

Earthquake Commission must follow legislation on claim lodgement time but Ombudsman considers law harsh

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| Legislation | Ombudsmen Act 1975, Earthquake Commission Act 1993 |
| Ombudsman | Peter Boshier |
| Case number(s) | 340961 (previously unpublished) |
| Date | 2017 |

Earthquake Commission (EQC) not unreasonable to decline a claim lodged out of time because this is required under the legislation—Ombudsman considers the law unreasonably harsh and it should be changed—EQC advised it will look into amending the law

This complaint was one of several made to the Ombudsman, where complainants believed that the Earthquake Commission's (EQC) decision to decline to accept out of time claims was unreasonable. Successive Ombudsmen had been concerned about the adequacy of the three-month lodgement period and had suggested to Parliament through their Annual Reports that it be extended to some circumstances where there is a justifiable delay to lodge the claim.

The complainant had lodged the claim only one working day after the required three month period. The complainant claimed that EQC failed to take into account her particular circumstances at the time (recently widowed and suffering from ill health).

The Ombudsman could not sustain the complaint because EQC was confined to administering claims under the present law. As EQC noted in its report to the Ombudsman, there was no discretion to allow for a claim to be lodged out of time. The Earthquake Commission Act 1993 specified the time requirements for reporting a claim as:

- (1) *On the occurrence of any natural disaster damage to any property insured under this Act, the insured person shall at his or her own expense—*

- (a) *within 30 days (or such longer time as may be prescribed by regulations made under this Act) give notice thereof, either orally or in writing, to the Commission; and*
 - (b) *as soon as practicable deliver to the Commission—*
 - (i) *a claim in writing for the natural disaster damage, including, in particular, such account as is reasonably practicable of all property lost or damaged, and of the respective amounts claimed in respect of each such item of property, having regard to their value at the time of the natural disaster damage; and*
 - (ii) *particulars in writing of all other insurances covering that property (if any).*
- (2) *Notwithstanding subclause (1), if natural disaster damage is not immediately apparent, or if the insured person is unable by his or her absence or incapacity, or by other disability suffered by him or her and proved to the satisfaction of the Commission, to give notice, or deliver a claim to the Commission, at or within the required time, it shall be sufficient compliance with this clause for notice to be given to the Commission as soon as the natural disaster damage is apparent or the insured person is able to do so, so long as the notice is given within 3 months (or such longer time as may be prescribed by regulations made under this Act) after the natural disaster damage has taken place, and the Commission is not prejudiced by the lapse of time.*

The period of 30 days has since been extended by regulations to a period of 3 months.

Although the legislation referred to a claimant suffering from incapacity or disability, and this seemed applicable to the complainant's situation, it still required notice of the claim to be given within three months. This period of time had not been extended when the general limit of 30 days was extended.

The Ombudsman concluded that although EQC must base its decisions on the legislation which governs its conduct, he was concerned that in the particular circumstances of this case, the legislation left no room for discretion, and the result was '*harsh and morally reprehensible*'.

While the complaint could not be sustained, EQC advised in response to the Ombudsman's comments, that the Act was being reviewed and the matter of an extended period of time for lodging claims was among the issues under consideration.

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