

Purpose

1. This note provides information on your proposal to establish a Canterbury Earthquakes Insurance Tribunal, to be considered by the Social Wellbeing Committee on 28 February.

Establishing the Tribunal will fulfil the Labour Party's election manifesto commitment to Canterbury

2. The Tribunal will provide an alternative pathway for claimants, EQC and insurers to resolve outstanding insurance claims relating to the 2010/11 Canterbury earthquakes only. This is due to the unprecedented scale of damage caused (from an insurance perspective), and the length of time it has already taken to resolve these claims.
3. Other major insurance events are out of scope for this Tribunal. Since the Canterbury earthquakes, improvements have been made to insurance processes to settle other event claims more smoothly. For example, there is now an agreement for private insurers to assess and settle claims related to the Kaikōura earthquake, on behalf of EQC. All claims are lodged with private insurers, regardless of amount. This reduces delays and provides for continuity of customer care, as claims do not need to be transferred between EQC and insurers if they exceed EQC's \$100,000 cap.

The Tribunal will serve as a 'circuit-breaker' for claimants and insurers

4. *Eligibility:* The Tribunal will have jurisdiction to consider unresolved insurance claims in respect of residential land and/or property. It will be able to consider remaining 'first time' claims, and claims that have been reopened due to the discovery of additional earthquake damage, or deficient repair work managed by insurers.
5. *Resourcing:* To ensure that claims are resolved quickly, the Tribunal will need to be heavily resourced. This will include appointing up to 10 Tribunal members and using independent technical experts where necessary. Most claims are expected to settle within 3.5 years.
6. *General Law:* Rather than deciding cases based on 'equity and good conscience' the Tribunal will apply existing contract law and legal precedent. This will mitigate some of the concerns raised by insurers and therefore not affect the NZ insurance market.
7. *Legal aid:* Legal aid will be available to eligible parties. However, given the value of property that is subject to insurance disputes, it is unlikely that many parties will satisfy the eligibility criteria.

The Tribunal will be able to direct parties to mediation

8. Mediation will be available to empower parties to resolve disputes themselves. Where it does not result in settlement, parties will then be able to seek a Tribunal determination.
9. You have observed that mediation is more effective when conducted in the 'shadow' of a Tribunal. The Tribunal will be able to actively case manage throughout the process and define issues in dispute before mediation. The independence, structure and safeguards provided by the Tribunal will enhance trust and confidence in the mediation process.

The Tribunal will be able to award general damages in the same manner as a court

10. s9(2)(g)(i) [REDACTED]
11. As with the courts, general damages will be available where the loss incurred is either a foreseeable consequence of the insurer's breach of contract, or is a result of a breach of good faith. A duty of good faith includes processing claims within a reasonable time.
12. There may also be scope to address delays through the Tribunal's ability to award costs in certain circumstances. For example, where a party has caused costs to be incurred unnecessarily by bad faith.

Work is ongoing to address the shortage of technical expertise in Christchurch

13. The establishment of the Tribunal will not address the existing shortage of technical experts, which is a key cause of delay in resolving claims. Minister Woods is exploring how the existing pool of experts could be used more efficiently, to help alleviate these delays.

Relationship with the Budget process

14. Funding for the Tribunal is subject to decisions made by Budget Ministers during the decision-making process for Budget 2018.

Enactment by the end of 2018 is anticipated

15. You have indicated that you intend to bring the Bill to the Cabinet Legislation Committee for approval and introduction in May 2018.