

JOINT STATEMENT BETWEEN  
EQC ACTION GROUP AND THE EARTHQUAKE COMMISSION

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The EQC Action Group is a group of owners of houses that were damaged by the Canterbury earthquakes in 2010 and 2011. In November 2015 the Action Group started a proceeding in the High Court against the Earthquake Commission. The Action Group sought declarations to clarify the extent of the Commission's liability under the Earthquake Commission Act 1993 (*Act*) for the earthquake damage to the houses owned by members of the Action Group.

The parties have ascertained that there is no material disagreement between them on the issues set out in this statement. The Action Group and the Commission have therefore settled the proceeding. As part of the settlement the Action Group and the Commission make this joint statement.

Both the Action Group and the Earthquake Commission acknowledge that:

- i. resolution of any claim under the Act will always require consideration of the extent of the earthquake damage;
- ii. resolution of any claim under the Act will always require consideration of the appropriate strategies for reinstating that damage;
- iii. the Commission's insurance cover for any earthquake damage is subject to all of the provisions of the Act; and
- iv. the Commission's insurance cover is subject to the Act's cap on the Commission's amount of insurance.

One of the concerns of the Action Group was that the Commission may have considered that the insurance under the Act was limited to reinstating an earthquake-damaged house to the same condition that it was in just prior to the earthquakes. The Commission confirms that the insurance under the Act insures houses for replacement value, which includes the cost to reinstate a house to substantially the same as (but not better or more extensive than) its condition "when new" and the cost of complying with any applicable laws. The Commission says that this has always been its position.

Another concern of the Action Group related to the situation in which, in order to reinstate an earthquake-damaged house, it is necessary to do work on an undamaged part of the house. Examples of this include removal of undamaged wiring in order to repair wall linings, or removal of undamaged floorboards in order to repair foundations. The Action Group wished to clarify that in such situations the Commission's liability under the Act includes the cost of such work on undamaged parts, the cost of reinstating the undamaged part if it was damaged in the course of such work, and the cost of modifying the undamaged part if any laws require modification of the part as a result of the work being done on it. The Commission agrees that the insurance under the Act covers those matters (subject to any other relevant provisions of the Act). Both parties emphasise, however, that whether work on an undamaged part is necessary in order to reinstate earthquake damage will depend on the particular circumstances of each earthquake-damaged house.

The Action Group also sought clarification on the use of a Guidance document that the Ministry of Business Innovation & Employment (*MBIE*) issued under the Building Act

2004. That document, entitled “Repairing and rebuilding houses affected by the Canterbury earthquakes” contains suggested indicator criteria for the levelness of floors. Table 2.2 of Part A of the Guidance document includes the following floor level criteria: “Vertical differential settlement <50 mm and floor slope less than one in 200 between any two points >2m apart”. The Guidance document states that these criteria may be used to indicate that no releveling of the floor or foundation is considered necessary. The Action Group sought clarification on whether these criteria could be used to determine whether the insurance under the Act would cover the releveling of the floor of an earthquake-damaged house, and if so the extent of the releveling that would be covered. The parties agree that if a house has suffered earthquake damage that includes the floor being out of level:

- i. The fact that the floor level is within the MBIE Guidance criteria is not a sufficient reason for the insurance under the Act not to cover the releveling of the floor; and
- ii. If the insurance covers the releveling of the floor, the releveling required is determined by the Act, not by the MBIE Guidance criteria.

A final concern of the Action Group related to clause 9(1)(a) of Schedule 3 of the Act. Clause 9(1)(a) provides that the Commission may at its option replace or reinstate any property that suffers natural disaster damage instead of paying the amount of the damage. The Action Group sought confirmation that, if the Commission elected to settle a claim by making a cash payment, clause 9(1)(a) was not applicable to determine or quantify the amount of that payment. The Commission confirms that its position is that, if it chooses to make a cash payment rather than replace or reinstate property, the payment must be the replacement value of the property as defined in section 2(1) of the Act (and otherwise in accordance with the provisions of the Act including the cap on the amount of the insurance). The Commission says that this has always been its position.