MINISTRY OF JUSTICE
Tāhū o te Ture

Regulatory Impact Statement on the Canterbury Earthquakes Insurance Tribunal

Minister of Justice
30 January 2018

Purpose

1. This note provides information on the attached Regulatory Impact Statement, which sets out our analysis of this proposal. It will accompany the Cabinet paper when it is considered by Cabinet, and will be published when the Bill is introduced to the House.

2. The RIS is a departmental document that provides information about the development and content of proposed legislation. Its purpose is to ensure that regulatory options are subject to careful and robust analysis, and that this analysis has been independently assessed. The structure and content of a RIS is dictated by Treasury's guidance and template.

3. As a departmental document, a RIS summarises our advice on the impact analysis. It may not necessarily reflect the final decisions you have made on policy options you wish to propose to Cabinet.

The RIS assesses five options for resolving earthquake-related insurance claims against five criteria

(see sections 3.1 and 3.2 of the RIS)

4. The options analysed in the RIS include the Tribunal model you are seeking Cabinet agreement for, as well as the other options canvassed in our 13 December 2017 briefing. These were:

    a. targeting additional resource into existing services;

    b. providing stand-alone mediation services; and

    c. creating a tribunal that decides claims on the basis of 'equity and good conscience'.

5. The RIS also considers one further option, expanding the jurisdiction of financial dispute resolution mechanisms (such as the Insurance and Financial Services Ombudsman) to consider a wider range of Canterbury earthquake-related insurance disputes. This option was not covered in our December briefing as our initial analysis suggested it was unlikely to be feasible.

6. All options were assessed against the following criteria:

    a. efficiency (quick and value-for-money, in respect of both implementation and claim settlement or resolution);

    b. independence and fairness (including observing natural justice and treating settled and unsettled claimants equitably);

    c. effectiveness (responding to the needs of claimants and promoting durable resolutions);

    d. accountability (preserving transparency and public confidence); and

    e. unintended outcomes minimised (in particular, limiting any adverse consequences in the insurance market).

7. The first four of these criteria are relatively typical for a RIS assessing the establishment of an adjudicative body such as a tribunal. The last criterion is included due to the particular

risks of moving away from using established contract law to determine disputes, which we identified in our 13 December briefing.

The preferred package in the RIS differs from the Cabinet paper package (see sections 4 and 5 of the RIS)

8. Our impact analysis suggests that the combination of stand-alone mediation and additional targeted resourcing for existing services best meet the identified criteria.

Internal review indicates the RIS 'meets' Treasury's quality assurance criteria

9. The Regulatory Impact Analysis Team at Treasury determines whether it will independently assess the RIS against Treasury's quality assurance (QA) criteria, or whether the Ministry's internal QA panel will undertake that assessment. This RIS was subject to the Ministry's internal QA review, which found the RIS meets Treasury's QA criteria.

10. This finding is included in the Cabinet paper at paragraph 60. The comment also notes that:

    "The RIS clearly articulates the options and assesses each against clearly specified objectives. The RIS clearly identifies the lack of consultation with those directly affected – insurers and claimants. This is noted as a result of the time to prepare the assessment. As this is clearly identified, the Quality Assurance Panel does not consider that it significantly constrains the ability of Cabinet to rely on the RIS for decision making."

11. Limitations and constraints on the RIS's analysis are acknowledged in section 1 of the RIS. These focus on gaps in data and the inability to consult directly with affected parties, and largely reflect the limited time available for policy analysis.