

Insurance (Prompt Settlement of Claims for Uninhabitable Residential Property) Bill

Member's Bill

Explanatory note

General policy statement

The Insurance (Prompt Settlement of Claims for Uninhabitable Residential Property) Bill is being proposed as an entirely new piece of legislation. Due to the lack of legislative time frames for settlement offers, it can result in a very worrying time for home owners. The insured are required to have their premiums up to date, but currently there is no time requirement for insurers to assess and present a settlement offer to the insured. Often policy holders find that “dealing with insurance has been more stressful than the actual event.” There needs to be a clear understanding of obligations both for the insured and for the insurer as to the expected period of time it would take to receive a settlement offer.

The purpose of this Member's Bill is to facilitate the swift resolution of uninhabitable property claims lodged with insurance companies.

The Bill aims to provide—

- a legal framework and parameters for when insurance companies must act by;
- an opportunity for the time frame to be extended in extreme circumstances at the Minister's discretion;
- a faster response and resolution for claimants;
- less stress and emotional burden for claimants affected by drawn out insurance claims; and
- clarity surrounding the claim process in regards to targets and deadlines.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 states that the purpose of the Bill is to facilitate the prompt settlement of insurance claims arising from uninhabitable residential properties.

Clause 4 is an interpretation provision. It defines terms used in the Bill.

Clause 5 provides that the Bill, when enacted, will bind the Crown.

Clause 6 provides that the Bill applies to every contract of insurance entered into by an insurer that insures a residential property to the extent that the law of New Zealand applies to the contract. Because the Bill applies only to a contract of insurance entered into by a licensed insurer (as defined by section 6(1) of the Insurance (Prudential Supervision) Act 2010), Crown entities such as the Accident Compensation Corporation, the Earthquake Commission, and the Housing New Zealand Corporation are excluded from the ambit of the Bill. Section 8(2) of the Insurance (Prudential Supervision) Act 2010 expressly states that these Crown entities do not carry on insurance business in New Zealand and hence they cannot become licensed insurers for the purposes of that Act.

Clause 6 also provides that the Bill applies despite any provision to the contrary in any agreement, contract of insurance, enactment, or rule of law.

Clause 7 prohibits contracting out from any of the provisions of the Bill. It states that a provision of a contract of insurance has no effect if it does, or purports to do, certain things to the disadvantage of the insured, such as excluding, restricting, or modifying the operation of the Bill.

Part 2

Prompt settlement of claims

Clause 8 provides that Part 2 applies to uninhabitable property.

Clause 9 requires an insurer that receives a claim in respect of a residential property that has become an uninhabitable property to take all reasonably practicable steps to ensure that the claim is processed as promptly as possible. The insurer must decide whether to accept or decline the claim and notify the insured of this decision within 6 months of receiving the claim.

Clause 9 is subject to *clause 10* and *clause 12*.

Clause 10 provides that, in exceptional circumstances, an insurer may take up to 12 months to decide whether to accept or decline a claim and notify the insured of this decision.

Clause 11 provides that, if a state of national or local emergency is declared, the Insurance Council may apply to the Minister for an extension to the 6-month deadline specified in *clause 9*.

Clause 12 authorises the Minister, on receipt of an application from the Insurance Council under *clause 11*, to grant an extension of up to 12 months from the date on which the national or local emergency was declared.

Stuart Smith

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Insurance (Prompt Settlement of Claims for Uninhabitable Residential Property) Act **2019**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1 Preliminary provisions

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3 Purpose

- (1) The purpose of this Act is to facilitate the prompt settlement of insurance claims arising from uninhabitable residential properties.
- (2) In order to achieve its purpose, this Act requires an insurer to—
 - (a) take all reasonably practicable steps to ensure that an insurance claim relating to an uninhabitable property is processed as promptly as possible; and 10
 - (b) decide whether to accept or decline a claim relating to an uninhabitable property and notify the insured of this decision within 6 months of receiving the claim. 15

4 Interpretation

In this Act, unless the context otherwise requires,—

contract of insurance has the meaning given by section 7 of the Insurance (Prudential Supervision) Act 2010

Earthquake Commission means the statutory entity constituted under section 4(1) of the Earthquake Commission Act 1993 20

Insurance Council means the industry body known as the Insurance Council of New Zealand that represents fire and general insurance companies

insured means—

- (a) the person who has entered into the contract of insurance with an insurer; or 25
- (b) if the rights of that person under the contract of insurance have been assigned, transferred by the operation of the contract, or transferred by operation of law, the person who has those rights

insurer means **licensed insurer** 30

licensed insurer has the meaning given by section 6(1) of the Insurance (Prudential Supervision) Act 2010

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 35

residential property has the meaning given by section 81(1) of the Fire and Emergency New Zealand Act 2017

uninhabitable property means residential property that has been destroyed or is so seriously damaged as to be unsuitable for living in.

5 Act binds the Crown

This Act binds the Crown.

6 Application

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(1) This Act applies to every contract of insurance entered into by an insurer that insures a residential property, to the extent that the law of New Zealand applies to the contract.

(2) This Act applies despite—

(a) any provision to the contrary in any agreement or in any contract of insurance (whether contained in a policy or not); and 10

(b) any other enactment or rule of law.

(3) This Act does not apply to a contract of insurance that was entered into before the date of commencement of this Act.

7 Contracting out prohibited

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A provision of a contract of insurance has no effect if it does, or purports to do, any of the following:

(a) excludes, restricts, or modifies the operation of this Act to the disadvantage of the insured:

(b) has the effect of excluding, restricting, or modifying the operation of this Act to the disadvantage of the insured. 20

Part 2

Prompt settlement of claims

8 Part applies to uninhabitable property

This **Part** applies to uninhabitable property.

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9 Requirements for insurers in processing certain claims

(1) An insurer that receives a claim under a contract of insurance that provides insurance cover for a residential property that has become an uninhabitable property must—

(a) take all reasonably practicable steps to ensure that the claim is processed as promptly as possible; and 30

(b) decide whether to accept or decline the claim and notify the insured of this decision within 6 months of receiving the claim.

- (2) For the purposes of **subsection (1)**, if the residential property that is the subject of the claim is also the subject of a claim to the Earthquake Commission, the 6-month period referred to in **subsection (1)(b)** does not start until—
- (a) the Earthquake Commission has decided whether to accept or decline the claim that was submitted to it and has notified the insured of this decision; and 5
 - (b) the insured has notified the insurer of the Earthquake Commission’s decision.
- (3) This section is subject to **sections 10 and 12**.
- 10 Further time available if exceptional circumstances apply** 10
- (1) If any of the circumstances set out in **subsection (2)** apply, an insurer—
- (a) must continue to comply with its obligation under **section 9(1)(a)** to take all reasonably practicable steps to ensure that the claim is processed as promptly as possible; but
 - (b) may take up to 12 months to decide whether to accept or decline the claim and notify the insured of this decision. 15
- (2) The circumstances are—
- (a) the insurer considers that the claim is fraudulent or reasonably suspects fraud; or
 - (b) the insured has failed to provide a reasonable response to the insurer’s reasonable inquiries or requests for documents or information concerning the claim; or 20
 - (c) the insurer is unable to communicate with the insured about the claim due to circumstances beyond the insurer’s control; or
 - (d) the insured requests a delay in the claims process. 25
- 11 Insurance Council may apply for extension if state of emergency declared**
- (1) This section applies if—
- (a) a state of national emergency has been declared under section 66(1) of the Civil Defence Emergency Management Act 2002; or
 - (b) a state of local emergency has been declared under section 68(1) of the Civil Defence Emergency Management Act 2002. 30
- (2) If either of the circumstances specified in **subsection (1)** apply, the Insurance Council may apply to the Minister for an extension to the 6-month deadline provided for in **section 9(1)(b)**.
- (3) The Insurance Council must apply to the Minister within the 4-month period immediately following the date on which the national or local emergency was declared. 35

12 Minister may grant extension if state of emergency declared

- (1) If the Minister receives an application under **section 11(2)**, he or she may grant an extension of up to 12 months from the date on which the national or local emergency was declared.
- (2) The Minister may grant an extension only if the Minister is satisfied that— 5
 - (a) the Insurance Council has consulted appropriately with its members; and
 - (b) the number of claims likely to be made as a direct result of the national or local emergency under insurance contracts that provide insurance cover for residential property is so great that insurers cannot reasonably be expected to decide these claims within a 6-month time frame. 10
- (3) Before granting an extension, the Minister must consult the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Civil Defence Emergency Management Act 2002.