Insurance Council of New Zealand

Insurance Council of New Zealand
P.O. Box 474 Wellington 6140
Level 2, 139 The Terrace
Tel 64 4 472 5230
email icnz@icnz.org.nz
Fax 64 4 473 3011
www.icnz.org.nz

11 December 2020

Committee Secretariat
Governance and Administration Committee
Parliament Buildings
Wellington

Dear Committee Members,

ICNZ submission on the Insurance (Prompt Settlement of Claims for Uninhabitable Residential Property) Bill

Thank you for the opportunity to submit on the *Insurance (Prompt Settlement of Claims for Uninhabitable Residential Property) Bill* (**Bill**), which was introduced to Parliament on 12 December 2019.

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

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

Submission

The Bill's stated aim of facilitating the swift resolution of uninhabitable residential property claims lodged with insurance companies,[1] is an aim insurers' share, as they strongly support resolving claims for their customers as quickly as is practicable. Insurers are also motivated to resolve claims, amongst other things, to remove liabilities off their balance sheets which also attract a regulatory cost applied by the Reserve Bank of New Zealand as prudential regulator.

Indeed, experience shows that following the Hurunui/Kaikōura earthquake (by way of a recent example), there is no problem to solve in practical terms, with claims for uninhabitable residential properties being reasonably uncommon and insurers resolving them as quickly as possible, with any delays relating to matters outside of their control. Additionally, under the Fair Insurance Code, general insurers regulate themselves to promptly resolve all claims including those claims covered by this Bill. For these reasons, while the Bill is well intentioned, we do not consider that it is necessary.

Even if there was an issue with timeframes to resolve claims for uninhabitable residential properties (which is not supported by the available evidence in our view), the Bill as drafted would not improve matters. This is because it only focusses on the timing of an insurer's decision about whether to accept or decline a claim. This is only the second step in the claims process, there being several other actions that need to be completed before a claim is concluded.

[1] Clause 3 of the Bill.

Further details about each of these matters and other comments are set out below.

There is no problem to solve in practical terms

To scrutinise the problem this Bill seeks to solve (the swift resolution of uninhabitable residential property claims), we have examined claims experiences in Kaikōura following the most recent and significant November 2016 Hurunui/Kaikōura earthquake as a pertinent case study.

While the truncated timeframe allowed for submissions on this Bill has restricted our ability to collate information from all members, based upon information received, we know uninhabitable residential properties made up a small proportion of total Kaikōura claims. Stepping back, the insurance sector exceeded its own goal of having a majority of claims settled by the end of 2017, with 88% of all domestic claims being fully or partially settled by 31 December 2017.[2] As at 30 November 2017, 96% of residential and commercial claims had been assessed one year on from the event, with 82% being fully or partially settled.[3]

When assessing claims, we understand members prioritise work to make houses inhabitable (including reinstating kitchens, bathrooms, and utilities). They will also urgently arrange for customers to be temporarily accommodated following the event where this cover is available.

It is also in insurers' best interests to accept and manage claims to completion as quickly as possible (within acceptable parameters) because:

- This ensures insurers meet customers' expectations for prompt resolution and obligations under the Fair Insurance Code (addressed in the next section).
- Resolving claims promptly minimises insurers' exposure under time-based covers (e.g. cover under a temporary accommodation benefit following a residential building loss).
- As above, until closed, a claim constitutes a liability on an insurer's balance sheet, attracting an undesirable element of uncertainty and a regulatory cost by the Reserve Bank of New Zealand as prudential regulator.

Insurers' claims guidelines and reinsurance requirements also generally stipulate that claims must be promptly resolved.

Where delays in claims resolution occur, generally these relate to matters which are outside of private insurers' control. This includes delays related to:

- A change in ownership of the property, the illness or death of the customer or a change in the customers' requirements (e.g. changes to layout or materials).
- Challenges with claims supplier availability (e.g. construction industry contractors, project management and materials, particularly when needed to be sourced overseas). This is a particular issue when the event/damage is of a large scale and/or there are difficulties or delays getting resources to the area impacted (e.g. because it is in a rural area that is hard to access).
- The presence of asbestos at the property that needs to be carefully removed in accordance with stringent regulatory requirements.
- Complexities associated with assessing and working through complex losses or additional/separate damage caused by aftershocks. This may necessitate council information and input, specialist loss adjusting and/or legal, engineering or architectural advice being obtained.
- The customer challenging the insurer's claim decision, resulting in a review and/or the matter being formally disputed.
- Challenges reaching agreement where multiple owners are involved, such as where cross-leases or multi-unit developments, are involved. In some cases, matters may be further complicated because owners have different insurers, or some owners are uninsured.

[2] https://www.icnz.org.nz/media-resources/media-releases/single/item/kaikooura-earthquake-claims-progressing-well/. One of the reasons for the success of the prompt claims resolution was that in Kaikōura, for the first time, private insurers acted as EQC's agent and were responsible for managing both EQC and private insurance claim components.

[3] https://www.icnz.org.nz/media-resources/media-releases/single/item/settlements-reached-for-82-of-kaikooura-claims/

Putting Kaikōura claims to one side, in circumstances such as the Canterbury Earthquake Sequence (**CES**), where private insurers were not acting as the Earthquake Commission (**EQC's**) agent, delays also occurred when private insurers were only apprised of claims once EQC assessed them as being over the applicable cap (previously $100,000, now $150,000) for EQC building cover. Even now, 10 years after the first Canterbury earthquake, a small number of such claims from the CES continue to be transferred to private insurers each month.

For completeness, the Canterbury Earthquakes Insurance Tribunal provides homeowners with a means of resolving unresolved claims with insurers (including Southern Response) and EQC related to the 2010 and 2011 Canterbury earthquakes.[4]

We also note that, rather than reinstating the property, customers or insurers may elect to cash settle. If this occurs there will be no control over the timeframe that a customer gets back into their property (if they do so at all).

ICNZ members already required to promptly engage with and resolve claims

Under the Fair Insurance Code (**Code**), ICNZ members are already required to promptly engage with and resolve claims. In particular, under the Code insurer members are required to:

- Acknowledge receipt of the claim within 5 business days of receiving it.[5]
- Decide whether to accept or decline the claim within 10 business days of the date that they have all the information needed to make that decision.[6]
- If they cannot make that decision within 10 business days (e.g. because the claim is complex or it is necessary to obtain information from third parties), explain why, how long making a decision is expected to take and update the customer about this at least every 20 days, or another time interval the insurer and customer agree to, until the claim is resolved.[7]

The Code notes that insurers may not be able to meet timeframes when a catastrophe or disaster occurs because they may receive a large number of claims and be especially reliant on third parties. In this situation, insurers must use their best efforts to meet their commitments under the Code, respond as quickly as possible, and update customers at least once every 20 business days, or another time interval agreed with the customer, until the claim is resolved.[8] Acknowledging that working through the claims process following a catastrophe or disaster can be stressful and take an emotional toll, the Code also requires insurers to identify and respond to vulnerable clients based upon their circumstances.[9]

The Code also requires insurers to, in all their dealings with customers, act transparently, honestly and fairly, and with integrity and utmost good faith. [10] When communicating with customers insurers must explain the information required when making a claim.[11] The Code also provides that, if a claim is not accepted by an insurer (either in whole or in part), they must clearly, concisely and effectively explain the reason(s) for this.[12] There is also provision under the Code for the customer to make a complaint if they are not satisfied with that outcome.[13]

For completeness, we note that the Financial Markets (Conduct of Institutions) Amendment Bill (**COFI**) currently before Parliament will enable the Government to regulate insurance claim handling generally. If this

[4] https://www.justice.govt.nz/tribunals/canterbury-earthquakes-insurance/who-can-apply/. The Tribunal does not consider claims relating to on-sold properties or the Kaikōura earthquake.

[5] Clause 17.

[6] Clause 17.

[7] Clause 18.

[8] Clause 22.

[9] Clause 22. This includes reference to the Human Rights Commission's Best Practice guidelines for the prioritisation of vulnerable customers.

[10] Clauses 2 and 3.

[11] Clause 6.

[12] Clause 16.

[13] Clauses 23 to 29.

Bill is progressed it will cut across COFI in relation to a specific class of claims, potentially resulting in unhelpful inconsistencies and additional regulatory burden.

The Bill would not improve matters

As above, the Bill focusses only on the claims process up to the point that the insurer decides whether to accept or decline the customer's claim.[14] This is only the second step in the process, there being several further steps that need to be completed before a claim is resolved.

The key steps that make up the claims process from a customers' perspective include:

Claim step	Description
1. Customer notification of claim	The customer contacts the insurer and notifies them that they wish to make a claim under their insurance policy and provides relevant information to support it. This claim may be made over the phone, online or via hardcopy in writing. *As above, the insurer must acknowledge receipt of the claim within 5 business days of receiving it.*[15]
2. Assessment and claim decision	The insurer assesses the claim and decides whether it should be accepted or declined with reference to the terms of the relevant contract of insurance. Before making this decision, the insurer may require the customer to provide additional information or seek input from third parties such as a loss adjuster. *As above, the Code states that this decision must be made within 10 business days of the date the insurer has all the information needed to make that determination, unless it cannot make a decision within this timeframe, in which case they must state why, how long making a decision is expected to take and update the customer about this at least every 20 days, or another time interval the insurer and customer agree to, until the claim is resolved*.[16] *If a claim is not accepted by an insurer and the customer disputes this, the Code provides mechanisms for such matters to be resolved.*[17]
3. Settlement	If the claim is accepted the insurer will move onto determining how it will be settled, including working through the entitlements under the relevant contract of insurance, practicalities and relevant costs. This may require the insurer to engage third parties to value, repair, replace or reinstate the property concerned. The time it takes to complete this step will depend on the complexity of the claim and the availability of resources needed to resolve it. In some cases, matters may be further complicated by the fact that only part of the loss is covered or due to multiple events (e.g. aftershocks) or insurers being involved – in which case issues of apportionment and/or contribution will need to be worked through. *The amount that the customer receives for the covered loss will depend upon the terms of the relevant contract of insurance and what settlement option the customer has elected (if applicable).*
4. Finalisation	The final step occurs once the settlement step outlined above is completed, at which point the claim will be completed. In broad and general terms, the claim may be resolved by the insurer: • Paying the customer cash for the covered loss less any excess (known as cash settlement). This includes situations where the customer has gone out and reinstated the relevant property themselves and is reimbursed by the insurer. • Arranging for the property that is subject to covered loss or damage to be repaired or otherwise reinstated, and meeting the costs of doing so, with the customer paying the insurer any applicable excess (known as reinstatement). • Arranging for the property that is subject to covered loss or damage be replaced (known as replacement). In this case the customer is again responsible for paying the insurer the applicable excess.

[14] Specifically, clauses 9 of the Bill requires an insurer that receives a claim for residential property that has become uninhabitable to take all reasonably practicable steps to ensure that it is processed as promptly as possible and specifically decide whether to accept or decline the claim and notify the insured of this decision within 6 months of receipt (our emphasis).
[15] Clause 17.
[16] Clauses 17, 18 and 22.
[17] Clauses 23 to 29.

Claim step	Description
	Following the finalisation of the claim from a customer's perspective, there may be other steps that the insurer needs to complete. This includes recovering amounts it has paid through salvage or from at fault parties (via subrogation),[18] reinsurers or other insurers on risk for the same loss. Following the completion of these steps the claims file will be closed.

Other comments

Notwithstanding the comments above (which our view justify this Bill not progressing), in the interest of completeness, we provide the following comments about specific aspects of the Bill.

Clause/aspect	Comment
Clause 4	**Definition of 'insured'**: it would be useful to clarify whether the intention is to cover only insurance held by natural people, as opposed to other ownership arrangements such as by family trusts. **Definition of 'residential property'**: • It would be useful to clarify whether the Bill is intended to extend to residential properties operated for commercial purpose (e.g. short term accommodation such as AirBnB), noting that where this is the case EQC cover may still be involved. Business Interruption insurance may have a role to play in covering loss of profit or increased costs during the period the settlement process is being undertaken (i.e. during the period the property is being reinstated). • We query the appropriateness of the reference to section 81(1) of the Fire and Emergency New Zealand Act 2017 (**FENZ**) given the commencement of sections 80 to 140 of FENZ has been suspended until no later than 1 July 2024 due to substantial issues with these provisions.[19] **The definition of 'uninhabitable property'** is unduly vague in our view. Consideration could be given to referring to requirements for notices issued under section 124 of the Building Act 2004 in this respect, noting that the insured property must have incurred sudden, unintended and unforeseen (accidental) physical loss or damage for the contract of insurance to respond.
Clause 6	We query the rationale for EQC being excluded from the remit of the Bill, noting that: • EQC claims are included within the scope of the Canterbury Earthquakes Insurance Tribunal • Uninhabitable residential building claims due to a natural disaster up to $150,000 fall under EQC's building cover not private insurer's building cover • delays arise from the resolution of EQC claims, and • under the new model for natural disaster response private insurers will be responsible for managing and settling claims covered by EQC (e.g. claims for land damage and claims for building damage over the $150,000 EQC building cap).[20] Given this, should this Bill proceed as it is, then this may add complexity to the interpretation and application of the law. In respect of clause 6(3), it would be useful to clarify whether the Bill is intended to apply to renewals of existing insurance, noting that each renewal constitutes a new contract of insurance.
Clause 9	See above regarding the Bill not improving matters (as it focusses only on the timing of an insurer's decision about whether to accept or decline a claim rather than the full claim resolution). The mechanism under clause 9(2), that delays the start of timing where a claim is also the subject of a claim with the EQC and EQC is yet to make a decision whether or not to accept it and notify the private insurer, is undesirable. As above, this is a common area where delays may occur (e.g. where, after a significant period has elapsed, EQC reassess an under-cap EQC claim as being over cap and it is transferred to the private insurer).

[18] Subrogation involves an insurer undertaking recovery action against a third party, in the place of the customer it has indemnified, exercising that customer's rights.
[19] See section 2(6) of the Fire and Emergency New Zealand Act 2017.
[20] https://www.eqc.govt.nz/news/ndrm.

Conclusion

Thank you again for the opportunity to submit on the Bill. If you have any questions, please contact our Regulatory Affairs Manager by emailing nickw@icnz.org.nz.

Yours sincerely,

Tim Grafton
Chief Executive

Nick Whalley
Regulatory Affairs Manager