

Briefing to the Public Inquiry into the Earthquake Commission

Title	The Kaikōura Earthquake
Date	4 July 2019

Contents

Purpose	4
Executive Summary	4
The key differences between the Kaikōura and Canterbury earthquakes	6
Kaikōura Earthquake Epicentre Not in Large Population Centre.....	6
Kaikōura Earthquake Not a Sequence	6
Kaikōura Earthquake Damage to Residential Property Widely Dispersed, Generally Not as Severe.....	7
The “Agency Model”	7
How did the model work?.....	8
How it was set up.....	12
Procurement	12
Negotiation Process	13
What was excluded from the MOU	14
What steps were taken to make the agency model work	15
Subject Matter Experts	17
Agreeing a Price to Pay Each Private Insurer for Its Agency Services	17
Reimbursing Private Insurers for Cash Settlements Made on EQC’s Behalf.....	18
Claim closure.....	18
Performance measures	19
Kaikōura Assurance Programme	20
What were the challenges of the agency model?	22
Differences Between EQC and Private Insurance Cover	22
Lodging claims.....	23
Difficulties in Establishing the Overall Number of Claims.....	24
Difficulties in Data Exchange.....	25
Privacy issues related to the sharing of personal data between EQC and private insurers	26
Pricing the Cost of Repairing Customers’ Houses	27
Dealing with urgent work.....	28
Confusion regarding EQC versus insurer managed claims	29
Audit and quality assurance.....	29

Health and safety	30
The customer experience of the Kaikōura earthquake	31
Communications between customers and insurers	31
EQC’s Input into Insurer Communications.....	31
Community Engagement	32
Customer satisfaction	33
Vulnerable customers	34
Initial results of the model.....	34
General Observations on Speed of Settlement	34
Some Data on Speed of Settlement.....	35
Claim re-opening rates.....	36
Disputes	36
Advantages of cash settlement approach	38
Risks associated with a cash settlement approach.....	38
Assessment of the model in action.....	39
The Acuo Review.....	39
The PwC Review	40
Land claims remained with EQC	41
Challenges with land claims	42
The Kaikōura Earthquake Viewer.....	42
Closing remarks.....	43

The Kaikōura earthquake

Purpose

- 1 This briefing provides information on the Earthquake Commission’s (EQC’s) response to the Kaikōura earthquake that occurred on 14 November 2016. It covers topics including:
 - a a brief overview of the Kaikōura earthquake;
 - b the “agency model”;
 - c an assessment of the model in action;
 - d summary of where the model may be appropriate and/or where it is less likely to work; and
 - e early learnings from Kaikōura.
- 2 This briefing does not contain a full “lessons learned” section. That is because EQC’s response to the Kaikōura earthquake is part of an ongoing co-design process. It would not be appropriate at this juncture to try to identify lessons learned before the co-design process has been completed.

Executive Summary

- 3 At 12.02 am on Monday 14 November 2016, a magnitude 7.8 earthquake struck the South Island. The earthquake started at a point about 15 kilometres northeast of Culverden and 60 kilometres southwest of Kaikōura. It occurred at a depth of approximately 15 kilometres.
- 4 The seismic activity comprised a complex series of ruptures that lasted around two minutes. From the point where the earthquake started, ruptures went northwards at a speed of two kilometres per second, over a distance of up to 200 kilometres. The largest amount of energy released occurred about 100 kilometres north of the epicentre, near Seddon. Detailed studies after the earthquake confirmed ruptures on 25 faults.
- 5 Two people died during the earthquake: one near Kaikōura and one at Mount Lyford.
- 6 The earthquake was followed by a tsunami. The tsunami – estimated at five metres high – struck the north-facing Little Pigeon Bay on Banks Peninsula, damaging an unoccupied holiday house.

- 7 EQC initially modelled (in round terms) 30,000 to 50,000 claims – a number similar to the claims generated by the June 2011 Canterbury earthquake. Ultimately, EQC received slightly under 40,000 claims from the Kaikōura earthquake – the mid-point of the initial forecast. The Kaikōura earthquake was the second largest event in EQC’s history after the Canterbury earthquakes in terms of the number of claims made.
- 8 The majority of claims that EQC ultimately received were for residential building damage only (71%); 10% of claims were for residential building and contents damage; 9% of claims were for contents damage only; 10% of claims included land damage.
- 9 The top locations for lodging claims were Christchurch, Wellington, North Canterbury and Marlborough. Low to moderate shaking was felt as far south as Dunedin and as far North as Auckland, reflecting the size of this earthquake.
- 10 It was identified early on that EQC would likely need to call on the Crown guarantee.¹ Under section 16 of the Earthquake Commission Act 1993, if EQC’s assets (including the Natural Disaster Fund) are not sufficient to meet its liabilities, the Minister is required to provide, by way of grant or advance, funding sufficient to meet the deficiency.² In essence, the Natural Disaster Fund had been significantly diminished following the Canterbury earthquake sequence, and at the time of the Kaikōura earthquake, EQC was still settling Canterbury claims. It was anticipated that the remaining funds in the Natural Disaster Fund would not sufficiently cover remaining Canterbury earthquake settlements and claims arising from this new event. As a result, the Government could expect to cover the shortfall.
- 11 The physical differences between the Kaikōura and Canterbury earthquakes (for example the epicentre was not close to a large population centre) meant that EQC’s response was also different. It was in this context, along with EQC’s response to the Canterbury earthquake sequence being ongoing in November 2016, that EQC and the private insurers undertook a different approach to managing claims resulting from the Kaikōura earthquake event. EQC and the majority of the private insurers piloted a model by which a private insurer acts as EQC’s agent to assess and settle claims made by their mutual customer – sometimes referred to as the “agency model”.
- 12 In general, private insurers took over responsibility for assessing and settling, on EQC’s behalf (and in some cases its own behalf) for dwelling claims. EQC remained responsible for assessing and settling any for earthquake damage to residential land; and any residential building where an EQC claim remained open for that building from a previous earthquake.³

¹ Letter from Minister Responsible for the Earthquake Commission, Hon Gerry Brownlee to Sir Maarten Wevers (Chair of EQC) regarding Expectations for EQC, dated 17 February 2017, <https://treasury.govt.nz/sites/default/files/2017-11/eqc-le-17.pdf>

² See section 16, Earthquake Commission Act 1993.

³ See clause 7.1, *Memorandum of Understanding relating to Kaikōura Earthquake Claims Management*, dated December 2016, https://www.eqc.govt.nz/sites/public_files/Memorandum%20of%20Understanding.pdf.

The key differences between the Kaikōura and Canterbury earthquakes

- 13 There were three key differences between the Kaikōura earthquake and Canterbury earthquake sequence, which meant that EQC's response was also different. The key differences in the Kaikōura event were:
- a the epicentre was not in a large population centre;
 - b it was not a sequence of earthquakes; and
 - c damage to residential property was widely dispersed and generally not as severe.

KAIKŌURA EARTHQUAKE EPICENTRE NOT IN LARGE POPULATION CENTRE

- 14 The epicentre of the Kaikōura earthquake was some distance from larger population centres. As a result, the number of claims generated in the Kaikōura earthquake – around 40,000 – was significantly lower than in each of the September 2010 and the February 2011 Canterbury earthquakes.
- 15 By contrast, the epicentre of the 22 February 2011 earthquake, for example, was only 10 kilometres southeast of the centre of Christchurch. The closer proximity of the Canterbury earthquakes to a large population centre meant that a much larger number of claims were generated – around 150,000 claims for each of the 4 September 2010 and 22 February 2011 earthquakes.

KAIKŌURA EARTHQUAKE NOT A SEQUENCE

- 16 The Canterbury earthquake sequence involved a number of significant seismic events occurring over a 16-month period (from September 2010 to December 2011 inclusive). The ongoing seismic activity impeded EQC's ability to respond immediately to each event; the ground shifted – literally as well as metaphorically – after each of the four main earthquakes.⁴
- 17 By contrast, the Kaikōura earthquake involved a single main event on 14 November 2016. EQC's response was therefore unimpeded by any further significant seismic activity. However, EQC's initial response was impeded as Kaikōura and the surrounding rural communities were isolated. Damage to State Highway 1 – the main access road into Kaikōura - closed the Highway both north and south of Kaikōura for a year, and the alternative access road, old State Highway 70, was closed for two weeks. The difficulty in access did slow down EQC's and private insurers' ability to conduct assessments.

⁴ The four main Canterbury earthquakes occurred in September 2010, February 2011, June 2011 and December 2011. In 2010 and 2011, Canterbury also endured 11 other damage-causing earthquakes.

KAIKŌURA EARTHQUAKE DAMAGE TO RESIDENTIAL PROPERTY WIDELY DISPERSED, GENERALLY NOT AS SEVERE

- 18 Claims for damage as the direct result of the Kaikōura earthquake were widely dispersed across the upper South and lower North Islands.
- 19 Furthermore, the damage that many residential properties sustained in the Kaikōura earthquake was less intense, generally speaking, than the damage sustained to most residential properties in the Canterbury earthquake sequence. Although the Kaikōura earthquake caused more shaking over a longer period of time, there was significantly less liquefaction and rock fall in urban areas.
- 20 While many homes were affected in the Kaikōura earthquake, including some that became total losses, the damage was generally minor to moderate. There were comparatively fewer instances of major damage occurring to residential properties. In addition, most homes remained habitable after the Kaikōura earthquake.
- 21 EQC decided to settle claims by cash payment rather than by the more time-intensive process of arranging for managed repair. The assessment and cash settlement of claims was a task that EQC could (and largely did) delegate to private insurers.

The “Agency Model”

- 22 After the 14 February 2016 (or “Valentine’s Day”) earthquake struck Christchurch, EQC had entered into a pilot arrangement with one private insurer, Vero. Under this pilot, Vero assessed a number of claims, on EQC’s behalf, that EQC’s and Vero’s mutual customers had made for earthquake damage from that event. Following on from that pilot, EQC decided that it would seek to adopt a similar approach for settling claims made to EQC for damage arising out of the Kaikōura earthquake. This sort of arrangement – by which a private insurer acts as EQC’s agent to assess and settle claims made by their mutual customer – is sometimes referred to as the “agency model”.
- 23 From EQC’s perspective, the Kaikōura earthquake provided an opportunity to further pilot the agency model. EQC and the private insurers could test how they could work together to deliver a better service to customers, in a manner that was more efficient and cost-effective from the perspective of both EQC and the private insurers. If a successful model was established, EQC and the private insurers could then discuss its use for future events.
- 24 From the day that the Kaikōura earthquake struck, EQC was in discussions with private insurers about the possibility of the private insurers acting as EQC’s agents in assessing and settling claims, eventually using a similar model to the pilot arrangement with Vero.

- 25 Establishing the approach and system for the Kaikōura agency model happened at speed. Within four weeks, EQC had negotiated and entered into a Memorandum of Understanding with eight private insurers to put the agency model into effect for Kaikōura earthquake claims. Only three private insurers with exposure to Kaikōura residential claims did not sign up to the Memorandum of Understanding. These insurers comprised only a small proportion of the market.

How did the model work?

- 26 The background to the Memorandum of Understanding records the objectives of the Memorandum and the circumstances that the parties faced at the time of its execution:
- a The parties wish to facilitate the provision of a good claim experience for people making contents and residential building insurance claims arising out of the Kaikōura earthquake event.
 - b EQC and the Insurers have together worked hard, in urgent circumstances, to identify a basis on which each Insurer can assess and settle EQC claims in order to achieve the objective of Background A.
 - c EQC and the Insurers each acknowledge that in the time available it has not been possible to resolve all operational issues relating to this Memorandum of Understanding. The parties agree to continue to work together in good faith and in a partnering spirit, with regular meetings, close and timely communication at a senior level and with a goal of identifying and resolving potential issues at the earliest opportunity.
 - d EQC and the Insurers have agreed that each of the Insurers will be appointed as an agent of EQC and will be responsible, on EQC's behalf, for lodging, assessing and settling certain claims arising out of the Kaikōura earthquake event on the terms and conditions set out in this Memorandum of Understanding which are legally binding on the parties.
- 27 Under the Memorandum of Understanding with private insurers, EQC remained responsible for assessing and settling any Kaikōura earthquake claims made to EQC for earthquake damage to:
- a residential land; and
 - b any residential building where an EQC claim remained open for that building from a previous earthquake.⁵

⁵ See clause 7.1, *Memorandum of Understanding relating to Kaikōura Earthquake Claims Management*, dated December 2016, https://www.eqc.govt.nz/sites/public_files/Memorandum%20of%20Understanding.pdf.

- 28 Otherwise, the participating private insurers assessed and settled, on EQC's behalf (and on their own behalf for any over cap claim), claims made by their respective customers for earthquake damage to residential properties from the Kaikōura earthquake.
- 29 EQC remained responsible for assessing and settling EQC's liability for those customers (comparatively few in number) whose private insurer did not enter into the Memorandum of Understanding.
- 30 In practical terms, the Memorandum of Understanding provided for each participating private insurer to act as EQC's agent and receive, assess and settle any residential building (and contents) claims that their customer had made. If the claim had been made directly to EQC in the first instance, the private insurer would assess the claim even though EQC first received it.
- 31 The private insurer would assess the claim in accordance with the Earthquake Commission Act 1993 and instructions and guidelines given by EQC to the private insurers from time to time. The private insurer would then cash settle their customers' claims by paying their customers the overall amount to which they were entitled under both the Act and the private insurer's policy. EQC would reimburse the private insurer for the private insurer's assessment of the amount for which EQC was liable under the Act and which had been paid to the customer. These arrangements applied even though the claim might be under the EQC cap.
- 32 As agents of EQC, the participating private insurers agreed to act as they normally would as professional managers of claims and in accordance with the Earthquake Commission Act 1993 and EQC's policies. But, although private insurers were acting as EQC's agent, EQC remained subject to its statutory obligations as a Crown entity.
- 33 There were also a number of matters that EQC needed to deal with, despite private insurers acting as EQC's agent, including:
 - a involvement in the wider government response;
 - b determining what EQC would recognise as a damage-causing event;
 - c determining what was and was not covered as part of the residential building cover under the Earthquake Commission Act 1993;
 - d determining what parts of a building EQC might cover where the building is not wholly residential;
 - e dealing with any overlap between residential building and residential land exposures; and
 - f fraud prosecutions.



- 34 The general scheme of the Memorandum of Understanding was as follows:
- a EQC appointed each participating private insurer to act as its agent for the purposes of receiving, assessing and cash settling any claims within the terms of the Memorandum of Understanding related to the Kaikōura earthquake;
 - b any insurer not already a party to the Memorandum of Understanding could, with EQC's consent, enter into it by signing a deed of accession;
 - c the Memorandum of Understanding was to remain in force until the processing of all claims was completed. However, any party could terminate its involvement without cause by giving 20 business days' notice, or EQC could terminate a particular private insurer's involvement immediately in certain cases of material breach;
 - d EQC was to provide the insurers with policies about how EQC applies the Earthquake Commission Act 1993. The insurers were entitled to rely on such policies;
 - e EQC was to make available to each insurer subject-matter experts and certain research and technical expertise to assist the insurer to assess and settle claims in accordance with the Earthquake Commission Act 1993;
 - f all settlements up to the EQC cap that an insurer paid to a customer within the terms of the Memorandum of Understanding were binding on EQC;
 - g once EQC received an invoice from the insurer for the cash settlement that the insurer made to the customer on EQC's behalf, EQC was to reimburse the insurer for the amount of that settlement, regardless of any subsequent view as to the validity of that settlement;
 - h each insurer would be entitled to be paid an agreed fee for each claim managed by the insurer in accordance with the Memorandum of Understanding;
 - i EQC was entitled to audit, observe, test or inspect an insurer's documents, records or data associated with the insurer's performance of claims management services or the Memorandum of Understanding. This was for the purposes of determining whether the insurer had complied with the Memorandum of Understanding and whether each claim had been dealt with in accordance with the Earthquake Commission Act 1993; and
 - j the private insurer would incur no liability to EQC for anything arising out of the Memorandum of Understanding so long as the insurer was reasonably operating within the scope of the Memorandum. In any event, the maximum amount for which an insurer would be liable for anything arising directly or indirectly out of the Memorandum was limited to \$1,000,000 in aggregate.

- 35 The claims that came within the scope of the Memorandum of Understanding were residential building and contents claims received either by EQC or the private insurer within three months of the Kaikōura earthquake event.⁶ However, certain claims were excluded from the scope of the Memorandum, namely:
- a all land claims;
 - b all claims relating to properties with prior EQC earthquake claims that were still open or otherwise unresolved (including all outstanding remedial claims, complaints and litigation from the Canterbury earthquake sequence); and
 - c part or all of any other claim or category of claim notified by EQC to an insurer.
- 36 The private insurers' key obligations under the Memorandum of Understanding were:
- a to act at all times with the degree of skill, care and diligence reasonably expected of a professional insurance claims manager providing insurance claims management;
 - b to act in accordance with the Earthquake Commission Act 1993, all other applicable laws and EQC's instructions in relation to the application of the Earthquake Commission Act 1993;
 - c to receive, assess and cash settle EQC contents and building claims for its own customers in accordance with the Earthquake Commission Act 1993;
 - d to act in good faith, considering EQC's interests so that claims are settled in accordance with the Earthquake Commission Act 1993;
 - e to identify vulnerable persons promptly after receipt of each claim and to prioritise claims for them. For these purposes vulnerable persons were defined as meaning a vulnerable person within the Human Rights Commission's vulnerability guidelines;
 - f to maintain full complete and accurate records relating to all claim assessment and settlement decisions and all other matters related to the Memorandum of Understanding;
 - g to report to EQC as requested from time to time in relation to any claims, the claims management process and any other aspect of the Memorandum of Understanding; and
 - h to manage its customers' claims prudently, in accordance with the Earthquake Commission Act 1993, and otherwise in accordance with the insurer's usual claims management practice from time to time.

⁶ The definition of Kaikōura earthquake event was varied to include any earthquake damage arising from earthquakes centred in and around Kaikōura through to and including 13 December 2017.

- 37 After some negotiation, EQC accepted the private insurers' resolute position that they would not accept liability for wrongful payments or over payment that they made of EQC claims (except in very limited circumstances).

How it was set up

- 38 Almost immediately after the Kaikōura earthquake occurred on 14 November 2016, EQC and some private insurers began exploring an agency model by which the private insurers would receive, assess and settle – on EQC's behalf – claims made for Kaikōura earthquake damage to residential buildings, regardless of whether the damage was under or over the EQC cap.
- 39 Initial discussions between EQC and at least one insurer took place on the day of the earthquake. Senior EQC management met with representatives of the Insurance Council of New Zealand the following day. The Insurance Council also raised the possibility that a wider agency approach could be adopted. During the month that followed, the Insurance Council worked as a conduit for the private insurers involved. Suggestions and proposals from the different private insurers concerned were coordinated by the Insurance Council so that EQC could (largely) deal with the private insurers as a single group (rather than having to conduct bilateral negotiations with each of them, except on issues of price).
- 40 From EQC's perspective, the Kaikōura earthquake provided an opportunity to pilot the agency model. EQC and the private insurers could test how they could work together to deliver a better service to customers, in a manner that was more efficient and cost-effective from the perspective of both EQC and the private insurers. If a successful model was established, EQC and the private insurers could then discuss its use for future events.

PROCUREMENT

- 41 Generally, Crown entities such as EQC are required to follow government procurement processes when looking for third parties to provide services, such as the claims management services that EQC was seeking from the private insurers under the agency model being negotiated. But, when there was a real imperative to get on with managing and settling customers' claims, having to follow those procurement processes would have unacceptably slowed progress on negotiating and settling the terms of the agency arrangement.
- 42 Applicable exceptions in government procurement policies allowed EQC to proceed, in the circumstances, directly with negotiating and settling the proposed memorandum of understanding with the private insurers (rather than having to go to tender for others to have the opportunity of providing those services). Those exceptions applied because, realistically, nobody but each participating private insurer could most efficiently provide the particular claim management services EQC sought in respect of settling the claims made by that private insurer's own customers.

NEGOTIATION PROCESS

- 43 In the week after the Kaikōura earthquake, EQC and private insurers including representatives from the Insurance Council of New Zealand worked on the possible parameters of a new agency model approach. The objective of the group was to ensure that insurance issues were managed in the most seamless fashion possible and that recovery from the Kaikōura earthquake was as fast as possible. At that time, the parties reached an agreement in principle on the broad framework of the agency model that would be adopted. Insurers were only interested in managing dwelling claims on behalf of EQC for cash settlements, not for a managed repair programme.⁷
- 44 A group was then set up to finalise a memorandum of understanding between EQC and the private insurers to provide for the new agency model. In addition, a more operationally-focused taskforce was established. That taskforce met weekly to progress operational issues and triggered some seventeen more detailed work streams. However, EQC negotiated bilaterally with each private insurer on price for the agency services they were providing (see paragraphs 60 to 64 below).
- 45 At its meeting on 29 November 2016, EQC's Board authorised EQC to enter into a final form of memorandum of understanding with each participating insurer, subject to a subcommittee of the Board recommending such approval. The Board also resolved under the Crown Entities Act 2004 to delegate to each participating insurer EQC's functions and powers required in connection with residential building and contents insurance claims settlement relating to the Kaikōura earthquake in accordance with the final form of the memorandum of understanding.⁸
- 46 On or about 13 December 2016, EQC entered into the *Memorandum of understanding relating to Kaikōura earthquake claims management*⁹ with most (but not all) of the private insurers. The Memorandum of Understanding was entered into with:
- a AA Insurance Limited;
 - b Farmers Mutual Group and FMG Insurance Limited;
 - c IAG New Zealand Limited;
 - d Medical Insurance Society Limited;
 - e QBE Insurance (Australia) Limited;

⁷ EQC Board Paper, *Coordination of EQC and Insurer Response*, dated 24 November 2016.

⁸ Ministerial consent to such delegations was already contained in the Minister of Finance's letter to EQC dated 28 March 2008.

⁹ See *Memorandum of Understanding relating to Kaikōura Earthquake Claims Management*, dated December 2016, https://www.eqc.govt.nz/sites/public_files/Memorandum%20of%20Understanding.pdf.

- f Tower New Zealand Limited;
- g Vero Insurance New Zealand Limited; and
- h Youi NZ Pty Limited.

47 Two insurers who provide residential cover did not sign up to the Memorandum of Understanding – Ando and Chubb.

What was excluded from the Memorandum of Understanding

48 The following are some key matters – operational and otherwise – that were not addressed in any real detail in the Memorandum of Understanding:

- a *Agreement as to price* – The Memorandum of Understanding did not set the price that EQC would pay each private insurer for the claim management services provided. Since the private insurers are in competition with one another, pricing was left to a separate bilateral negotiation process between EQC and each individual insurer to ensure compliance with the Commerce Act 1986. However, there was broad agreement that fees would represent cost-recovery. The basis for EQC paying claims handling fees to the insurers was to reimburse them for fees and marginal costs that they reasonably incurred while settling claims as EQC’s agent. EQC chose to carry out bilateral discussions with each insurer regarding the claims handling fees to ensure that appropriate competitive pricing existed between insurers, reflecting different insurer cost structures. The proposed insurer fees were reviewed by an external party (LSI Consulting) who concluded that the overall pricing seemed reasonable based on their industry experience;
- b *Steering Group* – The Memorandum of Understanding also provided for a Steering Group to be established, comprising senior executives of EQC and each insurer. The Steering Group was to be established as soon as reasonably practicable after the date of the Memorandum of Understanding and was to be led by an EQC representative. The purpose of the Steering Group was to:
 - i provide oversight of all aspects of the claims management process, with a view to ensuring that potential issues or differences were identified and resolved at the earliest opportunity; and
 - ii establish appropriate key performance indicators and a process for monitoring each insurer’s performance against those key performance indicators;
- c *Data sharing* – EQC and the private insurers agreed to develop and implement, as soon as reasonably practicable after the date of the Memorandum of Understanding, a mechanism for data sharing and storage, including historic settlement information where appropriate;

- d *Customer complaints* – EQC and the private insurers were also to establish, as soon as possible after the date of the Memorandum of Understanding, a protocol to address customer complaints setting out how complaints would be handled and the assistance that the insurers were to provide EQC in dealing with complaints.

What steps were taken to make the agency model work

- 49 The Memorandum of Understanding provided for appropriate training to be given to the private insurers. Under the Memorandum, the private insurers had to ensure that all personnel involved in receiving, assessing and cash-settling claims under the Memorandum completed and passed the training that EQC reasonably required from time to time.
- 50 During the first month after the Memorandum of Understanding was signed, EQC provided training to insurer representatives on a “train the trainer” basis. Those representatives were then responsible for rolling out this training within their own organisations.
- 51 Training was important to mitigate the moral hazard and conflict of interest inherent in the agency model, where private insurers are using EQC money to satisfy their customers. EQC’s protections against this risk (particularly given the insurers’ understandable refusal to accept liability for wrongful payment) were primarily two-fold:
 - a training; and
 - b rigorous real time audit and review.
- 52 The importance of training in safeguarding against incorrect payments is demonstrated by training being one of the very limited carve outs to the private insurers’ exclusion of liability under the Memorandum of Understanding. That is, EQC could not generally get the insurers to compensate it for an incorrect settlement decision as such, but EQC could do so if the decision had been made by someone who had not completed the training required by EQC.
- 53 The Memorandum of Understanding contemplated that EQC would provide the insurers with policies as to how it applies the Earthquake Commission Act 1993. Under the Memorandum of Understanding, insurers were entitled to rely on those policies for the purpose of acting in accordance with the Earthquake Commission Act 1993.

- 54 Initially following the set-up of the Memorandum of Understanding, EQC responded to a series of questions from various insurers regarding EQC cover and the assessment and settlement of claims. But it soon became clear that this mode of addressing and communicating on these issues across the eight insurers was ad hoc and inefficient. Accordingly, to provide all insurers with detailed information about its policies, EQC began developing an Insurer Manual.¹⁰ The objective of the Insurer Manual was to set out policies on how EQC applies the Earthquake Commission Act 1993 and how EQC expected its claims to be assessed and settled. The insurers were entitled to rely on the policies in the Manual (as amended from time to time) for the purpose of acting in accordance with the Earthquake Commission Act 1993.
- 55 EQC and the private insurers could not wait for the Manual to be completed before getting on with assessing and settling their customers' claims. As a result, the process of drafting the Manual occurred while EQC's and the private insurers' responses to the Kaikōura earthquake evolved.
- 56 To get as much information to the insurers as soon as reasonably practicable, EQC issued an Insurer Manual and relevant operational instructions in instalments. Different chapters of the Manual were rolled out over several months. Once published, the content of the Manual brought to light significant differences in some cases between EQC's approach to the Earthquake Commission Act 1993 (and its practices for assessing and settling claims) and that of the private insurers. However, once each chapter of the Manual was issued, its content allowed for a consistent approach to be followed both as between EQC and private insurers and as among the different private insurers.
- 57 Although some chapters of the Manual have ultimately not been completed, the chapters of the Manual that were completed helped to clarify for the insurers how the Earthquake Commission Act 1993 should be applied.
- 58 The Manual's effectiveness depended on it being a living document, complete, available and followed by insurers. However, EQC had no real visibility of the extent to which the insurers and their staff used the Manual. In addition, there were outstanding sections of the Manual awaiting finalisation of policy at EQC's end.

¹⁰ Earthquake Commission, *EQC Claims Manual for Insurers*, dated 28 September 2017, https://www.eqc.govt.nz/sites/public_files/images/Insurer%20manual%20-%201%2C3%2C4%2C5%2C6%2C7%2C8%2C9%2C10%20and%20Appendix%201%2029092017_0.pdf.

SUBJECT MATTER EXPERTS

59 The Memorandum of Understanding also provided for EQC to make available to each insurer (at no cost) a subject matter expert who would be the insurer's primary point of contact in relation to the Memorandum of Understanding. In addition, where EQC had other research or technical expertise that was not available to the insurers and that might assist in settling claims under the Memorandum of Understanding, EQC was required to make that information and research available to the insurers on request.

AGREEING A PRICE TO PAY EACH PRIVATE INSURER FOR ITS AGENCY SERVICES

60 As previously mentioned, EQC entered into separate bilateral negotiations with each private insurer who participated in the agency model to agree a price for the claim management services that the insurer was to provide to EQC under the Memorandum of Understanding. These arrangements had to be bilateral because competition law issues would have arisen if EQC and the private insurers had attempted to fix these prices multilaterally.

61 EQC would have lost bargaining leverage if each insurer had visibility over the prices that other insurers were (and were not) willing to accept in return for providing claim management services to EQC. Bilateral pricing negotiations ensured that appropriate competitive pricing existed between insurers.

62 Typically, EQC agreed to pay each private insurer a fee for each claim that the insurer assessed and settled on EQC's behalf. EQC also entered into an arrangement with each insurer to pay for some of the expert and other third party costs that the insurer incurred in assessing and settling the claim, with differing levels of payments based on whether claims were under or over the cap on EQC's liability.

63 Where a claim was over EQC's cap, both EQC and the private insurer would have some liability to the customer (EQC the under cap component and the private insurer the over cap component). It would therefore be appropriate in those cases for some level of cost sharing between EQC and the private insurer for expert and third party costs where both EQC and the private insurer would benefit from having the resulting reports from the expert or third party used to determine their respective liabilities to the customer.

64 The fee arrangements that EQC reached with each private insurer were not set in stone. Some private insurers sought to revisit the level of fees initially agreed, based on their experience with the Kaikōura earthquake.

REIMBURSING PRIVATE INSURERS FOR CASH SETTLEMENTS MADE ON EQC'S BEHALF

- 65 Under the Memorandum of Understanding, the private insurer was required to provide an invoice to EQC once it had cash settled a customer on EQC's behalf. Once EQC received that invoice, the amount of the cash settlement became a debt due from EQC to the private insurer. EQC was required to pay that invoice within five business days of the insurer:
- a making the payment; and
 - b confirming to EQC that the payment had been made, including with an accompanying tax invoice.
- 66 In addition, the Memorandum of Understanding provided for EQC and the private insurers to work together to develop and agree, as soon as reasonably practicable after the Memorandum was signed, a payment process. This process was designed to facilitate smooth handling of settlement payments consistent with the private insurers' and EQC's internal requirements. This was in turn to ensure that the private insurers' balance sheet liabilities in relation to settlement payments were removed.
- 67 The system that EQC and the private insurers had agreed for payment by EQC of the private insurers' fees (usually on invoice and within five working days) generally worked well. There were some delays by insurers in invoicing EQC for the services they had provided. One insurer was in the middle of an internal system switch-over when the Kaikōura earthquake struck. As a result, its staff had to develop familiarity with their own new system and then adapt that system to add the particular features required for EQC invoicing. Unexpected delays by insurers in invoicing EQC meant that EQC received large numbers of (from its perspective) unexpected invoices in the latter stages of the event response. This hampered EQC's ability to effectively forecast its future cash-flows.

CLAIM CLOSURE

- 68 Private insurers were not entitled to invoice EQC under the agency model until it had settled a claim. Once the settlement payment had been made to the customer, EQC had reimbursed the private insurer for that payment, and paid the agreed fees for the claim to the private insurer, EQC could close the claim on its system.

PERFORMANCE MEASURES

- 69 There was insufficient time during the negotiation of the Memorandum of Understanding between EQC and the private insurers for any detailed performance measures to be developed and agreed. In any event, meaningful performance measures could not readily be identified until EQC and the private insurers had worked through in more detail how to operationalise the agency model that had been developed. Nor could realistic performance measures be set until EQC and the private insurers had a clear idea of how many claims overall had been lodged for the Kaikōura earthquake. The total number of claims could not be known until after the three-month claim lodgement period had passed and after all of the private insurers had advised EQC of how many claims had been lodged directly with them.
- 70 At a high level, the Memorandum of Understanding addressed performance measures for the private insurers in the following ways:
- a each insurer was to provide EQC with its internal reporting against key performance indicators relating to the insurer's performance of claims managed under the Memorandum of Understanding; and
 - b EQC was given extensive audit and assurance rights for the purposes of determining whether a private insurer had complied with the Memorandum of Understanding and whether each claim dealt with by an insurer had been settled in accordance with the Earthquake Commission Act 1993.
- 71 However, the Memorandum of Understanding did not otherwise contain any particular set of performance measures.
- 72 Progress on developing a set of performance measures was slow. A final set of measures was agreed between EQC and the private insurers in August 2017. However, by this time, at least one insurer had largely completed all its settlements on EQC's behalf.

73 The success factor metrics that were ultimately agreed were as follows:

Key Success Factor	Performance Measure Target
1. EQC and its agents are easy to do business with	<ul style="list-style-type: none"> 60% or higher for overall customer satisfaction (TNS Survey)¹¹
2. Calculate and resolve entitlements correctly, on time and in accordance with the Earthquake Commission Act 1993	<p>EQC and Insurer Managed Claims</p> <ul style="list-style-type: none"> 90% of building claims assessed by 14 November 2017 99% of building claims assessed by March 2018 75% of building claims have received settlement by 31 December 2017 95% of building claims have received settlement by March 2018 99% of contents claims settled by September 2017 <p>Vulnerable customers</p> <ul style="list-style-type: none"> 99% of vulnerable customers have received entitlement by end of October 2017
3. Effective management of customer disputes	Less than 1% of customer complaints are upheld through the agreed external complaints process
4. EQC maintains a safety and quality focused working environment over this event	<p>The following targets are met:</p> <ul style="list-style-type: none"> 100% of identified assurance issues are remediated within the agreed timeframes Less than 10% of reopened claims have an additional building payment made due to assessment inaccuracy 90% of health and safety incidents are identified in monthly reports closed out within 30 days.

KAIKŌURA ASSURANCE PROGRAMME

74 In early 2017, EQC initiated the Kaikōura Assurance Programme. The purpose of this programme was to ensure compliance with the Earthquake Commission Act 1993 and with the Memorandum of Understanding. EQC carried out its Kaikōura Assurance Programme in three phases.

- 75 Phase one occurred during 2017. EQC undertook a claim file review for each of the eight private insurers who were party to the Memorandum of Understanding in addition to EQC’s Hamilton office. The claim file review aimed to sample 10% of the claims for which insurers had charged EQC a processing fee. EQC provided a report to each of the private insurers on the findings of the claim file review. The report detailed the deficiencies identified and sought the private insurer’s feedback and agreement on the points raised.
- 76 Phase two was completed in 2018. This involved further claim file reviews by EQC (on a sample basis) of claims managed by the private insurers to allow some degree of checking underlying assessment amounts.¹² Three categories of errors in claim settlements were identified:
- a factual errors – where payment was made for items not covered by the Earthquake Commission Act 1993 or where calculation or transposition errors were made in settlement;
 - b assessor judgement – where EQC’s assessor disagreed with the assessment conducted by the insurer’s assessor or their employed third party; and
 - c insufficient evidence – where the insurer failed to provide sufficiently clear evidence in terms of photographs or details on invoices, quotations or settlements, to enable EQC to determine if the claim had been appropriately settled.
- 77 The Kaikōura Steering Group decided no further review was necessary in respect of assessor judgement and insufficient evidence. The Steering Group determined that difference in opinion between assessors was always likely, even where EQC managed all claims. However, the information gathered could be used to refine training materials for the future.
- 78 Based on the results of the phase two claim file review, the Kaikōura Steering Group requested a third phase of review testing to be undertaken, focusing on identifying factual errors only.
- 79 Testing for phase three was completed by February 2019 and reports were issued to all private insurers except Youi. Overall, there was an improvement in the rate of factual errors from phase two. In the end, all insurers agreed to provide EQC with a credit note for the exceptions identified during the phase three testing.
- 80 As at May 2019, EQC was working to formally close phase three of the Kaikōura Assurance Programme. Each private insurer was sent a letter seeking the insurers’ confirmation that they had taken appropriate actions to address exceptions found in the phase one and two testing of the Kaikōura Assurance Programme.

¹¹ Note that EQC’s 2017-18 Statement of Performance Expectations (which was finalised before these measures were agreed) set this target at 75%. See, *Earthquake Commission (2017). Statement of Performance Expectations 2017-18*, page 9. https://www.eqc.govt.nz/sites/public_files/documents/SPE%202017-18%20Final.pdf

¹² See EQC Audit and Risk Committee Paper, *Kaikōura Assurance Programme*, dated 6 November 2018.

- 81 These letters are intended to provide assurance to EQC and its auditors that:
- a the insurers have complied with the Memorandum of Understanding; and
 - b appropriate governance and processes has been in place to ensure compliance with the Earthquake Commission Act 1993.
- 82 In addition, private insurers provided internal system audit quality assurance reports to EQC, but only after significant delays in agreeing the content and format of this reporting. As a result, the delays meant that any issues identified became of reduced value because insurers had sometimes implemented improvements on their own initiative or just changed processes by the time EQC reviewed the reporting provided.

What were the challenges of the agency model?

DIFFERENCES BETWEEN EQC AND PRIVATE INSURANCE COVER

- 83 The extent and amount of cover provided under the Earthquake Commission Act 1993 for contents generally mirror the extent and amount of cover provided under the corresponding private insurance policy for fire.¹³ The work that the private insurers would need to do to assess and settle claims made to them by their customers for earthquake damage to contents was little or no different from what would be required to assess the claim made to EQC for the same damage.¹⁴ Limited training was required for private insurers on contents cover.
- 84 By contrast, there are significant differences in the nature, extent and amount of cover provided under the Earthquake Commission Act 1993 for residential buildings when compared with private insurance policies which EQC needed to provide training on for private insurers. The key differences are explained below. There was also bespoke training on particular topics (such as declining claims).

¹³ Contents are deemed to be insured under the Earthquake Commission Act 1993 either for their replacement value (if they are so insured under the underlying contract of fire insurance) or, if they are insured against fire on any less favourable basis, on that less favourable basis. The amount to which contents are deemed to be insured under the Earthquake Commission Act 1993 is \$20,000 (excluding GST) or (if they are insured against fire to a lesser amount) a lesser amount.

¹⁴ One minor difference is that schedule 2 of the Earthquake Commission Act 1993 provides that various items (such as jewellery and works of art) are not insured under the Earthquake Commission Act 1993. These kinds of items are generally covered by private insurance policies (albeit sometimes subject to certain monetary limits).

- 85 A key difference is the type of cover provided by EQC and private insurers. The Earthquake Commission Act 1993 provides for residential buildings to be insured against natural disaster damage for their replacement value (as defined in the Earthquake Commission Act 1993). By contrast, some private insurance policies provide cover for residential buildings on a replacement value basis, while others provide insurance for residential buildings only on the lesser indemnity value basis. Indemnity value is the value of the item immediately before loss or damage, taking into account its age and condition and therefore its likely remaining life.
- 86 In addition, private insurance replacement value policies are costs incurred policies – that is, the cost of rebuilding or repairing the building to replacement value is not payable until the insured person incurs that cost. By contrast, the EQC entitlement is payable irrespective of whether the customer incurs the cost of rebuilding or repairing the building.
- 87 Accordingly, the nature and the extent of the insured loss that needs to be assessed and quantified can differ between the Earthquake Commission Act 1993 and a private insurance policy.
- 88 Another key difference is that the Earthquake Commission Act 1993 provides for residential buildings to be insured against natural disaster damage to a monetary limit (known as cap, usually, but not always, \$100,000 excluding GST). Private insurers’ assessors would not always be familiar with the detail of these limits and how they are determined.
- 89 A final key difference is that residential building cover under the Earthquake Commission Act 1993 captures only those assets that come within the definition of residential building in the Act (and excludes various assets specified in schedule 2 of the Act). The result is that some kinds of property – such as driveways, fences and swimming pools – may be insured only (if at all) under the private insurance policy and not under the Earthquake Commission Act 1993. Again, not all private insurers’ assessors would necessarily be familiar with the finer details of these exclusions.

LODGING CLAIMS

- 90 One early difficulty that arose was around lodging claims. Customers were able to lodge claims with either EQC (initially) or with their private insurers (once the Memorandum of Understanding was signed). While providing a range of lodgement options can make it easier for customers to make claims, the dispersion of responsibility for receiving the claims made it more difficult for EQC and the private insurers to keep track of which customers had made claims and how many claims had been made overall.
- 91 Under the Earthquake Commission Act 1993, a customer must give notice to EQC that natural disaster damage has occurred to their insured property in order to have a valid claim. The customer must give that notice within three months of the natural disaster damage occurring.¹⁵

¹⁵ See schedule 2, clause 7(1), Earthquake Commission Act 1993.

- 92 The Earthquake Commission Act 1993 provides for EQC to appoint other persons (such as private insurers) as EQC's agent for the purpose of receiving a notice of claim. In practice, however, it may be some time after a natural disaster event occurs before EQC is in a position to decide whether it is appropriate – given the circumstances of that particular natural disaster – to appoint other persons as its agent for claim notification purposes (rather than retain the default position of having customers contact EQC directly).
- 93 If the private insurers were to take the lead in receiving, assessing and settling claims for earthquake damage following a particular earthquake, customers would ideally lodge their EQC claims directly to their private insurer. That way, the private insurer could get on with assessing the claim straight away (rather than having to wait for EQC to pass on to the private insurer a claim that the customer had made directly with EQC). However, until EQC and the private insurers had in fact concluded an agency arrangement, customers could not sensibly be asked to lodge their claims to their private insurer (rather than to EQC), in case it turned out that no agency arrangement could in fact be agreed.
- 94 In the case of the Kaikōura earthquake (which occurred on 14 November 2016), EQC and the private insurers were able to negotiate and finalise the Memorandum of Understanding by 13 December 2016. From that point onwards, customers could be (and were) told to give notice of their claims to their private insurer. However, there was still a period of one month between the earthquake and the date when the Memorandum of Understanding was signed during which there was no alternative but to have customers give notice of their claims to EQC directly.¹⁶

DIFFICULTIES IN ESTABLISHING THE OVERALL NUMBER OF CLAIMS

- 95 One disadvantage of initially having multiple points of contact for giving notice of claims was that none of the parties involved had any certainty about exactly how many claims had been made until some time after the three-month window for giving notice of a claim had expired.
- 96 EQC knew how many claims it had received directly, but it could not know how many claims each of the private insurers had received (or the geographical distribution of those claims) until the private insurers gave EQC those details. There were delays in receiving this information from some of the private insurers. The absence of full and complete information about the number and geographical distribution of claims diminishes the ability to identify the most optimal overall plan for dealing with all the claims that come in.
- 97 To facilitate the electronic transfer of information such as claim numbers (in an agreed and usable format) between EQC and private insurers a meta-data standard agreement is required.

¹⁶ Customers could still, if they wished, give notice of their claim directly to EQC, even where their claim was to be managed under the Memorandum of Understanding by their private insurer. In that case, EQC would pass details of the claim on to the relevant private insurer.

98 There were also cases where a single customer had made a claim with both EQC and with the private insurer. This situation led to duplicate claims that needed to be identified so that the duplicate could be closed and a single claim left to be progressed. The presence of duplicate claims meant that it was not possible to establish the overall number of claims until all the duplicate claims were identified (see paragraph 104 below).

DIFFICULTIES IN DATA EXCHANGE

99 Another practical issue that had to be worked through was the sharing and exchanging of customer and claim data between EQC and the relevant private insurer. The difficulties discussed above in dealing with claim lodgement data is one (and an early) example. But even once EQC and the private insurer had established that their mutual customer had made a claim, sharing and exchanging data on any given claim could be difficult.

100 For the Memorandum of Understanding to work optimally, EQC and each private insurer would need to exchange claim information about their mutual customer. The Memorandum therefore provided for EQC and the private insurers to develop and implement a mechanism for data sharing and storing, including the sharing of historic claim information where EQC considered that appropriate.

101 However, data exchange became a significant problem. Three particular issues arose:

- a there were eight private insurers, some with multiple data systems, who needed to exchange information with EQC on customer claims;
- b there was no fully unique customer identification system; and
- c EQC's data requirements differed from insurer data capture and transferability.

102 EQC and each private insurer had its own computer system for managing claims. Since the systems were different, it was not easy for data to be readily exchanged between EQC and the private insurer.

103 Exchanging data also requires EQC and the private insurer to identify that they are in fact exchanging data about the same claim or customer. But there were no unique identifiers attached to each customer or claim that would make for easy and confident confirmation that EQC and the private insurer had identified the same person as their customer. Instead, they would need to look at details such as names and street addresses to try to work out whether they were indeed exchanging data about the same customer and claim.

- 104 The absence of any unique customer identification system also meant that it was difficult to identify and work through duplicate claims. By late November 2018, there still remained 4,000 duplicate claims that had to be worked through. The existence of these duplicates delayed resolution for a small number of customers and created some uncertainty for customers about whom they were supposed to be dealing with (EQC or the private insurer). It also meant that the true number of claims overall could not be known until all the duplicate claims were identified.
- 105 In addition, EQC and each private insurer would capture different information about a claim and their customers. For example, EQC historically looked to capture data about chimney damage for its customers, in part because knowing that a customer's chimney had been damaged might indicate a need for urgent works to re-establish a heating source over winter. By contrast, not all private insurers looked to capture information about chimney damage when first dealing with their customer. The end result was that, if the private insurer was primarily dealing with the customer, the insurer might focus on capturing information that the private insurer would find helpful without also seeking information that EQC needed (or vice versa).
- 106 EQC's Risk and Assurance team was unable to automate their assurance programme as the underlying data was not well structured. Therefore, for auditing purposes, the team often had to individually inspect claim files, rather than being able to rely on running an automated report.
- 107 When claims were completed, private insurers agreed to provide details of the work they had undertaken. However due to systems not being able to exchange this data, EQC received scanned PDFs. This meant that for EQC to audit and review claims, staff needed to open each document individually.
- 108 The agency model underlined the fact that data exchange between EQC and private insurers remains a big issue. Data flows happened at various stages of a claim life cycle (from lodgement, to assessment, to settlement). The lack of clarity about data requirements at an early stage of the information sharing process slowed down the sharing at all later stages.

PRIVACY ISSUES RELATED TO THE SHARING OF PERSONAL DATA BETWEEN EQC AND PRIVATE INSURERS

- 109 Two main issues arose in respect of the Privacy Act 1993:
- a EQC's provision of previous claim information relating to customers with a current claim; and
 - b whether there were any limitations on how the private insurers (acting as EQC's agents) could use new information that they gained in that capacity.

- 110 Initially, EQC took a conservative position around providing previous claim information when requested by a private insurer, generally doing so only where EQC expressly had the customer's authority or EQC was comfortable that there were grounds under the Privacy Act 1993 for disclosing the information. In time, an information-sharing provision was included in claim letters to customers, which allowed for a greater sharing by EQC of previous claims information, where appropriate.
- 111 Private insurers appeared to take the view that they were entitled to use information that they had seen in their capacity as an agent for EQC more widely in their own relationship with their customer, particularly, for example, for underwriting purposes.
- 112 Issues regarding the collecting and exchange by EQC of information for the purposes of (among other things) facilitating settlement of insurance claims by private insurers have now been addressed under amendments made in the Earthquake Commission Amendment Act 2019.¹⁷

PRICING THE COST OF REPAIRING CUSTOMERS' HOUSES

- 113 A pricing issue that arose out of operationalising the Memorandum of Understanding related to pricing the cost of repairs for the purpose of quantifying customers' claim entitlements and what level of consistency it might be appropriate to bring to this exercise across the different private insurers.
- 114 To quantify or price the cost of repairing earthquake damage, it is usual to first identify a raw cost of repair. In other words, an assessor identifies the particular line items of work that is required to repair the damage to the required standard and then establishes a cost for each line item (usually by applying an established set of rates for particular types of work). Once this raw cost of repair is identified, the total cost of repairing the earthquake damage is assessed by adding on additional sums to allow for (a) preliminary and general costs, (b) builder's margin, and (c) GST.
- 115 While GST is fixed, reasonable minds can differ about how to quantify preliminary and general costs and the builder's margin. Preliminary and general costs can cover a range of matters such as furniture removal to enable repairs, equipment hire, or site cleaning. In some cases, it may also be appropriate to add a contingency to allow for any unexpected work that may need to be done in repairing the earthquake damage. Again, reasonable minds can differ about when it is appropriate to add a contingency and, if it is, what amount to allow for it.

¹⁷ See section 31A, Earthquake Commission Act 1993, as inserted on 19 February 2019 by section 5 of the Earthquake Commission Amendment Act 2019.

- 116 Different insurers had different practices in terms of pricing the raw cost of repair and quantifying preliminary and general costs, builder's margin and contingencies. As a result, there was the potential for customers to receive differing EQC entitlements for essentially the same damage, solely depending on which insurer was managing their claim. EQC made an early decision not to provide rates or solution guidance to the private insurers, which would have been likely to result in more consistent pricing practices. Instead, EQC intended to rely on each insurer's own expertise in the relevant areas.
- 117 In late 2017, EQC tested the extent to which there might have been any material variance in the repair solutions and rates used by different insurers participating in the agency model by circulating some trial scopes of works for the insurers to cost. This limited trial showed small variations in the cost of cosmetic repair solution but larger variations for more structural components. There may be a case for EQC to provide more guidance in future events to private insurers on what EQC considers to be a reasonable rates range for different types of repair work.

DEALING WITH URGENT WORK

- 118 After an earthquake of any significance, some customers may need to have urgent work carried out to make their homes safe, sanitary, watertight and habitable before permanent repairs can be carried out. Historically, EQC has usually looked to meet the cost of such urgent work – as part of a customer's eventual insurance entitlement under the Earthquake Commission Act 1993 – as soon as reasonably practicable. That way, the customer's home can be made safe and comfortable for occupation, even if it will be some time before permanent repairs can be effected or paid for as part of EQC's settlement.
- 119 It is also appropriate to stipulate a monetary limit on the amount of urgent work that customers can carry out for themselves without prior approval from the insurer. Setting such a limit reduces the risk that EQC might be asked to pay for urgent work that may in fact be more extensive (or expensive) than what is actually required.
- 120 However, reasonable minds can differ over what work truly counts as urgent in this context. Reasonable minds can also differ over what monetary limit should be placed on the amount of urgent work that customers may arrange without prior approval.
- 121 In practice, some insurers and customers sometimes took a liberal view of what was urgent, with private insurers paying for some urgent work that EQC may not have approved if it had been managing the claims. However, it has been difficult to discern any material difference in the approach taken to urgent work as between EQC and the private insurers (and as among the private insurers themselves) in the context of the Kaikōura earthquake, for two reasons.
- 122 First, it would not have been appropriate to spend time trying to agree a common approach to urgent works given that urgent works are, by definition, urgent. Second, relatively few homes out of the 40,000 or so affected by the Kaikōura earthquake sustained damage that was sufficiently severe to require urgent work to be carried out.



CONFUSION REGARDING EQC VERSUS INSURER MANAGED CLAIMS

- 123 There were a number of Kaikōura earthquake claims where there was confusion between EQC and private insurers about who was responsible for managing the claim. In some instances, claims were pushed back and forward between parties on grounds of scope.
- 124 Examples included where:
- a the insurer lodged a claim;
 - b the insurer then found out that there were pre-existing unresolved claims relating to the property and sent the claim to EQC;
 - c EQC then checked the relevant records and discovered that the “unresolved” previous claims had in fact been settled; and
 - d EQC would then pass the claim back to the insurer to progress.
- 125 This administrative confusion led to tension between the parties that affected the customer, delaying settlement activity and providing mixed communication of the management of the claim.
- 126 Establishing clear roles, responsibilities, administrative processes and access to information would have mitigated a lot of confusion and supported better outcomes for customers.

AUDIT AND QUALITY ASSURANCE

- 127 The Memorandum of Understanding provided that EQC could at any time and on reasonable notice to the insurer audit the insurer’s documents for the purposes of determining whether the insurer had complied with the Memorandum of Understanding and whether each claim managed by the insurer had been dealt with in accordance with the Earthquake Commission Act 1993.
- 128 EQC’s initial expectations were that private insurers would report on their internal quality assurance processes and internal audits and that there would be limited file sampling with full document access if required. This was so that EQC could confirm that the insurers were approaching claim settlement in line with EQC’s expectations. However, data flows from the private insurers were initially limited. As a result, EQC’s quality assurance testing was largely restricted at first to reviewing how private insurers were dealing with claim lodgement and final payments, without reviewing the assessment and settlement stages of claims.

- 129 EQC’s audit expectations did not align with those of private insurers, who generally expected a less intensive review more along the lines of what reinsurers would do. Ideally, audit expectations would have been agreed between EQC and the private insurers in more detail up front. But there were limits to the level of detail that could be agreed in the first few weeks after the Kaikōura earthquake when the Memorandum of Understanding was being negotiated and finalised.
- 130 In practice, it proved difficult for EQC to carry out robust auditing of the private insurers’ assessments and settlements in a timely way. Both EQC and the private insurers were anxious to ensure that good progress was made in terms of completing assessments and settlements of customers’ claims. In reality, a significant number of claims would inevitably have been assessed and settled before any detailed auditing could be carried out.
- 131 While performance measures were ultimately agreed with the private insurers, it took time. This may have been a reflection of the lack of clarity for private insurers around EQC’s policies, procedures and processes in the initial stages. EQC had anticipated more extensive (and earlier) performance and progress reporting from insurers than in fact occurred. As a result, EQC was unable to accurately judge (and report on) the private insurers’ progress and performance.

HEALTH AND SAFETY

- 132 The Memorandum of Understanding provided that each insurer was responsible for all aspects of health and safety for its personnel (including its employees, contractors and subcontractors, agents, external consultants and co-opted or seconded employees). EQC and the private insurers had a collective goal of “zero harm” in the provision of services under the Memorandum of Understanding.
- 133 For various reasons, EQC was slow to provide clear health and safety expectations to insurers, with initial guidance being issued only in February and March 2017, and revised templates in May and June 2017. For some insurers and many claims, this guidance arrived after the main situations giving rise to health and safety risks had been worked through.
- 134 That said, the cash settlement model meant that health and safety obligations were generally relevant only in terms of the private insurer’s initial on-site inspection and any emergency repairs that the private insurer arranged. These exposures were likely to have been no more than the private insurers would have faced carrying out their role in any event.

The customer experience of the Kaikōura earthquake

Communications between customers and insurers

- 135 One potential element for confusion in insurers' communications with customers when dealing with their Kaikōura earthquake claims arose out of the fact that they were potentially acting in two separate capacities at the same time. On the one hand, the private insurer was acting as EQC's agent in assessing and settling the EQC aspect of the customer's building or contents claim. On the other hand, the private insurer was also acting – in some cases – in its own capacity, where it was having to assess and settle any over cap building or contents claim the customer had with the private insurer and any claim the customer had for items of property that the private insurer (but not EQC) covered.
- 136 It was important to EQC that the private insurers – whenever communicating with the customer – made clear what they were assessing and settling on EQC's behalf and what they were assessing and settling under their own policy. To that end, EQC had some input into the communications that the private insurers sent to their customers.

EQC'S INPUT INTO INSURER COMMUNICATIONS

- 137 The Memorandum of Understanding provided that EQC had to give its prior approval to all customer templates and other communications referencing EQC or in any way relating to claims, as well as to any use by the private insurer of EQC's logo.
- 138 As part of the Insurer Manual, EQC developed some template communications for insurers to use when communicating with customers about the assessment and settlement of the customer's EQC claim. The objective behind these templates was to ensure that settlement of EQC claims was approached (and explained to customers) in a relatively consistent way across the private insurers.
- 139 EQC also reviewed and provided feedback to some of the private insurers on settlement collateral that they prepared for their own customers with Kaikōura earthquake claims. The aim was to ensure that communications from private insurers made it clear which part of a settlement related to cover provided by EQC and which related to their private insurance, and to ensure consistency with EQC's Insurer Manual.

- 140 In July 2017, EQC and the Insurance Council of New Zealand (acting on behalf of the private insurers) put together a “frequently asked questions” document for customers with insurance claims from the Kaikōura earthquake.¹⁸ The questions and answers in this document covered some of the most common questions that customers had about assessments, settlements, what happened after settlement, private insurers acting as EQC’s agents, timeframes and customer care.

Community Engagement

- 141 Private insurers and EQC worked closely with local authorities in the most affected regions to ensure any insurance related issues were addressed. EQC and private insurers were also active participants in local community meetings and information clinics, and they engaged in many forums where residents could have one-on-one discussions with their insurer or EQC about their claims.
- 142 The day following the earthquake EQC organised three teams of staff to rotate into the most impacted areas of Ward, Waiau and Kaikōura to help customers lodge claims, provide information and answer EQC-related questions. The intention was to try and understand the needs of local residents through community meetings, and drop-in centres. Later on in the recovery, community forums were held during February and May 2017 in Kaikōura, Waiau, Ward, Seddon and Kekerengu.
- 143 In July 2017, EQC attended a community event in Cheviot, hosted by the local council. Residents were able to ask questions about their insurance claims face-to-face with EQC and private insurers. EQC also held a session with the Earthquake Navigators from the Hurunui area. The Earthquake Navigators were appointed by local councils to help affected residents find the right support for issues relating to buildings, healthcare or insurance.
- 144 Insurers and councils were complimentary of EQC’s proactive and early engagement with affected communities. EQC arranged a series of community meetings also attended by council and insurer staff and facilitated information flows and dialogue. Since rural areas were particularly affected, face-to-face meetings were particularly important. Initially, EQC met weekly with council staff.

¹⁸ See the *Frequently Asked Questions on Kaikōura Claims* on EQC’s website:
<https://www.eqc.govt.nz/recent-events/kaikōura-earthquake/faqs-on-kaikōura-claims>.

Customer satisfaction

- 145 An external review of claims settlement effectiveness for the Kaikōura earthquake considered customer satisfaction under the agency model, albeit there were limitations in the data considered for that report.¹⁹ In summary, on average, customers felt significantly more satisfied than was typical for other EQC managed events, and when compared with EQC's self-managed claims for the Kaikōura earthquake. However, there were differing satisfaction levels across the different private insurers and one large insurer's satisfaction levels were close to EQC's on most dimensions.
- 146 The average results were high by historic EQC standards and above the targets agreed for the Kaikōura earthquake. Interestingly, while private insurers were perceived as treating customers more fairly than EQC, EQC was generally seen as exceeding customer expectations more than most of the private insurers.
- 147 An earlier report by the same external reviewers also looked at the customer experience. In their view, the clear feedback from interviewees was that the reduction in contact points (that is, having to deal only with the private insurer, not with both the private insurer and EQC) was favourably received by customers and that customers were happy to deal with their private insurer.²⁰
- 148 However, long delays in data reconciliations between EQC and the private insurers reduced this overall outcome. In addition, there were multiple contact points for many customers with land claims, because they had to deal with EQC for the land claim, and separately with their private insurer for any building claim, contents claim or out-of-scope elements.
- 149 The multiple contact points for land claims (affecting around 20% of customers) and the complexities in potential building repairs where the land had been damaged led to an almost unanimous conclusion from those interviewed that, in future events, land and building claims should be managed by a single party.
- 150 The need for coordination where there are both residential building and residential land exposures to be assessed and settled is addressed above (see paragraphs 187 to 192 below).

¹⁹ Acuo, *External Review of Response to the Kaikōura November 2016 Earthquake: Stage 3: The Effectiveness of Settled Claims (12 December 2016 – March 2018)*, May 2018, paragraph 4.2 (report #37 in Appendix 1, *Briefing to the Public Inquiry, External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

²⁰ Acuo, *External Review of Response to the Kaikōura November 2016 Earthquake: Stage 2: Operationalising the MoU (12 December 2016 – November 2017)*, December 2017 (see under report #37 in Appendix 1, *Briefing to the Public Inquiry, External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

Vulnerable customers

- 151 The Memorandum of Understanding contained a provision requiring each insurer to identify whether a customer was a vulnerable person and to prioritise claims for vulnerable persons. Vulnerable persons means a vulnerable person within the Human Rights Commission's Vulnerability Guidelines, which was what EQC uses for the prioritisation of vulnerable customers.
- 152 In practice, it was unclear whether vulnerable customers were identified. There does not appear to have been a fully shared final list of vulnerable customers. While each insurer and EQC informed others and at times cooperated, internal processes seem to have driven actual triage of customers. However, the number of significantly affected customers was relatively low, which may account for the loose coordination.

Initial results of the model

- 153 In general, customer satisfaction appeared acceptable in terms of the substance and progress of claims being settled using the agency model (see paragraphs 145 to 150 above). As at 30 June 2018, the private insurers had 770 outstanding claims from the Kaikōura earthquake and EQC (for claims it was managing itself) had 78 – a total of 848. By October 2018, 461 of those 848 claims across both EQC and private insurers had been settled, leaving 407 outstanding claims on hand.²¹
- 154 As at 30 April 2019, 99% of EQC claims for the Kaikōura earthquake have been settled, and 190 claims remain with private insurers (a mix of first time open claims and re-opened claims).²²

GENERAL OBSERVATIONS ON SPEED OF SETTLEMENT

- 155 The proportion of claims settled during the first nine months after the Kaikōura earthquake varied significantly between the private insurers participating in the agency model. However, that variation reduced over time.
- 156 Overall the rate of claim settlement for the Kaikōura earthquake compared well to historic events of somewhat similar size when managed by EQC.²³ However, the lag in getting underway left overall progress behind that achieved by EQC for the Canterbury Valentine's Day, February 2016 earthquake.

²¹ A small number of Kaikōura claims were re-opened after 30 June 2018. As at 31 October 2018, EQC had three re-opened claims and private insurers reported 156 re-opened. As at 31 December 2018, 183 Kaikōura claims (16 for EQC and 167 for private insurers) had been re-opened after 30 June 2018, of which 168 (92%) had been settled.

²² EQC Board paper, *Claims Settlement Update*, dated 14 June 2019.

²³ The rate of claim settlement was compared with the 2013 Seddon earthquakes and the February 2016 Canterbury earthquakes in the Acuo, *External Review of Response to the Kaikōura November 2016 Earthquake: Stage 3: The Effectiveness of Settled Claims (12 December 2016- March 2018)* (May 2018), paragraph 4.5.2. (report #37 in Appendix 1, *Briefing to the Public Inquiry, External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

157 While the Valentine’s Day, February 2016 earthquake also suffered from a slow start, as a more end-to-end claim management model was adopted, EQC was able to make overall progress on claim settlement faster than the Kaikōura earthquake. A factor in the slower completion for the Kaikōura earthquake may have been the scale of the event, as it had more than double the claims. In addition, many of the properties affected in the Kaikōura earthquake were relatively isolated.

158 The scale of operations meant that some small insurers could scale up to complete their claims quickly, whereas larger insurers needed time to assemble and deploy their large teams. In addition, the isolated location of some affected properties and the constrained resource pool of expert assessors and engineers lengthened the response time.

SOME DATA ON SPEED OF SETTLEMENT

159 As at 31 May 2017, over 40% of the Kaikōura building and land claims managed by EQC or the private insurers had had their initial assessment completed, and 21% of those claims had been settled.

160 EQC and the insurers focused on assessing the hardest hit communities within Marlborough, Kaikōura and Hurunui first. As at 31 May 2017, 55% of initial building assessments in Marlborough had been completed, 75% in Kaikōura and 50% in Hurunui.

161 EQC’s website reported EQC’s and the private insurers’ combined progress on assessing and settling claims arising out of the Kaikōura earthquake as follows²⁴:

	Building claims – initial assessment	Building claims – settled
30 June 2017	over 51%	28%
31 July 2017	62%	34%
31 August 2017	80%	45%
30 September 2017	87%	54%
31 October 2017	91%	65%
30 November 2017	96%	74%
31 January 2018	98%	88%
28 February 2018	98%	93%

²⁴ Earthquake Commission, *Progress and Updates*, <https://www.eqc.govt.nz/recent-events/kaikoura-earthquake/progress-and-updates>

- 162 Inevitably, there is a tail of more difficult or complex claims that take longer to settle and close out. As at 22 July 2018, the insurer-managed portfolio of Kaikōura claims was 99% assessed and 98% settled, while the EQC-managed portfolio was 98% assessed and 97% settled.
- 163 Also as at 22 July 2018, EQC had paid \$515 million to insurers who managed EQC customers on EQC's behalf and \$38.9 million to customers EQC managed in settlement of their Kaikōura earthquake claims.
- 164 By December 2018, there were only 143 outstanding Kaikōura claims across EQC and the private insurers.

CLAIM RE-OPENING RATES

- 165 The number of Kaikōura earthquake claims that have been re-opened is relatively low – this may be because of the cash settlement approach, but it is difficult to draw conclusions as the reasons why claims are being re-opened is unclear. As at April 2019, 1,523 claims across all insurers (including EQC) had been re-opened.²⁵
- 166 EQC has committed to settling any Kaikōura earthquake claims re-opened after 30 June 2018 within six months of re-opening.²⁶

DISPUTES

- 167 EQC and the private insurers agreed an approach to dealing with customer complaints in relation to claims managed under the agency model.
- 168 In the first instance, customers were encouraged to approach their private insurer. The private insurer could then explain its internal disputes and complaints management process to the customer and recommend next steps.
- 169 All private insurers handling Kaikōura earthquake claims were signed up to the Fair Insurance Code which sets out best practice standards for members of the Insurance Council of New Zealand. The code covers service levels, responsibilities and complaints procedures, and it also includes information about how insurance companies should handle complaints.

²⁵ Note that different insurers classify re-opened differently, for example EQC classifies a re-opened claim as something that could result in a changed settlement. Some insurers include administrative re-opens (for example where they have paid a supplier invoice after the claims has been closed) as they are unable to exclude this from their data.

²⁶ Earthquake Commission, *Statement of Performance Expectations 2018-19*, dated 26 June 2018. See Output 2.2: Settlement of Kaikōura 2016 Earthquake Claims, https://www.eqc.govt.nz/sites/public_files/documents/publications/EQC-SoPE-2018-WEB.pdf

- 170 If the private insurer was unable to resolve a customer's complaint and the complaint was about a factual issue, the insurer would send a deadlock letter to the customer. The letter would explain that one of the customer's options was to have the complaint reviewed by the insurer's external dispute resolution scheme.
- 171 Different insurers used different external dispute resolution schemes. QBE used Financial Services Complaints Limited as its external dispute resolution scheme. The other private insurers participating in the Memorandum of Understanding used the Insurance and Financial Services Ombudsman Scheme.
- 172 These two organisations provide an external disputes resolution scheme to consumers with complaints about their financial service provider, including insurance claims. Their services are independent and free for customers of the scheme participants. The decision made under each scheme is confidential and binding for the private insurers and EQC.
- 173 If the private insurer was unable to resolve a customer's complaint and the complaint was not about a factual issue (for example, the complaint involved a dispute about the interpretation of the Earthquake Commission Act 1993), the customer could refer the complaint to the Parliamentary Ombudsman.
- 174 It took some time before EQC and the private insurers could settle on this pragmatic approach to complaints procedure / dispute resolution. EQC required comfort that the insurance industry approach – of using the Insurance and Financial Services Ombudsman or Financial Services Complaints Limited – could apply and be operated effectively with EQC, when private insurers were acting as EQC's agents. In the end, EQC did not agree to allow complaints relating to non-factual issues such as the interpretation of the Earthquake Commission Act 1993 to be included within the scope of the external dispute resolution schemes. That is because EQC considered that complaints involving a legal issue were more appropriate for the Parliamentary Ombudsman to address.
- 175 It also took considerable time to get the Insurance and Financial Services Ombudsman and Financial Services Complaints Limited to accept changes to their standard rules that were needed for consistency with the Earthquake Commission Act 1993. For example, the standard terms had the ability to impose general damages, which EQC could not pay under the Earthquake Commission Act 1993.
- 176 Only two complaints appear to have been dealt with by the Insurance and Financial Services Ombudsman Scheme involving Kaikōura earthquake claims that a private insurer managed on EQC's behalf. One complaint was settled before a determination was required. The other complaint was not upheld.
- 177 Since only two complaints were dealt with, it is difficult to gauge whether EQC's involvement in these external disputes resolution schemes was useful. It would seem, though, that having these schemes as another potential dispute resolution forum for customers is beneficial.

- 178 While some litigation has arisen out the Kaikōura earthquakes, the number of proceedings brought against EQC in respect of Kaikōura earthquake claims has been limited to date.

ADVANTAGES OF CASH SETTLEMENT APPROACH

- 179 A particular advantage of the agency approach was that paying a cash settlement meant that claims could be settled relatively promptly (when compared to the time that would be required to set up and complete a managed repair programme). Cash settlements generated certainty faster (in terms of overall losses) than a managed repair programme. In addition, EQC would not be liable for any repair work that turned out to be substandard or defective. This is because customers would be engaging and managing their own repair work (and would therefore have direct recourse against their contractors in case of any substandard or defective repairs).

RISKS ASSOCIATED WITH A CASH SETTLEMENT APPROACH

- 180 Cash settlement shifts the responsibility of repair from EQC (or insurers) to the customer. A key risk associated with this approach is that customers may not use their settlement to undertake the necessary repairs. This has potential implications for the quality of housing stock and potential issues for future buyers.
- 181 The nature of cash settlement means that EQC and insurers have generally less visibility on the extent to which damage has been repaired. One possible indicator that could be used to ascertain whether repairs have been undertaken is building consent data. This is not necessarily reliable, however, as the level of data that local authorities hold is not at an appropriate level to determine whether consent applications are for earthquake repairs or, say, building a new house that is unrelated to earthquake damage. Earthquake repair work also may not necessarily require a building consent. It is therefore difficult to determine whether repairs have been undertaken, other than on a property-by-property basis. As such, it will be some time before any conclusions can be drawn about the success of the cash settlement approach and what, if any, legacy issues may remain as a result.
- 182 Another implication of cash settlement is whether customers are adequately equipped to manage their own repairs. To help manage this, EQC published a guide to help customers once they had received their cash settlement.²⁷

²⁷ Earthquake Commission, *Managing your home repair*, <https://www.eqc.govt.nz/about-egc/our-publications/factsheets/managing-your-home-repair>.

Assessment of the model in action

THE ACUO REVIEW

183 In 2017, EQC commissioned Acuo, an independent advisory firm, to carry out an external review of EQC's response to the Kaikōura earthquake focusing on the operational aspects of that response. The purpose of the review process was to identify lessons and learnings that could be applicable to, and to improve the effectiveness of EQC's response in, future natural disaster events.

184 In summary Acuo found that:²⁸

- a on average, overall customer satisfaction was higher than the 60% target;
- b the target of having 90% of building claims (across EQC and the private insurers combined) assessed by 14 November 2017 (one year after the Kaikōura earthquake) was achieved. Indeed, by December 2017, 95% of building claims had been assessed;
- c the target of having 99% of building claims assessed by March 2018 (again, across EQC and the private insurers) had almost been met: 98% of building claims had been assessed by the end of February 2018;
- d the target of having 75% of building claims settled (that is, the customer had received their cash settlement) by 31 December 2017 was achieved. Indeed, 88% of building claims had been settled by January 2018;
- e the target of having 95% of building claims settled by March 2018 was almost met: 94% of building claims had been settled by the end of February 2018;
- f the target of having 99% of contents claims settled by September 2017 was almost met: 95% of contents claims had been settled by December 2017 and 96% of them had been settled by the end of February 2018; and
- g it was too early to tell whether the target of having less than 1% of customer complaints upheld through the agreed external process would be met. However, at the time of Acuo's May 2018 report, no customer complaints had been upheld.

²⁸ Acuo, *External Review of Response to the Kaikōura November 2016 Earthquake: Stage 3: The Effectiveness of Settled Claims (12 December 2016 – March 2018)*, May 2018 (report #37 in Appendix 1, *Briefing to the Public Inquiry, External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

THE PWC REVIEW

185 EQC also commissioned PwC to carry out an external strategic review of the EQC insurance response model response. As part of that wider review, PwC considered EQC's response to the Kaikōura earthquake through the agency model:

- a in September 2018, PwC delivered a draft interim report, primarily focusing on the Kaikōura agency response model pilot and the strengths and weaknesses of the agency model pilot involving private insurers;²⁹ and
- b in November 2018, PwC delivered its final report, building on some of the observations set out in the Interim Report to develop a set of hypotheses to support informed decisions by the EQC board and management.³⁰

186 In summary, PwC's key observations were that:

- a EQC has a unique value proposition in the role it plays for the good of New Zealand in support of effective natural hazard risk management;
- b The Kaikōura response model worked well in the circumstances;
- c The agency model provided a response that was acceptable in terms of speed of settlement and demonstrated insurer capacity to support a cash settlement model;
- d Insurers acting as agents have a number of advantages to EQC and to customers in a natural disaster response;
- e Based on information available, the agency model appears cost effective relative to alternatives;
- f There is substantial agreement on the areas that worked well or could easily be improved, and there is a lot of good will to implement improvements;
- g Market participants have expressed a real willingness to be involved with any initiatives aimed at improving the insurance response in a natural disaster; and
- h There are questions to be addressed about the future core business and accountability of EQC and work also need to be done to strike a balance between contractual arrangements, legislation and relationships.

²⁹ PwC, *Strategic Review of the EQC Response Model: Draft Interim Report*, dated September 2018.

³⁰ PwC, *Strategic Review of the EQC Response Model: Final Report*, dated November 2018 (report #46 in Appendix 1, *Briefing to the Public Inquiry, External Reviews of the Earthquake Commission since 2010*, dated 4 March 2019).

Land claims remained with EQC

- 187 Under the Memorandum of Understanding, any claims for damage to residential land remained EQC's responsibility. This division of responsibility was understandable, as private insurers do not provide any cover for damage to land and EQC therefore had the relevant experience and expertise in assessing and settling claims for earthquake damage to residential land.
- 188 Nevertheless, the result of this division of responsibility was that a customer whose property suffered earthquake damage to both their residential building and land would generally have to deal with both EQC (for the land claim) and the private insurer (for the building claim).
- 189 Ideally, the processing of the residential land claim by EQC and the residential building claim by the private insurer would be coordinated. That is because there is the potential for differences and inconsistencies to arise where a private insurer is assessing and settling the residential building claim and EQC is assessing and settling the residential land component.
- 190 A particular area that can be problematic is if EQC and the private insurer take different approaches to identifying what structures are insured under the Earthquake Commission Act 1993 as appurtenant structures. Appurtenant structures are structures that are additional to the residential building and used for the purposes of the household, for example a garage or clothesline. Appurtenant structures are relevant not just to residential building cover but also to residential land cover provided under the Act, because identifying what land is covered as residential land depends on identifying all the insured residential buildings (including appurtenant structures) within the land holding.
- 191 Other areas where inconsistencies can arise if EQC is assessing and settling the residential land exposure and the private insurer is assessing and settling the residential building exposure are:
- a what structures are insured under the Earthquake Commission Act 1993 as part of the residential land cover (for example retaining walls and culverts) as opposed to items that form part of the residential building cover;
 - b whether declining the building exposure means that it is also appropriate to decline the land exposure (or vice versa); and
 - c whether the same person should be paid in respect of both exposures.
- 192 Often the damage and appropriate repair strategies for both the residential building and residential land are interconnected. However, it is EQC, not the private insurers, which has the experience and expertise in assessing and settling land claims.
- 193 For a more detailed discussion on issues related to private insurers' involvement in assessing and settling land claims, see *Briefing to the Public Inquiry into the Earthquake Commission – Canterbury Land Programme* dated 24 May 2019.

CHALLENGES WITH LAND CLAIMS

- 194 The Kaikōura event saw some situations where moderate to severe land damage occurred and land damage payments may not be sufficient to effect repair as they are commonly calculated as the lower cost of the two options e.g. loss of land value or the cost to repair. This could leave property owners with a ‘gap’ between the value of their claim and the cost to repair their property.
- 195 There were also situations (for example at Lyell Creek) where the individualised nature of insurance (in which each customer has an individual entitlement to be indemnified against the loss suffered) may not have led to optimal outcomes.
- 196 In some cases a managed repair across multiple properties is likely to have been the most cost effective approach to address land damage. However, a managed repair is currently only viable if all owners agree as the legislation does not provide powers for EQC to make settlements on an area-wide basis. In practice, achieving agreement voluntarily between a number of owners is likely to be difficult. As a result, repairs may not be undertaken, and/or may cost more for individual owners to undertake and/or in some cases may not be able to remediate a problem which is bigger than their own property. This sets the scene for further damaging events as the ground is now more vulnerable.

THE KAIKŌURA EARTHQUAKE VIEWER

- 197 Data sets relating to land damage that occurred in the Kaikōura earthquake were captured by a tool called the Kaikōura Earthquake Viewer set up by EQC specifically for this event using off-the-shelf software. This tool was an interactive web map enabling EQC, (and following training) private insurers, response and recovery agencies, engineers and researchers to use a tailored, secure view of customer claims alongside geospatial event data.
- 198 The Kaikōura Earthquake Viewer included an evolving land damage index map showing the nature and extent of land damage from the Kaikōura earthquake.³¹ That map enabled:
- a efficient resource planning and coordinated deployment. The right level of resourcing and expertise (i.e. structural engineers, geotechnical engineers and geologists) could be directed to the relevant areas, minimising the number of site visits required;
 - b prioritisation. Geospatial intelligence was updated nightly to give claims priority ranking from latest damage observations and indicator criteria – 339 were prioritised and urgently assessed in Hurunui, Kaikōura and Marlborough; and

³¹ Tonkin + Taylor, *Kaikōura Earthquake Viewer*, dated 22 August 2018:
<https://www.eagle.co.nz/sites/default/files/John%20Carter%20-%20The%20Kaikōura%20Earthquake%20Viewer.pdf>.

- c proactive claim recognition and loss estimation. Areas could be identified where damage was likely to exist but where claims had not yet been made.

199 GNS Science used the Kaikōura Earthquake Viewer as a respository for the data they held on Kaikōura. It also had the ability to capture, display and share data from other international agencies. The Viewer facilitated better deployment of resources, sharing of information and overall understanding of the recovery environment than what had ever been available in past events. The tool is now utilised as a forward planning tool by a number of agencies.

Closing remarks

200 A small number of claims from the Kaikōura earthquake remain active. As at 30 April 2019, 99% of EQC claims for the Kaikōura earthquake have been settled, and 190 claims remain with private insurers (a mix of first time open claims and re-opened claims).³²

201 As noted in the beginning of this briefing, it does not contain a lessons learned section as this is considered to be premature at this point in time. Some of the key matters / questions that we anticipate would be considered in a lessons learned exercise in the future, and in developing a co-design model with private insurers include:

- a what worked well and what could have worked better at the interface between EQC and private insurers under the agency model?
- b what are the limitations of an agency model and how can the affect of those on the customer be minimised or removed? and
- c an assessment of the challenges and unintended consequences of a cash settlement approach (compared to, say, a managed repair approach) for a significant event given the Kaikōura earthquake was the second largest event in EQC's history after the Canterbury earthquakes in terms of the number of claims made, and how these could be managed in future. In essence, this would be an assessment of the counterfactual.

³² EQC Board paper, *Claims Settlement Update*, dated 14 June 2019.