

Earthquake Commission's interpretation of the Earthquake Commission Act 1993 regarding swimming pool building not unreasonable

Legislation	Ombudsmen Act 1975, Earthquake Commission Act 1993
Agency	Earthquake Commission
Ombudsman	Chief Ombudsman Peter Boshier
Case number(s)	452713
Date	June 2018

Whether the Earthquake Commission was unreasonable to decline compensation for damage to the pool house enclosing a swimming pool at a Christchurch property—Ombudsman concluded EQC's decision was not unreasonable

The Earthquake Commission (EQC) had determined that damage to the complainant's pool house fell outside the scope of cover under the Earthquake Commission Act 1993 (the Act). The complainant considered this decision was unreasonable given that in the first instance, EQC had accepted that the pool house and surrounds were covered, and gave approval for repairs to be carried out under the Canterbury Home Repair Programme. The complainant made a complaint to the Ombudsman on this basis.

During the investigation, it was apparent that EQC had informed the complainant that a mistake had been made in the original decision when the pool house was assessed as being covered by the Act, and it no longer had responsibility to carry out the repairs. The complainant was advised to talk to his insurer. The insurer refuted EQC's position, taking the view that the complainant was entitled to have the pool house repaired and as the claim was under cap, EQC should arrange for this work. The argument was that as EQC initially agreed that the damage to the pool house was covered and started work to repair it, it was under an obligation to complete the work. The complainant believed that EQC had a moral responsibility to do so.

The Chief Ombudsman concluded that although the complaint was not directed at EQC's interpretation of the Act, it was apparent that was central to the decision on the claim for damage to the pool house and surrounds. The complainant was advised that an Ombudsman

cannot determine the correct interpretation of the law. Ultimately, that is the role of the Courts. However an Ombudsman is empowered to form a view on whether the decision at issue *'appears'* to be contrary to law.

The Chief Ombudsman considered EQC's interpretation of the law regarding its liability to repair the pool house and concluded that it was reasonably open to EQC to interpret the Act in the manner it did. The Chief Ombudsman concluded that from his reading of the Act, it seemed that the default position was that swimming pools are not covered, with an exception for a swimming pool that *'constitutes an integral part of, and that is within, a residential building.'*

While the definition of residential building had an extended meaning including structures *'appurtenant'* to the primary definition of residential building, provided they are used for *'the purposes of the household of the occupier of the dwelling'*, there was no provision for cover of a swimming pool dependant on whether or not it has protection from the elements. Had that been the case, this may have allowed property owners with swimming pools to take advantage of the extended meaning of *'residential building'*. However no such cover was provided for, and would have been contrary to the apparent purpose of the exclusion in relation to swimming pools. It seemed to have been intended not to recognise the leisure activity of swimming as one of the purposes of a household, while recognising that sometimes a pool will form an integral part of the building containing the dwelling, and cannot readily be distinguished from the rest of the building.

It seemed to the Chief Ombudsman that the pool house was appurtenant to the pool and excluded from EQC cover, rather than appurtenant to the residential building, which was covered.

The Chief Ombudsman did not consider that EQC had a moral obligation to make payment for the repairs or to arrange for them to be carried out. EQC is required to handle claims in accordance with the law and having discovered that an error had been made, it was obliged to amend its decision accordingly. To the extent that EQC made a payment to cover the cost of rectifying the unsatisfactory repairs, it seemed to the Chief Ombudsman that EQC met its obligation, moral or otherwise. Overall, the Chief Ombudsman considered that EQC had not acted unreasonably in this matter. It was reasonably open to EQC to interpret the relevant provisions of the Act in the manner in which it did and on that basis determine that the complainant's swimming pool and pool house was outside the scope of cover under the Act.

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