</u>
<u>2B</u>	<u>Structures used to house animals (such as dog kennels or chicken coops)</u>
<u>2C</u>	<u>Outdoor cooking facilities</u>
3	Paths, driveways, stairs, walkways, and other forms of access
4	Paving and other artificial surfaces
5	Retaining walls that are not retaining walls for a residential building as defined in section 18
6	Other walls and poles
7	Bridges or culverts that are not bridges or culverts for a residential building as defined in section 18
8	Tanks and other structures used to store water or other liquids, but not— • water tanks and water towers used to store water for supply to a residential building; and • septic tanks. <u>Tanks and other structures that are used to store water or other liquids, unless they are used primarily by the owners or other occupants of the dwelling for household purposes</u>

Examples***Example 1***

A free-standing mailbox at the end of a driveway would be excluded under **item 2 of table 1**, but a mailbox that is built into the wall of a garage (which is an appurtenant structure) would not be excluded because of **subclause (1)(b)**.

5

Example 2

If a fuel tank is an integral component of a tool shed that is used for household purposes and meets the other criteria for being an appurtenant structure, the tank would not be excluded property under **item 8 of table 1** (even if the tank is used for a commercial purpose) because the shed is an appurtenant structure.

10

Example 3

If a fuel tank that is used for commercial purposes is an integral component of a shed, the sole purpose of which is to house the tank, the tank would be excluded under **item 8 of table 1**. Further, because its sole purpose is to house the tank, the shed would also be excluded property under **subclause (1A)**.

15

Example 4

If a cable car structure that provides access to a house is an appurtenant structure, the moving cable car is not excluded by **subclause (2)** because it is part of the appurtenant structure.

3 Property excluded in all circumstances

20

The property listed in ~~table 2~~ **table 2** is excluded property.

Table 2

Item	Excluded property
1	Swimming pools, spas, and baths and structures ancillary to them (unless they are inside, and are an integral component of, <u>an integral component of, and within,</u> an eligible building)
2	Sports fields and courts (such as tennis courts and football fields) and structures ancillary to them
3	Living things (such as plants and fungi)
4	Drainage ditches and other open drains, channels, tunnels, and cuttings
5	Jetties, wharves, and landings
6	Dams, reservoirs, breakwaters, moles, and groynes

4 Effect on land of being excluded property

The land on or within which excluded property is situated is not excluded property by reason only of the property on or within it being excluded property.

25

Schedule 3

Consequential amendments to other Acts

s 159

Canterbury Earthquakes Insurance Tribunal Act 2019 (2019 No 21)

In section 5, replace the definition of EQC with:

5

Earthquake Commission Act 1993 means that Act as in force before its repeal by **section 158** of the Natural Hazards Insurance Act **2022**, and section 38 of the Legislation Act 2019 does not apply

EQC means the Crown entity continued under section 4 of the Earthquake Commission Act 1993 with the name Earthquake Commission, and, after the commencement of the Natural Hazards Insurance Act **2022**, continued under **section 122** of that Act with the name Toka Tū Ake – Natural Hazards Commission

10

Civil Defence Emergency Management Act 2002 (2002 No 33)

In section 109(8), replace “Earthquake Commission Act 1993” with “Natural Hazards Insurance Act **2022**”.

15

In section 109(8), replace “disaster” with “hazard” in each place.

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 1,—

- (a) repeal the item relating to the Earthquake Commission; and
- (b) insert in its appropriate alphabetical order:

20

Toka Tū Ake – Natural Hazards Commission	✓	✓	✓	✓	✓
--	---	---	---	---	---

Fire and Emergency New Zealand Act 2017 (2017 No 17)

In section 160(2)(a), replace “Earthquake Commission Act 1993” with “Natural Hazards Insurance Act **2022**”.

In section 160(2), replace “disaster” with “hazard” in each place.

25

Replace section 160(3) with:

- (3) In this section, **natural hazard damage** has the same meaning as in **section 24** of the Natural Hazards Insurance Act **2022**.

Income Tax Act 2007 (2007 No 97)

In Schedule 29, item 6, replace “The Earthquake Commission” with “Toka Tū Ake – Natural Hazards Commission”.

30

Insurance (Prudential Supervision) Act 2010 (2010 No 111)

In section 8(2)(a), replace “the Earthquake Commission” with “Toka Tū Ake – Natural Hazards Commission”.

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2,—

5

- (a) repeal the item relating to the Earthquake Commission; and
- (b) insert in its appropriate alphabetical order:
Toka Tū Ake – Natural Hazards Commission

Privacy Act 2020 (2020 No 31)

In section 138, definition of **specified organisation**,—

10

- (a) repeal paragraph (d); and
- (b) after paragraph (i), insert:
(ia) Toka Tū Ake – Natural Hazards Commission:

Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, insert in its appropriate alphabetical order:

15

Natural Hazards Insurance Act 2022	145 144A	Power to enter if investigating offence <u>Authorised person may obtain and execute warrant to enter dwelling or marae for purposes of obtaining information</u>	All (except sections 118 and 119 and subpart 8) Subpart 3
	145	Power to enter if investigating offence	All (except sections 118 and 119 and subpart 8)

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16 March 2022
30 March 2022

Introduction (Bill 113–1)
First reading and referral to Finance and Expenditure Committee