Proposal for discussion

1 That the purpose of the EQC Act be to establish a Crown-owned natural disaster insurance scheme for residential buildings in New Zealand that:

- supports, complements and is closely coordinated with the provision of effective private insurance services to the owners of residential buildings
- recognises the importance of housing in supporting the recovery of communities after a natural disaster
- supports improved resilience of New Zealand communities and an efficient approach to the overall management of natural hazard risk and recovery in New Zealand
- contributes to the effective management by the Crown of fiscal risks associated with natural disasters.

What do you think?

1a Do you agree that these purposes are appropriate and complete?

Although ICNZ supports these purposes of the Act, we believe a prime purpose of the Act, namely, to ensure that people living in insured residential dwellings can be re-housed after a natural disaster should be stated more explicitly.

New Zealand is one of the world's most vulnerable economies to the impact of natural disaster as a percentage of GDP[1]. Fortunately, New Zealand has one of the highest levels of insurance penetration. High levels of insurance cover benefit society by sharing the risk and reducing the cost that individuals, businesses, local and central government would otherwise have to meet.

In New Zealand, house and contents insurance is not compulsory, so individuals make choices over the risks they are willing to take and how much of that risk they transfer to others such as insurers. Levels of private house insurance uptake is extremely high at about 98%. This in turn equates to public insurance cover provided by the Earthquake Commission because its cover applies when private insurance cover is in place. This level of coverage demonstrates that insurance cover is both accessible and available to all.

ICNZ believes that New Zealand should continue to maintain as far as possible these high levels of insurance cover. For that to be achieved, it is essential that cover remains affordable and accessible to New Zealanders. This will occur if EQC cover appropriately supports the provision of private insurance cover. ICNZ notes that four objectives for legislation in the Cabinet Committee paper on this aspect are more explicit in this regard than in the discussion document. For instance, an objective in the Cabinet Paper is '*to minimise the potential for property-owners to experience socially unacceptable distress and loss in the event of a natural disaster*'. ICNZ's view is that the importance of this objective highlights an issue we raise later

[1] Lloyd's Global Underinsurance Report compiled by the Centre for Economics and Business research Ltd, 2012.

in this submission about the risk posed by the proposal in the discussion document to include 'siteworks'[2] as part of the building cover.

Lessons learned from the Canterbury earthquake series also illustrate the importance of removing or reducing as far as possible frictional costs and duplication that occurred between EQC and insurers. The EQC scheme needs to be simpler and clearer in order to enable a more efficient and effective post-disaster recovery for the benefit of homeowners, EQC and insurers. We see the first three purposes in the discussion document contributing to that outcome.

We support purposes two and three. Our experience from Canterbury is that the legislation impacts how EQC interacts with private insurers and has a large bearing on the overall consumer experience and time to reinstate following loss.

The scheme introduces unnecessary complexity by providing its own cover terms and conditions and this creates a number of issues in reinstatement; multiple assessments; different rebuild standards and methodologies to name a few. This encourages disputes and litigation and results in cost and time inefficiencies.

We believe the best way in which to complement cover offered by private insurers is by EQC acting as first insurer for the first loss only. New Zealand's approach to sharing the risk of natural disaster between the public and private sectors on the basis that the former picks up the first loss is the envy of the world. It has enabled very high penetration (98%) for catastrophe cover. As long as EQC's role as covering the first loss remains, then New Zealanders should be allowed to choose their preferred insurance supplier in the knowledge that they will receive the same standard of reinstatement and cover irrespective of the value of their claim after a disaster which is clearly stated in the policy they purchase. This will be achieved if the EQC cover follows that of the insurer, thereby removing the difficulties that arise with two standards of assessment and repair methodology applying to the one property.

We also support the fourth purpose as insurers themselves prudently seek to effectively manage their financial risks with respect to natural disasters. The Canterbury earthquake series occurred in the wake of the global financial crisis and incurred losses estimated by The Treasury to be about $NZ40 billion, of which about $20 billion will be covered by private insurers and $13 billion by EQC. If New Zealand did not have high rates of insurance penetration, then the Crown would have incurred additional costs in a challenging economic environment. For these reasons, it is important that private insurance cover remains affordable and available to all. This is one reason why ICNZ points to the need for the Government to monitor regulatory costs that attach to the premiums homeowners pay.

The discussion document refers to a suggestion that EQC be permitted to play a role in natural hazard mitigation either by funding mitigation or carrying out mitigation works itself. It is said the proposed purpose statement is broad enough to permit but not require this activity. ICNZ supports the notion of mitigation to reduce risk, but we

[2] We believe 'siteworks' is a misnomer for the extent of the work it is proposed to cover and that there should more appropriately be a separate 'land cover' which will be more limited than the current EQC Act provides for.

would oppose post-disaster, area-wide as in suburb-wide mitigation activity being funded by EQC if that were to reduce the amount payable to individual homeowners by EQC. This would cloud the purpose of EQC cover and provide benefit to those who do not insure. It would also reduce the funding available from the EQC cap to individual properties which the discussion document proposes would fall under a single building cover. Area-wide mitigation should not absolve EQC from its site-by-site liability to homeowners who have purchased insurance.

Our proposal to have a separate, redefined 'landworks' (as opposed to 'siteworks' cover) and building cover addresses the issues thrown up by area-wide remediation later in the submission. Our approach reflects clarification from The Treasury that the reference to 'area-wide' mitigation in the discussion document is intended to be far more limited in its application to specific residences as opposed to suburbs.

1b If not, what changes would you suggest, and why?

Please see commentary above in reference to the Cabinet paper's objectives for legislation.

In addition, the objective in the Cabinet Paper that the legislation ought to "support the contribution of a well-functioning insurance industry to [encourage] economic growth opportunities in New Zealand" should be borne in mind in relation to the matters we discuss below. EQC and the insurance industry must work together with as much alignment as possible and this is a theme that underpins many of our recommendations and submissions below. It is also important to bear in mind that it is the same global capital markets that help protect both EQC and the insurance industry (i.e. the reinsurers).

What types of perils will EQC cover?

Proposal for discussion

2 That EQC continue to insure against the following perils: earthquake, natural landslip, volcanic eruption, hydrothermal activity, tsunami, and storm and flood (with, in the case of storm and flood, only residential land being covered).

2b If not, what changes would you suggest, and why?

ICNZ supports EQC continuing to cover those perils listed, subject to our comments below in relation to the need to redefine and separate 'siteworks' or what we now refer to as 'landworks' from the overall EQC building cap. This new approach would mean EQC has obligations to reinstate land damaged by a specified natural peril to provide a building platform on which a dwelling that complies with the Building Code can be reinstated. The rationale for this is covered later in this submission.

We note that the discussion document under the heading 'technical issues' refers to a proposal to change the definition of 'volcanic activity'. ICNZ is not aware of the detail of the proposed extension of cover that is contemplated, but in principle would support a definition of this natural peril that is more comprehensive as this would minimise disputes around EQC cover. Further, and more importantly EQC and insurers' cover need to align. Currently, some insurers provide volcanic cover that mirrors the EQC Act. More information on the change of definition is needed in order to confirm our view.

What types of property will EQC insure?

Proposal for discussion

3 That EQC building cover continue to be available to residential buildings and dwellings in non-residential buildings.

What do you think?

3a Do you agree that EQC building cover should continue to only be available to residential buildings and dwellings in non-residential buildings?

ICNZ supports the continuation of EQC cover for dwellings in residential and non-residential buildings where the residential component is 50% or more of the building's use. This acknowledges that more people are likely to reside in apartments in mixed use buildings in future. Those who choose to live in apartments or who cannot afford to live in houses should not be disadvantaged by a scheme which has a purpose that recognises the importance of housing in supporting the recovery of communities after a natural disaster. There would be further disadvantages for residents if no EQC cover applied because they would also face the prospect of more limited cover as standard commercial deductibles for earthquake range may be up to 5% of the sum insured for the building.

If this approach is taken, then it would make sense to align the EQC's definition of an event with that which applies to commercial buildings. Currently EQC uses a 48-hour period to define separate events for residential cover. This should be changed to 72 hours to align with standard commercial cover that body corporates purchase (see also response to 8b).

ICNZ notes that many mixed use buildings with commercial, retail operations and some residential use lend themselves by their very nature to complexity around the collection and calculation of the levy and reinstatement following damage. Much of this cover is brokered business and can lead to disputes as to whether the correct EQC levy has been collected if at all. Consideration should be given to placing a

more explicit requirement on body corporates and/or brokers to ensure the levy is appropriately applied and collected.

Later, in this submission, we propose an alternative to the two approaches in the discussion document as to how EQC cover reinstates during the period of insurance. One reason for this alternative is to avoid encouraging under-insurance from occurring where the status quo allows reinstatement to occur after each loss on an open-ended basis. In apartment buildings, this is likely to occur more frequently because they are typically lower cost properties. So, it is not difficult to imagine how multiple reinstatements would far exceed the sum insured of an apartment. So, if there is a preference to provide residents with EQC cover in a mixed use building, there is more reason to support our alternative approach to reinstatement of EQC cover.

One recommendation we do have for small apartments of less than 100 sq/m is that the Act be amended to enable the sum insured be used as a basis of calculating the levy. EQC have been requiring either the size of the unit or a certificate related to the value of a rebuild.

3b If not, what forms of accommodation or living arrangements do you think should be added or removed, and why?

ICNZ supports the status quo where EQC cover applies to all residential units in multi-use buildings, but where damage beyond the unit is only covered by EQC if the dwelling constitutes 50% or more of the total area of the building. This provides administrative simplicity as to what the EQC levy applies to and therefore clarity of cover.

ICNZ supports holiday homes being included under EQC cover largely on the grounds of simplicity and clarity of claims administration. ICNZ believes that trying to exclude holiday homes would give rise to definitional problems requiring insurers to distinguish between a primary and secondary home.

ICNZ also supports EQC cover applying to retirement villages but not to nursing homes reflecting that they are distinguishable on the basis that one is a dwelling of choice while the other is determined by patient care arrangements. However, the line between the two may not always be entirely clear as care arrangements can be provided in retirement villages, so greater definition in this area is desirable.

We also understand that under the Act that retirement villages are covered where the units are owned by residents, but units occupied under a license agreement are not. Again, there is a need for greater clarity particularly since residents will include elderly, vulnerable people whose expectations are that they do have EQC cover.

Proposal for discussion

4 That EQC land cover only be available for land associated with residential buildings. Therefore, dwellings in non-residential buildings would not receive any EQC land cover.

What do you think?

4a Do you agree that EQC land cover should only be available for land associated with residential buildings?

ICNZ supports this proposal. This is consistent with the purpose of the Act to re-house people after a natural disaster.

Those who choose to live in residential units within commercial buildings (where most of the building's use is commercial) should not be entitled to land cover. Commercial insurance for such buildings provides no land cover. The principle that should apply is to restore the owner to the position they were in prior to the disaster. This would mean reinstatement of the dwelling, not the land, or in the event of the total loss of the building, the payment of the sum insured that would enable purchase of a dwelling in another commercial building.

It would also be inappropriate to provide EQC land cover for undeveloped land where there is no residence. It would also introduce administrative complexity to the scheme to provide such cover as the levy attaches to the insurance cover and insurers do not insure land.

The Canterbury experience did highlight that a few landowners on un-developed sites in the Red Zone were left exposed after the disaster. Appropriately, no EQC funds were used to provide compensation to these individuals. If Red Zoning occurs in the future, the question of compensation should remain a Government decision, but should not be covered by EQC.

4b If not, what coverage of land cover would you prefer, and why?
See answer to 4a.

Extending building cover to include more siteworks and main access way

Proposal for discussion

5 That EQC building cover be extended to include siteworks and the main access to the building.

What do you think?

5a Do you agree that EQC building cover be extended to include siteworks and the main access to the building?

As a general observation, the Canterbury experience shows that land can be damaged in earthquakes to such a degree that it compromises normal building solutions for reinstatement. EQC has an obligation to reinstate land to enable rehousing to occur. In many instances, the remediation solutions for repairing or rebuilding on badly damaged land will involve a combination of land remediation around the foundation works and site specific engineering/foundations. It is vitally important to appreciate this point as it drives to the heart of the purpose to ensure people are rehoused after a natural disaster.

Many of the land issues in Christchurch have stemmed from the need for EQC to return the land to its pre-disaster state or, if that is not practicable, to provide appropriate compensation. This stems from the origins of the land cover which came into effect after the 1979 Abbotsford disaster where land was lost completely and there was an identified need for the Act to ensure there was sufficient land compensation to enable a house to be built on another site. This is limited to the value of the minimum area that a Territorial Authority would consent for a house to be built on.

The changes to the Act after Abbotsford meant separate cover was created for buildings and land. The High Court recently found that the way the current Act is worded, land damage cannot be indemnified by building repair.

In our view, the purpose of the EQC cover should be to ensure that a building platform can be provided upon which a house can be built after a disaster which is wholly consistent with a prime purpose of the Act and the reason for introducing land cover post-Abbotsford. For this reason, ICNZ proposes introducing the concept of 'landworks' cover which would be separate from the building cover. It is important to note that private insurers have never – and likely will never – indemnify land. Without EQC land cover to provide a platform for a building, landworks costs to reinstate a building may be unaffordable for homeowners.

The 'Landworks' concept proposed by ICNZ would include requiring EQC to meet the additional foundation/earthwork costs resulting from damage to land due to earthquake (or other natural perils it covers) over and above what would be required to repair or rebuild under current Building Act requirements as specified by the Territorial Authority. Essentially, EQC would pay (in addition to the building cap) for the necessary earthworks and/or enhanced foundations required to provide a building platform in terms of the most cost effective engineering solution. The point being that EQC has a role to indemnify for the drop in quality of the land as a result of natural disaster, which reduces the land's ability to provide an effective platform for the building. Further, noting the High Court's decision above, indemnification for land damage must not be limited to remediation of the land itself. The Act must allow land damage to be remedied through repairs to the building. For example, a hypothetical building could be reinstated with either a $100,000 horizontal soil mixing technique or $50,000 gravel raft (which involves some work on the ground and an enhanced foundation). Currently, because of the High Court's decision, EQC

would be restricted to the $100,000 solution despite the fact that a more affordable and effective solution exists to remedy the drop in quality of the land as a platform for the building. For this reason we submit landworks to remedy land damage to reinstate a platform for the building could include some part of the foundation work (though this would be payable under EQC's land cover, not the building cap).

Landworks would also include all earthworks, retaining-wall reinstatement and other factors required to enable a repair or rebuild to occur. The thrust of the definition proposed below is designed to simplify what insurers and EQC cover.

In our view, this approach would remove the difficulties presently experienced in terms of the overlap between land and building cover. The way the discussion document proposes inclusion of siteworks within the building cap creates a new set of insurmountable problems.

ICNZ does not support the inclusion of siteworks as part of the building cover. We believe that the insured could be dramatically exposed to the risk of being under-insured as a result of the proposal to combine site works as part of the building cover. This results from operating in a sum insured environment where the onus of estimating the appropriate level of insurance rests with the insured. For instance, in Wellington, where many homes are located on hillsides, homeowners could not or would not be able to estimate their siteworks costs. A geotechnical survey may be needed that would include the taking of one or more core samples for analysis. This could also mean that homeowners in higher risk areas may not insure at all due to the perceived additional cost and effort required to arrange this testing. An analogous scenario is that found in health and life insurance where medical examinations and tests act as a disincentive to people to take out more or improved insurance cover due to the additional time and cost involved.

The insuring public have little experience of quantifying building costs and while various sum insured calculators ask questions on slope of section, retaining walls and pathways they will not be able to provide information for the problem sites. Even if problematic sites were known (which they will not always be), they would require a site specific assessment of likely sitework costs - an expensive proposition for a homeowner to arrange. Indeed, the amount of cover required would in turn depend on the nature and severity of the natural disaster event. It would be highly likely that siteworks would be grossly underestimated which would result in a much lower amount being left available to build or repair a house. This leaves insureds in the invidious position that for each location it will be unknown what portion of the deductible will be available for the building because they will not have been able to determine in advance the likely site work costs.

EQC's cap could be completely used up on complex siteworks. If that occurred then the sum insured remaining for the rebuild of the dwelling may not be sufficient. For example in the case of say, an $800,000 sum insured home, if $200,000 is spent on siteworks then only $600,000 would remain to build an expected $800,000 home. By including the siteworks in the EQC cap the risk of any shortfall, currently held by EQC, would fall on the homeowner. If there were extensive underinsurance, then this would pose a risk to the Crown.

The proposal as it stands also potentially leaves insurers exposed to costs for land or 'earthworks' which they do not provide cover for. The EQC deductible (or 'cap')

applicable to the building has a very significant impact on the level of residual risk that insurers are taking and this impact operates in a geared sort of way. Not knowing the amount of the deductible applicable to the building is thus a material problem from a risk and pricing perspective which will result in detrimental results for the homeowner.

EQC has not been able to provide any data on separate sitework costs which therefore makes any attempt at correctly pricing such cover impossible. In the absence of established models and statistical data private insurers would have to make assumptions erring on the high side, even allowing for coverage within an EQC cap. Such increases in premium, inflated for all the uncertainty, would not meet Treasury's purpose of affordable premiums for homeowners.

Private insurers are prudentially regulated by the Reserve Bank of New Zealand under the Insurance (Prudential Supervision) Act 2010 and as part of that oversight the Bank requires insurers to work within solvency standards regulating that sufficient reinsurance be held to allow for a 1 in 1,000 year event. To determine what that exposure might be insurers use earthquake models developed by recognised modelling companies. At present the available earthquake models cannot account for site works. To allow any degree of confidence in the modelled results to be given to the private insurers' Appointed Actuaries (who are responsible under the Act to determine the 1 in 1,000 year event limit) the modellers will be required to disregard the EQC cap to some extent to allow for the fact that in some cases private insurers will be covering the rebuilding cost from ground up rather than with the EQC deductible. This will increase the modelled loss resulting in higher reinsurance premiums which will ultimately work through to homeowners.

The Cabinet Paper at paragraph 34 speaks of historic EQC data and suggests that 85% of land claims may be less than $20,000 and that officials have suggested that $20,000-$50,000 be included in the cap for siteworks. Siteworks may on average be in the vicinity of these amounts but of course they are not the ones of the greatest concern; it is the outliers from a large event that needs fuller consideration as they may exhaust the full cap in an extensive and widespread natural disaster that require consideration. It is a fact that EQC's data on such costs is limited which makes modelling of the risk a significant unknown.

The proposal in the discussion document would also likely lead to more cash-settled, total loss situations because siteworks would be significantly underestimated. Overall, this proposal shifts all the risk to the insured who would not be in a position to manage their reinstatement as well as would otherwise be the case.

ICNZ's discussions with The Treasury on this issue have proved helpful. The Treasury finds the risk of underinsurance and the risk to the Crown the most persuasive argument. It is not convinced about the matters raised by the fact that insurers do not insure land or 'earthworks' saying that insurers take on the risk of rebuilding a property and if EQC did not exist, then such work would be part of the building cover. It says insurers provide just such cover in Australia where several of those who provide residential cover in New Zealand provide cover. The

Treasury also favours a single cover because it says that would better enable an economic decision to be made around land reinstatement. For instance, it would more clearly determine the merits of rebuilding a property in Wellington's Oriental Parade relative to one on a hillside in a less affluent area.

ICNZ's counter to this is that 'siteworks' is normally regarded as scraping land to prepare for the laying of foundations and not more invasive work which is necessary in New Zealand involving geotechnical land testing on a site by site basis. In Australia, insurers do not insure the land beneath the house and so is not priced for in the cover provided there. If the intention of the discussion document is that 'siteworks' include any work required to rebuild the house, then the costs could be quite considerable, such as, if a landslip damaged a property.

Further, with the proposal for the building cover to include reinstatement of the main access way and retaining-walls the situation becomes more complex and likely a lot more expensive. Rebuild modelling is based around the rebuild of the dwelling itself and does not include retaining-walls and access ways. Modelling retaining-wall costs are particularly challenging in part because many of these have shared ownership. There is also a lack of clarity around access ways, for instance, would a crack on a small part of an access way require a rebuild of the entire access way?

In addition, homeowners will also face the challenge of estimating the complex overlay of costs associated with demand surge inflation during a recovery period that could last five years or more. Further, ICNZ's proposed solution below mitigates each of these factors.

While it might be possible to model damage over a wide area based around average losses, it will not be possible without detailed site specific inspections to estimate rebuild costs. This means that even though modelling might solve some of the problems that arise from a single building cover, the insured would still remain significantly exposed to underinsurance which runs counter to the objectives of reform.

ICNZ submits that the solution to these problems lies in having a separate building and 'landworks' cover. The building cover would be capped at $150,000, a lower amount, than the discussion document proposes which recognises the costs to be picked up by 'landworks'.

The landworks cover would be limited to the economic value of the land. The 'land' would be defined as the minimum area that a Territorial Authority would provide consent for a property to be built on.

Landworks would be based on the most cost-effective solution and would include:

- Any land/foundation works resulting from damage to land due to earthquake (or other natural perils EQC covers) over and above what would be required to repair or rebuild under current Building Act requirements as specified by the Territorial Authority. A holistic view of remediation would be adopted to enable a property to be repaired or rebuilt consistent with a least-cost land-

foundation engineering solution, but separate landworks and building cover would continue. By way of example:
    - A site with a land value of $300,000 has land damage which will cost $200,000 to remediate and the foundation solution necessary following land remediation would be $50,000; BUT
    - Instead of doing the extensive land remediation at a cost of $200,000, simpler land remediation can be undertaken at a cost of $100,000 if combined with an enhanced foundation solution costing $100,000. Clearly, the latter is a more efficient and fiscally responsible way of indemnifying the homeowner because a total of $200,000 (instead of $250,000) is required to achieve the same result. In our view the Act should make it clear that EQC can discharge its obligation in the above example by paying $200,000 from the land cap.
    - This approach is the most financially viable and efficient way to manage land claims. EQC is simply being provided with the legislative mandate to consider the most reasonable, economic and practicable way of resolving land issues. It also removes any potential driver on the part of either EQC or the insurer to push costs between land or building cap as the economic "ruler" provides an objective test as to the most appropriate outcome.
- All post-event testing (including geotechnical or other expert investigation work) required to develop and enable reinstatement solutions on the site. (Of course the geotechnical and other testing costs which are carried out for EQC's purposes of damage assessment would not form part of the landworks cover as this is a claims handling expense incurred by EQC in order to assess the claim and its own potential liability).
- Removal of spoil (liquefaction, volcanic ash), potentially dangerous elements (e.g. rocks that may fall)
- The level of cover for retaining-walls as is currently outlined in the Act should be changed from indemnity to replacement value
- Drainage including soak pits
- The main access way, including bridges
- Costs to comply with hazards (under section 71-74 of the Building Act and RMA compliance
- All retaining-wall reinstatements necessary to enable a rebuild or repair to proceed consistent with a least cost land-foundation engineering solution.
- 'Area-wide' work (which we understand following discussions with Treasury to mean work carried out outside the boundaries of the damaged property that is required to enable a repair/rebuild at the specific site to occur). In other words, area-wide mitigation work such as bunds or levees would not deplete a homeowner's landworks cover, but costs (for example) to work on a cliff adjacent to a site but not owned by that homeowner could be covered as landworks necessary to remedy the damage to the owner's site.
- Any land or foundation work which is the most sensible and economic solution to adopt at a particular site would not be rejected solely on the basis that there may be some element of land improvement as a natural incidence of the remediation solution. Our experience in Canterbury has shown that EQC feel compelled to draw a hard (and, in our view, artificial) line where a remediation solution may include an element of land

improvement, even though unavoidable improvement may result due to the remediation work.

Such an approach would address several frictional issues that have arisen in Christchurch.

First, it removes the current difficulties homeowners and insurers are experiencing with EQC over whether it will contribute to earthworks that have been carried out in order to progress repairs and rebuilds based on least cost engineering land remediation-foundation solutions.

Second, it describes how cash settled properties can be fairly compensated for land loss.

Third, it caps the exposure of EQC to the economic value of a defined area of land enabling it to model its exposure and calculate the impact of that on the levy – currently EQC has no ability to calculate its exposure to land and charges no levy for land cover.

Fourth, it addresses the need to draw down on the building cover for area-wide remediation.

We also note that it has long been the position that EQC compensates homeowners for the costs for dealing with vulnerabilities such as flood and liquefaction caused by natural hazards. The proposal in the discussion document to no longer provide this compensation is a relatively significant departure from this position. While this issue does not directly impact the insurance industry we anticipate that other submitters may wish to see further consideration given to this issue and the reasons for this change.

5b If not, what do you think should be done instead, and why?

See answer to 5a.

EQC to no longer provide contents insurance

Proposal for discussion

6 That EQC no longer offer residential contents insurance.

What do you think?

6a Do you agree that EQC should no longer offer residential contents insurance?

ICNZ supports this change. The private insurance market will be able to cover this additional risk and by removing EQC from dealing with any claims it also removes another potential frictional cost and duplication of effort and resources between

EQC and private insurers. Further, a purpose of the Act is to focus on reinstatement of residential dwelling post catastrophe, and compensation for contents damage below $20,000 is not central to that purpose.

A point that is sometimes missed in public discussion about the status quo is that individuals must have private contents cover in order to have EQC cover available to them. We note data released by EQC shows from 1997 to2015 (including the Canterbury earthquake series) the sum cost of contents claims for all perils covered by EQC was $540 million. For the 'business as usual' years, 1997-2009, the total was only about $7.5 million.

Clarity though is required on those items considered to be or not to be contents. Items such as landlord's chattels and carpets and drapes could be considered either a house component or contents depending on an individual insurer's wordings. The best approach is for the EQC cover to follow the individual insurer's policy rather than seek to define this in the Act.

6b If not, what level of contents cover do you think EQC should offer, and why?

N/A

6c For insurers, what do you anticipate the impact would be on premiums your company charges for residential contents insurance, if EQC no longer offered residential contents insurance?
Please note the information in section 1.4 regarding the Official Information Act.

ICNZ's members will respond individually to this question. ICNZ faces potential Commerce Act and confidentiality issues if it sought to draw together pricing data.

How much insurance will EQC offer?

Proposal for discussion

7 That the monetary cap on EQC building cover be increased to $200,000 + GST.

What do you think?

7a Do you agree with the proposed increase in the building cap to $200,000 + GST?

ICNZ's view is strongly influenced by whether separate 'siteworks' or as described earlier 'landworks' and building cover is in place. As noted above, it is our very clear view that siteworks cannot be included in a single statutory cap. This in turn may mean that with siteworks no longer being included, a lesser monetary cap for dwelling damage between $100,000 and $200,000 is more appropriate. On this basis only, we recommend a building cap of $150,000. 'Landworks' would have a

natural cap of its own determined by the economic value of the land as discussed earlier (5a).

However, absent any separation of siteworks from the building cover, ICNZ supports an increase in the cap from the current amount of $100,000 to a maximum of $200,000.

7b If not, what cap would you prefer, and why?

As noted above, the appropriate level of cap will depend on what The Treasury proposes to legislate as a cap for dwelling cover once siteworks/landworks is separated out from the building cap. If the proposal ICNZ has set out is accepted, then we would support a $150,000 building cap.

7c Do you have strong views on the merits of a $150,000 + GST cap versus a $200,000 + GST cap?

See our comments above.

7d If so, what are they?

As noted, ICNZ's views are predicated on whether separate covers are contemplated. Other matters that should be considered are that ICNZ supports a strong competitive private insurance market. The role of public insurance as outlined in the discussion document is to support and complement private insurance cover, not replace it. In principle, the cap should not be set at a level above which the private sector would otherwise provide cover without an adverse impact on the affordability and availability of insurance. This would appear to be consistent with an objective of the changes to ensure the effective management by the Crown of fiscal risks associated with natural disasters.

The discussion document supports a higher cap because of concern that over time private insurers will increase premiums in high risk areas as models become more sophisticated. So, a higher cap has been chosen to improve affordability in high risk areas. However, as noted, insurance penetration remains very high today and there is no reason for that to change should the increase in cap be to $150,000 as opposed to $200,000, say under a separate siteworks/landworks and building cover arrangement. This is despite the ability for insurers to technically rate high risk areas now. For instance, private insurance can technically rate a modest house in Petone (subject to earthquake, tsunami, liquefaction and flood risks) at $6000 per annum premium, but the actual premium charged reflects competitive market pressures.

ICNZ believes that if the Government's concerns were realised at some future time consideration should then be given to either an adjustment to the cap or the desirability of encouraging housing developments in high risk areas by muting the risk signals.

The proposal for a 5 yearly review of the cap can address any issues that may arise.

7e For insurers, what do you anticipate the impact would be on premiums your company charges for residential property insurance, if the proposals in this document regarding changes to building cover were implemented? Please provide this information for a monetary cap for EQC building cover of both $150,000 and $200,000.

Please note the information in section 1.4 regarding the Official Information Act.

ICNZ's members will respond individually to this question. ICNZ faces potential Commerce Act and confidentiality issues if it sought draw together pricing data. However, members will need to know what figure Treasury proposes to provide as a dwelling cap once siteworks/landworks is removed. Upon receipt of this information ICNZ's members may be able to respond individually in relation to this question as we are cognisant of potential Commerce Act, confidentiality implications, and matters of commercial sensitivity.

Reinstatement of EQC cover after an event

Proposal for discussion

8 That EQC building cover reinstate after each event.

What do you think?

8a Do you agree that EQC cover should reinstate after each event? If not, what is your preferred alternative, and why?

No, ICNZ supports a third option to the two offered in the discussion document due to the significant shortcomings that they each suffer from which the discussion document itself identifies. The proposed third option has some features of both options in the discussion document, but with fewer shortcomings than either of them. It is also more aligned with how current private insurance policies operate (compared to wordings historically in the market and in force during the Canterbury earthquake sequence). It also reduces the exposure of the EQC scheme to multiple events during the period of insurance.

This third option provides transparency and a cap for both EQC and insurers of their future exposures. It also incentivises customers to not underinsure. Under the status quo, which the discussion document proposes, EQC cover reinstates to 100% at each event. This means that customers could receive cover for which they have not paid and get a total rebuild from a sum insured just over the EQC building cap. So, for instance, if the cap were $150,000 and someone insured their property for $151,000 and there were three earthquakes causing $150,000 damage per quake, this could result in a $450,000 rebuild. It is unfair that people should receive such a benefit when EQC only collects one amount of premium. Similarly, insurers who have collected premium over and above the EQC cap

should be expected to contribute for single or multiple events when costs go above this limit. ICNZ's option is fairer and importantly reduces the complications around apportionment of costs which experience in Canterbury showed consumed a vast amount of time and effort through joint reviews and dealing with apportionment issues.

Under our proposal, EQC's maximum liability would not exceed an amount equal to one maximum payment under that cover until the property is completely repaired. EQC would pay the full costs of accumulating damage in each event until it reached the cap, and pay nothing more until the repair was fully completed. The insurer would be liable for any further damage from earthquake (or other specified peril) above the cap but only up to the sum insured until repairs were fully completed.

This approach is also consistent with the fundamental insurance principle of indemnity i.e. for the insured to be put back to the same position after an event (or after several events) that they were in immediately prior to the loss. This means the insured should never obtain (or require) any more than what they were insured for regardless of whether loss was caused by fire or a series of earthquakes. The total that can be paid out should not exceed the sum insured and may involve a maximum $150,000 EQC payment (under our proposal for building cover plus separate 'landworks') with the balance paid by the private insurer.

The option favoured in the discussion document is at odds with the approach taken by private insurers. Most residential (and all commercial policies) have moved to a sum insured and include clauses now aggregating losses, so the reinstatement of insurance cover only occurs once the damage is reinstated. While it might benefit private insurers to have EQC on the hook for multiple caps with each event, this offends a principled approach and what is beneficial for New Zealand. Further, the frictional cost of having to agree and apportion loss with EQC for each and every event is so significant as to outweigh potential the benefits. Although apportionment between events will still be necessary for reinsurance purposes and to a more limited extent for determining under and over cap claims, the former will have no impact on delaying recovery. As for the latter, the need for apportionment would be significantly reduced and if insurers were assessing and managing all claims subject to an EQC audit of under cap claims, it would virtually remove the issues that have caused delays for homeowners.

ICNZ's option proposes that the full sum insured should not be reinstated until after permanent repairs have been completed to a property. This does not mean that the dwelling would not have insurance cover, but that the cover would be limited by the amount of damage already sustained. Naturally each insurer will have its own specific policy wording but in general terms, policies would specify that the sum insured would be reduced by the amount of damage incurred prior to the completion of permanent repairs.

During the process of repairs a contract works policy can be arranged to cover the works in progress so there is a form of automatic reinstatement which covers the homeowner for the residual value of the damaged house under their original homeowner's policy, plus the value of repairs completed to date under the contract works cover. If the insurer is undertaking the repair, then they would be liable for

the damage until the repair is completed and should take out contracts work insurance. If the insured manages their own repairs, then they should take out contract works cover which could be part of the settlement as a repair expense of the original claim.

This approach has the additional benefit of encouraging repairs to be undertaken as quickly as possible in order to get full EQC cover reinstated.

This approach means that there will be alignment between EQC cover and insurance policies. Issues of damage apportionment are greatly reduced as the aggregate damage in the first or subsequent events falls solely on EQC until its cap is exhausted and then reverts wholly to the insurer after that point. Under the intended future model where insurers would manage claims it would also provide a far easier (and less-resource intensive) practice whereby a loss adjuster simply needs to know the point at which an aggregate repair cost exceeds the EQC cap (at which time the costs begin to be covered by the insurer instead of EQC). Provided there is no underinsurance the homeowner is kept adequately indemnified without as their sum insured cap effectively "floats" with them depending on whether it goes down (and EQC or the insurer are liable) because of loss, or then goes back up because repairs to a dollar value have been undertaken.

Here are four scenarios to illustrate how the policy would apply based on a $150,000 EQC cap and a sum insured of $600,000.

Scenario 1

*EQ event 1, estimated damage $100,000. The damage is **unrepaired**. EQC liability $100,000 less excess. EQC cover is reduced by $100,000 to a remaining $50,000. Another event happens before any permanent repairs are completed. EQ event 2, estimated additional damage $ 250,000. Total unrepaired **damage** $100,000 + $250,000 = **$350,000**. EQC pays $150,000, Insurance company pays $200,000 and the house is repaired.*

Scenario 2

*EQ event 1, Damage $100,000. The damage is **repaired**. EQC pays repair costs of $100,000 less excess and the EQC sum insured is fully reinstated. EQC cover is back to $150,000.*

*Another event happens after the damage has been repaired. EQ event 2, estimated additional damage $250,000. Total unrepaired **damage** $250,000. EQC liability $150,000 and Insurance company liability $100,000.*

Once the house is repaired the EQC cover is reinstated to $150,000 and the total sum insured is reinstated to $600,000. EQC paid 2 losses worth a total of $250,000 and the Insurance Company paid $100,000 and the Insured has full cover again because the dwelling has been repaired.

Scenario 3

*EQ event 1, estimated damage $100,000. The damage is **not repaired**. EQC liable for repair costs of $100,000 less excess. EQC remaining cover reduces to $50,000. EQ event 2, estimated damage $ 250,000. Total unrepaired **damage** $350,000. EQC liability $100,000 plus $50,000 = $150,000 and Insurance company liability $200,000.*

Once the house is repaired the sum insured is reinstated. If a fire were to happen before any earthquake damage repairs were made the sum insured for fire damage should be $600,000 less $350,000 = $250,000. The Insured would receive the following cheques.

EQC $150,000 (EQ 1)

EQC $50,000 (EQ 2)

Insurance Company $200,000 (EQ Damage) Insurance Company $250,000 (fire damage)

Total $600,000. The principle of Indemnity is upheld.

Scenario 4

EQ Event 1, unrepaired damage $300,000. EQC liability $150,000. Insurance Company liability $150,000.

Another event happens before any permanent repairs are completed. EQ Event 2, unrepaired additional damage $300,000. EQC Liability $0. Insurance Company liability $300,000.

The dwelling is now a constructive total loss and EQC would pay a cheque for $150,000 and the Insurance Company would pay a cheque for $450,000 and the Insured would receive a total payment of $600,000.

This examples are premised on the basis that the insured had a policy insurance for $600,000 current at the time of each event with the same insurer. This is irrespective of the expiry or renewal of the cover.

8b Do you agree with retaining the current definition of an event?

The discussion document says EQC applies a definition of an event on the basis of all damage caused within 48 consecutive hours as the direct result of a natural disaster. To align with the practice of private insurers in writing commercial insurance this should be increased to 72 hours. This would simplify the management of claims where residential units are located in commercial buildings.

Apart from this, the definition and timing of event has less practical and operational impact if ICNZ's proposal to remove automatic reinstatement of cover as outlined

above is adopted. If ICNZ's approach as outlined in 8a is adopted, the critical question is timing of repairs; not necessarily timing of damage until the EQC cap aggregate is exhausted.

8c If not, what is your preferred definition, and why?

Please see the answer to 8a and b.

EQC land cover

Proposal for discussion

9 That land cover be limited to situations where the insured land is a total loss meaning it is not practicable or cost-effective to rebuild on it.

What do you think?

9a Do you agree that the proposed enhanced building cover, combined with restricting land cover to situations where the site of the insured building cannot be rebuilt on, would resolve, for future events, many of the recent difficulties with the interaction between land and building cover?

For the reasons outlined above in section 5 in relation to siteworks/landworks, ICNZ does not believe siteworks/landworks can be included in one combined cap with the building cap. This means that it is equally inappropriate to limit land cover to situations where the land cannot be rebuilt on. Homeowners who suffer land damage and require siteworks to be carried out still require land cover even though they fall short of a "total land loss" situation.

Instead, it is ICNZ's view that the solution to this siteworks and land cover issue can be resolved as outlined below:

- Legislative clarity is required around what constitutes siteworks/landworks and what structures EQC covers. ICNZ's view is that siteworks/landworks must include all work (as defined in section 5), including ground-testing and professional advice where required for reinstatement, design solutions, earthworks/enhanced foundations required because of damage to land due to one of EQC's specified perils and actual on site work, that is required to enable the repair or rebuilds. Insurers do not insure land as a matter of course.
- Insurers and their experts should manage the claim and when costs which fall within this clear definition are required then those are EQC's responsibility.
- The total amount of EQC's liability for landworks will always be capped at the amount that EQC could be called upon to pay if the land itself cannot be built on (see below)
- The determination of whether a cost incurred on a site is dwelling or landworks-related is a question of fact in each case and the insurer and loss adjuster responsible for managing the site are in the best position possible

to determine this (subject of course to audit by EQC and reinsurers as outlined below in section 17).

- This approach provides a holistic site-specific view and eliminates duplication of resource (in terms of both time and cost). One set of experts would review the damage to the property and its land and make a recommendation as to reinstatement which would then translate into a scope of works from which the landworks costs could be separated for EQC to pay and the remainder of the costs are divided between EQC (up to its cap) and the remainder to the insurer.
- Landworks should encompass either "true" siteworks such as land remediation or a different and more economic approach such as more extensive foundations, depending on what is required at the site.

Appurtenant structures

ICNZ notes that in Section 7 of the Discussion Document it is proposed that the new Bill will include consideration of what will constitute an appurtenant structure. ICNZ supports review of this aspect of EQC cover and is of the view that the current position of EQC providing cover for appurtenant structures should be retained but with further definitional clarity. Following the Canterbury earthquake sequence EQC and ICNZ needed to establish an agreed protocol (Protocol 5) on what should be treated as appurtenant in relation to patios, porticos, pergolas and the like. ICNZ submits that the new Bill should provide more definitional clarity around these items and around what is excluded from EQC cover in schedule two of the current Act. ICNZ would welcome the opportunity to provide input into appropriate definitions.

A status quo position also supports the proposal to separate 'landworks' and building cover to enable the specific appurtenant structures, for instance, separate garages to be reinstated.

ICNZ acknowledges that if the purpose of the EQC scheme is to rehouse, an argument can be mounted that appurtenant structures be excluded from that cover unless they are integral to the structure of the dwelling. However, on balance we believe it is better to meet homeowners' expectations such structures are covered rather than risk that they cannot be reinstated for want of land remediation.

9b If not, what is your preferred alternative, and why?

See above.

9c Do you agree that restricting land cover to situations where the site of the insured building cannot be rebuilt on is appropriate, given the EQC scheme's focus on providing homeowners the resources to repair, rebuild or re-establish homes elsewhere?

As above, it is ICNZ's view that land cover should not be restricted to situations where the land cannot be rebuilt on. It is our view that siteworks/landworks should be a separate component of EQC money available to redress land issues up to the maximum that would be paid if the land was a total loss. The land being defined as the minimum area that a Territorial Authority would provide consent for a house to be built on.

The critical issues though that arise around this proposal are what determines whether land cannot be rebuilt on and who makes that determination?

Where land has totally disappeared as in a landslide or cliff collapse the inability to rebuild in situ is clear and that is why land compensation was introduced to the EQC scheme after the 1979 Abbotsford disaster. ICNZ would argue in the interests of certainty for homeowners that this would also apply in a situation where there is imminent loss of land. We understand that EQC defines this as a loss that in the balance of probabilities will occur within 12 months.

While physical loss of land is clear, it is not clear how it will be determined that it is not economically feasible to repair or rebuild in situ. A pure economic approach would argue that the trigger for economic loss would be if the additional cost of repair or rebuilding on the damaged land that arose because of the damage to the land exceeded the value of the land.

However, in Wellington, for instance, there are many properties with 'million dollar' views built on hillsides where the value of the land may be a small proportion of the capital value and where the owner has taken out a sufficient cover to rebuild on site. Should those properties be deemed not economically feasible to repair when a repaired property would command a high resale price? If not, then the trigger for determining uneconomically viable land will need to take into account the value of the property, repair costs and the sum insured. It should still mean though that the EQC landworks liability is capped by the value of the land, so the decision to repair/rebuild in those circumstances should reside with the owner or their insurer.

This leads to the second issue which is who determines whether the trigger has been reached. ICNZ acknowledges EQC, as the provider of land cover, clearly has a mandate to make that determination where it is not possible to repair or rebuild on land. However, it is less clear when it comes to determining the economic feasibility to repair on badly damaged land. If an insurer (or homeowner) believes a repair can be carried out at less cost than a total loss then it will object to EQC determining that it is not economically feasible to do so. At the very least, if EQC were to be determining economic feasibility, it would need to be informed of the repair costs by the insurer.

It is critical for the homeowner to understand how their land will be determined as unfit to be rebuilt on. This is particularly so since their home is dependent on the land underneath. If the land is treated as a total loss but the home itself has little or no damage, the homeowner may be left without the resources to repair, rebuild or to re-establish elsewhere. ICNZ believes criteria should be drawn up irrespective of who decides whether land is an economic loss and these should clearly relate to whether a property can be repaired or rebuilt on the land.

ICNZ's view is that the determination of economic viability should only arise if the homeowner or insurer has decided not to reinstate on the land. The EQC liability would be capped at the value of the land. If insurers were managing all claims, then they would be better placed to make that determination.

There is a stronger case for the insurer to determine the economic feasibility of rebuilding or repairing in situ. This is because the economic feasibility hinges entirely upon the costs that the insurer is responsible for on the assumption that such properties will be over cap as is almost certainly the case where land has been badly damaged. So, EQC's liability with respect to repair of the dwelling is not material to the decision. EQC's liability with respect to land cover is for total loss only, but the economics of a feasible repair are determined solely by the insurance policy and the homeowner's ability to reinstate an insurable property.

In terms of an appropriate measure of "economic feasibility", it is important to look at the land and building together to ensure fairness. We explain our views as follows.

EQC's review proposes that land cover only apply "where rebuilding is not practicable". Currently, EQC will assess land and typically cash settle for the lesser of the cost of repairs or the value of the minimum lot size per District Plan. However, assessing land only in absence of what is occurring with the building can lead to perverse outcomes where the land is deemed a total loss but the dwelling is not. The EQC review presents an opportunity to improve the situation, if possible.

The dwelling is interdependent with the land. Any approach must therefore consider both at the same time. The solution then is to focus first on what the impartial best outcome for the individual site would be. This can be determined by viewing this decision point from the perspective of a "rational property owner".

A rational property owner is one that will choose the most economic outcome between the costs of remediation versus the value of the asset. The cost of remediation will equal the damage to the dwelling and any siteworks to the land that is necessary to carry out the dwelling repairs. So, what happens if the siteworks/landworks cost exceeds the value of the minimum lot?

If EQC only cover the value of the minimum lot plus the EQC cap for dwelling repairs, and the insurer pays the dwelling repairs less EQC cap, the property owner will have to cover the difference between the minimum lot size and the cost of siteworks/landworks. ICNZ identifies this problem though the extent that it is a problem is uncertain.

What this does clearly point to though is that assessment and handling of the landworks claim is not one that can be the sole responsibility of EQC. ICNZ acknowledges though that EQC will have a role with respect to needing flexibility to remediate land issues across wider areas as that might apply to some specific properties.

9d If not, what is your preferred alternative, and why?

Please see answer to 9c.

9e Do you have any concerns regarding the proposed change to the configuration of building cover in light of the move by most insurers to provide sum insured home insurance policies?

We have already covered this point by highlighting the concerns that arise under the proposal to combine siteworks/landworks and building under the one cover. This increases the risk of under-insurance in a sum insured environment and why ICNZ advocates for separate landworks and building cover.

By way of background, the move to sum insured by most insurers arose as a direct result of the Canterbury earthquakes when it was made clear that the risks to reinsurers and insurers of open-ended replacement and uncapped liability was too high to be sustainable. Maintaining the reinsurance industry's confidence in providing cover to New Zealand has required a shift to sum insured by most insurers. The sum insured is the maximum an insurer will pay for a claim and this is determined by the insured who is best placed to make that decision because they know more about their own property than the insurer. An agreed sum insured will speed the recovery timeframe in a future event because when properties are deemed a total loss the maximum compensation is known immediately and is not a matter for dispute, negotiation or determined on the basis of notional rebuild costs.

As insurers have never insured land, proposed changes to land cover and the transition to sum insured do give rise to significant concerns under a single siteworks and dwelling cover as outlined above.

Concerns could arise for the Government if there was significant under-insurance which meant that after a disaster there was insufficient funding to rebuild from the combined EQC and private cover. The key question is whether homeowners will have sufficient access to advisers to enable them to determine an appropriate sum insured. However, free calculator tools, which many homeowners may rely upon (and thereby avoid the cost of a quantity surveyor), cannot adequately account for 5 years demand surge inflation and increased building code requirements which would inevitably follow a wider area major event in Wellington or Auckland). Even with these tools, as noted above, they are not sufficiently sophisticated or detailed to estimate costs required to adequately undertake siteworks/landworks of the nature contemplated here.

9f If so, what is your preferred alternative, and why?

N/A

Better aligning EQC and private insurers' standard of repair

Proposal for discussion

10 That EQC's current statutory repair obligation already appears broadly consistent with industry practice.

What do you think?

10a Do you agree with the Government's assessment that EQC's legislated standard of repair is broadly consistent with current industry norms?

ICNZ strongly disagrees with the Discussion Document's assessment that EQC's legislated standard of repair is broadly consistent with industry practice. Under the current Act, EQC building cover is for replacement value, meaning "any costs which would be reasonably incurred in respect of … replacing or reinstating the building to a condition substantially the same as but not better or more extensive than its condition when new, modified as necessary to comply with any applicable laws". ICNZ agrees that this standard, on its own, broadly aligns with the standard usually applying under private insurer provisions, and includes a "reasonableness" qualification often (but not always) found in private policies.

However, where EQC reinstates, EQC's obligation is subject to the qualification that it "is not bound to replace or reinstate exactly or completely, but only as circumstances permit and in a reasonably sufficient manner" (Condition 9(1) (a) of Schedule 3). This type of qualification is not usually found in private insurance policies, so the standard of reinstatement under the private policies does not differ depending on whether the insurer elects to reinstate.

This qualification on the standard to be met when EQC carries out the repairs is vague and at odds with the standard otherwise contained in the Act, which is in any event already subject to a reasonableness requirement (as replacement value only covers costs which would be "reasonably incurred" in reinstating). There does not appear to be any good reason for the standard applying to EQC cover to differ depending on whether EQC elects to reinstate. Repair standards for EQC should also be to Building Code standards in light of the findings of the recent MBIE survey of consent exempt repairs in Christchurch.

The experience in Canterbury has shown that EQC's interpretation of its reinstatement standards has led to differences in repair assessments, scopes of work and estimates of costs and also contributed to apportionment differences between EQC and insurers. These issues have delayed recovery and contributed to disputes between residents and both EQC and insurers. Although some of the proposals in the discussion document may go some of the way toward addressing issues such as apportionment, the need to make the transition between an under-cap and over-cap reinstatement as seamless as possible is critical. This is further reinforced where insurers will be handling under-cap claims in future.

The Discussion Document refers to standards of repair but does not address the associated difference in assessed repair costs that arose in Canterbury. While we accept that professional assessors will differ in their views on the cost of a repair,

the greater the scope for interpreting a gap between EQC and insurer reinstatements the more likely there will be disputes. Most disputes in Canterbury arose because of differences around the value of the repair, whether repairs were under or over cap and the scope of works. If disputes can be minimised through greater alignment between the EQC Act's wordings and that of insurers, then that will contribute to a more efficient and effective recovery.

ICNZ also submits that the EQC Act should require both lodgement of claims with insurers. This would enable assessments to occur as soon as possible after lodgement and avoid dual assessments (by both EQC and insurers) Further, if the intention is for insurers to settle or reinstate all claims, it would make more sense for them to be required to carry out assessments.

ICNZ submits that the most effective way to minimise these tensions between EQC cover and private insurance cover is for EQC to adopt a reinstatement standard which aligns to the private insurance policy on the particular site irrespective of whether claims were under or over cap. Most wordings are relatively standard in the market and economic and market tensions would suggest that broad alignment is likely to remain the status quo. This has the advantage of removing friction between EQC cover and private insurer cover and the various problems that this has created as outlined above. This would also fit squarely with insurers' management of claims and remove any bias for assessors as they would be applying the same standards across the site regardless of whether a claim is under or over cap.

ICNZ submits that EQC cover should follow that of the individual insurer to create a seamless assessment process that admits no bias in assessment because there is only one standard of cover in place for each property. This would enable homeowners to know with certainty that the cover they purchase will have the same outcome regardless of whether the damage is under or over cap. It would ensure that homeowners are restored to the position they were in before the loss regardless of whether the loss was under or over cap.

The Treasury has advised ICNZ that if EQC were to follow the insurer's policy it would put EQC in a difficult position having to assess properties to different standards. ICNZ's counter to the first point is that the assessment issue is a paper tiger and disappears if the insurer is conducting the assessment of both under and over cap claims. For the insured, they have the certainty of knowing that the policy they purchased applies to any type of damage to their property. Further, the experience in Christchurch with respect to multi-unit buildings where different insurance policies are in place is that the experience of the lead insurers shows that the average square metre reinstatement costs have little difference irrespective of which insurer is leading the reinstatement.

Treasury also raises an equity issue, namely, that if everyone's EQC cover is not the same, then some will enjoy more benefit from the under cap payment than others. ICNZ notes that the EQC scheme by its very nature in applying a standard levy across the country regardless of location or type of residential property has built in inequities. No scheme can be expected to be perfectly equitable and that such a consideration should weigh far less compared to a scheme that addresses the problem associated with each property having to have two different assessments

and the frictional issues that creates. In any event, the amount of EQC cover each homeowner receives is the same dollar amount regardless of what it will be applied to on each different property. It is more acceptable for a difference in reinstatement standards to occur between different sites than it is for one homeowner to have a difference on their own site due to disconnection between EQC and their own insurer.

If EQC cover follows the insurer's policy, then homeowners enjoy much greater certainty about what their reinstatement standard will be. Further, they will know that the policy they bought from their insurer is the one that applies regardless of whether the damage is under or over cap. Providing clarity and certainty for homeowner in this way will better enable their expectations to be met after an event and remove the cause of much dispute. It would deliver on the policy the homeowner bought. This approach will also encourage competition between private insurers which is another significant benefit for homeowners and the Crown.
We believe a higher level of consumer satisfaction will result from private insurers managing all claims and settling based on the terms and conditions of their own policies.

If, however, this were not acceptable to the Government (that EQC follows the insurer's policy), ICNZ submits that the qualification in Condition 9 (1) (a) should be deleted from the Act in order to more closely align the cover provided by EQC and private insurers. This though is a sub-optimal solution.

10b If so, do you have views on why EQC's standard of repair is seen as markedly different from current insurance industry norms?

See the comments above. In addition, if insurers were responsible for assessing both under cap and over cap claims as is anticipated in future, the demarcation between EQC and insurer assessments would be removed by adopting ICNZ's recommendation. It also avoids EQC having to outsource work to third parties which would compete with insurers for scarce resources. Further, it would avoid duplication of costs and efforts and is in line with feedback that customers want to deal with only one entity about their claims.

ICNZ believes concerns that officials have about risks to the Crown associated with insurers being responsible for spending EQC's under cap claims are unfounded. It is common practise in the insurance industry for insurers to be spending reinsurers and shareholders' funds to meet liabilities. This is no different for EQC with the bulk of EQC's liabilities being met through reinsurance arrangements – absent a rebuilt Natural Disaster Fund. Audit of insurers' handling of claims is a core competency of reinsurers who would be auditing EQC claims as well as insurers. As long as there were clear audit processes available to EQC there should be no concerns about insurers' managing under cap claims.

Although EQC and insurers have a liability to ensure repairs are of a standard that meets policy obligations, it is the insurer that has an ongoing interest in the integrity of repairs because they take on the all perils cover after their completion. Correspondingly, EQC will also benefit from a better building stock because EQC

cover applies where private insurance is taken out. This provides a stronger incentive for insurers to be satisfied about the quality of repairs and reinforces the case for insurers to handle both under and over cap claims.

10c If not, do you have suggestions for reforms that you consider would move the EQC standard of repair closer to current insurance industry norms for residential property?

See answers to 10a and 10b.

Simplifying EQC's claims excess

Proposal for discussion

11 That EQC has a standard claims excess of $2,000 + GST per building claim.

What do you think?

11a Do you agree that EQC's building claims excesses should be standardised and simplified to a flat dollar amount?

ICNZ agrees with the discussion document on page 31 that the current excess arrangements are unnecessarily complex. We note the importance of the insured being able to understand their own obligations as well as those of EQC, so a move to a simpler, standard excess is required. We also note that the levels of excess have not been adjusted for 22 years which of itself would indicate that they are woefully low for their intended purpose and need to be substantially increased. So, excesses need to be simplified and standardised.

In light of the intention for insurers to manage claims on behalf of EQC in future, care will need to be taken to ensure that excess collection by insurers on behalf of EQC is robust. Insurers are well equipped to settle claims with deduction of appropriate excess as this is what occurs on each and every claim, whether for natural disaster claims or otherwise. The problems EQC had encountered in Canterbury in seeking to recover excesses post-repair were not an issue for the private industry as insurers discussed how to treat excesses with customers at the outset and included the option of allowing the customer to choose a reduced repair/rebuild to the value of the excess.

11b If yes, do you agree that $2,000 + GST is the appropriate claims excess on building claims?

A purpose of an excess is to keep the overall premium costs down by enabling the homeowner to retain some of the risk rather than transferring it entirely to the insurer. It also encourages homeowners to mitigate risks for themselves, such as, removing chimneys or securing contents. As the primary purpose of the EQC

scheme is to enable people to be rehoused after a disaster, it is important that the scheme be designed to that end. By maintaining a modest excess, it keeps EQC levies lower than they would otherwise be and recognises that repairing cosmetic damage to property is not the purpose of the scheme. Insurers' focus post disaster should be on handling larger claims on EQC's behalf, not on very minor damage.

As the primary purpose of the EQC scheme is to enable people to be rehoused after a disaster, it is important that the scheme be designed to that end and that the relevant excesses are affordable. It is ICNZ's view that the excess should be a set amount that does not exceed $2,000.

The Discussion Document proposes that the excess be exclusive of GST. Insurers' practices vary with some excluding and others including GST when applying their excess on claims. There is an argument that to have the excess inclusive of GST would be simpler for homeowners to understand though the application of GST is also commonplace.

11c If not, what would you prefer, and why?

Se answer to 11b.

Proposal for discussion

12 That EQC have no claims excess on land claims.

What do you think?

12a Do you agree that EQC should have no claims excess on land claims?

If a separate siteworks/landworks and building cover approach were adopted for the reasons given above, then ICNZ would be open to an excess being charged to siteworks/landworks cover. This would avoid cosmetic cracks on driveways and retaining-walls swallowing up National Disaster Fund cover (see comments in section 21). The primary purpose of the EQC scheme is to enable people to be rehoused after a disaster. However, care needs to be taken to avoid setting the excess at such a level that the combination of an excess applied to land remediation as well as to the building cover and the private insurance's policy does not cause problems of affordability for some individuals post-disaster.

If separate siteworks and building cover is rejected, then ICNZ sees no purpose in having a claims excess on land because land claims under the proposed changes only arise if it is not possible to build on the land and as the discussion document points out that is likely to give rise to very few claims. As the number of claims would be so low then the application of an excess would not have any material impact on lower premiums, hence there would be no point applying one.

12b If not, what would you prefer, and why?

See answer to 12a.

Regularly reviewing main monetary settings of cover

Proposal for discussion

13 That the EQC Act require monetary caps, premium rates and claims excesses on EQC cover to be reviewed at least once every five years.

What do you think?

13a Do you agree that monetary caps, premium rates and claims excesses on EQC cover should be reviewed at least once every five years?

ICNZ concurs with this recommendation because it enables a review to be conducted with greater frequency than every five years if the situation demanded. Global catastrophes may occur, as they did 2010-12, and were on such a scale that reinsurance costs rose very sharply worldwide. It is conceivable that similar circumstances could arise again and it would be necessary to adjust premiums to reflect changing market conditions. Having said that, ICNZ would not support more frequent reviews than 5 yearly unless there was strong market volatility or similar impact because premium rate changes give rise to system and process changes which add to compliance costs.

A key matter to be addressed will be who will carry out the review and what consultation process l there will be. Our expectation is that insurers would be included in a consultation process.

ICNZ would like to have established lead times on the review to allow our members to take into account and implement any actions necessary. The cost of frequently changing processes and systems within insurance company administrative and claims systems would be prohibitive, so any drastic changes made more frequently than 5 yearly would be a burden. Private insurance policies are annual contracts and so any changes can take up to a year to phase in. This needs to be taken into account when implementing changes to the EQC scheme and means we seek at least 18 months lead-in time to implement changes in policy wordings, reinsurance arrangements, system changes, and the need to establish contractual agreements between insurers and EQC.

13b If not, what alternative would you prefer, and why?

N/A

How will homeowners access EQC insurance cover?

Proposal for discussion

That EQC cover continues to automatically attach to fire insurance policies on residential buildings, as defined in the EQC Act; or

That EQC cover automatically attach to insurance policies on residential buildings, as defined in the EQC Act, on a peril by peril basis; so if a peril covered by EQC is excluded from the private policy, it is also excluded from the EQC cover.

What do you think?

14a Do you agree that EQC cover should continue to automatically attach to fire insurance policies on residential buildings?

ICNZ has no concern with the status quo point of attachment of EQC cover to fire polices though 'fire only' policies are a rarity today as insurers in New Zealand typically offer 'all risks' residential policies which includes fire cover. For this reason, there is no reason to attach on a peril by peril basis. So, alternatively, the attachment point could simply be to any policy for material damage to a building that meets the definition in the Act of a residential unit as long as this is how the Fire Service Levy applies. The alignment of the EQC and Fire Service levies is important to minimise compliance costs and for overall clarity and simplicity.

ICNZ also notes that the Government is considering changes to the Fire Service Levy (FSL) to fund the New Zealand Fire Services more or less concurrently with the EQC Review. This is important because the FSL also attaches to fire policies and is capped at $100,000 in the same way as the current EQC cap. ICNZ is keen to ensure that system changes and other costs that insurers will have to carry out as a result of changes to the FSL and EQC are kept to a minimum.

This is another reason why attachment of both levies to fire insurance policies makes sense. Such an approach would seem to support the Government's objective under its Better Public Services programme to reduce the cost of compliance for businesses transacting with the Government by 25% by 2017.

15a do you agree that EQC cover should automatically attach to insurance policies on residential buildings, and EQC cover should exclude any natural disaster peril that is excluded from the fire insurance policy it attaches to?

In 14a we submit that EQC cover should continue to automatically attach to fire insurance policies on residential buildings or alternatively to any policy for material damage to a building that meets the definition in the Act of a residential unit. We go further and submit that EQC cover should not exclude any natural disaster peril

that is excluded from that policy. A decision of a private insurer to not provide cover for a particular natural disaster peril should not preclude homeowners from accessing the natural disaster cover provided by EQC. Furthermore if EQC cover was excluded as a result of excluding natural disaster perils from the insurance policy it otherwise attaches to, it would open up the possibility of homeowners requesting that natural disaster perils be excluded from their policies so they could avoid paying the EQC levy. It may also result in the creation of multi-tier type arrangements for avoidance of EQC levies.

15b If you do not agree with either of these options, what alternative arrangement do you prefer, and why?
N/A

Proposal for discussion

16 That EQC continue to have the ability, but not the obligation, to directly provide EQC cover to homeowners who request it.

What do you think?

16a Do you agree that EQC should continue to be able, but not be obliged, to directly provide EQC cover to homeowners who request it?

As a general principle, EQC cover should follow that of the insurer. However, there are circumstances where insurers will not provide cover to individuals, for instance, the applicant for insurance may be a convicted arsonist or fraudster or the property may be in such a poor state of repair that the risk of total loss is too great for an insurer to accept the risk.

In such instances, ICNZ would have no objection to EQC having the discretion to provide its cover up to the cap. Insurers though would not be on risk for costs above the cap unless they had accepted that risk. ICNZ agrees there should be no obligation on EQC to provide cover. As a social insurer, this may enable changes in legislation to provide support to New Zealanders that is not available through traditional means.

16b If not, what alternative arrangement would you prefer, and why?
N/A

Who will handle EQC claims in future?

Proposal for discussion

17 That all EQC claims be lodged with claimants' private insurers.

What do you think?

17a Do you agree that EQC claimants should be required to lodge all EQC claims with claimants' private insurers?

ICNZ strongly supports this proposal and believes equally strongly that the legislation should require insurers to assess all claims. We also believe that insurers should handle all under cap as well as over cap claims to the point of settlement or reinstatement. This would remove duplication of costs, confusion for the insured, provide one point of contact for the insured and a faster recovery process. If this was done in conjunction with EQC following insurers' cover the vast majority of problems that arose around assessment and the intersection of EQC and private insurance cover would be removed. It would ensure recovery in future is quicker than what has been experienced in Canterbury.

There is immense benefit in legislating that insurers assess all claims with a proviso that EQC would have the ability to assume the assessment role in the event that an insurer did not meet key performance indicators. If insurers only have the right to have claims lodged with them, then they are wholly reliant on EQC's assessment processes which have proven in Canterbury to have resulted in many hundreds of homes being identified as over cap five years after the first earthquake. Over cap claims represent the most severely damaged properties and it is intolerable that homeowners have to wait years before their insurer can assist them. Lodgement without assessment as proposed in the discussion document leaves critical gaps that arose in Canterbury unresolved.

The discussion document envisages that insurers could handle all claims to reinstatement or settlement, but believes this should not be legislated because the management of claims should be a commercial arrangement between insurers and EQC. ICNZ agrees that those arrangements should be commercially agreed, but we also believe that there should be a legal obligation for EQC to enter into those arrangements with insurers. This would clarify the responsibilities and accountabilities which would rest with insurers for the handling of all clams. Naturally, claims handling by insurers would be auditable by EQC in the same way as reinsurers currently have those rights with insurers. This is common practise world-wide in the insurance industry. In fact, arrangements could be reached so that reinsurers who audit private insurers' handling of under cap claims could report their audit findings to EQC. This would avoid duplication of effort and provide comfort to EQC that the under cap claims are being managed in a way acceptable to the reinsurance market. The great benefit of ensuring insurers manage the entire process from lodgement to settlement is a single point of assessment and accountability for reinstatement on the basis of the insurer's policy (as outlined earlier, the EQC cover should follow the insurer's policy) and a single customer service contact point for the insured. When disaster strikes, insurers collectively have the resources and capability to respond which EQC in a business-as-usual state does not have.

If this were agreed, then discussions would need to be held on the privacy and data-sharing aspects of such arrangements. This though would be necessary regardless of arrangements in order to facilitate a more efficient recovery process in future and

may possibly give rise to the need for other legislative change outside the scope of the Discussion Document.

A number of independent reports have pointed to claims management as an area that must be improved. In addition to our own experiences, a number of independent reports and surveys conducted on the Canterbury recovery since our last submission to The Treasury have persuaded us that there should be a significant change in this area.

In 2013, The Human Rights Commissioner's report *Monitoring Human Rights in Canterbury*[3] identified that the dual model of claims handling causes unnecessary delay. The report also cited further delays arising from disagreements, differing expectations and/or miscommunications between EQC and insurers and EQC and homeowners. A Deloitte Access Economics report[4] outlined the economic benefits of early claims resolution and in particular a customer-centric approach to claims handling after a major catastrophe. The report also notes that financial hardship, stress and welfare outcomes would have been limited to a greater degree if such a claims process had been in place immediately after the Canterbury Earthquakes.

The Auditor-General's 2013 review[5] of the Canterbury home repair programme found among other shortcomings that homeowners experienced inconsistency in information and processes and dissatisfaction with the quality and time taken to undertake repairs. We acknowledge that private insurers are not immune from criticism either and recognise that EQC, with a staff of about 24 at the time of the first earthquake, faced a huge number of claims and a massive task in up-scaling over a short period of time. The challenge though is to devise a claims management system that will be better equipped to respond in future.

Surveys undertaken by CERA[6] have also identified EQC and insurance issues as a major stressor for residents. In 2015, *All Right?*[7], a project led by the Canterbury District Health Board and the Mental Health Foundation, reported growing concern for the well-being of those with unsettled claims. Through 2014, almost 2000 claims were transferred to insurers having eventually been deemed as over cap with 744 coming in the last quarter of the year. While these represent a small proportion of EQC's total claims, there are significant costs involved in these claims and, it still represents several thousand people living in homes that could only then start at the back of the design-build queue.

Based on experience following the Canterbury earthquakes, there seems to be consensus that duplicate loss assessment has led to confusion and less efficient settling of claims. It has also placed significant drain on finite resources such as engineers, builders, assessors etc. The case for change is too compelling for the status quo around claims management to continue.

[3] *Monitoring Human Rights in Canterbury*, Human Rights Commission, 2013
[4] Deloitte Access Economics, "Four Years on: Insurance and the Canterbury Earthquakes", February 2015.
[5] Review of the Canterbury Home Repair Programme, Auditor-General, 2013.
[6] CERA's Wellbeing Surveys 2013-14.
[7] Media release, All Right, led by Mental Health Foundation and the Canterbury District Health Board, February 2015.

Insurers have ongoing customer relationships with residents. When claims are lodged they are able to confirm cover. This is far more efficient and straightforward for the public than the current approach where claims are lodged with EQC initially and then EQC seeks verification from insurers as to whether there is cover over the property or not. Such an approach, would give reinsurers transparency around policy cover with none of the frictional inefficiencies that exist under the current dual claims management/assessment model. Naturally, EQC would need to have visibility of those claims in relation to managing its exposure.

Prior to the Canterbury earthquakes EQC had about 24 staff which reflects that in business-as-usual circumstances its optimum staff level cannot cope with a major disaster without a major scale up of operations. While the scale of the Canterbury disaster tested private insurers' resources too, business-as-usual for insurers involves having several thousand staff employed throughout the country. It is noteworthy that private insurers lodge, assess and settle in excess of 1,000,000 claims a year as a matter of course. Insurers would have significantly more qualified resources and better systems in place to respond to a major disaster vis-a-vis EQC. EQC on the other hand was required to scale up infrastructure in addition to personnel whereas insurers already have this in place (e.g. payroll, human resources, legal providers, audit and quality assurance teams etc.) To maintain EQC as the first response, would likely lead to high levels of over-staffing for an extremely rare event. This is a further reason for insurers to be the first point of contact for the lodgment and assessment of claims.

We also note that the 2014 report EQC commissioned from Linking Strategy to Implementation[8] found that customer interactions lacked standard operating procedures and a lack of service level agreements related to these interactions. Such procedures are standard for insurers who are constantly interacting with customers. We believe this ongoing customer relationship model is better suited to respond in a disaster situation than one where EQC has no direct customer relationship with the public except post-disaster.

Insurers' responsibility for all assessments should be legislated. This would enable assessments to occur as soon as possible after lodgement and avoid dual assessments (by both EQC and insurers). Further, if the intention is for insurers to settle or reinstate all claims, it would make more sense for them to be required to carry out assessments. It would also ensure that insurers identify all over cap claims much earlier compared to the current situation – more than five years after the first earthquake occurred in Canterbury insurers are still receiving over cap claims. This would mean insurers would be assessing under cap dwelling damage on behalf of EQC, but with the changes to EQC as outlined it would be logical for the customer to continue dealing with their insurer. Clearly, there would be contractual arrangements with EQC and an appropriate claims handling fee agreed which would include the ability for EQC and reinsurers to audit under cap claims processed by insurers.

[8] *EQC - Customer Interaction Review*, Linking Strategy to implementation and EQC, November 2014.

The discussion document on page 38 lists five areas the Government will need to have confidence are addressed for outsourcing arrangements to be agreed to. The commentary below addresses some of these areas.

The first is robust audit and accountability mechanisms to manage the financial costs and risks of outsourcing claims. Private insurers have long established mechanisms to deal with the same needs with their reinsurers over treaty claims where reinsurers share risk exposure. It would be relatively straightforward to reflect similar arrangements with EQC in respect to under cap claims. We have proposed a clear definition of siteworks/landworks cover and recommend that this together with a requirement for EQC to develop a standard policy for its liability under the building cover should form the basis of a commercial agreement between EQC and insurers. This would provide clear accountability and responsibilities for the parties ex-ante a disaster.

The second area is the need to have clear agreements about the quality of service provided to EQC claimants as well as ongoing accountability arrangements. Our members have signed up to comply with a revised Fair Insurance Code from 1 January 2016. This sets high standards of responsiveness to claimants setting timeframes for acknowledging, determining and keeping insureds informed about the progress of all their claims, including those related to natural disasters. It also sets sanctions for non-compliance and establishes a Code Compliance Committee to oversee compliance. This Committee includes former Governor-General, Judge and Ombudsman, Rt Hon Sir Anand Satyanand, former Cabinet Minister and Board Chair, Hon David Caygill and former Clerk of the House of Representatives and Ombudsman, David McGee CNZM, QC. The Code's high benchmark for claims management will ensure that all insurers are operating to industry best practice standards in business-as-usual and catastrophe response situations. This includes timeframes for responses to claims and complaints.

And with respect to the quality of repairs and liability for them, these issues can be addressed in a straightforward manner in much the same way as they have been dealt with the establishment of Project Management Offices in Canterbury for insurer-managed repairs and rebuilds. It is important to remember that it is as much in the interests of insurers as it is homeowners to have repairs and rebuilds meet accepted building standards as insurers will want to continue to insure those properties and meet their obligations to customers.

The third area is that there are robust arrangements between EQC and insurers for sharing relevant customer and claims data in a timely and secure way. Data sharing arrangements between EQC and insurers have developed in the context of the Canterbury earthquakes and discussions have been held between ICNZ and EQC about the type of data it would be essential to share post disaster. Insurers acquire Privacy Act waivers when policies are taken out and renewed that enable some key information to be shared to settle claims, but EQC does not obtain this waiver. It would be a simple matter for the new legislation to put it beyond doubt that EQC and private insurers have a legislative mandate to share policy and claims-related information. If both lodgement and assessment of claims by insurers were legislated, then the need for this would be essential. It would enable a high quality

match up of property, policy and owner information that are essential for claims handling.

Discussions with EQC have also canvassed the need to share information about vulnerable people. Insurers in Canterbury (and EQC) have established vulnerability indices, so the most vulnerable in the community are identified and prioritised. It would be important to have these indices aligned and for information to be collected and shared between EQC and insurers. As this type of information is more personal that publicly accessible property data, sharing of this kind of information raises privacy issues. We note that the discussion document also identifies that consideration should be given to the Royal Commission's recommendation that amendment should be made for disclosure of information that may affect personal safety. ICNZ supports this amendment.

In our discussions with EQC, we have discussed establishing a shared database with EQC and if Government expressed a preference for insurers to handle under cap claims this would be progressed further. Product is also available on the market now to employ "middle-ware" that can integrate claims from different claims management systems (while keeping separate each individual insurers' claims from a competitor) and also accept data from assessors in the field, so technical solutions exist to these issues.

As we have noted above, if EQC policy followed that of insurers on a per-site basis and insurers also managed the under and over cap claims, homeowners would receive seamless cover and duplication of resource and cost would be eliminated. EQC would have audit ability and so could access any insurance policy documentation to investigate how the claim has been settled. This is precisely what has happened with respect to insurer-reinsurer arrangements in Canterbury for all over cap claims so is not without precedent or unfamiliar to the industry (or EQC for that matter in terms of its own reinsurance arrangements).

The fourth area is that insurers have ongoing capability and quality of preparation to manage future events. As noted earlier, insurers have thousands of staff, respond 24/7 to claims and handle over one million claims a year under business as usual. In short, insurers' response capability will always better resourced from the get-go than EQC operating under business as usual constraints when a major disaster strikes.

ICNZ notes though that insurers would need to have a commercial arrangement with EQC for the reimbursement of costs associated with managing under cap claims. This would need to be established up-front before any claims were handled and on an industry-wide basis. In fact, ICNZ submits that negotiations should commence as soon as possible in relation to a claims-handling arrangement between EQC and insurers. It may well be that matters that arise from those discussions may in turn lead to further legislative changes relevant to the current review of the Act and vice versa.

The fifth area in the discussion document is around evidence of appropriate and robust arrangements either with insurers or elsewhere to replace any loss of adaptability or flexibility to natural disaster response as a result of EQC not directly

handling claims. If this is understood correctly, the Government seeks to have the ability to respond to situations that presently are outside of the bounds of an insurance policy obligation. For instance, in Canterbury, EQC was required to manage the installation of insulation to many homes. Where appropriate and with commercial contracts in place insurers could undertake such work or work alongside a third party contracted by the government. Without knowledge of what these requirements might be, it is difficult to be definitive in our response, but it is possible for a revised Act to make such arrangements permissive and reflective of the need to compensate insurers for any additional work beyond policy reinstatement on a commercial basis.

17b If not, what alternative arrangement would you prefer, and why?

N/A

Deadline for reporting claims

Proposal for discussion

18 That the current three-month time limit for claims notification be retained, but EQC be able to accept claims up to two years after an event, unless doing so would prejudice EQC.

What do you think?

18a Do you agree that the current three-month time limit for claims notification should be retained, but EQC should be able to accept claims up to two years after an event, unless doing so would prejudice EQC?

ICNZ supports the current three-month time limit for the notification of claims. This supports an efficient and effective response to a disaster as an open-ended arrangement simply leaves claims in limbo which is in no one's best interests.

Three months is a sufficiently long time period for claimants to be able to manage through the immediate aftermath of a disaster without having to notify a claim and also long enough for owners to be aware of the damage to their properties. Under the proposal to legislate for claims to be lodged with insurers, we suggest the Act be amended to reflect this.

ICNZ also acknowledges that it is possible for some damage not to be easily identifiable after an event, particularly where parts of a dwelling may not be easily accessed. In addition, after a particularly large event, it may take some time for full assessments to be completed and damage identified outside the three-month period for notification. We understand that the Act gives EQC no discretion to pay for damage in these circumstances.

ICNZ believes that the key issue is to notify that some damage has occurred. The actual process of quantifying and repairing the damage can come later. If the ICNZ view is accepted that EQC cover only reinstates after repairs are completed, there is less of a need to quantify the individual cost of each "event" in the total cost and

there is less exposure to conflict of interest between EQC and Insurers and loss adjusters in each individual repair process.

The discussion document proposes to amend the Act to allow EQC to accept notification of claims up to two years after an event period as an absolute time limit. This would provide flexibility to address the problems identified in the examples above, so we agree that EQC should have the discretion to make payments up to two years after notification.

ICNZ assumes that if the intention is that claims be lodged or notified to insurers then the Act would be worded to reflect the notification time as the time that notification is made to the insurer, not EQC. There would of course need to be an obligation on the insurer to in turn notify EQC.

18b If not, what alternative arrangements would you prefer, and why?
See answer to 18a.

Ensuring the scheme meets its expected costs

Proposal for discussion

19 That the new EQC Act contain pricing and transparency principles requiring the scheme to adequately compensate the Crown for its expected costs and risks.

What do you think?

19a Do you agree that the new EQC Act should contain pricing and transparency principles requiring the scheme to adequately compensate the Crown for its expected costs and risks?

ICNZ agrees with this proposal. It is sound financial practice that if the EQC scheme is managing a large fiscal risk to the Crown that a pricing principle should be for it to manage a sustainable scheme and therefore compensates the Crown for its expected costs and risks. This would also give insurers and reinsurers confidence in the sustainability of the scheme. Stating clear pricing principles up-front would ensure the scheme was sustainable and give insurers and customers more certainty around how the scheme would respond in the event of a disaster.

ICNZ notes, however, that sudden changes can occur that would materially affect EQC's management of the scheme. For instance, no catastrophe models have been changed since the Canterbury earthquakes and it is expected that the revision to models that will occur over the next two to three years will see a significant increase in projected maximum losses from events. This in turn may affect the extent to which the NDF will need to be built up. Such changes might require a significant increase in the EQC levy and we accept that it might be prudent to phase this in over time rather than risk homeowners responding by not insuring or underinsuring. So, we agree with the suggestion that where there

are departures from pricing principles that the reasons for doing so are made transparent to all.

19b If not, what alternative arrangements would you prefer, to ensure the scheme's future financial sustainability, and why?
N/A

Allow but do not require differentiated EQC premiums

Proposal for discussion

20 That the current legislative flexibility to charge flat-rate or differentiated EQC premiums be retained.

What do you think?

20a Do you agree that the current flexibility to charge flat-rate or differentiated EQC premiums should be retained?

ICNZ supports continued flexibility to charge a flat or a differentiated rate recognising there are good arguments in favour of both approaches. The current flat-rate has a social policy benefit because the subsidisation that occurs lowers the rate in high risk areas which enables those on low incomes in those areas to better afford cover. It therefore meets the objective of maintaining high levels of residential cover for catastrophe cover. Maintaining a flat rate makes the administration around collection simpler and easier.

The draw-back though of a flat-rate is that it does not signal relative risks or reflect the differences inherent in repairing between large, expensive to rebuild properties on hillsides with standard, modest dwelling on good quality flat ground. To that degree, cross-subsidisation occurs with a flat-rate premium, but that too occurs in the private market as noted earlier in this submission in reference to the technical risk attached to a property in Petone. There is also administrative simplicity operating a flat premium to all properties in terms of calculating and collecting the EQC levy.

So, on balance, ICNZ favours continuation of a flat rate, but acknowledges that circumstances may suggest a more targeted approach in the future and for that reason we support the flexibility to enable differentiated rates to be charged. If that were to occur, then the need to consult the insurance sector on such changes would be necessary.

A simple pricing structure also makes it easier to explain to customers and be supported in systems and processes.

ICNZ notes though that the discussion document caries an implicit presumption that the EQC levy is less of a concern with respect to its impact on the affordability and accessibility of insurance than the potential impact of risk-rating by insurers. ICNZ invites The Treasury to examine whether the EQC levy (and other Government

levies and taxes applied to insurance premiums) is in fact cheaper than the private insurers' cost of cover for the same natural perils damage.

20b If not, what alternative arrangement would you prefer, and why?
N/A

20c Do you agree with the Government's intention to continue charging EQC premiums at a universal flat rate?
Please see answer to 20a.

How will EQC finance its risk?

Proposal for discussion

21 That the Natural Disaster Fund be retained in broadly its current legislative form.

What do you think?

21a Do you agree that the Natural Disaster Fund should be retained in broadly its current legislative form?

The sole purpose of the National Disaster Fund is to act as a buffer before ultimately the Crown's guarantee is called upon in the event that the fund and reinsurance cover are unable to meet EQC's obligations. Since a Crown guarantee exists, there is no material risk for insurers or the insured whether the NDF is retained or not.

As the discussion document points out, the most efficient approach to financing would be to close the NDF and finance natural disaster risk centrally through Treasury. Further, as the management of the NDF is a risk to the Crown, The Treasury already has a direct interest in how it is managed and the NDF's direct investments in New Zealand are already transferred to Treasury's Debt Management Office for management centrally.

For these reasons alone there would be no reason to retain the NDF.

The counter-argument though is that having a NDF reflects the understanding that insurance pools premiums so the many look after the few. ICNZ accepts there is a perceptual benefit to this, but doubts whether this has a significant impact in accepting the need to pay EQC premiums. The Canterbury earthquakes and other disasters underline the need to pay EQC premiums. We do not see how the existence of the NDF supports EQC's engagement with the insurance industry as the discussion document states.

If the NDF were retained, then at the present rate of replenishment and without any claims being made, it would take the best part of three decades to bring it back to where it was before the Canterbury earthquakes if there is no excess (hence the

need for an excess, so cosmetic repairs do not continually eat away at the NDF). To replenish the NDF quicker would require the EQC levy to be increased. Insurers would be concerned if this gave rise to a sharp levy increase as it might impact on the take up of insurance cover. Over time if the NDF were sufficiently large it could reduce the amount of reinsurance cover that would need to be purchased though that would take several decades.

On balance, ICNZ does not regard retention of the NDF as essential. However, as a form of 'pooling' arrangement to deploy resources immediately after a major event it does have merit. Also, a small but growing fund will be useful in smoothing expected losses such as from events of a similar scale to those experienced in Seddon and Dannevirke. So, the fund is useful and should be retained, but it is not essential.

Finally, where levies are collected to form a fund, those levies should not disappear into general taxation, and the capital collected could be used to defray reinsurance costs in hard market cycles.

21b If not, what changes would you like to see considered?

See response to 21a – if there were no NDF, then EQC cover would be met by a combination of reinsurance cover and Crown finance.

Proposal for discussion

22 That the Act enable EQC to use other forms of risk transfer, in addition to traditional reinsurance.

What do you think?

22a Do you agree that the Act should enable EQC to use other forms of risk transfer, in addition to traditional reinsurance?

ICNZ gives qualified support to EQC being able to use other forms of risk transfer. EQC has to purchase a large catastrophe reinsurance programme and in the absence of a fully rebuilt National Disaster Fund will be reliant upon this to meet claims without recourse to the Crown guarantee. Further, it is suggested that EQC also have a role as an agent for acquiring reinsurance cover for state sector organisations. To manage these obligations, EQC needs to have sufficient flexibility to purchase cover in a way that optimises its purchase opportunities in a competitive, global market.

ICNZ has reservations about some of the new forms of risk transfer being used to wholly displace traditional reinsurance cover. Providers of new forms of Insurance Linked Securities (ILS) have exit strategies. They may not show any "loyalty" when a major catastrophe strikes anywhere in the world. In general, large, well-capitalised, traditional reinsurers have no exit strategy and will stay on risk after an event. Global interest rate fluctuations can also influence the flow of capital to ILS (if interest rates increase capital may quickly leave the ILS market). If ILS is used on a temporary basis to fill a few gaps, it may provide EQC with flexibility, but it

should not be used to do the heavy lifting or to support a sustainable risk based exposure.

Do you have any other feedback?

Other feedback

23a Are there any issues not discussed in this document that you would like to bring to the Government's attention at this stage?

Yes, there are a number of issues raised under the subject of Technical Issues on page 45 of the discussion document we would like to comment on. These largely focus on the matters that would better align the EQC Act with private insurance practise.

Also, there are issues that need to be addressed in other legislation which would support a more efficient and effective recovery post-disaster that should not go ignored by virtue of a focus on the EQC Act.

23b What submissions would you like to make on those issues?

A.TECHNICAL ISSUES (page 45 of discussion document and additional matters identified by our members)

A.1 Enable EQC to deny claims where the private insurer has declined for the same natural damage

The current Act does not enable EQC to decline claims in every case where a private insurer has declined a claim for the same damage. If part of the intent of the proposed changes is to better align EQC and private insurance practise, then this needs to be addressed. This would be particularly important if insurers were acting on behalf of EQC to handle under cap claims. So, if the insurance policy is avoided for any reason then EQC cover does not apply. However if the claim is declined by the insurer then EQC cover may still apply depending on the reason for declinature.

Private insurers may decline claims for changes of building use prior to the natural disaster or for fraud or other instances that might void a contract. The Act should be amended to enable EQC to decline a claim where the insurer has done so for the same natural disaster damage. Similarly, EQC should be able to recover payments if these have been made before it becomes aware of circumstances such as a change in use of the building or fraud.

ICNZ would also support amending the Act to make it clear that EQC claims can be declined where the insured has not taken reasonable precautions to look after the safety of the property that has sustained natural disaster damage. This too aligns with private insurance practise.

A.2 Assignment of benefits of a claim

The Act needs to specifically contemplate and permit the assignment of claims to insurers. This would provide certainty for insurers when undertaking repairs and rebuilds to progress recovery efforts and would reduce potential frictional issues with the EQC.

A.3 Payments to mortgagees or insurers

The Act presently provides EQC with no clear ability to make payments to mortgagees or direct to insurers who are arranging reinstatement following an over-cap claim. Problems have resulted from owners spending their EQC payments on expenses other than reinstatement and they have then not had funds to complete the repair or rebuild of their home.

It is also administratively burdensome for insurers to have to collect funds from owners when, with careful drafting for the appropriate situations, provision could be made in the Act for payments to be made direct to insurers or mortgagees.

A.4 Confusion over insurable interest and who may claim – section 29

In addition to the issue noted above about who may receive payment for a claim, a related issue is who may *make* a claim.

"Section 29 provides that:
(a) a claim may be made in respect of any insurance under this Act only by a person who has an insurable interest in the property concerned; and
(b) without limiting section 31, where more than 1 person has such an insurable interest, the Commission shall in settling any claim have due regard to the respective insurable interests."

It is not uncommon for multiple insurance policies to be taken over a particular property and the Act could be clearer as to EQC's obligations in this regard. For example, a tenant and a landlord may each take out a policy, or a unit owner and a body corporate may also each take out a policy. ICNZ submits that the rights of policy holders to claim in this situation should be clarified as part of the amendments in relation to who has standing to receive payments from EQC.

A.5 The value of EQC settlement to be based on actual, final costs to repair quantified at time of settlement

Condition 13 of Schedule 3 of the Act provides that EQC may settle any claim "on the basis of the amount it would have cost to replace or reinstate the property at the time of the occurrence of the natural disaster damage to the property" and only leaves a discretion for EQC to pay on the basis of the value of the property at the time of settlement of the claim. This is at odds with private insurance policies where insurers cannot elect under replacement policies to assess payments based on what it would have cost to replace or repair at the time of the damage.

ICNZ submits that it is more in keeping with the purposes of the new Act and continuing to drive alignment with the insurance industry, if the new Act were to provide that EQC must settle at the cost to replace or repair at the time of settlement. The fairness of this is especially apparent in cases where the circumstances of the natural disaster are such that wide-spread damage causes significant demand-surge inflation on reinstatement costs and services or where EQC has unreasonably delayed settling the claim.

This would simply mean a reversal of the current drafting in the Act so that the status quo is that EQC is obliged to settle based on what it would cost to reinstate at the time of the settlement of the claim with a discretion to not do this where, for example, a homeowner has delayed or unreasonably obstructed assessment and settlement of a claim.

ICNZ favours settlement on the basis of cost to reinstate at the time of final settlement as this will be closest to the time when actual payment is made, minimises potential unfairness and accurately reflects the actual loss and the

indemnity required. This approach also accords with private insurance practise and strengthens the alignment sought by these proposals.

A.6 EQC's Salvage Rights

EQC has far-reaching salvage rights that enable it to take ownership of any property damaged by a natural disaster, and sell or dispose of the property until the insured advises in writing that they make no claim or if a claim is made, until the claim is withdrawn. If the insured hinders or obstructs the EQC in exercising its rights a claim can be declined and no liability attaches to EQC.

ICNZ objects to the current Act as its sweeping powers not only impact harshly on the insured person, but also put at risks the rights private insurers have to salvage due to the limits of EQC's cover. Rights in relation to salvage should be exercised fairly and reasonably to protect the rights of the insurer or EQC. Further, salvage rights should be exercised in such a way that if the EQC insurance is exceeded, then the private insurers' losses would be recovered first from any salvage. This is only logical as once the EQC cap is reached the repair/rebuild is the insurers' responsibility and EQC simply pays the insurer its obligation.

A.7 Redefining volcanic eruption as volcanic activity more broadly

ICNZ is not aware of the proposed extension of cover that is contemplated, but in principle would support a definition of this natural peril that is more comprehensive as this would minimise disputes around EQC cover. Further, and more importantly it would be ideal for both EQC and insurers' cover to align. More information on this would assist us to comment further prior to the introduction of legislation.

A.8 Disclosure of information

Section 32(4) of the current EQC Act states that:

> A person authorised by the Commission for the purposes of subsection (1) shall not make a record of, divulge, or communicate to any person, any information acquired in exercising the powers conferred by that subsection except—
> (a) to the Commission; or
> (b) for the purposes of this Act; or
> (c) for the purposes of any court proceedings; or
> (d) for such purposes as may be specified in any other Act.

This clause limits the sharing of information with insurers and it is not entirely clear that if an insurer were acting on EQC's behalf with respect to an under cap claim that information could be freely shared to facilitate the recovery response.

ICNZ seeks certainty from the Act to enable information that is gathered for the purpose of settling a claim can be shared between EQC and insurers.

Information is also gathered post-disaster by both EQC and insurers or their agents (also possibly acting as agents for EQC) to determine the vulnerability status of residents. This information may include their age, health issues, household composition, income and other data that helps prioritise recovery needs.

At the same time, other agencies, such as district health boards and the Ministry of Social development may hold information that will also identify vulnerable people.

ICNZ believes consideration should be given to how the EQC legislation and Privacy Act provisions can be made more flexible within established protocols and confidentiality provisions to enable better information sharing.

A.9 Facilitating area-wide repairs

The discussion document raises the prospect that EQC have the ability to undertake area-wide repairs or off-site works where that is the most economical solution to meet EQC's obligations. This could potentially lead to decisions being made that adversely impact the most economic solutions for the homeowner or the insurer. It would be of concern if EQC's obligations were wholly committed, for example, to the construction of some form of mitigation which left insufficient funds when the EQC cap is deducted from the sum insured to repair or rebuild the property.

It is our understanding that The Treasury does not intend 'area-wide' repairs to be thought of on a suburb basis, but would be typically be repairs particular to a small number of properties which would enable repairs or rebuild of those properties to proceed. If this is the intention, then this provides further support to ICNZ's argument for separate landworks and building cover.

A.10 Transitional arrangements

There are a number of issues ICNZ submits should be addressed in the transition to a revised EQC scheme:

- changes to the EQC Act and the proposed changes to the Fire Service Levy should both be aligned with respect to the attachment to fire policies for residential polices and ideally at the same sum (currently $100,000). This would minimise transition costs.
- The timeframe for implementation should be at least 18months. This reflects that insurers will be required to make two system changes (Fire Service Levy and EQC Levy) and that insurers typically send renewal notices to customer about two months in advance of the renewal date.
- The impact on private insurers' reinsurance arrangements. These arrangements will differ from insurer to insurer and will not necessarily coincide with EQC's reinsurance arrangements. These arrangements typically run on an annual basis, so consideration needs to be given to a phase-in of these changes over a 12 month period.

It will also take some time for GNS Scientists and earthquake tool modellers (RMS / AIR etc) to understand any EQC changes and for this to flow through to risk modelling of insurance companies' expected loss from a modelled event. These matters have important implications for insurers' capital adequacy and reinsurance arrangements.

Insurers have advised ICNZ that they would need at least 18 months to make necessary changes to systems and polices to implement the changes. Time would also be needed to ensure the necessary commercial arrangements are in place and agreed with EQC to enable insurers to handle under cap claims. This must be completed prior to the Act coming into force. Further, there will be a period of 12 months after the Act comes into effect that will see some insurers with reinsurance cover that reflects the old scheme that will need to change and because private insurance policies are typically annual policies a lead-in time of at least 12 months will be required for changes to be implemented.

A.11 Election to reinstate/over-cap claims

Unless private insurers take over handling claims (in which case this issue falls away) it is submitted that EQC should not have the ability to elect to reinstate damage if a claim is over-cap. Once one event goes over-cap the entire reinstatement project should fall to the insurer. This would alleviate duplication of efforts between insurers and EQC and their contractors and provides certainty for a home owner as to who will be responsible for assisting them with their reinstatement.

A.12 Temporary accommodation, removal and storage of contents during under cap reinstatements

Through the experience of the Canterbury earthquake sequence it became apparent that EQC's view was that it was entitled to refuse to pay the cost of removing and storing contents and relocation and accommodation costs of owners needing to move out while under cap reinstatement work was carried out by EQC.

Eventually this matter was resolved with EQC accepting liability for these costs provided that there was no cross-over (i.e. double-insurance) with private insurance entitlements. While a pragmatic resolution was eventually reached on this issue, it would be preferable for this to be clarified in the legislation.

It is our members' view that the costs of removing and storing contents to enable repair work to be carried out falls within the statutory cover provided by EQC under the current Act and that this should continue. A privately insured residential building is deemed to be insured under the Act against natural disaster damage for its "replacement value" to the statutory maximum set out in section 18(1)(c) of the Act. "Replacement value" is defined in section 2 of the Act as:

> "Any costs which would be reasonably incurred in respect of –

i. …

ii. replacing or reinstating the building…; and

iii. …; and

iv. other… costs payable in the course of replacing or reinstating the building…"

Where EQC's contractors form the view that the removal and storage of contents and alternative accommodation of people living within the home is necessary to enable the repair work to be carried out, then it is ICNZ's view that these costs are "reasonably incurred in respect of … replacing or reinstating the building." Alternatively, those costs could be captured by subsection (iv) above.

ICNZ does not believe that these costs are consequential losses which are excluded from EQC cover by clause 2 of Schedule 3 of the Act. The examples of consequential loss specified in clause 2 (theft, vandalism, loss of profits or business interruption) are of entirely separate heads of loss or damage, rather than costs which are a necessary incident of replacing or reinstating the building following natural disaster damage. We submit that clarification is required.

A.13 EQC's status to make determinations on the balance of probabilities

Difficulties have arisen in litigated matters due to confusion about the legal standard applicable to EQC (i.e whether EQC is solely subject to judicial review proceedings or whether it is subject to ordinary private law action on a balance of probabilities standard). This question was largely resolved by the decision of the Full Bench of the High Court in *Re Earthquake Commission* (IFV and ILV declaratory judgment) but further certainty could be provided.

The question of the standard that EQC is to be held to is also important in light of the points we have made above in terms of whether EQC is the ultimate arbiter of deciding whether or not the land costs at a site are such that the site is an economic total loss. It will become critically important in an operational and jurisdictional context in future scenarios where insurers will be managing claims. Differing legal tests and jurisdictional tests need to be eliminated.

A14 Claim Handling Expenses (CHE) vs reinstatement costs and what costs are included in the cap

Confusion has arisen, particularly in the multi-unit/shared property context in Canterbury, in terms of what qualifies as CHE and what should be included in EQC's dwelling cap. For example, a dispute has arisen with EQC in relation to whether project management costs form CHE or are part of the cost of reinstatement and therefore subject to EQC cap.

It has long been ICNZ's position that project management costs are properly considered as CHE and therefore payable over and above the EQC cap (as are other claims handling costs and certain damage assessment and quantification fees). In terms of the review of the legislation, it is ICNZ's position that the Act should be clarified to make it clear that CHE are not part of the replacement value of a building and are not subject to the EQC cap.

A.15 Definition of "dwelling" and impact on EQC land cover

A residential building is defined in the Act as "any building…which comprises or includes one or more dwellings…"

"Dwelling" is defined in the Act as "any self-contained premises which are the home or holiday home, or are capable of being and are intended by the owner of the premises to be the home or holiday home, of one or more persons".

To receive land cover under the current Act, section 19 says "where a residential building is deemed to be insured under this Act against natural disaster damage, the residential land on which that building is situated shall, while that insurance of the residential building is in force, be deemed to be insured under this Act…"

This means that in order for EQC land cover to apply, a site must have on it a building meeting the Act's definition of "residential building", which requires that the building contain at least one "dwelling" as defined. This requires that the building or part of it contain premises that:

(1) are self-contained; and

(2) are either (i) the home or holiday home of one or more persons; or
(ii) capable of being and are intended by the owner of the premises to be the home or holiday home of one or more persons.

In order to satisfy (2) above, the premises will qualify if they are either actually being used as a home, or (if they are not being used as a home) are "capable" of and are "intended" to be used as a home.

This caused serious difficulties in Canterbury and ICNZ has several concerns with this wording. First, it creates an incentive for people to continue to live in damaged and potentially unsafe homes in an attempt to be able to demonstrate that the building continues to be a "dwelling", so that land cover will continue to apply. Second, it acts as a disincentive for people to work swiftly to demolish dwellings as and when necessary, which in turn leaves unsafe structures in situ and interferes with normal supply and demand prices on demolition services.

In relation to the first point, EQC has itself created this incentive by adopting the position that an intention for permanent habitation of a home is required in order for it to continue to qualify as a dwelling. This position was conveyed by EQC to ICNZ in correspondence in 2012. ICNZ does not accept this interpretation, as no

such requirement is expressed in the Act. ICNZ submits that with the review of the legislation there is now an opportunity to better clarify the requirements for a building to meet the definition of "dwelling" so that EQC building and land cover applies.

If an intention for long-term, on-going habitation is required for a building to meet the definition of "dwelling", this unfairly disadvantages owners of houses that are economically a total loss due to natural disaster damage and need to be demolished and rebuilt. That is because there will frequently be a delay before rebuilding can be undertaken, but EQC land cover will not be available for land damage occurring in another natural disaster before rebuilding is completed. Owners of homes that are awaiting rebuilding due to natural disaster damage have the same need for EQC land cover as owners of properties that do continue to qualify for EQC land cover.

Where a house requires rebuilding due to damage, private insurers will not necessarily cancel the policy, and owners typically choose to continue to insure the building. Even where a house is considered uneconomic to repair due to earthquake damage and rebuilding is therefore required, it is possible that a further future loss could occur (e.g. a kitchen fire) which would require immediate interim repairs to be carried out so as to make the house liveable again (pending rebuilding). Liability cover is also an advantage to homeowners in this situation, and continues to be available providing the home insurance policy remains in force. The home continuing to be insured creates a reasonable expectation that EQC cover will continue, even though eventually demolition and rebuilding will need to occur at a future point in time.

It is ICNZ's submission that the Act should be clarified (or amended, as the case may be) so that it is made clear that cover under the Act continues to apply to residential land and buildings where a building is awaiting rebuilding following damage occurring in a natural disaster, regardless of whether it is currently habitable.

The above should be read in the context of our submission where we advocate that EQC cover does not reinstate at each event during the period of insurance. As noted, this approach will incentivise repairs quicker in order to obtain the full reinstatement of cover once the repair is completed.

A16 Insurance otherwise than under the Act – current section 30

The default position under this section is that cover under the Act is excess cover only, unless specific provision is made for the private insurance to apply as top-up cover only. The provision is unnecessarily complex and confusion in relation to how it should be interpreted contributed to the Zurich/ACM Ahlers litigation.

Given that private cover is uniformly structured throughout the industry to provide top-up cover only, and a levy is charged for EQC cover regardless, our members submit that it would be helpful if the Act was changed so that the default position is that cover under the Act applies first, with the private insurance functioning as top-up cover.

A.17 Cover for multiple dwellings in a residential building

The effect of section 18(3) of the Act is that multiple units in one building are currently only covered if their existence was notified to the insurer when the cover was placed. The rationale for this is unclear and leads to arbitrary outcomes (i.e. if a complex is made up of separate townhouses, each is covered as a residential building regardless of how many units the insurer thought there were, but if one building contains multiple units then there is only cover for one dwelling unless the insurer was told the number of units). It is unclear what the identifiable purpose is for this distinction and ICNZ submits that the requirement for notice of the number of units should be deleted. Any perceived problems can be addressed by back-dating the cover for units that were not notified and this would be an administrative issue EQC and the insurer could resolve between themselves.

B. OTHER LEGISLATIVE MATTERS

B1 Dispute Resolution Schemes

ICNZ submits that consideration should be given to whether disputes between homeowners and EQC are best dealt with by the Parliamentary Ombudsman or whether the ISO or FSCL ought to have jurisdiction as they do for private insurance disputes. Clarity on this is required and this will become especially critical if private insurers will be managing EQC under cap claims in future as otherwise disputes around the same property could be dealt with in two different jurisdictions. It is submitted that insurance-specific experience sits with the ISO and FSCL and it may be that this is the more appropriate forum for EQC disputes.

In addition, if insurers are to manage under cap claims in future a dispute resolution process between insurers and EQC will clearly need to be built into that arrangement. Until the details of such an arrangement are known it cannot be said whether some legislative overlay to that arrangement may also be needed.

B2 Privacy Act

As mentioned above, ICNZ submits that clear legislative reinforcement for the sharing of claims and policy information is essential. This is especially so following a major disaster where it is important to identify and prioritise the vulnerable and to readily share information about matters affecting public safety.

B3 - Multi-unit buildings, EQC and The Unit Titles Act

Multi-unit buildings on cross-lease arrangements created a number of problems in Canterbury and lead to delays in handling claims which could be addressed by removing impediments. Typically, these residential properties had different insurers, different policies and those without insurance in buildings. This led to complications apportioning costs and contributions to claims. It also led to complications progressing claims as the Unit Titles Act requires 100% agreement from residential owners on resettlement paths. This presented difficulties when long-standing disputes between neighbours hindered agreement and there were times when owners were no longer resident or locatable. In addition, complications arose between EQC and insurers as to what EQC would contribute to and whether it would be a party to contractual arrangements.

There is no clear legislative lever to fix what is essentially a compliance issue. ICNZ recommends that a separate review be conducted into the problems experienced in large-scale natural disasters as they are largely out of the Discussion Document's scope.