

Canterbury Earthquakes Insurance Tribunal Bill

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Andrew Little

Canterbury Earthquakes Insurance Tribunal Bill

Government Bill

Contents

		Page
1	Title	4
2	Commencement	4
2	<u>Commencement</u>	4
Part 1		
Purpose, preliminary provisions, eligibility, bringing claims, and case management		
Subpart 1—Purpose and preliminary provisions		
3	Purpose	4
4	Overview of Act	4
5	Definitions	5
6	Transitional, savings, and related provisions	7
7	Act binds the Crown	7
Subpart 2—Eligibility criteria and parties to claim before tribunal		
8	Application of Act	7
9	Eligibility criteria to bring claim before tribunal	8
10	Bringing claim to tribunal	8
11	Additional parties and removal of parties	8
Subpart 3—Bringing claims to tribunal, ineligible claims, and status of claims under other enactments		
<i>Bringing claims by application to tribunal</i>		
12	Claim brought by application to tribunal	9
13	Applications that chairperson may accept	10
14	Serving notice on respondent	10
15	Response from respondent	10

Canterbury Earthquakes Insurance Tribunal Bill

	<i>Bringing claims to tribunal by transfer of proceedings from court</i>	
16	Claim brought by transfer of proceedings from court	10
	<i>Ineligible claims because of proceedings in another forum</i>	
17	Application ineligible because of proceedings or decision in another forum	11
18	Withdrawal of claim on claimant commencing proceedings in another forum	12
	<i>Status and effect of claim under other enactments</i>	
19	Status and effect of claim under other enactments	12
	Subpart 4—Case management	
20	Managing claims and natural justice	12
	<i>First case management conference</i>	
21	Notifying date for first case management conference	13
22	Attendance at first case management conference	13
23	Accompanying party at first case management conference	14
24	Matters for first case management conference	14
25	Independence of expert advisers	15
	<i>Further case management</i>	
26	Further case management	15
27	Powers of tribunal	16
28	Transfer of claim to court	17

Part 2

Mediation and adjudication of claims

Subpart 1—Mediation

29	Application of this subpart	17
30	Mediation services	17
31	Independence of mediators	18
32	Procedure in relation to mediations	18
33	Confidentiality	18
34	Settlements to be provided to chief executive and tribunal	19
35	Enforcement of mediated settlements	20
36	Mediation services not to be questioned as being inappropriate	20
	Subpart 2—Adjudication, enforcement, and appeals	
37	Managing adjudication of claims and natural justice	20
38	Case management conference to prepare for hearing	21
39	Powers of tribunal	21
39A	Tribunal's powers to seek and receive evidence, investigate, and make inquiries	22
40	Expert advisers	22
41	Hearing of claim	22

Canterbury Earthquakes Insurance Tribunal Bill

41A	Consolidation of expert evidence on same subject matter for multiple claims	23
42	Further provisions relating to tribunal	23
	<i>Tribunal's decision</i>	
43	Matters tribunal may decide	23
44	Tribunal's decision: substance	24
45	Costs	25
46	Tribunal may award interest	25
47	Tribunal's decision: form	25
48	Nothing done by or relating to tribunal invalid because of failure to comply with technicality or legal form	26
49	Suppression orders	26
	<i>Enforcement, referral of questions of law to High Court, and appeals</i>	
50	Enforcement of tribunal decisions (other than costs awards)	26
51	Questions of law may be referred to High Court	26
52	Appeals	27

Part 3

Canterbury Earthquakes Insurance Tribunal

Subpart 1—Canterbury Earthquakes Insurance Tribunal
established

53	Canterbury Earthquakes Insurance Tribunal established	27
54	Nature of proceedings	27
55	Appointment of members of tribunal	28
56	Performance of functions of tribunal	28
57	Further provisions relating to tribunal members	28
	<i>Chairperson's responsibilities</i>	
58	Assignment of member to act as tribunal	28
59	Orderly and efficient operation	28
60	Delegation by chairperson	29
	<i>Registrar and staff of tribunal</i>	
61	Registrar and staff	29
	Subpart 2—Contempt, exclusion of liability, tribunal records, regulations and rules, and consequential amendments	
62	Contempt of tribunal	29
63	Exclusion of liability	30
64	Tribunal records	30
	<i>Regulations and rules</i>	
65	Regulations	31
66	Rules of court: District Court and High Court	31

	<i>Consequential amendments</i>	
67	Consequential amendments to Aets-enactments	31
	Schedule 1	32
	Transitional, savings, and related provisions	
	Schedule 2	33
	Further provisions relating to tribunal and members	
	Schedule 3	44
	Consequential amendments to Acts	
	Schedule 3	44
	<u>Consequential amendments to enactments</u>	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Canterbury Earthquakes Insurance Tribunal Act **2018**.

2 Commencement

- (1) ~~**Sections 6, 8 to 52, 62, and 64 and Schedule 1 and Part 1 of Schedule 2**~~ come into force on the day that is 28 days after the date of Royal assent. 5
- (3) The rest of this Act comes into force on the day after the date of Royal assent.

2 Commencement

This Act comes into force on the later of—

- (a) 10 June 2019; and 10
- (b) the day after the date of Royal assent.

Part 1

Purpose, preliminary provisions, eligibility, bringing claims, and case management

Subpart 1—Purpose and preliminary provisions 15

3 Purpose

The purpose of this Act is to provide fair, speedy, flexible, and cost-effective services for resolving disputes about insurance claims for physical loss or damage to residential buildings, property, and land arising from the Canterbury earthquakes. 20

4 Overview of Act

- (1) This section is a guide to the general scheme and effect of the Act.

- (2) **Subpart 1 of Part 1** sets out the purpose of the Act and preliminary provisions. The latter provisions include a section containing definitions and a section that states that this Act binds the Crown.
- (3) **Subpart 2 of Part 1** sets out the nature of disputes and insurance claims to which this Act applies, and the eligibility criteria for a claim before the Canterbury Earthquakes Insurance Tribunal (established under **Part 3**). 5
- (4) **Subpart 3 of Part 1** sets out the procedure for bringing a claim before the tribunal (either by applying to the tribunal or by transferring proceedings from a court to the tribunal).
- (5) **Subpart 4 of Part 1** contains provisions for case management (up to the point when the parties begin to prepare for hearing), including the first case management conference. 10
- (6) **Subpart 1 of Part 2** sets out processes for the mediation of claims.
- (7) **Subpart 2 of Part 2** sets out the main functions and powers of the tribunal for the adjudication of claims, including case management to prepare for hearing. Other provisions relating to the tribunal are contained in **Part 1 of Schedule 2**. 15
- (8) **Subpart 1 of Part 3** establishes the tribunal, including the appointment of members. Other provisions relating to tribunal members are contained in **Part 2 of Schedule 2**. 20
- (9) **Subpart 2 of Part 3** contains miscellaneous provisions, including an offence of contempt of tribunal.

5 Definitions

In this Act, unless the context otherwise requires,—

Canterbury earthquakes means 1 or more of the earthquakes on 4 September 2010, 26 December 2010, 22 February 2011, 13 June 2011, and 23 December 2011, and any aftershocks until the close of 31 December 2011 25

chairperson means the member of the tribunal appointed as the chairperson under **section 55(3)**

chief executive means the chief executive of the department 30

claim means a claim that is before the tribunal because—

- (a) the chairperson has accepted an application to the tribunal under **section 13**; or
- (b) a court has transferred proceedings to the tribunal under **section 16**

claimant means— 35

- (a) a person who is a policyholder or an insured person (or both) who has a claim before the tribunal because—
 - (i) the chairperson has accepted the person’s application under **section 13**; or

- (ii) the person was a plaintiff in proceedings that a court has transferred to the tribunal under **section 16**; or
- (b) an insurer or the EQC, if they were a plaintiff in proceedings that a court has transferred to the tribunal under **section 16**

department means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of **subpart 1 of Part 2** 5

EQC means the Crown entity, called the Earthquake Commission, continued under section 4 of the Earthquake Commission Act 1993

expert includes both expert advisers appointed by the tribunal (*see sections 24(1)(f), 27(1)(f), and 39(1)(f)*) and experts retained by parties as advisers or witnesses 10

function includes a function, power, or duty

insurance claim means—

- (a) a claim made under a contract of insurance by a policyholder to an insurer: 15
- (b) a claim made under the Earthquake Commission Act 1993 by an insured person to the EQC

insured person has the meaning given in section 2(1) of the Earthquake Commission Act 1993 20

insurer—

- (a) means a person who is liable as the insurer under a contract of insurance in respect of a residential building or residential property; but
- (b) for the purpose of this Act, also includes Southern Response

mediator means a person employed or engaged to provide mediation services under **subpart 1 of Part 2** 25

Minister means the Minister of Justice

policyholder means a person who holds a contract of insurance with an insurer to insure a residential building or residential property

residential building has the meanings given in **section 8** 30

residential land has the meaning given in **section 8**

residential property has the meaning given in **section 8**

respondent—

- (a) means a person against whom a claim is before the tribunal; and
- (b) includes a third party respondent 35

sitting includes a case management conference and a substantive hearing of a claim

Southern Response means Southern Response Earthquake Services Limited

tribunal means the Canterbury Earthquakes Insurance Tribunal established under **Part 3**.

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

5

7 Act binds the Crown

This Act binds the Crown.

Subpart 2—Eligibility criteria and parties to claim before tribunal

8 Application of Act

(1) This Act applies to disputes between policyholders and insurers about insurance claims for physical loss or damage arising from the Canterbury earthquakes to a residential building or residential property. 10

(2) This Act also applies to disputes between insured persons and the EQC about insurance claims for physical loss or damage arising from the Canterbury earthquakes to a residential building or residential land, or both. 15

(2A) This Act also applies if—

(a) a policyholder or an insured person (or a person who is both) has both:

(i) a dispute or disputes described in **subsection (1) or (2)** (the **first dispute**); and

(ii) a dispute or disputes about an insurance claim for further physical loss or damage to the same building, property, or land that is the subject of the first dispute (the **second dispute**); and 20

(b) that further physical loss or damage arose from any earthquake or after-shock that occurred after 31 December 2011.

(3) Despite **subsections (1), (2), and (2A)**, this Act does not apply if the ownership of the building, property, or land has been transferred to the policyholder or insured person under a sale and purchase agreement following the physical loss or damage giving rise to the insurance claim. 25

(4) For the purpose of **subsection (1)**, **residential building** and **residential property**— 30

(a) include similar terms (such as home) used in a contract of insurance between a policyholder and an insurer; and

(b) have the meanings given in a contract of insurance to residential building, residential property, or any similar term.

(5) For the purpose of **subsection (2)**, **residential building** and **residential land** have the meanings given in section 2(1) of the Earthquake Commission Act 1993. 35

- (6) For the purpose of **subsection (2A)**,—
- (a) the first dispute and the second dispute may be or include disputes with different insurers:
 - (b) if the EQC is not a party to the first dispute, the second dispute may be or include a dispute with the EQC: 5
 - (c) further physical loss or damage may be related to or be entirely separate from the particular physical loss or damage that is the subject of the first dispute.
- 9 Eligibility criteria to bring claim before tribunal**
- (1) The eligibility criteria to bring a claim before the tribunal are that the claim— 10
- (a) must arise from a dispute between the parties under **section 8**; and
 - (b) must seek resolution of liability, or remedies, or both; and
 - (c) must be within the jurisdiction of the tribunal to make an order under **section 44**.
- (2) **Subsection (1)(c)** does not require the chairperson (under **section 13**) or a Judge (under **section 16(2)(a) or (4)(a)**)— 15
- (a) to form a view on any question of law; or
 - (b) to assess the likelihood of success of the claim or any defence to it.
- 10 Bringing claim to tribunal**
- (1) A claim may be brought to the tribunal only in accordance with **subsection (2) or (3)**. 20
- (2) A person who is a policyholder or an insured person (or both) may bring a claim to the tribunal against an insurer or the EQC (or both) by making an application under **section 12** that is accepted by the chairperson under **section 13**. 25
- (3) A claim may also be brought by the transfer of proceedings from a court to the tribunal under **section 16**.
- 11 Additional parties and removal of parties**
- (1) If the tribunal considers it necessary for the fair and speedy resolution of a claim, it may order that— 30
- (a) a person be joined as a third party respondent:
 - (b) a party be removed.
- (2) However, the tribunal may order that an insurer or the EQC be joined as a respondent only if the claimant is both a policyholder and an insured person.
- (3) If a claim involves more than 2 parties and a party or parties are removed from it, the claim may continue in the tribunal only if— 35

- (a) at least 1 person who is a policyholder or an insured person (or both) remains as a claimant and at least 1 insurer or the EQC remains as a respondent; or
 - (b) at least 1 person who is a policyholder or an insured person (or both) remains as a respondent and at least 1 insurer or the EQC remains as the claimant. 5
- (5) If a claim cannot continue in the tribunal under **subsection (3)** and one of the parties is a third party respondent, the claimant may pursue the claim against the third party respondent in another forum—
- (a) if the claim is filed in the other forum within 6 months of the date on which the order was made to remove a respondent; and 10
 - (b) even if the time for filing a claim in that other forum has passed; but
 - (c) only if the claim before the tribunal was brought within any applicable limitation period.

Subpart 3—Bringing claims to tribunal, ineligible claims, and status of claims under other enactments 15

Bringing claims by application to tribunal

12 Claim brought by application to tribunal

- (1) A person who is a policyholder or an insured person (or both) may bring a claim by applying to the tribunal. 20
- (2) The application must set out (for both a first dispute and a second dispute (*see section 8(2A)*), if relevant)—
 - (a) the date of the application; and
 - (b) a description of the claim and the parties involved; and
 - (c) the remedy sought; and 25
 - (d) the names and addresses of the parties involved; and
 - (e) if available, the addresses that the parties have specified for the service of notices.
- (3) The application must—
 - (a) be in writing; and 30
 - (b) be in the form (if any) approved by the tribunal; and
 - (c) include sufficient information and supporting documentation to fairly inform other parties and the tribunal of the substance of the claim being brought; and
 - (d) be accompanied by the prescribed fee (if any). 35
- (4) The filing date of an application is the date on which the tribunal receives the complete application.

13 Applications that chairperson may accept

The chairperson may accept an application only if it meets the eligibility criteria in **section 9**.

14 Serving notice on respondent

- (1) This section applies if the chairperson has accepted an application. 5
- (2) The claimant must serve notice of the claim before the tribunal on the respondent (or respondents), unless the tribunal serves notice of the claim on the claimant's behalf.
- (3) *See clause 11 of Schedule 2* for requirements for service of notices.

15 Response from respondent 10

- (1) A respondent may file with the tribunal a written response and supporting documentation within 15 working days of being served a notice of the claim or within a later time period directed by the tribunal.
- (1A) A response must—
 - (a) be in writing; and 15
 - (b) be in the form (if any) approved by the tribunal; and
 - (c) include sufficient information and supporting documentation to fairly inform other parties and the tribunal of the substance of the response.
- (2) The respondent must serve a copy of any response and supporting documentation on the claimant and any other respondent before or immediately after any response and supporting documentation is filed with the tribunal. 20
- (3) *See clause 11 of Schedule 2* for requirements for service of notices.

*Bringing claims to tribunal by transfer of proceedings from court***16 Claim brought by transfer of proceedings from court**

- (1) If a person who is a policyholder or an insured person (or both) is a plaintiff in court proceedings relating to an insurance claim in dispute, a Judge may, on the application of that person or on the Judge's own motion, order that the proceedings be transferred to the tribunal. 25
- (2) An order to transfer proceedings may be made under **subsection (1)** only if—
 - (a) the proceedings meet the eligibility criteria for a claim under **section 9** (however, the proceedings may also include additional parties to those referred to in **section 8**, but may not include a class action—*see clause 5(2) of Schedule 2*); and 30
 - (ab) the other party or parties to the proceedings have been given a reasonable opportunity to comment; and 35
 - (b) the Judge making the order believes that the transfer is in the interests of justice.

- (3) If a person who is a policyholder or an insured person (or both) is a defendant in court proceedings relating to an insurance claim in dispute, a Judge may, on the application of that person, order that the proceedings be transferred to the tribunal.
- (4) An order to transfer proceedings may be made under **subsection (3)** only if— 5
 - (a) the proceedings meet the eligibility criteria for a claim under **section 9** (however, the proceedings may also include additional parties to those referred to in **section 8**, but may not include a class action—*see clause 5(2) of Schedule 2*); and
 - (b) the other party or parties to the proceedings agree to the transfer; and 10
 - (c) the Judge making the order believes that the transfer is in the interests of justice.
- (5) If court proceedings are transferred to the tribunal, a plaintiff in the proceedings becomes a claimant before the tribunal.
- (6) If proceedings are transferred, the tribunal may have regard to any notes of evidence transmitted to it by the court, and it is not necessary for that evidence to be given again unless the tribunal requires it. 15
- (7) **Sections 12 to 15** do not apply to a claim that is transferred under this section from a court to the tribunal.
- (8) For the purpose of this section, **Judge** means a District Court Judge or a High Court Judge. 20

Compare: 2006 No 84 s 120

Ineligible claims because of proceedings in another forum

- 17 Application ineligible because of proceedings or decision in another forum**
- A person may not bring a claim before the tribunal under **section 12** if— 25
- (a) they have commenced arbitration relating to the same insurance claim in dispute; or
 - (b) they have commenced proceedings relating to the same insurance claim in dispute in the Disputes Tribunal and the proceedings are in progress; or 30
 - (c) they have commenced proceedings relating to the same insurance claim in dispute (including by way of counterclaim) in a court and the proceedings are in progress (although the proceedings may be transferred to the tribunal under **section 16**); or
 - (d) they were a party to proceedings before a court or the Disputes Tribunal relating to the same insurance claim in dispute and the proceedings have been decided by the court or the Disputes Tribunal. 35

- 18 Withdrawal of claim on claimant commencing proceedings in another forum**
- (1) A claimant may not continue a claim before the tribunal if—
- (a) they commence arbitration relating to the same insurance claim in dispute; or 5
 - (b) they commence proceedings relating to the same insurance claim in dispute (including by way of counterclaim) in a court or in the Disputes Tribunal.
- (2) If a claimant commences arbitration or proceedings of a kind referred to in this section,— 10
- (a) the claimant must notify the tribunal:
 - (b) the claim must be treated as withdrawn.

Status and effect of claim under other enactments

- 19 Status and effect of claim under other enactments**
- (1) This section applies to a claim before the tribunal when— 15
- (a) the chairperson accepts the relevant application; or
 - (b) a court transfers the relevant proceedings to the tribunal.
- (2) The claim before the tribunal must be treated as—
- (a) proceedings for the purpose of section 76 of the Insolvency Act 2006; and 20
 - (b) legal proceedings under section 248 of the Companies Act 1993; and
 - (c) legal proceedings under section 321(1)(b) of the Companies Act 1993; and
 - (d) actions or proceedings for the purposes of section 42 of the Corporations (Investigation and Management) Act 1989. 25

Subpart 4—Case management

- 20 Managing claims and natural justice**
- (1) When managing claims, the tribunal must have regard to the purpose of this Act, which is to provide fair, speedy, flexible, and cost-effective services.
- (2) In particular, the tribunal— 30
- (a) must encourage the parties to work together on matters that are agreed; and
 - (b) if experts are used (whether by a party or the tribunal), must consider using conferences of experts to avoid duplication of advice or evidence on matters that are or are likely to be agreed. 35
- (3) The tribunal must comply with the principles of natural justice.

- (4) However, **subsection (3)** does not require the tribunal to allow the use of an expert by a party in the tribunal’s case management processes if the tribunal considers this is unnecessary.
- (5) For case management relating to adjudication of claims, *see* **section 37**.

First case management conference 5

21 Notifying date for first case management conference

- (1) The tribunal must notify the parties within the time period set out in **subsection (2)** of the date for the first case management conference.
- (2) The time period for notification is within 15 working days of—
 - (a) the chairperson accepting the relevant application; or 10
 - (b) a court transferring the relevant proceedings to the tribunal.
- (3) The tribunal may notify a change of date of the first case management conference if the circumstances require it.

22 Attendance at first case management conference

- (1) A party must attend the first case management conference unless— 15
 - (a) the party has a reasonable excuse for not attending; or
 - (b) the tribunal decides that the party does not need to attend.
- (2) If a party is not a natural person, the following individuals may attend the first case management conference on behalf of the party, but only if they are authorised to bind the party: 20
 - (a) for the EQC, an officer or employee:
 - (b) for another corporation or an unincorporated body of persons,—
 - (i) an officer or employee; or
 - (ii) a member of the corporation or body; or
 - (iii) an individual who holds a majority interest in that corporation or 25
 - body:
 - (c) for a person jointly liable or entitled with another or others, one of the individuals jointly liable or entitled or, in the case of a partnership, an employee of the partnership.
- (3) The tribunal may impose in respect of any participant (**A**) attending the first case management conference any conditions that it considers necessary to ensure that any other participant (**B**) is not substantially disadvantaged by the attendance of A. 30
- (4) Any participant who attends the first case management conference must do so in person unless— 35
 - (a) the necessary facilities are available for the participant to attend by telephone, audiovisual link, or another remote access facility; and

- (b) the tribunal considers it appropriate for the participant to attend via one of those means.

23 Accompanying party at first case management conference

- (1) A party at the first case management conference may be accompanied by—
- (a) 1 or more representatives (*see clause 3 of Schedule 2*): 5
 - (b) experts employed by the party;
 - (c) 1 or more support persons, with the approval of the tribunal.
- (2) The tribunal may direct that the number of representatives and experts at the first case management conference be limited to allow for the efficient conduct of the conference. 10

24 Matters for first case management conference

- (1) At the first case management conference, the tribunal may—
- (a) set a timetable for future steps to progress the claim, for example, for information or documents to be produced and the convening of an expert conference: 15
 - (b) identify any issues on which the parties are agreed and the core issues in dispute:
 - (c) obtain further information regarding the claim or a response to the claim:
 - (d) decide whether parties need to be joined or removed and, if so, make an order under **section 11** to this effect: 20
 - (e) direct a respondent to file a response to the claim:
 - (f) appoint an expert adviser to assist the tribunal:
 - (g) direct the parties to mediation and set time frames for mediation:
 - (ga) direct that arrangements be made to inspect the dwelling house, property, or land to which the claim relates (as long as the consent of the owner or occupier is obtained before entry): 25
 - (h) issue any other reasonable directions that may assist with the early resolution of the claim.
- (2) If a respondent is joined to the claim, the tribunal must—
- (a) notify them that they have been joined as a respondent to the claim: 30
 - (b) specify the date by which a response must be filed with the tribunal and served on the other parties:
 - (c) specify the date by which any information or documents must be produced to the tribunal and the other parties.
- (3) An appointment of an expert adviser under **subsection (1)(f)** is at the absolute discretion of the tribunal. However, before appointing an expert adviser, 35

the tribunal must advise the parties that it intends to do so and give them a reasonable opportunity to comment.

- (4) Expert advisers must act in accordance with practice notes issued by the chairperson.
- (4A) Before directing the parties to mediation, the tribunal must inform the parties of the effect of **section 35** (which relates to the enforcement of settlements reached through mediation). 5
- (4B) At the first case management conference, the tribunal must inform the parties of the effect of **section 44(7)** (which relates to settlements by agreement between the parties (otherwise than through mediation under this Act)). 10
- (5) The first case management conference must be held in private.

25 Independence of expert advisers

- (1) Expert advisers appointed by the tribunal—
 - (a) must act independently when assisting the tribunal with any particular claim or aspect of it; and 15
 - (b) must be independent of any of the parties to the claim.
- (2) An expert adviser who is being considered for appointment to assist, or is assisting, the tribunal and who has a conflict of interest in relation to the particular claim—
 - (a) must disclose it to the tribunal and all the parties; and 20
 - (b) unless all the parties agree otherwise,—
 - (i) must not accept the appointment:
 - (ii) must withdraw from acting in relation to the claim.
- (3) A party who agrees to an expert adviser being appointed or continuing to act forfeits any right to object to the expert adviser acting on the basis of the conflict of interest that was disclosed by the expert adviser. 25

Further case management

26 Further case management

- (1) For the purpose of case management following the first case management conference and at any stage before the parties begin preparing for a hearing (if one is needed), the tribunal may, as it considers appropriate in order to progress the claim,— 30
 - (a) hold any number of case management conferences; and
 - (b) if a party is not a natural person, require the attendance at a case management conference of an individual listed in **section 22(2)** who is authorised to bind the party; and 35

- (c) otherwise communicate with the parties in any way it considers is efficient.
- (2) A case management conference must be held in private.
- (3) A case management conference may be conducted by telephone, audiovisual link, or another remote access facility if the tribunal considers it appropriate and the necessary facilities are available. 5
- (4) The tribunal may direct that the number of participants at a case management conference be limited to allow for the efficient conduct of the conference.
- (5) If a party has been joined to the claim since the first case management conference, the tribunal must as soon as practicable inform the new party and at the same time remind the other parties of the effect of **section 44(7)** (which relates to settlements by agreement between the parties (otherwise than through mediation under this Act)). 10
- 27 Powers of tribunal**
- (1) The tribunal may do any of the following that are relevant to the stage of proceedings at which a case management conference or other communication with the parties occurs: 15
- (a) set a timetable for future steps to progress the claim, including for any of the things in **paragraphs (b) to (j)**:
- (b) direct that information or documents be produced: 20
- (c) request written submissions from a party or the parties on preliminary matters, as long as it then gives the relevant parties a reasonable opportunity to comment on them:
- (d) decide whether parties need to be joined or removed and, if so, make an order under **section 11** to this effect: 25
- (e) direct a respondent to file a response to the claim:
- (f) appoint an expert adviser to assist the tribunal:
- (g) convene an expert conference:
- (h) even if the parties have attempted mediation previously, direct the parties to mediation and set time frames for mediation: 30
- (ha) direct that arrangements be made to inspect the dwelling house, property, or land to which the claim relates (as long as the consent of the owner or occupier is obtained before entry):
- (i) request, direct, or order the parties to do anything provided for in **Part 1 of Schedule 2**: 35
- (j) issue any other reasonable directions for resolving the claim.
- (2) **Section 24(2)** (relating to the filing of a response by a respondent joined to a claim) applies if a respondent is joined to a claim under this section.

- (3) An appointment of an expert adviser under **subsection (1)(f)** is at the absolute discretion of the tribunal. However, before appointing an expert adviser, the tribunal must advise the parties that it intends to do so and give them a reasonable opportunity to comment.
- (4) **Section 25** (relating to the independence of expert advisers) applies to expert advisers appointed under **subsection (1)(f)**. 5
- (5) Expert advisers must act in accordance with practice notes issued by the chairperson.
- (6) Before directing the parties to mediation, the tribunal must inform the parties of the effect of **section 35** (which relates to the enforcement of settlements reached through mediation). 10

28 Transfer of claim to court

- (1) The tribunal may order that a claim be transferred to the District Court or the High Court at any time before the tribunal makes an assessment of liability if, in the tribunal’s view, it is more appropriate for a court to decide the claim for any or all of the following reasons: 15
 - (a) the claim presents undue complexity:
 - (b) the claim is a novel claim:
 - (c) the subject matter of the claim is related to the subject matter of proceedings that are already before the court. 20
- (1A) Before making an order under **subsection (1)**, the tribunal must give the parties a reasonable opportunity to comment.
- (2) If the total amount at issue is within the jurisdiction of the District Court stated in section 74 of the District Court Act 2016, the claim must be transferred to the District Court. 25
- (3) Any other claim must be transferred to the High Court.

Part 2

Mediation and adjudication of claims

Subpart 1—Mediation

- 29 Application of this subpart** 30
This subpart applies where the tribunal directs the parties to mediation.

30 Mediation services

- (1) The chief executive must employ or engage persons to provide mediation services that are fair, speedy, flexible, and cost-effective to assist parties to resolve claims. 35

- (2) Nothing in this Act prevents any person from seeking and using mediation services other than those provided by the chief executive under this subpart to settle a dispute to which this Act could apply.
Compare: 2006 No 84 ss 77(1), 79
- 31 Independence of mediators** 5
- (1) A mediator—
- (a) must act independently when deciding how to deal with any particular claim or aspect of it; and
- (b) must be independent of any of the parties to whom the mediator provides mediation services. 10
- (2) A mediator who has a conflict of interest in relation to a particular claim—
- (a) must disclose it to all the parties; and
- (b) must, unless all the parties agree otherwise, refuse to act (or withdraw from acting) in relation to the claim.
- (3) A party who agrees to a mediator acting (or continuing to act) forfeits any right to object to the mediator acting on the basis of the conflict of interest that was disclosed by the mediator. 15
Compare: 2006 No 84 s 78(1)
- 32 Procedure in relation to mediations**
- (1) Except as provided in this section, the mediator decides what services are appropriate to a particular claim. 20
- (2) If the parties to a claim agree that they require more time for mediation of the claim than is provided by any order of the tribunal, the parties may apply to the tribunal for more time for mediation.
- (3) The mediator— 25
- (a) may, having regard to the purpose of this Act and the needs of the parties, follow any procedures, whether structured or unstructured, or do any things that the mediator considers appropriate to resolve the claim promptly and effectively; and
- (b) may receive any information, document, or other material, in any way that the mediator thinks fit, whether or not it would be admissible in judicial proceedings. 30
- (4) However, a mediator does not have power to determine any matter, even if asked to do so by the parties. 35
Compare: 2006 No 84 s 81(1)–(3)
- 33 Confidentiality**
- (1) The people specified in **subsection (2)** must, unless authorised to do otherwise by the parties or the relevant party, keep confidential—

- (a) any information, document, or other material created for the purposes of mediation (including any admission or agreed terms of settlement); and
 - (b) any information that, for the purposes of a mediation, is disclosed orally in the course of the mediation.
- (2) The people are— 5
- (a) the mediator:
 - (b) a party to the mediation:
 - (c) the chief executive:
 - (d) a person employed or engaged by the department:
 - (e) a person who assists the mediator or a party. 10
- (3) A mediator must not give evidence in any civil proceedings, whether under this Act or any other Act, about—
- (a) the mediation services provided by the mediator; or
 - (b) anything related to those services that comes to the mediator’s knowledge in the course of providing those services. 15
- (4) No evidence is admissible in any court, or before any person acting judicially, of any information, document, or other material that, by **subsection (1)**, is required to be kept confidential.
- (5) Nothing in the Official Information Act 1982 applies to any information, document, or other material disclosed to the mediator in the course of a mediation under this subpart. 20
- (6) Nothing in this section—
- (a) prevents the discovery or affects the admissibility of any evidence that would otherwise be discoverable or admissible and that existed independently of the mediation process merely because the evidence was presented in the course of a mediation under this subpart; or 25
 - (b) prevents the gathering of information by the department for research, educational, monitoring, or evaluation purposes so long as the parties and the specific matters in issue between them are not identifiable; or
 - (c) prevents the disclosure by any person employed or engaged by the chief executive to any other person employed or engaged by the chief executive of matters that need to be disclosed for the purposes of giving effect to this Act. 30

Compare: 2006 No 84 s 84

34 Settlements to be provided to chief executive and tribunal 35

- (1) If a claim (or part of a claim) settles at mediation, the mediator must promptly provide a copy of the agreed terms of settlement to the chief executive and to the tribunal.

- (2) The agreed terms of settlement provided to the chief executive may be—
- (a) used by the department for research, educational, monitoring, or evaluation purposes so long as the parties and the specific matters in issue between them are not identifiable; and
 - (b) disclosed to any person who is employed or engaged by the chief executive if the disclosure is necessary for the purposes of giving effect to this Act. 5

Compare: 2006 No 84 s 86

35 Enforcement of mediated settlements

- (1) The tribunal must record the agreed terms of settlement provided to the tribunal under **section 34(1)** as a decision of the tribunal. 10
- (2) The decision is enforceable under **section 50**.
- (4) **Section 33(4)** (which relates to the admissibility of confidential information, documents, and other material) does not apply to the decision for the purpose of enforcement proceedings. 15

Compare: 2006 No 84 s 87

36 Mediation services not to be questioned as being inappropriate

Mediation services provided under this subpart cannot be challenged or called into question in any proceedings on either or both of the following grounds:

- (a) that the nature or content, or both, of the services was inappropriate: 20
- (b) that the manner in which the services were provided was inappropriate.

Compare: 2006 No 84 s 88(1)

Subpart 2—Adjudication, enforcement, and appeals

37 Managing adjudication of claims and natural justice

- (1) When managing the adjudication of claims (including at hearings), the tribunal must have regard to the purpose of this Act, which is to provide fair, speedy, flexible, and cost-effective services. 25
- (2) In particular, the tribunal—
 - (a) must encourage the parties to work together on matters that are agreed; and 30
 - (b) must not admit or permit unnecessary or irrelevant evidence or cross-examination; and
 - (c) if experts are used (whether by a party or the tribunal), must consider using conferences of experts to avoid duplication of advice or evidence on matters that are or are likely to be agreed. 35
- (3) The tribunal must comply with the principles of natural justice.
- (4) However, **subsection (3)** does not require the tribunal to—

- (a) permit the cross-examination of a party or person:
- (b) allow the use of an expert by a party in the tribunal’s processes for managing the adjudication of a claim, or allow a party’s expert to give evidence, if the tribunal considers this is unnecessary.

Compare: 2006 No 84 s 57

5

38 Case management conference to prepare for hearing

- (1) If adjudication is necessary to resolve a claim, the tribunal must ~~set a date for~~ hold a case management conference to prepare for a hearing.
- (2) At that case management conference, the tribunal must—
 - (a) identify any issues on which the parties are agreed and the core issues in dispute; and
 - (b) decide whether parties need to be joined or removed and, if so, make an order under **section 11** to this effect.
- (3) **Section 24(2)** (relating to the filing of a response by a respondent joined to a claim) applies if a respondent is joined to a claim under this section.
- (4) **Section 26** (relating to flexibility for the tribunal to deal with the parties as it considers appropriate to progress the claim) applies to case management under this subpart.
- (5) At the first case management conference to prepare for the hearing, the tribunal must inform the parties and, if a party is later joined to the claim following that conference, must as soon as practicable inform the new party and at the same time remind the other parties, of the effect of **section 44(7)** (which relates to settlements by agreement between the parties (otherwise than through mediation under this Act)).

10

15

20

39 Powers of tribunal

25

- (1) For the purposes of preparing for a hearing and the hearing of a claim, the tribunal may—
 - (a) set a timetable for future steps to progress the claim, including for any of the things in **paragraphs (b) to (k)**:
 - (b) direct that information or documents be produced:
 - (c) direct that statements of evidence be exchanged:
 - (d) consider evidence from another claim heard by the tribunal or on appeal that it thinks relevant and applicable to the present claim, as long as the tribunal—
 - (i) informs the parties that it intends to do so; and
 - (ii) gives them a reasonable opportunity to comment:
 - (e) request written submissions from a party or the parties, as long as it then gives the relevant parties a reasonable opportunity to comment on them:

30

35

- (f) appoint an expert adviser to assist the tribunal:
- (g) convene conferences of the parties or experts:
- (h) even if the parties have attempted mediation previously, direct the parties to mediation and set time frames for mediation:
- (i) direct that arrangements be made to inspect the dwelling house, property, or land to which the claim relates (as long as the consent of the owner or occupier is obtained before entry): 5
- (j) request, direct, or order the parties to do anything provided for in **Part 1 of Schedule 2**:
- (k) issue any other reasonable directions for resolving the claim. 10
- (1A) Before directing the parties to mediation, the tribunal must inform the parties of the effect of **section 35** (which relates to the enforcement of settlements reached through mediation).
- (2) **Section 28** (relating to the transfer of a claim to a court) applies at the adjudication stage. 15
Compare: 2006 No 84 s 73
- 39A Tribunal’s powers to seek and receive evidence, investigate, and make inquiries**
- (1) The tribunal may, on its own initiative, seek and receive any evidence and make investigations and inquiries that it considers appropriate. 20
- (2) All evidence and information received by the tribunal must be disclosed to every party, and each party must be given a reasonable opportunity to comment on it.
- 40 Expert advisers**
- (1) An appointment of an expert adviser under **section 39(1)(f)** is at the absolute discretion of the tribunal. However, before appointing an expert adviser, the tribunal must advise the parties that it intends to do so and give them a reasonable opportunity to comment. 25
- (2) **Section 25** (relating to the independence of expert advisers) applies to expert advisers at the adjudication stage. 30
- (3) Expert advisers must act in accordance with practice notes issued by the chairperson.
- 41 Hearing of claim**
- (1) The substantive hearing of a claim must be held in public except if, or to the extent that, an exception in this section applies. 35
- (2) On application by a party, the tribunal may order that all or part of a hearing be held in private.
- (3) The tribunal may make an order under **subsection (2)** only after—

- (a) hearing from the parties; and
- (b) having regard to—
 - (i) the interests of the parties; and
 - (ii) the public interest; and
- (c) considering the open justice principle. 5
- (4) The tribunal may decide a claim on the papers if the tribunal considers it appropriate. However, before making that decision, the tribunal must give the parties a reasonable opportunity to comment.
- (5) A hearing or any part of it may be conducted by telephone, audiovisual link, or other remote access facility if the tribunal considers it appropriate and the necessary facilities are available. 10

Compare: 1996 No 99 ss 14G and 14H; 2006 No 84 s 106

41A Consolidation of expert evidence on same subject matter for multiple claims

- (1) The tribunal may order that expert evidence on a subject matter relevant to more than 1 claim be given at a special sitting of the tribunal at which the parties to all affected claims and their representatives are entitled to be present and be heard, including to cross-examine the witness or witnesses giving the evidence (subject to any other provision in this or another Act). 15
- (2) Evidence that is given at the special sitting may include evidence resulting from a conference of experts. 20
- (3) The evidence given at the special sitting forms part of the evidence for each claim.
- (4) A claim may be included in a special hearing only if—
 - (a) the tribunal considers it would be efficient to do so; and 25
 - (b) all parties to that claim agree.

42 Further provisions relating to tribunal

Further provisions relating to the tribunal’s procedure, evidence, expert advisers, witnesses, an annual report to the Minister, provision of assistance and guidance to parties, and publication of information and decisions are set out in **Part 1 of Schedule 2.** 30

Tribunal’s decision

43 Matters tribunal may decide

- (1) The tribunal may decide, under **section 44**,—
 - (a) any liability of any party to any other party; and 35
 - (b) any remedies for that liability.

- (3) If the tribunal decides that an insurer or the EQC has, or both have, no liability to a claimant who is a policyholder or an insured person, or both, the tribunal may still decide that a third party respondent has liability to that claimant.
- (4) If the tribunal decides that a policyholder or an insured person has no liability to a claimant who is either an insurer or the EQC, or has no liability to either, the tribunal may still decide that a third party respondent has liability to that claimant. 5
- 44 Tribunal’s decision: substance**
- (1) The tribunal may make any order that a court of competent jurisdiction could make in relation to a claim in accordance with the following: 10
- (a) the terms of the contract of insurance in dispute between the parties:
- (b) the general law of New Zealand, in particular,—
- (i) the law of contract as it relates to contracts of insurance:
- (ii) the Earthquake Commission Act 1993.
- (2) The Limitation Act 2010 and any other enactment that prescribes a limitation period or other limitation defence apply to a claim brought before the tribunal. 15
- (3) An order may require the payment of general damages in accordance with the general law of New Zealand.
- (3A) Despite **section 45**, the tribunal may make an order for costs and expenses that are payable under a contract of insurance between the parties. 20
- (4) If an order requires a party to do something, other than pay money, the tribunal must also set an amount of money that is payable by them, and the date by which that amount is payable, if they fail or refuse to do that thing by that date.
- (5) If the tribunal decides that a party is liable to make a payment to another party, the tribunal may make the payment subject to any conditions. 25
- (6) The tribunal may decide that the liability of a party depends on another party meeting particular conditions.
- (7) If a claim is settled by agreement between the parties before the tribunal’s decision is given (otherwise than through the mediation process provided in this Act), the tribunal— 30
- (a) must terminate the claim; and
- (b) if requested by the policyholder or insured person, may record the settlement in the form of a decision of the tribunal.
- (7A) The agreement of all parties is not required before the tribunal records a settlement agreement as a decision under **subsection (7)(b)**. 35
- (7B) The resulting decision is enforceable under **section 50**.

Compare: 2006 No 84 s 90

45 Costs

(1AA) The tribunal may award costs against a party only in accordance with this section.

- (1) A costs award may be made against a party whether the party is successful or not (with all or part of the party’s claim or response) if the tribunal considers that—
 - (a) the party caused costs and expenses to be incurred unnecessarily by—
 - (i) acting in bad faith; or
 - (ii) making allegations or objections that are without substantial merit; or
 - (b) the party caused unreasonable delay, including by failing to meet a deadline set by the tribunal without a reasonable excuse for doing so.
- (2) A costs award must relate to ~~costs incurred~~ costs and expenses incurred by the parties only and not to ~~costs incurred~~ costs and expenses incurred by the tribunal.
- ~~(2A) The tribunal must take into account any costs an insurer is liable to pay under an insurance contract.~~
- (3) If the tribunal does not make an order under this section, the parties must meet their own costs and expenses.
- (4) An order for costs may, on registration of a certified copy of the tribunal’s decision, be enforced in the District Court as if it were an order of that court.

Compare: 2006 No 84 s 91

46 Tribunal may award interest

- (1) In a claim for the recovery of money, the tribunal may order the inclusion of interest on all or part of the money ordered to be paid for all or part of the period between the date on which the cause of action arose and the date of payment.
- (2) Interest must be calculated,—
 - (a) if provision is made for interest in the relevant contract of insurance, in accordance with that contract;
 - (b) if no provision is made in the relevant contract of insurance or the claim does not involve a contract of insurance, in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

47 Tribunal’s decision: form

- (1) The tribunal’s decision must be in writing and include the tribunal’s reasons for it.
- (2) After a copy of a decision is given to the parties, the tribunal may correct any minor clerical or typographical errors or errors of a similar nature.

- 48 Nothing done by or relating to tribunal invalid because of failure to comply with technicality or legal form**
- No direction, decision, or order given or anything done by the tribunal, or anything done by anyone relating to the tribunal, is invalid because of a failure to comply with a technicality or legal form. 5
- 49 Suppression orders**
- (1) The tribunal may order that all or part of the evidence given or the name or any identifying particulars of any witness not be published.
- (2) An order may be made subject to any conditions that the tribunal considers appropriate, having regard to the interests of the parties and to the public interest. 10
- (3) A person who breaches an order made under this section commits an offence and is liable on conviction to a fine not exceeding \$3,000.
- Enforcement, referral of questions of law to High Court, and appeals*
- 50 Enforcement of tribunal decisions (other than costs awards)** 15
- (1) A decision of the tribunal may be enforced as if it were an order of the District Court except as provided in this section.
- (2) If application is made to the District Court for the issue of any process to enforce a decision by the tribunal setting an amount payable by a party who fails or refuses to do something by a certain date (*see section 44(4)*), the Registrar of the court must give written notice of the application to the party against whom enforcement is sought. 20
- (3) If that party does not file a notice of objection within 10 working days after receiving that notice, the decision may then be enforced against the party.
- (4) A notice of objection may be given only on the ground that the party believes that the decision of the tribunal has been fully complied with. 25
- (5) This section applies even if the amount at issue exceeds the jurisdiction of the District Court stated in section 74 of the District Court Act 2016.
- Compare: 2006 No 84 s 98
- 51 Questions of law may be referred to High Court** 30
- (1) If a question of law arises during any case management process under this Act or at the hearing of a claim, the tribunal—
- (a) may (if a member is acting as the tribunal, with the written approval of the chairperson) refer the question to the High Court for its opinion; and
- (b) may delay the hearing until it receives the court’s opinion. 35
- (1A) The tribunal must give the parties a reasonable opportunity to comment on whether the question should be referred to the High Court.

- (2) The High Court must give the tribunal its opinion on the question, following which the tribunal must continue the hearing of the claim in accordance with the opinion.

52 Appeals

- (1) A party to a claim that has been decided by the tribunal may appeal on a question of law or fact that arises from the decision. 5
- (2) An appeal must be filed in the High Court and requires the leave of the High Court.
- (3) A notice of appeal and an application for leave to appeal must be filed together within— 10
- (a) 20 working days of the tribunal’s decision; or
 - (b) any further time that the High Court allows.
- (4) The High Court may—
- (a) confirm, modify, or overturn the tribunal’s decision:
 - (b) order a remedy or award costs or interest that could be ordered or awarded by the tribunal. 15
- (5) Except to the extent modified by this Act, the High Court Rules apply to an appeal brought under this section.
- (6) A party may appeal a decision of the High Court to the Court of Appeal and a decision of the Court of Appeal to the Supreme Court, in each case— 20
- (a) with the leave of the court that is being appealed to; and
 - (b) on a question of law only.

Part 3

Canterbury Earthquakes Insurance Tribunal

Subpart 1—Canterbury Earthquakes Insurance Tribunal established 25

53 Canterbury Earthquakes Insurance Tribunal established

- (1) The Canterbury Earthquakes Insurance Tribunal is established.
- (2) The tribunal comprises all members.
- (3) The chairperson presides over the tribunal.

54 Nature of proceedings 30

Proceedings of the tribunal are—

- (a) judicial proceedings subject to appeal to the High Court, Court of Appeal, and Supreme Court; and

- (b) inquisitorial in nature (*see*, for example, the powers of the tribunal to seek and receive evidence, investigate, and make inquiries under **section 39A**).

Compare: 2009 No 51 s 218

55	Appointment of members of tribunal	5
(1AA)	The minimum number of members that must be appointed to the tribunal is 1.	
(1)	Each member of the tribunal is appointed by the Governor-General on the recommendation of the Minister.	
(2)	The Minister must recommend for appointment—	
(a)	only people who, in the Minister’s opinion, are suitable to be appointed as members, taking into account their knowledge, skills, and experience; and	10
(b)	at least 1 person who has the experience required to be the chairperson under subsection (4) .	
(3)	One member must be appointed by the Governor-General as the chairperson of the tribunal.	15
(4)	The chairperson must have held a New Zealand practising certificate as a barrister or as a barrister and solicitor for at least 7 years.	
56	Performance of functions of tribunal	
	The functions of the tribunal are performed by its members.	20
57	Further provisions relating to tribunal members	
	Further provisions relating to tribunal members are set out in Part 2 of Schedule 2 .	
	<i>Chairperson’s responsibilities</i>	
58	Assignment of member to act as tribunal	25
	The chairperson must assign 1 member (and may assign themselves) to act—	
(a)	as the tribunal for each claim;	
(b)	as the tribunal to perform the functions required to be performed under section 64(4) (relating to access to tribunal records).	
59	Orderly and efficient operation	30
	The chairperson is responsible for making any arrangements that are practicable to ensure that each member (including themselves) performs their functions—	
(a)	in an orderly and efficient manner; and	
(b)	in a way that achieves the purpose of this Act.	35

60 Delegation by chairperson

- (1) The chairperson may delegate any functions (except this function to delegate) to a member who the chairperson is satisfied has the necessary ~~capability~~ knowledge, skills, and experience to perform that function.
- (2) A delegation— 5
 - (a) must be in writing; and
 - (b) must be to a named member; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance of the function by the chairperson.
- (3) A member to whom a function is delegated may perform it in the same manner and with the same effect as if it had been conferred directly by this Act and not by delegation. 10
- (4) A member who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.
- (5) A member to whom a function is delegated is entitled to additional remuneration for work undertaken in performing that function at the rate at which the chairperson would be paid to perform the function (also *see* **clause 33 of Schedule 2**). 15

Registrar and staff of tribunal

61 Registrar and staff 20

- (1) The Secretary for Justice may appoint a person as the Registrar for the tribunal.
- (2) The Secretary may assign employees of the Ministry of Justice to act as staff of the tribunal as may be required for the tribunal to have the services and resources necessary to perform its functions.
- (3) A person appointed as the Registrar and employees who are assigned to act as staff may also hold any other office or position in the Ministry. 25

Subpart 2—Contempt, exclusion of liability, tribunal records, regulations and rules, and consequential amendments

62 Contempt of tribunal

- (1) A person commits an offence if they— 30
 - (a) wilfully insult or obstruct the tribunal, a member, a witness, or an officer or staff member of the tribunal during a sitting of the tribunal or while a member, a witness, or an officer or staff member is going to, or returning from, a sitting of the tribunal; or
 - (b) wilfully insult or obstruct a person attending at a sitting of the tribunal; 35
or
 - (c) wilfully interrupt, or otherwise misbehave at, a sitting of the tribunal; or

- (d) wilfully and without lawful excuse disobey an order or direction of the tribunal during the hearing of a claim; or
- (e) fail to—
- (i) attend at the tribunal after receiving a witness summons to do so; or
- (ii) produce any books, papers, documents, records, or things that the tribunal has required be produced.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$2,000.
- (3) The tribunal may order the exclusion of a person from a sitting of the tribunal if that person's behaviour, in the opinion of the tribunal, constitutes an offence against **subsection (1)**, whether or not the person is charged with the offence.
- (4) An officer or a staff member of the tribunal or a constable may take any steps that are reasonably necessary to enforce the exclusion.
- 63 Exclusion of liability**
- (1) This section applies to—
- (a) the Secretary for Justice and the chief executive; and
- (b) a mediator, a member of the tribunal (including the chairperson), or an expert adviser; and
- (c) an officer, an agent, or a staff member of the tribunal.
- (2) Unless they have acted in bad faith, none of those people are under any criminal or civil liability for—
- (a) an act done or omitted in the course of performing a function under this Act; or
- (b) any words spoken or written at, or for the purposes of, a mediation or a sitting or hearing of a claim; or
- (c) anything in a notice given under this Act.
- 64 Tribunal records**
- (1) The tribunal is responsible for ensuring the safe custody of the records and papers relating to an application or a claim under this Act.
- (2) The records and papers must be available for public inspection at all reasonable times, on payment of the fee payable (if any) for searching and accessing court records under the District Courts Fees Regulations 2009.
- (3) **Subsection (2)** is subject to **section 33** (which relates to the confidentiality of information and documents relating to mediation).
- (4) The District Court (Access to Court Documents) Rules 2017 apply to access to the formal record of a claim by any person, or to other records and papers by the parties or by any person, with any necessary modifications; and in those

rules references to the functions of a Judge are to be read as references to the functions of the tribunal.

Regulations and rules

65 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 5

- (a) prescribing fees for the purposes of this Act:
- (b) making rules for tribunal procedures:
- (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 10

66 Rules of court: District Court and High Court

- (1) In addition to the powers conferred by the District Court Act 2016 or the Senior Courts Act 2016, the Governor-General may, by Order in Council, make rules regulating the practice and procedure of the District Court or the High Court in proceedings under this Act. 15
- (2) Rules may be made only with the concurrence of—
 - (a) the Chief District Court Judge (for rules for the District Court) or the Chief Justice (for rules for the High Court); and
 - (b) 2 or more members of the Rules Committee established under section 155 of the Senior Courts Act 2016 of whom at least 1 is a District Court Judge (for rules for the District Court) or a High Court Judge (for rules for the High Court). 20

Consequential amendments

67 Consequential amendments to ~~Acts-enactments~~

Amend the ~~Acts-enactments~~ specified in **Schedule 3** as set out in that schedule. 25

Schedule 1
Transitional, savings, and related provisions

s 6

Part 1
Provisions relating to this Act as enacted

5

1 Proceedings commenced in court before or after section 16 in force

Section 16 applies regardless of whether the proceedings commenced in court before or after that section comes into force.

2 Arbitration or proceedings commenced or decided before or after section 17 in force

10

Section 17 applies regardless of whether—

- (a) arbitration commenced before or after that section comes into force; or
- (b) the proceedings were commenced or decided before or after that section comes into force.

Schedule 2
Further provisions relating to tribunal and members

ss 27, 39, 42, 57

Contents

Page

Part 1

**Tribunal procedure, evidence, expert advisers, witnesses,
annual report to Minister, assistance and guidance, and
publication of information and decisions**

Procedure

1	Procedure	34
2	Practice notes	34
3	Representation and privilege of communications	35
3A	Incapacitated persons and minors	35
4	Privileges and immunities of counsel	35
5	Consolidation of claims	35
6	Urgency	35
7	Claim to continue on change of member acting as tribunal	35
8	Party's failure to act does not affect tribunal's ability to continue to hear and decide claim	36
9	Tribunal may strike out, decide, or adjourn claim	36
10	Withdrawal of claim	36
11	Service of notices	37
12	Discovery	37

Evidence

13	Evidence	37
14	Tribunal may take evidence on oath	37
15	Tribunal may dispense with evidence if agreement by all parties	37
16	Tribunal may draw inferences from party's failure to act and decide claim based on available information	38

Expert advisers

17	Expert advisers not compellable witnesses	38
----	---	----

Witnesses

18	Party competent as witness	38
19	Witness summons and production of things in evidence	38
20	Protection and privileges of witnesses	38
21	Witnesses' expenses	38

Annual report to Minister

22	Annual report to Minister on performance of tribunal's functions	39
----	--	----

Assistance and guidance, and publication of information and decisions

23	Assistance and guidance for parties	40
24	Online publication of information about procedures, time frames, and progress of decisions	40
25	Online publication of final written decisions	40

Part 2

Tribunal members

26	Term of appointment	41
27	Oath of office	41
28	Term of office	41
29	Resignation or removal from or vacation of office	42
30	Appointment of temporary acting chairperson or member	42
31	Duty of members to disclose conflicts of interest	42
32	Members not compellable witnesses	43
33	Remuneration and expenses	43

Part 1

Tribunal procedure, evidence, expert advisers, witnesses, annual report to Minister, assistance and guidance, and publication of information and decisions

Procedure 5

1 Procedure

The tribunal may regulate its procedures as it thinks fit, subject to—

- (a) this Act and any regulations made under it; and
- (b) any practice notes issued under **clause 2**.

2 Practice notes 10

- (1) The chairperson may issue practice notes for—
 - (a) making an application to the tribunal, including guidance on the type and quality of information and documentation required to support an application so that it meets the eligibility criteria:
 - (b) convening and organising case management conferences: 15
 - (c) referring cases to mediation:
 - (d) the use of expert advisers by the tribunal:
 - (e) how expert advisers must conduct themselves while assisting the tribunal to resolve claims:

- (f) any other matter to facilitate the orderly and efficient operation of the tribunal.
- (2) Practice notes must not be inconsistent with this Act or any regulations made under it.
- 3 Representation and privilege of communications** 5
- (1) A party to a claim may be represented by another person of their choice whether or not that other person is legally qualified.
- (2) If a party’s representative is not legally qualified, any communications between the party and their representative are privileged to the extent that the communications would be if the representative were legally qualified. 10
- 3A Incapacitated persons and minors**
- (1) When managing or adjudicating claims, the tribunal has the powers provided in subpart 7 of Part 4 of the District Court Rules 2014, and any reference to the court in those rules is to be read as a reference to the tribunal.
- (2) The appointment of a litigation guardian may be made by the tribunal at any time, including before an application is made to the tribunal under **section 12**. 15
- 4 Privileges and immunities of counsel**
- Any counsel appearing before the tribunal has the same privileges and immunities as counsel in a court of law.
- 5 Consolidation of claims** 20
- (1) The tribunal may order that 1 or more claims be heard together if—
- (a) it considers that it would be efficient to do so because the claims involve 1 or more of the same parties or the same building, property, or land; and
- (b) all the affected parties consent.
- (2) This clause does not permit the bringing of a claim on behalf of a class of persons. 25
- 6 Urgency**
- Upon application by a party for a claim to be heard urgently, the tribunal—
- (a) must consider that application; and
- (b) may, if satisfied that it is necessary and just to do so, order that the claim be heard by the tribunal as soon as practicable. 30
- 7 Claim to continue on change of member acting as tribunal**
- (1) If the member acting as the tribunal for hearing a claim cannot continue to hear it and another member is appointed to do so, the hearing of the claim is not affected and is to continue as if no change had taken place. 35

- (2) However, the new member may require evidence to be retaken if they consider it necessary to do so.
- 8 Party’s failure to act does not affect tribunal’s ability to continue to hear and decide claim** 5
- The tribunal may continue to hear and decide a claim if a party fails, without reasonable excuse, to do anything the tribunal requests or directs, including failing to meet a deadline set by the tribunal.
- 9 Tribunal may strike out, decide, or adjourn claim**
- (1) The tribunal may strike out a claim, in full or in part, if satisfied that it—
- (a) discloses no reasonable cause of action under the tribunal’s jurisdiction; 10
 - or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of process.
- (2) If a party is not present or represented at the hearing of a claim, the tribunal— 15
- (a) may—
 - (i) strike out the claim; or
 - (ii) decide it in the absence of the party; or
 - (iii) adjourn the hearing:
 - (b) must, if it does so, notify that party that it has done so. 20
- (3) If a claimant fails to prosecute their claim, the tribunal may strike it out.
- (4) Before striking out a claim, the tribunal must consider whether to instead transfer it to a court but may do so only if all parties agree. **Section 28(2) and (3)** applies to a transfer under this subclause.
- 10 Withdrawal of claim** 25
- A claim may be withdrawn if—
- (a) the parties agree; or
 - (b) the claimant serves written notice of withdrawal on the tribunal, and either—
 - (i) no respondent objects to the withdrawal; or 30
 - (ii) the tribunal considers that a respondent who objects to the withdrawal does not have a legitimate interest in the claim continuing and being decided.

11 Service of notices

- (1) Any notice or other document required to be served on, or given to, a person under this Act or any regulations made under this Act is sufficiently served or given if—
 - (a) it is delivered to that person; or 5
 - (b) it is left at or posted to that person’s usual or last known place of residence or business in New Zealand; or
 - (c) it is transmitted on a working day to an email address provided by that person; or
 - (d) it is sent in any other manner approved by the chairperson. 10
- (2) The notice or other document is to be treated as having been served—
 - (a) 5 working days after it was left at or posted to the recipient’s last known place of residence or business in New Zealand; or
 - (b) on the first working day after the day on which it was transmitted by email. 15

12 Discovery

The tribunal may make any order for discovery that the District Court may make under section 105 or 106 of the District Court Act 2016, and those sections apply with all necessary modifications.

Evidence 20

13 Evidence

Any party may give and call evidence.

14 Tribunal may take evidence on oath

- (1) The tribunal may take evidence on oath or affirmation, and the member acting as the tribunal in any case or any other person acting under the express or implied direction of the tribunal may administer an oath or affirmation. 25
- (1A) The tribunal may require that any documents or information be verified by oath or affirmation, statutory declaration, affidavit, or other means.
- (2) On a charge of perjury, it is sufficient to prove that the oath or affirmation was administered, or the documents or information were verified, in accordance with this clause. 30

15 Tribunal may dispense with evidence if agreement by all parties

When hearing a claim, the tribunal may dispense with evidence on any matters on which all parties have agreed.

- 16 Tribunal may draw inferences from party's failure to act and decide claim based on available information**
- If a party fails, without reasonable excuse, to do anything that the tribunal requests or directs be done, the tribunal may—
- (a) draw from that failure any reasonable inferences it thinks fit; and 5
 - (b) decide the claim on the basis of the information available to it; and
 - (c) if information was to be provided by a certain time and it was not provided by that time, give any weight it thinks fit to that information.
- Expert advisers*
- 17 Expert advisers not compellable witnesses** 10
- An expert adviser appointed under **section 24(1)(f), 27(1)(f), or 39(1)(f)** cannot be required to give evidence in any civil case on anything connected with a claim in the tribunal that has come to their knowledge due to their involvement with that claim.
- Witnesses* 15
- 18 Party competent as witness**
- Any party is competent to give evidence in the hearing of a claim and may be compelled to give evidence as a witness.
- 19 Witness summons and production of things in evidence**
- (1) The tribunal may issue a summons to a person requiring the person to attend the hearing of a claim and give evidence, including to produce books, papers, documents, records, or things in that person's possession or under that person's control that relate to the issues in dispute. 20
 - (2) A member cannot be summonsed.
- 20 Protection and privileges of witnesses** 25
- A witness before the tribunal has the same privileges as witnesses have in a court of law, when—
- (a) giving information to the tribunal; and
 - (b) giving evidence to, or answering questions before or put by, the tribunal; and 30
 - (c) producing anything to the tribunal.
- 21 Witnesses' expenses**
- (1) A person attending or giving evidence before the tribunal is entitled to be paid witnesses' fees, allowances, and travelling expenses as prescribed by the Witnesses and Interpreters Fees Regulations 1974. 35

- (2) The fees, allowances, and travelling expenses must be paid by the party calling the witness.
- (3) The tribunal may disallow all or any part of a sum payable under this section.
- (4) On each occasion on which the tribunal issues a summons under **clause 19**, the tribunal must fix an amount that must be paid to the witness— 5
 - (a) on the service of the summons; or
 - (b) at some other reasonable time before the date on which the witness is required to attend the tribunal.
- (5) When fixing the amount for a summons, the tribunal must estimate the amount of the allowances and travelling expenses (but not fees) that will be payable to the witness under this section. 10

Annual report to Minister

22 Annual report to Minister on performance of tribunal’s functions

- (1) Each year the chairperson of the tribunal must report to the Minister on the tribunal’s performance in the period 1 July to 30 June. 15
- (2) The report must be provided to the Minister by 30 September each year.
- (3) The report must include the following details for the relevant year:
 - (a) the number of applications filed:
 - (b) the number of applications accepted as claims:
 - (ba) the number of claims that were transferred from a court to the tribunal: 20
 - (c) the number of claims settled through the mediation process provided under this Act:
 - (ca) the number of claims settled otherwise than through the mediation process provided under this Act:
 - (cb) the number of claims decided after a hearing in the tribunal: 25
 - (d) the stage at which claims were settled:
 - (e) the average length of time taken to settle or decide claims:
 - (f) the number of claims discontinued for other reasons, for example, claims that were struck out or withdrawn:
 - (g) the number of cases still to be resolved as at the last day of that year. 30
- (4) The report—
 - (a) must identify the number of claims filed against each insurer and against the EQC; but
 - (b) must not identify individual claimants or contain details that could lead to the identification of individual claimants. 35
- (4A) The report may also contain information about any matters that the chairperson wishes to report on that relate to or affect the tribunal’s operations.

- (5) The report must be published by the Ministry of Justice on an Internet site that is maintained by, or on behalf of, the Ministry of Justice.

Assistance and guidance, and publication of information and decisions

23 Assistance and guidance for parties

- (1) The Ministry of Justice and the chief executive (for mediation only) may assist and guide parties with the processes for dealing with claims. 5
- (2) The assistance and guidance may include—
- (a) providing information about case management conferences, mediation, and adjudication:
- (b) providing information about other possible means of resolving disputes. 10

24 Online publication of information about procedures, time frames, and progress of decisions

The following information must be published on an Internet site that is maintained by, or on behalf of, the Ministry of Justice:

- (a) information about the purpose of the tribunal and the ways that a person may use it: 15
- (b) any requirements that a person must meet to use the tribunal:
- (c) guidelines on how and when parties may obtain information on the progress of their application or claim and when a decision may be expected.

25 Online publication of final written decisions 20

- (1) Every final written decision of the tribunal must be published on an Internet site that is maintained by, or on behalf of, the Ministry of Justice as soon as practicable unless there is good reason not to publish it.
- (2) A final written decision may be published in part if there is good reason for not publishing the full decision. 25
- (3) **Good reason not to publish** a decision or part of it includes the following:
- (a) non-publication is necessary because of a suppression order under **section 49** or a statutory requirement that affects publication or continued publication:
- (b) the decision is of limited public value: 30
- (c) having taken into account the presumption in favour of publication, the tribunal nevertheless decides that publication of the decision or any part of it would be contrary to the interests of justice.
- (4) In this section, **final written decision**—
- (a) means a written decision that decides, or substantially decides, the outcome of a claim in the tribunal and is either of the following: 35
- (i) a written reserved decision following an oral hearing:

- (ii) a written decision for a claim considered on the papers:
- (b) does not include agreed terms of settlement recorded as a decision of the tribunal under **section 35 or 44(7)**.

Part 2
Tribunal members

5

26 Term of appointment

- (1) A member takes office on the date and for the term stated in the member’s notice of appointment.
- (2) A person who is appointed as a member is not an employee as defined in section 2 of the State Sector Act 1988. 10
- (3) A person appointed as a member may hold that office concurrently with any other office.

27 Oath of office

A member must, before performing any function under this Act, swear or affirm before a Judge of the High Court that they will faithfully and impartially perform their functions and duties as a member. 15

28 Term of office

- (1) Except as otherwise provided in this schedule, a member—
 - (a) holds office for a term of up to 5 years; and
 - (b) may be reappointed. 20
- (2) However, a member continues in office despite the expiry of their term of office until—
 - (a) the member is reappointed; or
 - (b) the member’s successor is appointed; or
 - (c) the member is notified that a replacement member will not be appointed; 25
or
 - (d) the member vacates or is removed from office.
- (3) A member who continues in office for a period under **subclause (2)** may act as a member during that period for the purpose of—
 - (a) completing a claim partly or fully heard by that member acting as the tri- 30
bunal before the expiry of their term of office:
 - (b) hearing another claim.
- (4) A member who has resigned or whose successor is appointed or who will not be replaced may continue in office to complete the hearing of and deciding a claim that was partly or fully heard by that member acting as the tribunal. 35

- (5) However, a member may not continue to act under **subclause (3) or (4)** if they are removed from or are treated as having vacated their office under **clause 29(2) or (3)**.

29 Resignation or removal from or vacation of office

- (1) A member may at any time resign from office by written notice given to the Minister. 5
- (2) A member may at any time be removed from office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.
- (3) A member is to be treated as having vacated their office if they are adjudged bankrupt under the Insolvency Act 2006. 10

30 Appointment of temporary acting chairperson or member

- (1) If the chairperson or another member of the tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if the chairperson or another member considers it is not proper or not desirable that they adjudicate on a particular claim, the Governor-General, on the recommendation of the Minister, may appoint a suitable person as an acting chairperson or acting member for the period or purpose stated in the appointment. 15
- (2) No person may be appointed as an acting chairperson or acting member unless they are eligible for appointment to the relevant position. 20
- (3) An acting chairperson or acting member is, while acting in the position, to be treated as the chairperson or a member of the tribunal.
- (4) An appointment of an acting chairperson or acting member, an act done by an acting chairperson or acting member, or an act done by the tribunal may not be questioned on the ground that the occasion for the appointment had not arisen or had ceased. 25

31 Duty of members to disclose conflicts of interest

- (1) A member who, in performing the functions of the tribunal, has a conflict of interest in relation to a particular claim— 30
- (a) must disclose it to the chairperson and all the parties; and
- (b) must withdraw from acting in relation to the claim unless all the parties agree otherwise.
- (2) A party who agrees to a member hearing or continuing to hear a claim forfeits any right to object to the member doing so on the basis of the conflict of interest that was disclosed by the member. 35

32 Members not compellable witnesses

A member cannot be required to give evidence in any civil case on anything connected with a claim in the tribunal that has come to their knowledge due to their involvement with that claim.

33 Remuneration and expenses

5

(1) All members of the tribunal (including the chairperson) are entitled to be paid, and be reimbursed for, out of public money, without further appropriation than this section and in accordance with the fees framework,—

(a) remuneration for services as a member; and

(b) actual and reasonable expenses incurred in performing their functions as a member. 10

(2) For the period that an acting chairperson or acting member acts, they are entitled to be paid remuneration calculated as a pro-rata proportion of the remuneration of a full-time chairperson or member respectively.

(3) In this clause, **fees framework** means the framework determined by the Government for the classification and remuneration of statutory and other bodies in which the Crown has an interest. 15

Compare: 2016 No 17 Schedule 5 cl 32; 2016 No 49 ss 35, 60(2)

Schedule 3

Consequential amendments to Acts

s 67

Courts Security Act 1999 (1999 No 115)

After section 3(5)(j), insert:

5

(ja) the Canterbury Earthquakes Insurance Tribunal:

Legal Services Act 2011 (2011 No 4)

In section 4(1), definition of **civil proceedings**, paragraph (a), after “the Care of Children Act 2004,”, insert “the Canterbury Earthquakes Insurance Tribunal Act **2018**.”

After section 7(1)(p), insert:

10

(pa) proceedings before the tribunal under the Canterbury Earthquakes Insurance Tribunal Act **2018**:

Schedule 3

Consequential amendments to enactments

s 67 15

Part 1

Act amended

Legal Services Act 2011 (2011 No 4)

In section 4(1), definition of **civil proceedings**, paragraph (a), after “the Care of Children Act 2004,”, insert “the Canterbury Earthquakes Insurance Tribunal Act **2018**.”

20

After section 7(1)(p), insert:

(pa) proceedings before the tribunal under the Canterbury Earthquakes Insurance Tribunal Act **2018**:

Part 2

Legislative instrument amended

25

Courts Security Regulations 2019 (LI 2019/61)

In Schedule 2, after the item relating to the Alcohol Regulatory and Licensing Authority, insert:

Canterbury Earthquakes Insurance Tribunal

Canterbury Earthquakes Insurance Tribunal Bill

Legislative history

1 August 2018	Introduction (Bill 82–1)
4 September 2018	First reading and referral to Governance and Administration Committee
18 March 2019	Reported from Governance and Administration Committee (Bill 82–2)
11 April 2019	Second reading
8 May 2019	Committee of the whole House (Bill 82–3)