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## **Call for feedback: Developing a standing dispute resolution mechanism**

A response to the EQC Inquiry recommendation

### **Submission form**

The Ministry of Business, Innovation and Employment (MBIE) is seeking feedback on proposed options developed in response to Recommendation 8.1.1 of the Public Inquiry into the Earthquake Commission by **5.00pm on Friday, 15 October 2021**. Let us know if you would like to provide feedback but are unable to make this deadline.

Please send your submission form to:

- [DRproposalfeedback@mbie.govt.nz](mailto:DRproposalfeedback@mbie.govt.nz) (in Microsoft Word format), or
- EQC Inquiry Recommendation Feedback  
Operational Policy and Service Design Team  
Te Whakatairanga Service Delivery  
Ministry of Business, Innovation, and Employment  
PO Box 1473  
Wellington 6140

Please include your name, the name of your organisation, and your contact details.

### **Release of information**

Your feedback is subject to the Official Information Act 1982. Please tell us if you have any objection to the release of any information in your feedback, which parts you consider should be withheld, and include your reasons for withholding the information. MBIE will consider any objections you note and consult with you when responding to any requests under the Official Information Act 1982.

Please indicate whether your feedback contains confidential information, and mark the text accordingly.

### **Private information**

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE as part of your feedback will only be used to help inform the development of advice in relation to the this work. Please clearly indicate in your feedback if you do not wish your name to be included in any summary of feedback that we may publish.

## Submitter information

**Name (first and last name)**

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**Email**

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**Is this an individual submission, or is it on behalf of a group or organisation?**

On behalf of an organisation

**Business or organisation name**

Engineering New Zealand

**Is there any information you would like to be withheld? Please state which question or information you would like to be withheld. If applicable, please also provide a separate version of this form without the sensitive information.**

## Section 1: Key stakeholders

**1.1** Other than the stakeholders listed on page 4, is there anyone else you think MBIE should talk to about the Inquiry's recommendation to develop a standing dispute resolution mechanism?

ACE New Zealand

## Section 4: Problem definition

**4.1** Do you agree with the challenges, concerns and issues that we have identified on pages 9 to 11? Are there any other significant issues that claimants commonly encounter, that contribute to the need for a claimant support mechanism?

The issues identified do broadly cover the challenges encountered by claimants.

Disagreement between experts as the existence and extent of quake-related damage, which is identified at paragraph 35, alludes to another challenge which is access to clear guidance from trusted sources. Individual experts' opinions may differ, but the provision of guidelines and standards by government, professional bodies, and other trusted sources can significantly reduce the scope of those disagreements.

For example, lack of clarity and consistency in the way engineers were briefed by their clients following the Canterbury Earthquake Sequence led to many disputes, because engineers gave different advice (in terms of quality and substance) because they received different briefs from their clients. One outcome of this was the development of a standard template letter of engagement, promoted by both Engineering New Zealand and the GCCRS. The use of a standard letter of engagement reduces the risk of obtaining conflicting or unhelpful engineering advice.

A goal of any future resolution mechanism should be to provide clear and consistent guidance for experts advising in the field.

**4.2** Do you agree that there is a need for claimant support? What is the value of a government dispute resolution service in the current ecosystem? Please explain your answer.

We strongly agree there is a need for claimant support across all three aspects identified in the discussion document.

The value of a government dispute resolution service is in providing free or low-cost support that is (and is perceived as) independent, non-commercial, and designed with claimants' interests at its heart. The value in removing the barriers of cost and complexity in navigating civil and commercial disputes resolution processes cannot be overstated. The incredibly positive feedback from claimants exiting the GCCRS is strong evidence of the value in providing this kind of support.

## Section 5: What support do claimants need?

**5.1** Do you agree with the three main identified claimant needs? Are there any other significant needs that should be addressed?

- Independent and free expert advice and information
- Claims support, navigation of services, and case management
- Flexible and effective mechanisms for dispute resolution

Yes, we agree with the three main identified claimant needs.

As identified at 4.1, inconsistency of expert opinions can drive disputes. There may be a need for the dispute resolution mechanism to provide guidance, frameworks, or prescribed criteria for expert opinions to minimise the scope for conflicting expert opinions and therefore narrow the scope of disputes. We have seen through the GCCRS and Expert Engineering Panel that when engineers are briefed to consistent standards, and provided with prescribed definitions (eg of 'damage), opinions tend to be more consistent and less open to interpretation.

## Section 6: Defining key aspects of the Inquiry's recommendation

**6.1** Do you agree with the definition of 'standing', and the suggested core activities the mechanism would undertake in its standing mode? If not, how do you see a standing mechanism operating?

Yes, we agree with the definition of standing and the suggested core activities the mechanism would undertake in its standing mode.

**6.2** What level of need could trigger a resolution mechanism (standing or otherwise) to scale up or down? Please give reasons for your answer.

The standing mechanism should be equipped in terms of staffing and resources to handle minor events of an annual or 2-yearly occurrence without needing to scale up.

This would ensure baseline staff had hands-on experience of the core activities that would be needed in later, more significant events. It would also allow for the testing, refining and improvement of services over time, and the development of guidance and resources for the public to prevent future disputes from arising.

**6.3** When considering Recommendation 8.1.1, do you agree that dispute resolution should be considered more broadly in terms of the use of early resolution and other preventative measures? Why or why not?

We consider dispute resolution should be considered in the broadest possible sense, including the use of early resolution and other preventative measures. As the discussion document identifies, disputes become more entrenched the longer they carry on, and intervention at the earliest possible stage can be key to avoiding a formal dispute.

Providing efficient, free or low-cost advice and support to claimants before their issues reach the stage of a formal dispute should form part of the services.

On a higher level, guidance and ‘in principle’ position statements on contentious issues could be developed and published by the service, potentially avoiding entire classes of disputes.

#### 6.4 Do you agree with the tiered model for dispute resolution? Why or why not?

We agree with the tiered model for dispute resolution, with the courts available as a last resort. A tiered model provides a clear pathway for claimants, and encourages the exhaustion of all other options before litigation.

#### 6.5 What dispute resolution processes, or combination of processes, do you think would be most effective? Please give reason for your answer.

We support consensual processes being the first and most-used processes, because parties are far more likely to achieve satisfactory outcomes where they are empowered to seek and find their own solutions, and feel ownership over the process.

We support a determination process similar to that of the GCCRS, or hybrid models as proposed in the discussion document, with subject-matter experts involved in making the determinations.

If a tribunal is the preferred option, we consider expert advice from subject matter experts needs to be built into the process to ensure technically sound judgements.

Specific events may demonstrate a need for specific requirements, and the enabling legislation should provide flexibility to adapt and respond, for instance by introducing new processes or services, in the shortest possible time-frame.

#### 6.6 Should the service scope of any mechanism be limited to natural disasters? Should the scope include disasters not covered by EQC? Why or why not?

We agree the scope of the mechanism should cover all types of natural disasters and should not be limited to those covered by EQC, in the interests of fairness and meeting social need.

We agree a state of emergency should not need to be declared for claimants to be able to access the service.

#### 6.7 Should any potential mechanism be targeted or limited to particular groups of homeowners?

The mechanism should be available to all homeowners and should not discriminate between owner-occupied or tenanted.

The impact of tenanted properties being uninhabitable should not be underestimated. Prioritising owner-occupied properties would lead to inequitable outcomes for renters, who are already at increased risk from housing insecurity.

**6.8** Other than those discussed on pages 18 to 19, are there any other factors that should be considered when determining the scope of a potential mechanism??

Recent trends towards higher-density housing, with multiple units on a single site, or apartment buildings, mean effects on residential housing could be greater. The adverse effects of higher density housing blocks being out of commission should not be underestimated.

**Section 7: What issues or gaps does the current landscape have?**

**7.1** Do you agree with the gaps and issues we have identified in the current insurance claims and dispute resolution landscape? Please provide reasons why.

We agree with the gaps and issues identified.

Engineering New Zealand's Expert Engineering Panel has had significant success resolving entrenched disputes where engineering issues are at the heart of the dispute. Resources such as the template letter of engagement have prevented additional disputes from arising out of a disparity between engineers' briefings.

It would be great to see similar guidance and expert input provided from a legal or other technical perspective in future services, to prevent or help resolve issues such as the disputes around "as new" vs "when new" insurance cover limitations, and the regulatory uncertainty of the interplay between ss17/112 of the Building Act. While this expert input and guidance may not prevent all litigation and uncertainty in future events, it may go some way to mitigating the costs. The extent of such services will of course be subject to cost.

## Section 8: Four proposed responses to the Inquiry's recommendation

- 8.1** Do you agree that the proposals below are the correct proposals to consider? If not, why not?
1. A standing **advisory only** mechanism.
  2. A standing **dispute resolution only** mechanism.
  3. An **advisory and dispute resolution** mechanism – the advisory support would be 'standing', with dispute resolution processes to be 'stood-up' when necessary.
  4. An advisory and dispute resolution mechanism that is planned for, but only stood up when necessary.

We consider MBIE has appropriately identified the proposals for consideration, provided option 3 is considered with the broadest interpretation of 'dispute resolution, as recommended above.

- 8.2** Are there any other options that should be considered?

No.

- 8.3** Is there a need for a standing service outside of a major disaster?

Yes, for the reasons set out above.

- 8.4** Can a dispute resolution service deliver value during times of high volume of claims after a major natural disaster (e.g. similar to the Christchurch or the Kaikōura earthquakes)?

Yes, with adequate planning, expertise and experience. For this reason it is our strong recommendation that the service be 'standing' and that it combines advisory and dispute resolution services, so that it is resourced with experienced and competent people when demand spikes.

## Section 9: Assessment of the proposals

**9.1** Do you agree with the criteria we have used to analyse these proposals (pages 27 to 28)? If not, why not?

Yes, the criteria are appropriate.

**9.2** How likely is it that the four proposals will result in greater benefits for homeowners with issues, questions, concerns or disputes?

We agree with the analysis set out in the table on pages 29-30, which captures the benefits option 3 presents over options 1, 2 and 4.

**9.3** What sources of information should MBIE use to assess the impacts, risks, costs, and benefits of any options proposed to Ministers?

Reports, statistics and reviews of the effectiveness of the GCCRS since its inception, and information generated by its associated groups including the Engineering, Legal, Welfare and Homeowners advisory groups.

First-person interviews with claimants who have been through the GCCRS process, as well as case managers.

**9.4** Do you agree with the initial assessment of each proposal in the table on pages 29 and 30?

We broadly agree with the initial assessment, and agree fully with the assessment of proposal 3. We consider proposals 1 and 2 should score lower than proposal 3 in terms of the final two criteria (flexibility and responsiveness, and engendering public confidence) – option 3 provides a stronger response on both of these criteria by virtue of the increased services available.

**9.5** Which proposal do you prefer? Please explain your answer.

We prefer proposal 3.

It is, as demonstrated by the table at 29-30, the clearly superior option and provides the best delivery route for the proposal to succeed.