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Te Kāhui Inihua o Aotearoa

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Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

Dear Madam/Sir,

ICNZ submission on Natural Hazards Insurance Bill

Thank you for the opportunity to submit on the Natural Hazards Insurance Bill (**"the Bill"**).

By way of background, the Insurance Council of New Zealand / Te Kāhui Inihua o Aotearoa (**"ICNZ"**)'s members are general insurers and reinsurers that insure about 95 percent of the Aotearoa New Zealand general insurance market, including about a trillion dollars' worth of Aotearoa New Zealand assets and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, commercial property and directors and officers insurance).

We wish to appear before the Committee to speak to our submission. Please contact Jane Brown (jane@icnz.org.nz) if you have any questions on our submission or require further information.

This submission has two parts:

- overarching comments, and
- feedback on the Bill.

1. Overarching comments

ICNZ is pleased to see the introduction of such a comprehensive Bill. There have been many learnings from the Canterbury Earthquake Sequence (**"CES"**), as well as other natural hazard events in recent years, that have shown that the Earthquake Commission Act 1993 (**"EQC Act"**) is no longer fit for purpose. There has been a great deal of time-consuming and expensive litigation to determine novel points of law relating to the EQC Act following these events, as well as continuous engagement required between insurers and the Earthquake Commission (referred to collectively with the new Toka Tū Ake – Natural Hazards Commission throughout this submission as **"the Commission"**) to establish new ways of working.

Our members' primary focus in providing this feedback is their customers. It is vitally important to our members that the Bill is functional and provides certainty for customers, while clarifying areas

where insurers and customers alike have experienced difficulties when responding to previous events.

While, as noted above, it is positive to see that many learnings from recent natural hazard events have been included in the Bill, we remain concerned about the decision not to consult on a final set of detailed proposed changes to the regime. This, and the choice not to release an exposure draft of the Bill, has made it necessary for the Select Committee to explore and resolve a number of complex issues. Whilst there has been consultation on many of the matters now addressed in the Bill, these matters are complex and in some cases interrelated with other processes happening in parallel and would have benefited from the further discussion that would have been carried out had an exposure draft of the Bill been released.

This creates a concern that despite years of engagement, the new regime will not be as integrated and well set-out as it could have been and could create future issues for the Commission, insurers and most importantly, policyholders, and even require further amendment of the legislation at a later date. We view this as a once in a generation opportunity to create a durable piece of legislation. We therefore recommend that the Select Committee enables its advisers to engage directly with submitters, as necessary, to work through some of the more complex issues raised.

We are hopeful that once further feedback has been considered and worked through and the necessary amendments made, the Bill will mean that for future natural hazard events there is a much more streamlined and customer-centric experience for homeowners that minimises the possibility of disputes arising and is focussed on restoring and strengthening affected communities.

ICNZ is particularly pleased to see the ability to delegate claims management functions and powers formalised in legislation (in clause 127). It is widely agreed that the memorandum of understanding between insurers and the Commission that was put in place following the Hurunui/Kaikōura earthquake in 2016 greatly simplified and sped up the claims settlement process for customers. Insurers and the Commission have also since put a lot of work into agreeing the Natural Disaster Response Agreement (**"NDRA"**), and while the agreement will require renegotiation to reflect the changes in this Bill, it will continue operating.

Before providing our analysis of the Bill itself, we raise a number of points relating to the regime generally.

Commencement of the Act

To implement the changes in the Bill effectively and efficiently, private insurers and the Commission will require sufficient time to update their systems, processes, policy wordings, and collateral etc. Having an adequate amount of time is critical to the successful implementation of the new regime. It would not be in the best interests of customers for insurers or the Commission to find themselves having to apply new legislation that there has not been sufficient time to properly implement. If there has not been time to iron out operational issues both within an insurer's business, as well as between the insurer and the Commission, it is likely that the customer experience will suffer.

When considering commencement, it is important to be aware of the extensive regulatory change underway at present which will also require insurers to review policies, including what they cover and how they work. Ideally, the commencement of this regime will align with other major pieces of legislation, so that insurers are not required to carry out multiple product, system and process reviews, which will only increase costs for insurers, which will ultimately be passed onto customers.

The other key regulatory change that has a significant and overlapping impact on insurance policies and wordings is the Insurance Contracts Bill. It makes sense for the implementation of both this Bill and the Insurance Contracts Bill to either be aligned, or be significantly separated in time, as it would be very problematic to have overlapping implementations (for example, within the same year).

As an example of the work that will be required to implement the changes provided for in this Bill, insurers will be required to:

- review and update policy wordings for home and body corporates to reflect changes in names and definitions (for example, materially rework policies to reflect the decision to change 'natural disaster' to 'natural hazard' and to reflect other changes to definitions, and the updating of the Commission's name) and key concepts.
- review and update the cover provided (for example, in relation to retaining walls, removal of the insurer discount) and pricing of relevant products to reflect changes in cover provided under the regime (for example, changes to cover for multi-use buildings).
- review some policies (for example, caravan policies) in relation to changes to the scope of the regime.
- update internal systems and processes and renegotiate aspects of the NDRA.
- update all collateral and websites to reflect changes to definitions, and processes etc., as well as the Commission's new name.
- undertake training for insurer staff and Third Party Advisors. This is a significant piece of work and one that cannot occur properly until the Commission (in discussion with insurers) has amended their manuals. The changes to retaining wall cover are an excellent example of a seemingly minor change that will have a big impact "on the ground" and will therefore need to be thoroughly covered by training.
- "book" system changes with suppliers. This requires sufficient lead time and can be a costly exercise, even for a relatively minor system change.
- ensure regular, comprehensive communications with customers to keep their abreast of upcoming changes.

As the above commentary demonstrates, it will be critical for the Government to work with insurers on how this Bill can be practically implemented alongside the other reforms currently underway. The Bill will also need to provide commencement provisions that give sufficient flexibility to enable this to take place.

ICNZ estimates that, at a minimum, insurers will require 18 months from when the Bill is passed to make the changes and have them in place. This is consistent with what has been recommended by the Treasury.[1] They will then need to be implemented over a 1-year period as policies are renewed and new policies commence.

We note the savings provision provided in clause 15 of Schedule 1 (References to EQC Act or defined terms), however, the extent of changes required by the Bill means that it is likely insurers will update their policies rather than maintain out of date language and rely on this savings provisions (for example, because the definition of 'natural hazard' in the Bill is not synonymous with the 'natural disaster' terminology under the EQC Act).

[1] For example, we note that Treasury's 18 November 2021 advice on implementation arrangements and other matters (https://www.treasury.govt.nz/sites/default/files/2022-05/eqc-t2021-2873-4583593.pdf) recommended a start date of 1 July 2024. This was recommended on the basis that insurers will need to implement the necessary contractual and systems updates, and make consequential changes to retail and whole reinsurance contracts.

ICNZ's view is that 1 December 2023 is not suitable as a commencement date. This is because even if the Bill is passed in late 2022, insurers would then only have slightly over a year for implementation, rather than the 18-month minimum that is required. Insurers regularly implement change processes for regulatory and non-regulatory updates to their policies and practices so have experience and an understanding of the amount of work and the time that is needed to ensure the transition is as smooth and simple as possible for their customers. We also note insurers would need to have completed all the change work at least three months prior to 1 December 2023. This is because new policies will need to be presented to customers prior to renewal and for intermediated distribution a full three months is required.

We recognise that, in theory, the current Commencement provisions in the Bill could enable a straightforward implementation date to be determined, but this would rely on using the ability to defer the date by Order in Council in clause 2(2). A more sensible approach would be to reframe the drafting in the Bill to enable an appropriate implementation date to be determined and fixed. We recommend amending the commencement provisions so that the Bill comes into effect on a date to be fixed by Order in Council that is no more than 3 years after Royal Assent. While we do not expect that the full 3-year period would be required, this would provide the flexibility to allow for an appropriate implementation period, depending on when the Bill is passed, and reflecting other factors that are relevant at the time (for example, the passage of other legislation such as the Insurance Contracts Bill outlined above or any major natural disaster events that occur).

It is worth noting that insurers will be required to operate under both the EQC Act and the Natural Disaster Insurance Act for a period of time, (and possibly for a not insignificant period of time if there was a large event during the transition) which will add complexity when implementing the new regime, and insurers need to be able to prepare for this additional complexity. This should be taken into account when considering an appropriate commencement date.

Finally, it must be acknowledged by the Government that the review of the EQC Act has taken approximately a decade to get to this point. This is not intended as a criticism as we recognise the various challenges that have arisen over that period. Nonetheless, for the Government to now seek to rush implementation in order to bring this legislation into force within a year, rather than giving insurers at least 18 months required for sensible implementation, would create risks in the delivery of this change and pose an undue burden on insurers that would increase costs and reduce the ability to focus on meeting their customers' needs.

The Commission's role

ICNZ's understanding was that one of the aims of the review of the EQC Act was to clarify the Commission's role. Despite enhancement of the Commission's functions, we do not believe that the Bill accurately reflects the role the Commission will play during natural hazard events. In practice, the NDRA means that insurers act as the Commission's agents and the Commission's role is akin to that of a reinsurer. However, this is not the impression given by the Bill. While the Bill provides for the Commission to delegate its claims settlement powers, it would be preferable if the Bill was more closely aligned with what a customer will experience during a claim i.e., that private insurers will serve as the primary point of contact and hold responsibility for lodging, assessing and settling claims. If this is not done, it creates confusion in the customer experience and a lack of clarity around roles.

Insurer discount

We note that the Bill does not make any mention of removing the Commission's discretion to provide a discount to private insurers for collecting the levy.[2] Insurers incur costs in collecting the levy and historically, the discount has been used to cover those costs. The costs remain whether or not a discount is applied and as such, will then be passed on directly to customers through increased insurance premiums. Furthermore, removal of the discount will cause disruption to insurers' businesses as it will require unnecessary system and process changes. These changes will also attract a cost.

ICNZ does not believe that it is reasonable to require insurers to incur costs on behalf of the Government, costs that the Commission would otherwise be required to incur itself, without compensating insurers for the use of their resources. Nor is it in line with the partnership developed under the NDRA. Especially given insurers will be taking on even more responsibility for the Commission with the increase in cap.

The discount is not a "bonus" to insurers but a fee for the service that insurers provide. Further, the Bill sets out additional reporting requirements, which will also have the effect of increasing insurers' costs.

We therefore recommend retaining the discount in the form of an "administration fee", which properly reflects the use of that money.

Should the discount be removed, then there needs to be specific acknowledgement in the Bill enabling the Commission to directly negotiate in good faith such an administration fee with insurers undertaking this activity. However, this would be a far less preferable approach to that of the status quo given different arrangements would likely be agreed between different insurers (who will have very different negotiating powers).

Matters not addressed in the Bill

During discussions in the lead-up to the introduction of this Bill, the idea of requiring insurers to ensure that funds from a cash settlement were used by a customer to reinstate their property was mooted. ICNZ is pleased to note that, consistent with the feedback already provided to Treasury, there is no such requirement included in the Bill. It would be inappropriate and overly burdensome for insurers to take on such responsibility. However, it does raise the question as to whether there should be reference included in the Bill to any expectations the Government has of property owners to repair their property. This is an important point to consider as failure to use settlement money to repair a property could mean that cover is excluded during a subsequent event or that cover is cancelled (as provided for in clause 47 of the Bill). Also related to this point, is the need for customers to disclose any material facts which could impact on the future insurability of their property or claims response. We recommend that consideration is given to addressing these matters in the Bill.

[2] Section 23(4) of the EQC Act allows the Commission to provide such discount as the Commission thinks fit in respect of premiums payable by insurers. Advice provided to ICNZ states that the ability to offer a discount was first provided for in the War Damage Act 1941 and then carried through to subsequent legislation. Hansard reports from the 1940s show that the discount was intended to compensate insurers not only for their costs associated with collecting what is now the EQC levy, but also for the information disclosure obligations that insurers were made subject to under the legislation. Under the Bill, insurers will continue to have obligations relating to collection of the levy and information disclosure.

The ability to use regulations

While ICNZ is generally supportive of the addition of regulation making powers, we have concerns around the possible use of regulations provided for in the Bill, and the ability they provide to implement further policy details at short notice to the industry and without adequate consultation. We take this opportunity to stress that where regulations are being developed there must be ample opportunity for consultation with the insurance industry (as well as other interested parties) along with adequate lead time for their implementation.

2. Feedback on the Bill

Clause	ICNZ comments	Recommended amendments
2 (Commencement)	Please see our commentary relating to commencement in the overarching comments to the submission. It is essential that the commencement provisions allow ample time for implementing the changes and are timed so as to minimise the risk that insurers will have to review policy wordings multiple times to meet the requirements stemming from different regulatory review currently underway at present.	We recommend amending the commencement provisions so that the Bill comes into effect on a date to be fixed by Order in Council that is no more than 3 years after Royal assent. Insurers should then be given at least 18 months from when the Bill is passed to the changes come into effect.
3 (Purposes of Act)	ICNZ is pleased to see the addition of purposes to the Bill and believe that they are appropriate for such a regime.	
5 (Interpretation)	ICNZ believes that the definition of 'landslide' needs to be clear that it includes subsea landslides, as this is integral to the definition of 'tsunami'. We also note that a number of key terms have been changed from the current EQC Act 1993. For example, 'natural landslip' to 'landslide' and 'natural disaster' to 'natural hazard' which has the potential to affect private insurance cover given the current 'natural disaster' definition is central to the drafting of many home insurance policies, and the replacement definition of 'natural hazard' in clause 22 adds the perils of flood and storm to the scope of the definition, which is a material change. We comment further on this point in relation to clause 21 below.	The definition of 'landslide' should be amended to read '**landslide** means movement, including subsea movement, …'
6 (Dwelling)	Overall, the expanded definition of 'dwelling' is an improvement on the status quo, however, there remain two important aspect of this definition that need to be considered and resolved. *Temporary removal of property features* We do not believe that the issues relating to dwellings being self-contained, that ICNZ has previously submitted on, have been addressed. Fulfilment of the self-contained aspect of the dwelling test becomes problematic if there is temporary removal of a kitchen or bathroom, for example, when a homeowner undertakes	In relation to the self-contained requirement for a building, or part of a building, to be considered a dwelling, we recommend including a temporal extension so that buildings that temporarily do not meet the conditions (such as where renovations or repairs are taking place), are still considered to meet the definition, provided the building will meet the definition within a specified time period.

	renovations or repairs. Clause 6(1)(a) provides that a building is not a dwelling if it does not have "somewhere to cook, sleep, live wash and use a toilet". ICNZ is concerned that renovations to those areas would invalidate cover. Furthermore, the way that the provision around facilities for day-to-day living is drafted indicates that *all* of those elements must be present. Consistent with what ICNZ has previously submitted to Treasury, we suggest that the Bill includes an extension of the self-contained requirement to cover situations where elements required to satisfy the test have been temporarily removed, but there is an intention for them to be reinstated. Please also refer to our comments below in clause 21. *Single building* The Bill appears to require all elements of a dwelling to be in a single building, or part of a building, rather than the current EQC approach that would allow, for example, a separate building for ablutions, that providing it is not shared, to still meets requirements. It is unclear whether this is deliberate, or simply the inadvertent result of using different drafting. The current policy is addressed in the EQCover Insurers Guide - June 2021 (refer to the example at the bottom of page 9).[3] The drafting of the Bill should be clarified to avoid any ambiguity in this respect, and we consider that it would be appropriate that the current policy should be retained. *Holiday homes* We also believe that a redraft of the provisions relating to holiday homes, Airbnbs etc., is required. Firstly, we do not consider the provisions in clause 6(4)(a) adequately address the uncertainty that currently exists in relation to the situation where holiday homes are both used by the owner and rented out for periods of varying and potentially short durations. The clause refers to temporary accommodation "ordinarily provided for periods of less than 28 days at a time" being excluded. This is not consistent with current EQC policy that if the owner can use a property whenever they want and intends to/does do so at least once in the policy period, then the requirements for being a dwelling are met. The drafting of the Bill on the other hand, leaves uncertainty as to whether many holiday homes are covered by the regime, which is not an acceptable position for those customers, and their insurers, to be in.	In relation to the holiday home provisions in clause 6(4), we recommend that the "such as" example in clause 6(4)(a) is amended to include "holiday rentals that the owner does not use or intend to use for their own purposes". We also recommend amending clause 6(4)(a) to "it is used to provide temporary or transient accommodation that is ordinarily provided to any one paying occupant for period of less than 28 days at a time…".

[3] https://www.eqc.govt.nz/our-publications/eqcover-insurers-guide-july-2021/

	We consider the current EQC policy approach outlined above to be appropriate and workable, but it is not currently provided for clearly in clause 6(4)(a). We therefore recommend the "such as" example in clause 6(4)(a) be amended to also include "holiday rentals that the owner does not use or intend to use for their own purposes", thereby providing clarity on when such dwellings are not covered. This change would codify the current situation and ensure that there is certainty for insureds and insurers as to whether these properties are covered under the regime and therefore whether levy needs to be collected and paid to the Commission. We recognise this could be further supported by regulations if necessary (clauses 6(6) and (7)) but it would be preferable to take the opportunity to make the legislative provision clear. Secondly, we can see a potential issue with clause 6(4)(a) where a property is managed by a third-party provider such as Bookabach over a long period. Properties managed in this way could be caught by this and cease to be covered under the regime because the accommodation is provided for a period greater than 28 days in total. We therefore suggest adding the words "ordinarily provided to any one paying occupant for periods of less than 28 days at a time".	
6-9 (Dwelling, Eligible building, Mixed-use building, Residential building)	Clauses 6-9 define buildings and dwellings without reference to the land/title/location upon which the dwelling sits. Because of this, it is unclear whether a building situated outside of the boundary (on the 'Queen's Chain', for example) would be covered by the regime. It would be useful to clarify this situation, as it can otherwise cause confusion and, from experience, differing opinions within the Commission itself. This type of confusion and inconsistency in opinions can also have a negative impact on the customer experience as it is likely to increase the length of time required to finalise a claim. ICNZ's preference would be for buildings outside the boundary to also be covered, so that all customers can be treated in the same way.	We recommend that buildings outside the boundary also be within the scope of cover.
8 (Mixed-use building)	ICNZ is supportive of the changes made via the Bill to address issues identified with the calculation of the applicability of the regime to mixed-use buildings in relation to common property within the building.	
11 (Appurtenant structure)	ICNZ supports the definition for 'appurtenant structure' in relation to both individual dwellings and apartment buildings, where the application to garages. for apartment blocks has been a challenge under the EQC Act.	We recommend that in addition to the definition of appurtenant structure, a list of relevant structures is also included in the Bill. The Bill

	A detailed list of relevant structures would be helpful in the Bill. For example, "An appurtenant structure includes the following detached structural improvements: (a) garage, shed, barn, sleep-out or similar outbuildings that are not self-contained, carport, gazebo, greenhouse, etc.". However, definitions for things like appurtenant structures should be supported with subsequent guidance notes. As while they may be covered in one instance, they may not be covered in another, depending on what they have inside them, what they're used for, and how they've been constructed. By way of example, the Commission has previously indicated that permanent clotheslines, i.e., those concreted in, would be covered as an appurtenant structure, but we cannot recall instances where the Commission provided cover for damaged clotheslines under the CES. The definition of "appurtenant structure" is further complicated by reference in clause 11(c)(i) to "used…for household purposes". This raises the question of whether a shed, for example, that is normally used for the storage of household items but is empty at the time natural hazard damage occurs would be covered. Including a list of appurtenant structures in the Bill together with subsequent guidance would help to clarify this type of situation. While noting our comments about the use of regulations in the Bill in the overarching comments to this submission, we believe that this is one area where the use of regulations would be appropriate. Including a list of appurtenant structures and being able to amend that list via regulation will future-proof this clause and ensure that it remains reflective of the use of the terminology "appurtenant structure" in the natural hazard context.	should state that this list can be updated via regulations.
13-15 (Common property, Joint property, Shared property)	We do not believe that the definitions of common, joint and shared property are clearly explained in the Bill. Complex definitions such as those used in clauses 13-15 create difficulties for claims staff when dealing with a claim, and when explaining the different types of property to a customer, who would also likely find the concepts difficult to understand. Lack of clarity such as this can contribute to the time taken to settle a claim and increase the potential for disputes.	We recommend reviewing and simplifying the definitions for common property, joint property and shared property in clauses 13-15. We would welcome the opportunity to work with drafters on suggested wording changes to the definitions.
14 (Joint property)	The current 'such as' example for integral components in subclause 1(b)(i) is very structural in nature rather than related to spaces within a building, which is more straightforward. It could therefore be overly narrow and challenging to	Subclause 1(b)(i) should be amended to also include entrance ways/foyers.

	apply in practice. We believe that additional examples should be added to widen the provision.	
16 (Insured person's land)	Subclause 16(3) could be problematic in places like Wellington, where the main access way may be on adjoining council land with an encroachment, rather than by way of easement. When taken together with clause 17, subclause 16(3) appears to reduce the cover provided by the scheme as nothing on the land is covered by the Bill unless it is a retaining wall, bridge or culvert for the residential building. Cover should be included in such circumstances as we cannot see any rational basis for excluding such land based on proprietary rights. Particularly because without land being repaired in some instances (an access way on council land for example), it may not be possible to then repair the damage to the residential building covered by the scheme. The interface between private insurers' policy cover and the scheme may also need to be revaluated in light of 16(3) because, if something falls within the scope of EQCover (i.e. a driveway or retaining wall) insurance cover will top-up the amount where the portion EQC would be liable for is exhausted (even if for some reason this is not payable (for example, if there is an encroachment rather than easement and EQC decline cover, insurer would not pay ground-up)).	We recommend that clause 16 be amended to cover situations where the access way may be on adjoining council land with an encroachment.
17 (Residential land)	It is positive to note that Clause 4(3) demonstrates a policy intent for natural hazard cover for residential land to include land that *"*supports and maintains the integrity and usability of the residential building and access to it*"*. However, we consider that claims handlers are likely to require further guidance as to how this clause should be applied in practice. We would want to see this clause interpreted in a practical (rather than overly technical) fashion. We would also appreciate guidance or confirmation around whether foundations fall within the definition of 'residential land'. This has previously been a problematic area for insurers so it would help to avoid disputes if the legislation is clear on this point as it has important implications for the optimum property reinstatement options	We recommend noting our comments and the need for guidance in relation to the application of this clause.
18 (Retaining walls and bridges or culverts)	ICNZ is pleased with the new cover for retaining walls. However, the parameters of the cover would benefit from the inclusion of definitions of "bridge" and "culvert". Clear definitions will remove ambiguity, thereby removing the potential for argument and the need for negotiation once a claim has been made, which will only serve to extend the process.	We recommend that definitions of "bridge" and "culvert" be included in the Bill. As examples, the definitions used in the NDRA Insurer Manual are as follows: • "A bridge is a structure for the purpose of

	As an example of the potential ambiguity, would "bridge" include any lighting/electrical services located on the bridge, or guttering/water management services that dispel rainwater at either end of the bridge? We would also appreciate guidance in the Bill as to whether cover would be excluded for drainage ditches which form part of a retaining wall (discussed further below in relation to Schedule 2, excluded property).	carrying a road or path across a river, road or similar. The bridge includes all components necessary for this purpose". • "A culvert is a tunnel for the purpose of carrying a stream or open drain under a road or access way. The culvert includes all components necessary for this purpose". However, due to operational difficulties around the definition of "bridge" in the Insurers Manual, we suggest that it be amended as follows: "A bridge is a structure for the purpose of carrying a road, path or accessway across a ~~river~~ body of water, road, chasm or other structure including but not limited to a vented ford ~~similar~~. The bridge includes all components necessary for this purpose".
21 (Fire Insurance contract and fire insurer)	ICNZ is concerned that the interplay between clauses 6 (Dwelling), 21 and 29 (When natural hazard cover commences and ceases) could lead to dwellings losing cover at the time of renewal if they are under renovation or repair at that time. Under clause 21(3), renewals are considered to be new contracts so presumably, the dwelling test as set out in clause 6(1) arises again at this time, although this is not clear from the drafting used in the Bill. Similar to the concerns already raised in relation to the self-contained portion of the dwelling test in clause 6, there are also issues if, on the day of the renewal, the dwelling test is not met due to renovations or repairs being underway but not complete (and, for example, there is no usable toilet). Theoretically the dwelling test could be failed at renewal even if the next day, the kitchen or bathroom are back in and functioning. We do not believe that temporary conditions such as these are adequately dealt with in the Bill. Further complicating the above example, is clause 29(3) which says, if a dwelling ceases to be a dwelling during the period of the fire insurance contract, then cover ends at renewal. It is important that these provisions are clear, as they will impact on the available insurance cover.	We recommend clarifying in the Bill that if, at the time of renewal, a dwelling is undergoing renovations or repairs that mean the dwelling does not satisfy the test in clause 6(1), but intends to do so once the work is complete, then cover is continuous.

23 (Natural hazard)	As noted in our commentary on clause 5 above, the 'natural disaster' wording used in the EQC Act has been changed to 'natural hazard' in the Bill. While insurers do not object to the change, it is important to recognise that it increases the changes required to implement the Bill. This change, combined with the new drafting of the Bill will have a material impact on the way many insurers have designed their policies to fit in with and build from the EQC scheme. While these changes can be addressed by insurers via amendment to policy wordings etc., it should be noted that the required changes will be more extensive than if the current EQC drafting had been retained (i.e., it is not a matter of replacing references to 'natural disaster' in policy wordings with 'natural hazard', as the definition is not the same). It should also be recognised that while the drafting form has been materially altered, the substance is essentially the same. This further supports the need for at least an 18-month implementation period to make the necessary changes to policy wordings.	
24 (Natural hazard damage)	In our view, customers do not have a strong understanding of the differences between the concepts of urgent works, imminent risk, and conceptual repair as are provided for in clause 24(1)(a)(ii) and clause 24(1)(b)(ii). Likewise, there does not appear to be any real clarity in relation to who is responsible for implementing this type of work, nor what happens if it is not done. As a result, this subject has caused a lot of discussion, dispute, and misunderstanding and has the potential to continue to do so. To make the topic more understandable, it would be helpful to break these concepts down for customers in supporting materials and communications after the Bill is passed and make it clear that if they do not actually carry out the work upon which their settlement is based, particularly work recommended to prevent imminent loss, they will not have the benefit of their private insurance cover and may not have EQCover either. It is important to explain these concepts because clause 70 (Claim may be declined for failure to protect property) is worded so widely that it may not be understood by an insured as actually requiring that they conduct repairs for which they have been settled (although the example certainly helps). We note that clause 70 is much wider than the current Schedule 3, section (3)(a) which states:	We recommend also including volcanic ash as an example of natural hazard damage as this would help to clarify the various ways in which clause 24(1)(a)(ii) could be applied.

	"The Commission may decline (or meet part only of) a claim made under any insurance of any property under this Act where— (a) the natural disaster damage to which the claim relates was caused or exacerbated by earlier natural disaster damage for which the Commission made payment and that payment was not used to repair the property".	
28 (Natural hazard cover insures against natural hazard damage)	We note that clause 28(3) excludes cover against consequential loss such as temporary accommodation costs. ICNZ has previously advocated for these costs to be covered for consistency with the cover provided by insurers. Furthermore, the exclusion of costs for temporary accommodation seems to conflict with the aim to aid community recovery following a natural hazard event.	We recommend that further consideration is given to the inclusion of costs for temporary accommodation with the scheme providing initial cover, and insurers providing top-up cover once the scheme's limit has been reached.
29 (When natural hazard cover commences and ceases)	Please refer to our comments on clause 21 above in relation to issues at renewal if the cause of damage to, or ineligibility of, a dwelling is not from a natural hazard.	Note recommended changes outlined above in relation to clause 21.
32 (Replacement cost)	We are concerned that clause 32 appears to suggest that the Commission could bear the cost of upgrading an entire building (to a level that complies with all applicable laws such as the Building Act) rather than just the damaged parts. Although clause 32(1) refers to "the damaged parts" it then goes on to define 'replacement cost' as "the total cost that would reasonably be incurred to replace or reinstate the damaged property". We do not believe that the policy intent is for the Commission to upgrade an *entire* building rather than just the damaged parts. To make this clear, we have recommended replacement drafting. It would create difficulties for both customers and private insurers if insurers were required to apply one level of cover under the legislation (upgrade a building) and another level entirely for private insurance (upgrade the damaged parts of the building). This interpretation remains a possibility unless the legislation is clarified.	We recommend that clause 32 is redrafted as follows: (1) The **replacement cost** of the damaged parts of the residential building ("damaged property") is the total cost that would reasonably be incurred to replace or reinstate the damaged property to a condition substantially the same as, but not better or more extensive than, its condition when it was new, but with the damaged property— (a) modified as necessary to comply with all applicable laws (such as the 25 Building Act 2004 and the building code under that Act)… (2) The **total cost** to replace or reinstate the damaged property means— (a) the costs of all replacement or reinstatement work; and (b) the cost of demolition and removal of debris to the extent that is reasonably required to enable the damaged

		property to be replaced or reinstated; and (c) the costs of complying with all applicable laws.
37 (Land cover insures residential land on indemnity basis)	ICNZ is disappointed that the Bill still provides for land cover on an indemnity basis, despite the issues that ICNZ has previously raised with using this concept in relation to land.[4] We still consider that it is not sensible to refer to land being repaired on an 'indemnity' basis. Land does not deteriorate over time in the way a building or structure does, and nor can it always be returned to its pre-event state. It is not logical, for example, to think of a depreciated cost of repair for land in the same way that it might be appropriate for a building. The indemnity concept has more relevance when land is lost entirely and so the homeowner is indemnified for that loss. It would be better for the Bill to clarify the intention behind reinstating land and spell out what land cover does and its limits, rather than to rely on insurance language and precedent that is not designed for or particularly relevant to land. It would make more sense to talk about 'reinstatement' in relation to the repair of damage to land (as clause 40 etc. already do) and 'indemnity value' in the situations where land is lost or no repair is possible. We note that Cabinet's policy decision on the scope of land cover did not refer to 'indemnity' and was instead to "contribute resources to reinstate or replace land damaged by natural disaster where that land contributes to providing support and protection for a residential building, and/or the main accessway to the building".[5] In our view, the policy intent of this statement is to ensure the land can act as a building platform which will then allow for the repair, rebuild, or replacement of a building. As drafted, we also do not consider that clause 37 demonstrates any commitment to community resilience or provides the ability to maintain a strong, sustainable housing stock. In fact, it risks causing a situation where homeowners cannot afford to remediate land to protect the residential building. The flow on effect is that insured homes will not be fully protected and homeowners must	We recommend that reference to land cover being on an 'indemnity basis' in the Bill instead refer to reinstatement and rely on how this is expanded in clause 40.

[4] In previous correspondence with the Treasury, ICNZ has stressed the difficulties presented by talking about land being repaired on an indemnity, as opposed to a replacement, basis. The use of the term 'indemnity' can also create confusion for customers as private insurance policies commonly use this term to describe current market or present day value assessments of a man-made insured property which depreciates over time.

[5] https://www.treasury.govt.nz/sites/default/files/2021-12/eqc-dev-21-min-0062-4442186.pdf, at 9.1.

	incur costs themselves to rectify the issue, or risk cancellation through inaction.[6]	
39 (Actual loss suffered)	We note that clause 39 largely seeks to codify the EQC policy related to increased liquefaction vulnerability (ILV) that was considered in a 2014 Declaratory Judgment involving the EQC, ICNZ and others.[7] We note that including 'would be disproportionately expensive compared with the diminution of value if the land were not reinstated' in subclause 39(3)(a)(iii) will result in reduced long-term resilience and be inequitable. Including this criteria here does not take into account risks of future damage from unrepaired land, which was a significant issue during the CES. Failing to repair land based on weighing up disproportionality in this way could increase costs to the Commission over the long term and also fails to meet the purpose set out in clause 3(a)(ii) of the Bill to "contribute to improving community resilience". It should also be remembered that the overall monetary cap in clause 42 would remain, meaning that the costs of repair could not exceed the value of the land, which puts an ultimate limit on reinstatement costs. Including this is also likely to lead to socially inequitable outcomes. The application of the criteria in subclause 39(3)(a)(iii) could mean that lower value land is less likely to be repaired as the relative loss in value is likely to be lower, which in turn means land repairs with the same costs are more likely to be disproportionate in the case of lower value land.	
41 (Diminution of value)	We do not believe that diminution of value should be limited to the specific event as land could also be damaged further in subsequent events. For instance, removing any cover for increased flooding or liquefaction vulnerability (IFV/ILV) may leave building sites and the buildings on them more vulnerable to future damage, which may in turn impact their ongoing insurability. This again raises questions around the extent to which the Bill demonstrates a commitment to ongoing community resilience.	We recommend that: • 'diminution of value' is expanded to include damage from subsequent events; and • subclause 41(2)(d) is removed.

[6] Insurer data shows that the actual cost of repairing land is nearly always higher than the land valuation, and the majority of land claims are settled on land valuation rather than the cost of repair. For example, we know of one instance where the land valuation was $21,200 but the scope of works was $51,500, and another where the valuation was $299,000 and the scope of works was $440,000. We would be happy to provide further examples if they would assist. The areas where this issue is most likely to arise are low damage claims and high land value claims (for example, this approach would benefit people with high-value land such as properties in Auckland, and disadvantages those in places with low-value land like Westport).

[7] CIV 2014-485-5698 [2014] NZHC 3138.

	Subclause 41(2)(d) will operate in a way so as to be unfair to policyholders and should be removed. To say that market perceptions of the safety and desirability of the land are not relevant to diminution of value would remove a key aspect of how the value has been diminished. This is clearly shown in Christchurch where ILV properties carry a negative perception that reduces their value. Failing to recognise this also exacerbates the issue with including 'proportionality' in clause 39(3)(a)(iii) as discussed above. We consider the other subclauses under clause 41(2) are appropriate.	
42 (Maximum land cover amount)	We note that for retaining walls, bridges and culverts, the new basis ('undepreciated value') of the cover and the new caps provided will change the level of cover provided under the scheme. It will mean an increase in cover for some and a reduction for others, which could be significant. For those homeowners for whom the new cap is a reduction in cover (likely to be those with larger and higher value retaining walls), there will be an increased need for top-up cover provided by private insurers. As clause 44(3)(a) excludes cover for costs that insurers would typically consider as part of the cost for replacing walls or bridges, these costs will also need to be provided via private insurer top-up cover and reflected in sums insured. These points will have an impact on pricing generally and some homeowners may need to increase their sums insured to reflect the changes to cover, with a resulting impact on their premiums. Failure to do so could mean that it is not possible for a homeowner to repair or rebuild their house if they do not have the necessary funding to repair/rebuild damaged retaining walls, culverts or bridges to provide a building platform for the house and access to it. Communications provided by the Commission and others will need to clearly outline the implications of this, to support policyholders making changes to their cover in response to the changes to the legislative regime.	
47 (Cancellation of cover)	Clause 47 appears to be a new right which allows the Commission to cancel cover where full settlement for a below cap value building has been paid and the customer has been slow to undertake repairs. ICNZ would appreciate further information about when this provision might be used. It would also be helpful to have guidance as to what "sufficient time" under clause 41(1)(d) might amount to.	We recommend amending clause 47(2) to "…by giving the insured person, and their insurer, written notice of the cancellation…"

	It is essential that the insurer is informed if cover is cancelled by the Commission as, in an event, the private insurer policy will not respond if there is no cover under the scheme. We believe that the simplest solution to this would be to amend clause 47(2) to also require written notice to the insurer. It should also be noted that the Insurance Contracts review has taken a particular focus on the use of unfair contract terms, including the cancellation of cover via notice to the customer. In the interests of fairness to the customer, we would caution the Commission against liberal use of the cancellation provisions simply because they are provided for by statute.	
48 (Limitation of liability for preventable repeat damage)	Clause 48 allows the EQC to limit liability where a building is damaged by landslide or the land is damaged by landslide, flood, or storm, and the EQC considers it is likely to occur again, and the insured could take reasonable steps to mitigate the risk of future damage. The limitation is provided by notice and recorded on the title (clause 49). We have a number of suggestions in relation to clause 48: • any limitation under clause 48 should be limited to the perils specified in that clause. At present, clause 48(1)(b) is not explicit that "future damage" relates back to the perils at 48(1)(a). To make this clear, clause 48(1)(b) could be amended to "…will suffer substantially the same natural hazard damage as set out in clause 48(1)(a) in the future…" • insurers should also receive a copy of the notice issued under clause 48(2). • the Commission's ability to decline a claim for failure to take reasonable steps should be limited to the particular natural hazard against which steps should have been taken. For example, if a person fails to take reasonable steps to protect against a landslide by erecting a palisade wall, but then suffers from a flooding event. Even though the damage from the flooding event might have been reduced by the palisade wall it should not be taken into account. • "reasonable steps" should be defined so that its interpretation is not left open. It is not clear from its use in this section as to what would be considered "reasonable" and how much would be expected of the insured. • it would be helpful for guidance to be provided on how far into the future enquiry around the likelihood of future natural	Please see the bullet points in relation to clause 48 to the left for our recommendations.

	hazard damage will go. If there is already a time period in mind, then we believe that it should be specified in the Bill.	
50 (Insured person may make a claim)	Clause 50(1) allows the insured person to make a claim for natural hazard damage. Our learnings from the implementation of the NDRA make us believe that this provision should be redrafted to make it clear that a broker or other agent can make claims on the insured's behalf.	Amend clause 50(1) to "the insured person or their authorised representative".
55 (Commission must assess, decide, and decide claim)	We note that the obligation on the Commission to assess, decide and settle the claim "as soon as practicable" is different to what is expected of private insurers under the Fair Insurance Code.[8] As insurers are agents for the Commission, this may mean that they have to apply two slightly different standards in relation to one claim.	We recommend that clause 55 is redrafted to align with the private insurer standard to "settle all valid claims quickly and fairly".
58 (Commission must decide on settlement) and 59 (Methods to settle)	Clause 58(1) provides "The Commission must settle a valid claim as the Commission considers appropriate...". The Commission is then required to provide reasons for their decision (clause 58(6)(b)) and notify the insured that they have a right to dispute the decision (clause 58(6)(c)). By comparison, section 29(2) of the EQC Act provides that the Commission is solely responsible for deciding how best to settle any claim "at the option of the Commission". It appears then that clause 58 is a "watering down" of section 29. While we appreciate that there is likely good intentions behind involving the customer in the decision as to settlement, we believe that it should ultimately be up to the Commission to decide how a claim should be settled. Our preference is that the clause is explicit about decision-making (as it is currently in the EQC Act) to avoid potential arguments about how repairs are undertaken and who conducts them. Home insurance policies set out settlement methods and state that the insurer will choose. This gives greater transparency to customers so that methods to settle can be clearly set out in advance and people don't feel they are being treated differently. It would be helpful for the Bill to allow the Commission to take a similar approach. The move in clause 58 for greater customer involvement in the decision as to how best to settle a claim raises several questions. For example, whether a customer would be able to insist on reinstatement, and if so, who would	Clause 58 should include an exception to subclause 58(4) where it is not practicable to make a payment.

[8] https://www.icnz.org.nz/fileadmin/Assets/PDFs/Fair_Insurance_Code_2020_te_reo_logo.pdf, paragraph 16 says that ICNZ members will "settle all valid claims quickly and fairly". Paragraphs 21 and 22 also recognise that in a catastrophe or disaster, the timeframes set under the Code may not be met.

	undertake that work. If it would be possible under clause 58 for a customer to insist on reinstatement (or other methods of settlement), then the Bill must make that clear, and must also set out who would be responsible for undertaking the work. Covering all the possible outcomes in the primary legislation will minimise the possibility of a dispute arising at a later stage, which would only cause delay to the settlement of a claim and potential additional cost. We note that the settlement methods in clause 59 provide for methods beyond that currently provided in the NDRA (cash only). This will therefore be one of the areas in the NDRA which will require renegotiation. Clause 58(4) provides that if the Commission decides to settle the claim, it must make the payment not more than 1 year after it decides on the amount. In practice, because of the NDRA, this will be carried out by insurers. However, the Bill does not allow for circumstances where payment cannot practically be made (because for example, a bank account number is not provided). The Bill should be amended to ensure that there is an exception where it is not practicable to make a payment.	
62 (Relocating a residential building)	Relocating all or part of a residential building, as provided for in this clause, seems to open up the types of settlement that are permitted under the scheme and could be problematic to interpret. It would be helpful for the Bill to include an example of when this provision would be used.	We recommend adding an example to this clause as guidance on when the provision might be used.
75 (Assignment of benefit of claim)	We believe that the intention of this clause is unclear. It is possible that the clause is simply intended to inform insureds so that they are able to assign the benefit of their natural hazard cover, for example, if the property is sold before the claim is settled. However, reference to natural hazard cover being a "thing in action" could also indicate an intention to alter the effect of *Xu v IAG.*[9] While the assignment of insurance claims may have caused problems in the past, these were unique to the CES. The longer it takes to resolve a claim, the more likely the property will be sold. This is less likely to be an issue now that the NDRA is in place and a claim will be handled by an insurer from the beginning (and therefore more quickly and with greater certainty).	We recommend that clause 75 be deleted to allow the common law relating to assignment to remain unchanged.

[9] https://www.courtsofnz.govt.nz/assets/cases/2019/jdi.pdf. In *Xu v IAG*, the Supreme Court confirmed that the entitlement under an Insurance policy to replacement benefits, conditional upon reinstatement by the insured, is personal to the original insured and cannot be assigned without the consent of the insurer.

	In our view, the common law regarding assignment is clear and settled after the Supreme Court judgment in *Xu v IAG*. We would not want the position to become uncertain merely by virtue of being mentioned in the Bill.	
79 (Right to salvage) and 82 (Dealing with salvaged property)	ICNZ is concerned that the clauses relating to salvage seem to provide the Commission with a level of rights inconsistent with private insurer practice. Insurers will generally only salvage through the demolition costs on a rebuild, the cost of which is effectively passed on to the insured as the cost of demolition comes out of their overall sum insured. Therefore, the more items a demolition company is able to salvage if it is an extensive repair/renovation or total rebuild, the better it is for the client.	
84 (Purpose of Code of Insured Persons' Rights)	ICNZ agrees that it is important for there to be measures in place to ensure policyholders are treated fairly. It is also vitally important that customers have a seamless claims experience so that the stress caused by the natural hazard itself is not exacerbated. However, we do not believe that another Code is necessary to achieve these outcomes. Insurers are already subject to the Fair Insurance Code, the provisions of the NDRA (when acting as the Commissions agent in administering claims) and will soon be subject to the COFI regime and its fair conduct principle and will receive specific oversight of this by the FMA. Despite our preference of not introducing another Code, if the proposed Code is established then it will need to be compatible and consistent with the already existing obligations arising in the areas listed above. If the obligations are not consistent, then it risks creating an additional burden for insurers who would be subject to a series of different rules for the same claim activity. Insurers will be administering under-cap claims as EQC's agent, over-cap and claims outside EQC's scope of cover for the same property and likely contents claims in relation to the same dwellings. The process could become confusing for a customer if different aspects of their claim are subject to different expectations. If the new Code is introduced then it will also be important that, as in the Fair Insurance Code, it includes a provision stating that in a major event, it is possible that operational metrics will slip. While every effort is made by insurers to settle claims quickly in all circumstances, if they are	We do not believe that there is need for another code, however, if a new code is introduced, it should be aligned with the Fair Insurance Code so that there are not different rights expected for the treatment of below or above cap claims, or claims managed by the Commission rather than the private insurer.[10]

[10] While the majority of claims will be handled by private insurers, at present, the NDRA allows for certain claims to be handled by the Commission.

	faced with a situation where there is a much greater number of claims than usual, as occurred following the CES, it is helpful to allow some flexibility in the timeframes. While the Fair Insurance Code provides flexibility in a large-scale event, there is still an obligation to provide the insured with an update every 20 business days (or other timeframe as agreed with the insured).	
87-96 (Reviews of complaint procedure)	The complaints procedure set out in clauses 87-96 appears to be complex and unclear as to how the procedure works, how it relates to the dispute schemes that insurers currently participate in, and any new claims resolution service that might be developed in response to the Public Inquiry into the Earthquake Commission. Overall, we struggle to see how these are intended to work. Rather than suggesting specific drafting changes we suggest a complete review to consider how best to provide for likely customer issues and complaints in a way that: • reflects insurers are acting as EQC agents in managing claims and are subject to existing requirements and in future the COFI regime; • integrates with any proposed alternative dispute resolution scheme, which could be in effect by the time the Bill's provisions commence. On our reading of these clauses, a breach of the Code could be subject to the complaint management procedure under subpart 5, review under subpart 6, and then the external dispute resolution scheme process under subpart 7. We encourage Treasury officials to engage MBIE to review this section to ensure that the process takes a simple and streamlined approach that will be easily understood by a customer, and that is consistent with the comparable process private insurers already employ. Further to this point, the Bill does not make it clear how complaints would be managed where the insurer is the agent of the Commission and if a matter arises that is relevant to both a below and above-cap claim. Additionally, while ICNZ has already engaged with the GCCRS and MBIE around the advisory portion of a new dispute mechanism, it is our understanding that the Ministry of Justice will be responsible for the dispute resolution portion of the work. Please note that ICNZ will want to be part of the consultation process on the dispute resolution mechanism.	We recommend that MBIE review these clauses to ensure that the process is as simple and understandable as possible from a customer perspective, and aligned with the existing private insurer dispute resolution process.

97 (Commission must participate in dispute resolution scheme)	ICNZ would appreciate greater guidance as to how this aspect of the dispute resolution process fits with any proposed claims resolution service. Generally, we are supportive of there being a dispute resolution scheme outside of the Courts, but would want to ensure that there are not multiple competing schemes with differing rules.	
100 (Referral of dispute and participation in resolution)	ICNZ is concerned that the reference to a "referable decision" in subclause 6(b) risks opening up disputes about how claims are settled. For example, could an argument be made about cash vs reinstatement, or is this subclause only intended to apply to the settlement amount? We would appreciate clarification on this point.	
113 (Payment of levy)	Clause 113(3)b)(i) allows for the imprisonment of an individual if they have intentionally failed to comply with the provisions relating to payment of the levy. ICNZ believes that providing for imprisonment is excessive and wholly unnecessary, particularly when compared with the possible $50,000 penalty for an entity. The prospect of imprisonment seems entirely out of touch with the potential impact of any non-compliance.	We recommend redrafting clause 113(3)(b)(i) as "in the case of an individual, to a fine not exceeding $25,000; and".
117 (Liability for levy if overseas insurer)	We note that the definitions used in 117(7) may be subject to change following completion of the Insurance (Prudential Supervision) Act 2020 (IPSA) review. As the IPSA legislation is not expected before late 2023, any changes to this legislation will need to be made as consequential changes at that time.	
121 (Charge for continuation of natural hazard cover after claim)	It is unclear from this clause whether insurers would need to recharge the levy if a claim is settled during the period of cover. Recharging premium during the policy period is not an insurer practice and so is not provided for in insurer systems. Insurers only recharge premium in the event of paying out a claim for a total loss. We would appreciate clarification of the policy intent of this clause, and how it would be expected to be applied by insurers, recognising that, as above, insurer systems are not set up to recharge the levy during the policy period.	
125 (Objectives of the Commission)	ICNZ is pleased to see the introduction of a section outlining the Commission's objectives. However, we question whether there should also be objectives included about ensuring fair treatment of insured persons. This objective would seem consistent with the policy intent behind the overall review of the legislation. We note clause 125(2)(d) which allows the Commission to facilitate the purchase by the	

	Crown of reinsurance in respect of other Crown risks, which is a new objective.	
126 (Functions of Commission)	ICNZ is pleased to see comprehensive clarification of the Commission's functions and notes the inclusion in clause 126(h)(ii) of the ability to facilitate the purchase of reinsurance or other risk transfer products in respect of other Crown risks.	
131 - 132 (Amending financial settings)	ICNZ agrees that a review of financial settings every 5 years is appropriate, but it should be noted that any changes resulting from a review will take time to implement and could have, potentially large, associated costs. Changes to the level of the building cover cap in particular, will require insurers to reprice relevant products before implementing the changes, which will necessitate changes and/or updates to insurer systems and collateral. Changes such as these require time to implement (18 months would be most efficient) and bring costs and disruption for insurers. Changes in levy rates will also impose system change costs on insurers. Please see the commentary on clause 137 below for our recommendation on this point.	
137 (Matters Minister may have regard to)	ICNZ is supportive of the current drafting of clause 137 and the matters the Minister may have regard to when carrying out a review. However, because of the possible impact of changes following a review, we believe that the 'impacts and change costs for fire insurers resulting from changes to financial settings' should be added to the list.	We recommend that 'the impacts and change costs for fire insurers resulting from changes to financial settings' is added to clause 137.
138 (Purposes for which Commission may collect information)	We note that the proposed requirements are broad, but appear consistent with feedback from the EQC Inquiry. ICNZ's view continues to be that there is insufficient evidence of a problem to require such broad powers relating to collection and disclosure of information. It should be noted that it is possible, depending on how liberally the provisions relating to information collection are used, that they could create further cost for insurers if they have to dedicate additional time and resources to fulfilling information requests. We outline our concerns more fully below in relation to clause 142.	
141 (Authorising person to exercise information gathering powers)	We note that the Bill provides the Commission with an ability to authorise an individual, without any apparent limitations, to exercise the powers provided under sections 142, 144 and 145. We comment on those sections further below.	
142 (Power to require information)	The Bill provides the Commission with broad new powers to both request information and to	We recommend the scope of the information request power

	disclose it. We consider those powers are excessively broad and unconstrained. Clause 142 gives an authorised person the power to require production of any information or other thing that the Commission reasonably needs for the purpose of performing its numerous functions listed in clause 126 of the Bill. ICNZ opposes such a broad power and believes that there are a number of issues with it: • the 'functions' to which it applies includes matters such as managing the Fund (cl 126(b)), facilitating research (126(c)) and supporting the Minister to which an information power of the kind proposed is disproportionate given the impacts on those form which information is potentially requested; • unless the requested information is redacted to remove any personal information, insurers risk breaching the Privacy Act; • servicing wide ranging information requests can be resource intensive, which takes time away from settling claims; • onerous compliance may rebound in increased costs to customers (noting that clause 142(5)(a) allows the notice to produce information can specify the form and manner in which the information, documents, or things must be provided. If the insurer does not already hold the information in the specified form, then they will have to incur costs in order to satisfy the request, seemingly without having any ability to challenge the request or its form requirements); • certain data may be held by intermediaries. In most cases, an insurer does not have the ability to compel third parties to release data (due to the distribution agreements in place between the parties). That potentially puts the insurer in breach of clause 142 if they are unable to fulfil the request; • certain information may be commercially confidential to insurers. As set out above, the Commission can require information "for the purpose of performing its functions". The functions of the Commission are set out at clause 126 and go further than just administering natural hazard cover and purchasing reinsurance. This means that the Commission can potentially request a wide range of information from a wide range of sources. For example, the reference at clause 126(e) to facilitating research and sharing knowledge around community	is limited to only those areas where it is necessary, meaning: • administering natural hazard cover (126(a)) • collecting the levy (126(c)) • monitoring compliance with the Act (126(g)). We recommend that the Bill is also amended to build controls into any information gathering powers, including an ability to challenge requests, and an obligation to provide notice to the originator that their information is to be shared with another agency. If the Bill retains such a broad power to request information, then we recommend including an ability for insurers to be compensated for providing the requested information.

	resilience has the potential to encompass a significantly wide body of information. We consider it would be more appropriate to provide such an information request power in relation to only those areas where it is necessary, which would appear to be the following: • administering natural hazard cover (126(a)) • collecting the levy (142(c)) • monitoring compliance with the Act (126(g)). Clause 142(3) states that the written notice can relate to information that is "within the recipient's possession or control or that later come into their possession or control." ICNZ is concerned that it will not be considered acceptable for insurers to say that they cannot provide information because they do not collect it or cannot require that it be provided (for example, because it is held by an intermediary). In our view, clause 142(3) appears to allow for the Commission to require insurers to obtain information from third parties, which seems unreasonably onerous (and in some cases impossible). Insurers already have a detailed Data Agreement with the Commission which reflects the type of data that insurers collect and have access to. However, it should be pointed out that the content of that agreement and the length of time it took to negotiate is indicative of the gap between the Commission's expectations and insurers' ability to provide information. During negotiations, it was also clear that there was no real appreciation of the costs and time involved in making changes to systems in order to collect new information. For this reason, and as ICNZ has previously submitted, we believe that if the Commission are to have the extensive information collection powers provided for by the Bill, consideration should be given to at a minimum, compensating private insurers for the additional costs of meeting them. The ability to make regulations in relation to the matters set out at clause 142(5) is also of concern. Depending on how the provision is used, it could allow for the introduction of further information gathering powers at short notice and without adequate consultation with the industry. We recommend that controls are built in to make sure that this clause is not used in a way that is unreasonable. ICNZ has previously submitted that there should be controls built into information gathering powers, including an ability to challenge requests, and an obligation to provide notice to the	

	originator that their information/data is to be shared with another govt agency. Noting the comments already made above and concerns raised, we reiterate the need for controls on the extent of the powers. The final point to consider in relation to this clause is the security risk in providing information. It is well known that risks to both cyber and data security have escalated, largely because of the increase in remote working due to COVID-19 and now the Ukrainian-Russian conflict, and indeed, a cyber breach of one of the financial sector's regulators has already lead to the loss of confidential data. It is essential that if the Commission is to have such broad powers to collect information, and then an ability to share that information with others, that there are strict security programmes and processes in place, as is the case with the Data Agreement and NDRA. Another option would be for the legislation to provide a countervailing power for those who receive an information request to decline that request if they have not been provided with sufficient assurance by the Commission that Information Privacy Principle 5 (Storage and security of personal information) will be met. As noted above, in the current environment, what will be required to meet IPP 5 will be a much greater level of security than what has previously sufficed. We also believe that insurers should be able to decline a request if provision of the information would be so costly or time-consuming to comply with that it makes the request unreasonable.	
145 (Power to enter if investigating offence)	ICNZ notes that these are potentially broad powers and questions whether they are appropriate when balanced with the type of offence that would warrant investigation under this regime.	
148 (Record keeping)	In our view, the requirement in clause 148(2)(c) to record the number of dwellings in each building where there is more than one dwelling and more than one building supports the approach of insuring one building per contract, as many private insurers currently do. Where this might become problematic is, for example, if there is a main house/granny flat set-up where the usage of the granny flat means that it is not under the same cap as the main house, but the occupancy does not mean the insurer records it as a different policy type. It would be helpful to have guidance on how records are to be kept in situations such as these. We also note that new recording requirements will result in insurers having to incur further costs arising out of system enhancements.	We recommend that the record keeping requirements are amended to better align with the requirements under the Privacy Act 2020 and that the ability to prescribe in regulations on "the way" the records must be kept is removed or at minimum an explicit requirement to consult insurers is included.

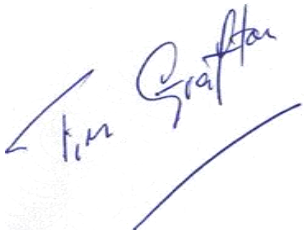
	The proposed 25-year period for the retention of records in clause 148(3)(a) is so long that it would likely involve multiple system/platform transitions for insurers. Accordingly, the records are likely to be held in an archival-type format for the latter part of this period which would make them both logistically challenging and expensive to retrieve and so this may not meet the expectations provided in regulations. If this is to be retained then at minimum close consultation with insurers would be required to ensure any requirements are practical and not disproportionally expensive to apply, noting that this could have the potential to impact how insurers design and maintain their underlying insurance systems. Potential changes in privacy law over the coming years may have impacts on these requirements that would need to be considered in future. Clause 148(2)(g) requires that insurers keep records of "any property that is not insured under the contract". For privacy reasons, insurers do not collect information about properties they do not insure so it would not be possible for them to comply with this provision. We also believe there should be some relief for insurers where they have provided information to the Commission. For example, if insurers have transmitted information following receipt of a notice under clause 142, insurers should not be required to continue holding the same information. Insurers would need to have certainty that their customers' information would be stored in a manner consistent with the Privacy Act 2020 and the Information Privacy Principles.	
150 (Misleading information)		Drafting comment: Clause 150(1) is missing the word 'must' and should be amended to read "A person must not give misleading information to the Commission…".
Schedule 1 (Transitional, savings, and related provisions)	As noted above, because of the extensiveness of the changes to definitions and terminology, in addition to the other changes provided for in the Bill, insurers will likely have to update policy design, pricing and wordings before the commencement date.	
Schedule 2 (Excluded property)	Clause 3 (Property excluded in all circumstances) includes drainage ditches. We have previously queried whether this exclusion extends to retaining walls that form part of the drainage ditch. We would therefore appreciate guidance as to how this situation should be treated.	

	Clause 3 excludes swimming pools, spas, and baths and structures ancillary to them, unless they are inside, and are an integral component of, an eligible building. However, this is similar to the cover provided by insurers, which results in a 'doubling up' of cover for internal pools and a potential gap in cover for external pools. We would appreciate clarification as to whether this was the intention of the clause and if there is an expectation that insurers will fill this gap.	

3. Conclusion

Thank you again for the opportunity to submit on this matter. If you have any questions about our feedback, please contact our General Counsel by emailing jane@icnz.org.nz.

Yours sincerely,



Tim Grafton
Chief Executive

Jane Brown
General Counsel