**SUBMISSION**

To the

Regulations Review Committee

From



On the

**Inquiry into Parliaments Legislative Response to Future National Emergencies**

**27 February 2015**



**Submission on the Inquiry into Parliaments Legislative Response to Future National Emergencies**

**Introduction**

1. The Insurance Council of New Zealand (“The Insurance Council”) appreciates the opportunity to comment to the Regulations Review Committee on the Inquiry into Parliaments Legislative Response to Future National Emergencies.
2. The Insurance Council is an industry association body that represents 28 property and casualty insurers and reinsurers that write at least 95% of all property insurance in New Zealand protecting about $600 billion of assets.
3. The Insurance Council’s members pay property damage claims that allow New Zealanders to recover from a Natural Disaster. As at the end of February 2015 Insurance Council members had paid over $14 billion in property claims for the rebuild of Canterbury.

1. The Insurance Council wants to be very clear about the context of this submission. It fully supports the extraordinary rescue efforts in the aftermath of the 22 February 2011 earthquake. This submission addresses decisions that were made outside of efforts to save lives or retrieve the casualties of that event. Further, we acknowledge that when decisions by people using emergency powers in circumstances they have never encountered before that decision-makers may be unaware of the unintended consequences of their actions. This submission therefore is made in the spirit of informing so collectively New Zealand can respond better should similar events occur in future.
2. The Insurance Council observed during the Canterbury earthquake recovery many cases where insurers’ normal rights and interests to determine the extent of material damage to buildings were not allowed to prevail due to actions by those exercising emergency powers. This resulted in needless economic loss, uncertainties and delays. There were also opportunities to exercise powers available to recovery authorities to remove roadblocks to recovery that were not exercised which also contributed to uncertainties and delays.
3. It’s important that New Zealand’s legislative environment in dealing with national emergencies is transparent and fair as this provides the necessary confidence for reinsurers to invest the financial capacity to our insurance market. Without the reinsurers financial capacity, Canterbury would not have recovered well from the 2010/2011 earthquakes.

**Buildings Demolished without Insurers Knowledge**

1. Commercial buildings that had suffered damage from the 22nd February 2011 earthquake were demolished under order of the recovery authorities. In some cases, it was alleged that building owners may have given permission to authorities to allow a building to be demolished. In other cases, it was understood that the building owner was unaware of the decision. This all occurred soon after the 22nd February 2011 earthquake event but prior to the establishment of CERA in April 2011.
2. A number of insurers found that they had been prejudiced by these decisions as insured buildings were demolished without the opportunity to assess the building damage. This meant buildings that were demolished could have been repaired, but all evidence crucial to a claim settlement was destroyed. This situation makes it very difficult for insurers to justify to their reinsurers to pay the claim as there was insufficient claims evidence.
3. It is mistake to think that the building owner is the only party affected when an insurer cannot pay a claim or a claim becomes frustrated due to evidence being destroyed. In most cases, there will be a financial effect on the mortgage lender and ultimately the tenants and the local community that benefited from the building’s amenity value.
4. The Insurance Council was informed by its members that there were not just one or two isolated cases of a building being demolished without the insurer’s knowledge. There were many and a number of these claims are still in dispute now four years after the event.
5. Another consequence of buildings being demolished without the insurer’s knowledge is that other property not directly owned by the building owner, such as, the tenants commercial fit out, stock and contents is also destroyed. In one case we are aware of the combined insured value of the tenants fit out exceeded the insured value of the building.

**Insurers Faced Access Delays to Inspect Damaged Buildings**

1. It took significant time for insurer and their engineers to be allowed access to damaged buildings in the Christchurch CBD cordon. While we are well aware of the safety issues that existed at the time, authorities made decisions about the demolition without insurers being able to verify and or agree with those decisions as they were not granted access to those buildings.
2. The Insurance Council recommends that any future legislative controls on emergency response would include a protocol requiring that insurers and their engineering experts be able to have direct input to decisions about the fate of buildings and have access to damaged buildings much earlier on than was experienced in Canterbury.
3. Such a protocol would reduce the risks of claims disputes and unrecoverable financial losses as well as facilitate speedier recovery and remove critical grounds for dispute which inevitably delays settlement.

**Power to Refuse Building Consents for Repairs**

1. Another significant issue that affected insurers and property owners was the Canterbury Earthquake Recovery Authority (CERA) CBD blue print “Land Designation Zone” that was administered by the Christchurch Central Development Unit (CCDU). The CCDU had the power to prevent building owners and their insurers from repairing buildings that were located in “Land Designation Zone” and instead many repairable buildings were at risk of facing demolition that would have resulted in a total economic loss for the insurers and building owners. The red zoning of the CBD, which remained, cordoned off for more than two years, was one of the many reasons behind the delays to commercial reconstruction.
2. The CCDU advised that the Minister for the Canterbury Earthquake Recovery had the power to refuse a building consent to repair a building that sat in the “Land Designation Zone”. Without a building consent many repairs could not be legally undertaken. Insurers had to spend considerable sums, sometimes many hundreds of thousands of dollars on engineering reports just to get to a building consent application stage with no certainty that the building consent would not be refused by the Minister (the CCDU).
3. The effect of the Minister being able to refuse a building consent effectively removed the building owners existing “use rights” that are set out in the original district plan. Existing use rights would normally allow like for like repairs to proceed. This change created by the Land Designation Zone ended up causing much uncertainly for insurers and building owners and would have delayed many claims being settled. Building owners in many cases would not have been able to recover the full insured replacement sums from their insurers as many insurance contracts required the building owner to replace the building as a condition of the full sum insured being paid.
4. The Insurance Council knows of a number of instances were insurers dealing with damaged buildings that were economically repairable with repair plans well advanced then to learn that CERA had compulsorily acquired the land and required the building be demolished. Significant time and expense had been lost in scoping repairs, letting tenders and seeking consent applications. Building owners too suffered considerable stress and anxiety as they were aware that their insurance policy contracts in many cases only pay the repair costs and exclude losses resulting from decisions of civil authorities.
5. The Insurance Council obtained legal advice on behalf of its members that confirmed that the powers of the Minister in relation to the refusing building consents was unclear and possibly conflicted with some of the provisions of the Resource Management Act. Much greater clarity is needed for future events.
6. The Insurance Council is of the opinion that any special powers to aid recovery following a significant disaster needs to be cognisant of insurance contracts and RMA provisions.

Select Committee to scrutinize the use of Special powers

1. It is also possible for institutions that have emergency powers that could be used to facilitate recovery do not exercise them. The Insurance Council believes CERA could have used its powers to facilitate recovery efforts with respect to multi-unit residential buildings on cross-lease titles in Christchurch. These properties are complex settlements involving a number of different insurers including in some cases uninured owners as well as a mix of under and over the cap EQC claims. Legislation requires agreement of all property owners in a multi-unit building to agree on all aspects of reinstatement. Insurers made representations to CERA for changes to be made to enable, for instance, 75% agreement among building-owners to proceed with decisions, so progress could be made quicker. This did not occur.
2. The Insurance Council believes when powers are vested in a public organisation to aid a recovery from an extraordinary disaster that it be accountable to Parliament for the use of those powers. While such organisations may be scrutinised by a select committee, it would be useful if that were extended to seek wider comment from others as to how those powers are being used.

**Summary**

1. The Insurance Council recommends the inquiry into Parliament’s legislative response to future national emergencies consider the following:
2. a protocol requiring that insurers be given priority to have access to decision makers about the fate of buildings.
3. allow insurers early access to damaged buildings.
4. clarify in the legislation the powers of civil authorities to change land use designations and order the destruction of property.
5. that a parliamentary select committee review the use of any special powers vested in a public organisation by seeking input from all stakeholders.

We trust that the Regulations Review Committee Secretariat will find our submission to the Inquiry into Parliaments Legislative Response to Future National Emergencies clear and informative.

We are happy to appear before the Select Committee to discuss our submission or answer any specific questions the select committee may have should the opportunity arise.

Should the Committee Secretariat have any questions then please contact either Chief Executive Tim Grafton tim@icnz.org.nz 04-495-8001) or Insurance Manager John Lucas john@icnz.org.nz (04 495 8006).