Annual Report of the

CANTERBURY EARTHQUAKES INSURANCE TRIBUNAL

For the 12 months ended 30 June 2021

In accordance with the provisions of section 23(3) of Schedule 2 of the Canterbury Earthquakes Insurance Tribunal Act 2019

Canterbury Earthquakes Insurance Tribunal

Introduction

[1] The Canterbury Earthquakes Insurance Tribunal (the Tribunal) was established with effect from 10 June 2019 under s 55 of the Canterbury Earthquakes Insurance Tribunal Act 2019 (the Act). This Second Annual Report, required by sch 2 s 23(3), covers the period from 1 July 2020 to 30 June 2021.

[2] The Tribunal was set up 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.

[3] Applications filed under the Act will only be considered as claims before the Tribunal if:

(a) the applicant was an owner of the property at the time it was damaged by any of the earthquakes experienced in Canterbury between 4 September 2010 and 31 December 2011 (the sequence);

(b) at the time the property was damaged:

(i) it was insured in the name of the applicant; and

(ii) it was used as a residence (if the claim is against an insurance company) or 50% of the property was used as either a residence or a resthome (if the claim is against the Earthquake Commission (EQC)

(c) one of the parties is either EQC or an insurance company; and

(d) there is a dispute between the applicant and an insurance company/ EQC about a claim relating to that damage.

[4] The Tribunal does not deal with claims that:

(a) solely relate to Canterbury earthquakes which occurred after 31 December 2011;

(b) relate to earthquakes outside of Canterbury, unless there is a claim stemming from the sequence; or

(c) relate to properties that have been "on-sold" (purchased by an applicant after the property suffered earthquake damage during the sequence).

Tribunal caseload

[5] Section 23(3) of Schedule 1 of the Act requires the following information be provided in the Annual Report of the Tribunal:

- number of applications filed, including those referred from another jurisdiction
- number of applications accepted as claims
- number of claims filed against each insurer and the Earthquake Commission
- the way claims were settled, and at which stage they were settled
- the timeliness with which claims have been completed
- the outcome of claims
- the number of claims still to be resolved at the end of the reporting year.

[6] Although claims may only be brought to the Tribunal by homeowners, appropriate claims can be referred to the Tribunal by the High Court, the District Court, and the Disputes Tribunal. The High Court has transferred 46 claims, two during the current year and 44 during the Tribunal's first 13 months of operation. The District Court has only transferred two claims, neither during the current year. None have been referred by the Disputes Tribunal. The Tribunal has referred no claims to either the High Court or the District Court under s 28 of the Act.

[7] Homeowners typically choose to bring their disputes to the Tribunal because:

(a) they seek early resolution of the dispute;

(b) the process is less adversarial than in a court and is easier to negotiate without a lawyer;

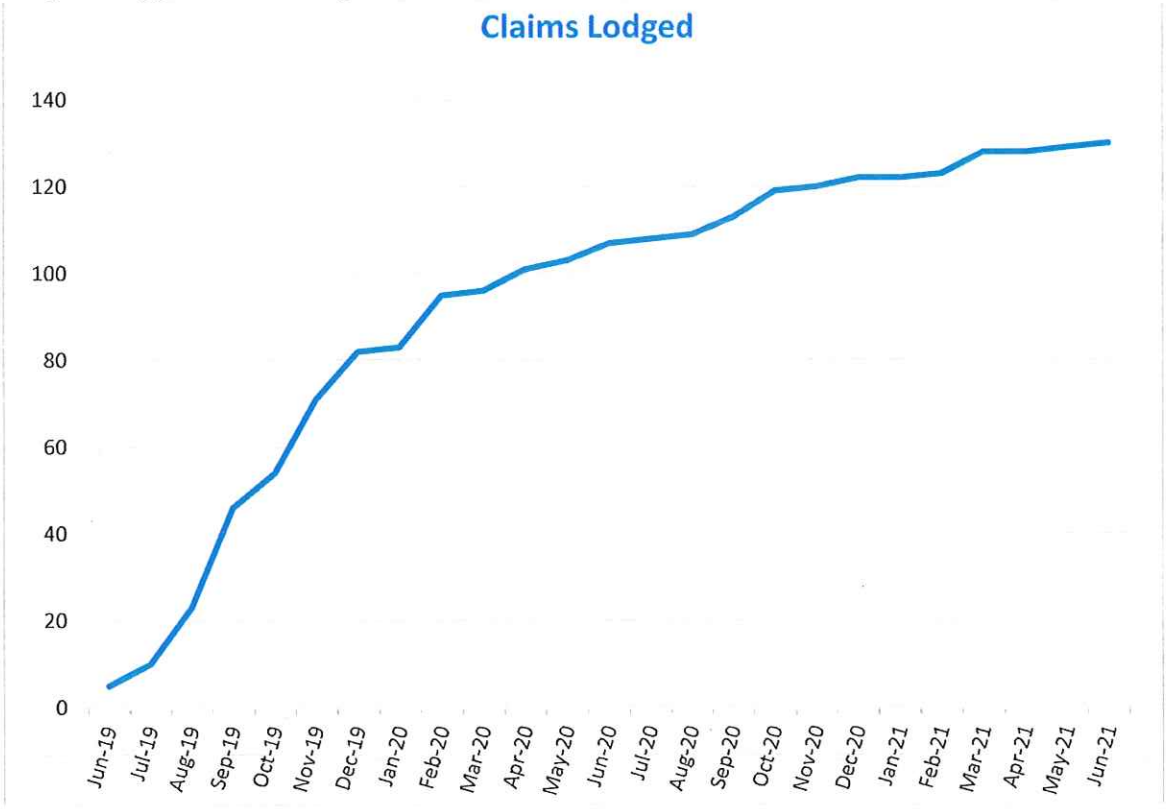
(c) the Tribunal has no filing or hearing fees; and

(d) they do not face an award of costs against them if their claim is unsuccessful.

[8] During the first 13 months of the Tribunal's operation, 70 claims were lodged by homeowners and 61 accepted as being within the Tribunal's jurisdiction. Homeowners filed 22 claims during the current year of which 21 were accepted.

[9] By 30 June 2021, 140 claims had been lodged with the Tribunal, of which 130 were accepted to continue as active claims. A graph showing when the claims were lodged with the Tribunal is set out below.

Graph 1: Applications accepted since 1 June 2019



Insurers

[10] The claims brought to the Tribunal involve nine separate insurers (if State Insurance, Lumley General Insurance, NZI and Lantern Insurance are grouped with their associate company IAG, and AA is grouped with Vero). QBE is not included in the figures as its only role is as an insurer of an insolvent building company in defective repair claims.

[11] Some homeowners have disputes with both EQC and their insurer, so both are joined as respondents to the claim. Sometimes EQC is later removed as a party because the claim against it is resolved earlier than the claim against the insurers. On other occasions, EQC remains a party until the dispute with the insurer has been resolved.

[12] Set out below is a list of those companies and the number of claims in which each is involved. The numbers in this list exceed the number of open claims because some claims involve multiple insurers.

Table 1: Claims by insurer as at 30 June 2021

Insurance Co	**2020/21**	**2021/22**
EQC	14	17
EQC & Anor	32	39
IAG New Zealand Limited	41	49
Southern Response Earthquake Services Limited	21	27
Tower Insurance Limited	12	15
Vero Insurance New Zealand Limited	20	22
MAS	2	3
Westpac Insurance	1	1
	143	173

Types of issues addressed by the Tribunal

[13] Many issues that were previously controversial have now been resolved by the High Court and appellate courts, but some remain unresolved. The Tribunal has provided several rulings that are useful to those resolving disputes outside the Tribunal. Set out below is a list of the issues addressed by the Tribunal over the last year:

Flooding/liquefaction

[14] In a recent claim brought against EQC seeking compensation for increased vulnerability to flooding (IVF), the Tribunal ruled that IVF refers only to the risk of water entering the land from the beyond its boundaries, such as by rivers overflowing, excess tidal events, or from heavy rain events which overwhelm drainage, leading to water draining across the land. It does not cover the risk of water pooling due to the failure of drainage systems to remove rain falling on the property.

https://www.justice.govt.nz/assets/Documents/Decisions/CEIT-2020-0010-G-v-Earthquake-Commission.pdf

Litigation funding

[15] After considering whether clauses in a litigation funding agreement could create a barrier to the settlement of the claim, the Tribunal concluded that the agreement should be changed to provide for independent advice to be sought by the homeowner should a conflict arise.
https://www.justice.govt.nz/assets/Documents/Decisions/CEIT-2020-0024-LS-v-MIS-Decision-2.pdf

Election by homeowners to repair

[16] Where the homeowners' election not to repair their house reduces their replacement insurance cover to indemnity cover, that election can be reversed if, at the time they made that election, they did not have a reasonable appreciation of the damage and the necessary repairs. However, homeowners are not deemed to know the effect of their election. Instead, they must have actual knowledge of the events that created their right to elect, and have a reasonable appreciation of the differences between their options, including the monetary value of each, and the timeframe for repair.

[17] The insurer has a duty to ensure that homeowners with such a right of election have a reasonable appreciation of the differences between the options and the effects that making an election could have on their rights.
https://www.justice.govt.nz/assets/Documents/Decisions/CEIT-2020-0024-LS-v-MIS-Decision-2.pdf

Respective obligations of homeowners and insurers

[18] Homeowners are entitled to select their own experts and builder, choose their own repair methodology, develop their own scope of works, and enter into a building contract for a price they consider to be reasonable. But insurers are equally entitled to undertake their own assessments of the damage, prepare their own scope of works, and arrange for repairs to be costed to determine how much they are willing to pay to repair the property. If the homeowners enter into a building contract that exceeds their insurer's assessment of the cost of those repairs, however, the homeowners must meet the additional cost themselves unless they establish that the insurer's figure is unreasonable.

https://www.justice.govt.nz/assets/Documents/Decisions/CEIT-2020-0020-W-and-W-v-SR-Decision-2.pdf

Joint engineering reports

[19] An insurer may refuse to ratify an agreement between the parties' respective structural engineers about how the earthquake damage should be repaired, but cannot act unreasonably in doing so.
https://www.justice.govt.nz/assets/Documents/Decisions/CEIT-2020-0020-W-and-W-v-SR.pdf

Independent advisors

[20] An expert advisor will be considered independent, irrespective of the appearance of bias, unless there is a real connection between the expert and one or other of the parties such that their independence is affected. This could be based, for example, on the expert's price statements, their conduct in other cases, or if they exclusively accept instructions from a single party or class of parties.
https://www.justice.govt.nz/assets/Documents/Decisions/N-v-IAG-expert-advisor-decision-Anon.pdf

Conflict of interest

[21] No conflict of interest arises simply because an expert is giving evidence in a case against a former principal.
https://www.justice.govt.nz/assets/Documents/Decisions/CEIT-2019-0024-Nipperd-v-IAG.pdf

Procedure

[22] The Tribunal has made a number of procedural rulings, including:

(a) The first case management conference enables the Tribunal to design a pathway specific to each claim, and should not be pre-attempted by an agreement between counsel about the first step in the Tribunal's process.
https://www.justice.govt.nz/assets/Documents/Decisions/CEIT-2020-0028-21-October-2020-anonymised.pdf

(b) Although the Tribunal is not bound by the Evidence Act 2006, it is reluctant to admit evidence of "without prejudice" settlement discussions unless the parties have mutually waived their right to object, the discussions were without prejudice save as to costs, or those discussions are evidence of whether a binding agreement has been reached.
https://www.justice.govt.nz/assets/Documents/Decisions/CEIT-2020-0021-Decision-of-CD-Boys-Anon.pdf

(c) The Tribunal's informal process can lead to the incorporation of irrelevant, argumentative, and hearsay evidence in affidavits and briefs, particularly from litigants in person. Irrelevant material will be excluded, argumentative material overlooked, and hearsay evidence admitted subject to submissions about relevance, reliability and the weight to be attributed to it. https://www.justice.govt.nz/assets/Documents/Decisions/CEIT-2019-0037-DGF-Trust-anonymised.pdf

(d) The Tribunal has undertaken an in-depth analysis of its costs jurisdiction and explored the conduct that might trigger an award of costs, which are compensatory in nature. Generally, the Tribunal may award costs if it thinks that one party's conduct has caused one or more of the other parties to incur unnecessary costs and/or expenses. https://www.justice.govt.nz/assets/Documents/Decisions/D-decision-3-costs-anon.pdf

Tribunal experts

[23] The Tribunal regularly appoints experts to assist it. Generally, it is not economic to seek detailed reports, but these experts have been very helpful in resolving technical issues at facilitated conferences of experts and by engaging in debate with the experts giving evidence during hearings. During the year under review the Tribunal spent $504,875.40 in relation to this expert assistance.

[24] The Tribunal recently altered its expert facilitation process by instructing its expert advisor to provide a short opinion on those issues where the parties' experts have been unable to agree. Although this opinion is not binding on the parties, it provides an independent opinion which the parties have found helpful in resolving their dispute.

Mediation and settlement conferences

[25] Four claims were referred to funded mediation through MBIE in the current year, compared with three for the preceding 13 months. All mediations have resulted in agreement. Two claims attempted settlement using a private mediator paid by the parties, but only one was resolved.

[26] To increase the opportunities for settlement, the Tribunal has conducted its own settlement conferences during the year under review. During the current year the Tribunal has held 22 settlement conferences, of which 12 resulted in resolution of the claim. A further six

resulted in agreement but will not be finally resolved until the agreed repairs have been completed. No agreement was reached at four settlement conferences.

[27] The Tribunal has also introduced a process whereby the Member who is assigned to hold the settlement conference convenes an experts' conference beforehand to reduce the number of issues in dispute.

Case stated

[28] The Tribunal had envisaged that it would be efficient to obtain rulings from the High Court on controversial issues by applying to that Court using the case stated procedure but has only done so twice and has not found the process to be particularly helpful.

Rulings

[29] Twenty-four Tribunal rulings are now recorded on its website. Only one of those, relating to the Tribunal's costs jurisdiction, has been appealed. No suppression orders have been made so far, but every endeavour is made to anonymise the identity of claimants to protect their privacy.

Resolution

[30] The Tribunal was initially resourced to deal with 50 claims in the first year, but the demand was more than double that, leading to inevitable delays. Fortunately, this resourcing issue was resolved for the year under review by the appointment of four new members in May 2020.

[31] The Tribunal has resolved 84 claims, leaving 46 claims still to be resolved.

[32] Of those 46 unresolved claims:

(a) thirteen have been resolved but are classified as active until the completion of the agreed repairs or they await the outcome of cases in the Court of Appeal;

(b) six have been heard but are awaiting a reserved decision,

(c) seven have been scheduled for hearing; and

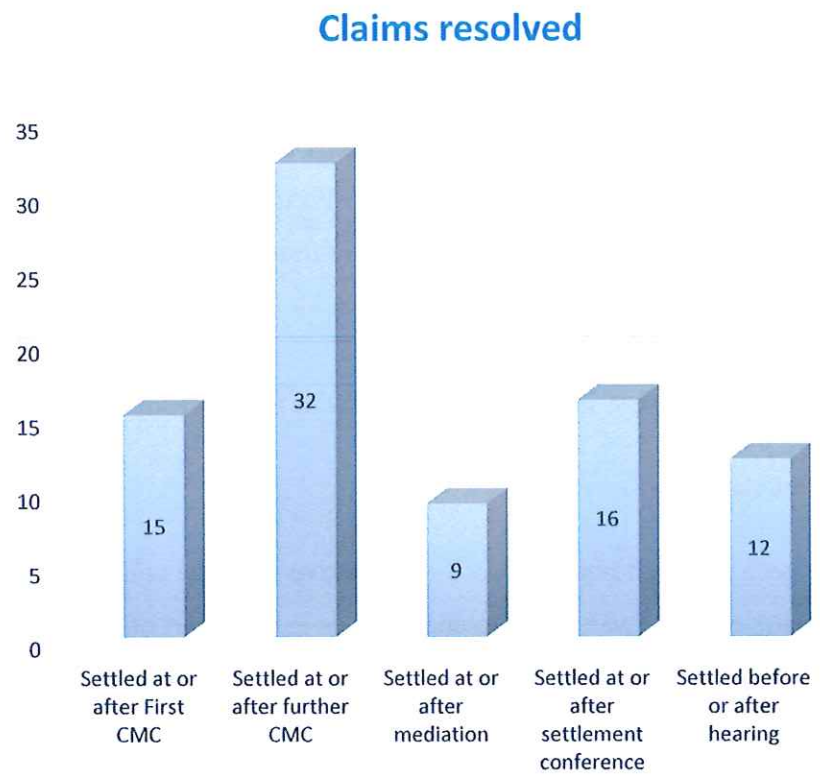
(d) eight more were only accepted in the last six months.

[33] The table and chart below show the stage at which the 86 claims were resolved and the average age of each at resolution. The age of the claims settled at a settlement conference is distorted because this process was not instituted until near the end of the first 13 months of the Tribunal's operation and involved claims that were already aged.

Table 2: Claims resolved by stage since inception

Stage at resolution	Total	Avg Days
Settled at or after First CMC	15	114
Settled at or after further CMC	32	265
Settled at or after mediation	9	272
Settled at or after settlement conference	16	329
Settled before or after hearing	12	235
	84	**247**

Chart 1: Claims resolved by stage since inception

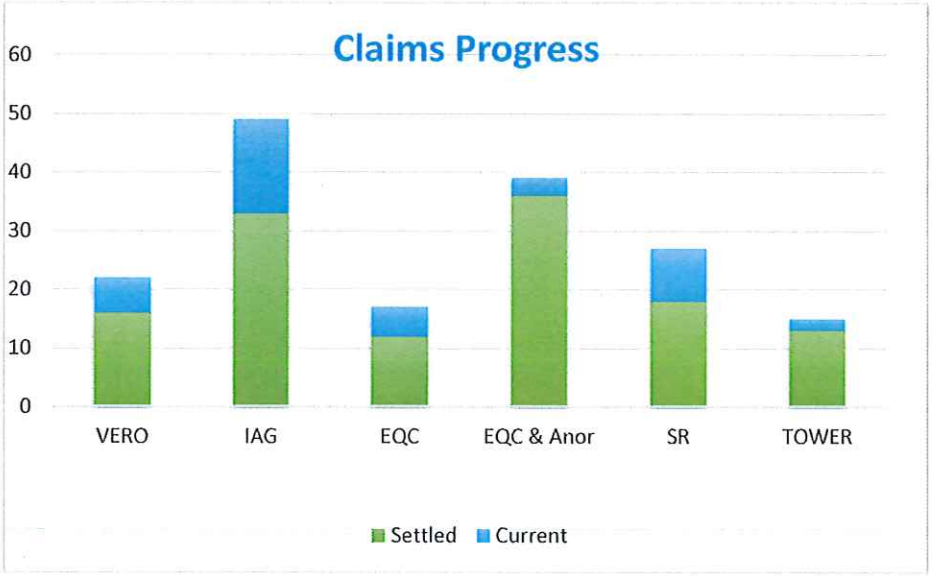


[34] The resolution rate for the eight insurers is shown in the table and chart below:

Table 3: Claims history by insurer

	Accepted	Settled	Current	
VERO	22	16	6	73%
IAG	49	33	16	67%
EQC	17	12	5	71%
EQC + Anor	39	36	3	92%
SR	27	18	9	67%
TOWER	15	13	2	87%
MAS	3	2	1	67%
WESTPAC	1	1	0	100%
	173	131	42	76%

Chart 2: Claims history for top six insurers



Relationship with other providers

[35] The Tribunal works in partnership with the High Court and the Greater Christchurch Claims Resolution Service (GCCRS) to enable Cantabrians to resolve their earthquake claims and move on with their lives. The Tribunal has already resolved many claims referred to it by

the High Court and has made rulings in these and other cases which it hopes will enable Cantabrians to resolve their claims, either by themselves, or with the assistance of the GCCRS.

Cantabrians are moving on

[36] Below are a few case summaries and testimonials to show how the Tribunal is helping Cantabrians to move on.

A v EQC

EQC cut trench in sealed driveway to replace damaged pipes. Dispute whether trench only should be re-sealed or entire driveway. Resolved within three months after first case management conference by EQC agreeing to meet cost of sealing entire driveway. Subsequent claims for costs resolved by decision on papers. Claim terminated after five months in Tribunal.

B v Southern Response

Vulnerable homeowner lodged claim with Tribunal in June 2020 alleging Southern Response bullied her in 2016 into accepting inadequate cash settlement to rebuild house. Southern Response denied allegation and claimed cash settlement in full and final settlement. Homeowner able to air grievance at first case management conference. Member outlined relevant law in Minute and directed submissions hearing after further discovery. Homeowner withdrew application before submissions hearing after three months in Tribunal.

C v EQC & IAG

Despite initial repair and re-repair by EQC, unacceptable floor dislevelment (between 54 – 64 mm) remained. Engineers unable to agree on repair methodology. Claim transferred to Tribunal after two years in the High Court and settled at facilitation led by Tribunal engineer after the four months (including Covid-19 delay) in Tribunal.

D v IAG

IAG decided to reimburse homeowners for costs incurred by lifting superstructure and replacing foundations to repair earthquake damage. Homeowners placed in managed repair programme. Repairs defective: foundations built too small and not to specification, garage too small and too close to boundary, internal walls badly out of vertical, leaking roof, leaking and draughty windows, unrepaired drains. Claim transferred to Tribunal after nearly 3 years in High Court and resolved day before scheduled hearing after seven months (including Covid-19 delay) in Tribunal.

E v IAG & Third Parties

IAG decided to reimburse homeowners for costs incurred by lifting superstructure and partially replacing foundations to repair earthquake damage. Homeowners placed in managed repair programme. Repairs defective: unsuitable repair method chosen, unacceptable floor slopes

remaining throughout the house, new concrete floor slab and pile repairs failed to meet code requirements, multiple examples of poor workmanship, kitchen and one bathroom unusable. Homeowners forced to cook and eat in garage. Five parties joined as respondents at IAG's request. Discovery ordered. Experts on-site conferral directed. Claim resolved following settlement conference after 14 months (including Covid-19 delay) in Tribunal.

Testimonials

I just wanted to touch base with you personally to thank you very much for the assistance and respect you showed to me in my time in the tribunal.

I understand from [lawyer], that you are aware that settlement was reached on Friday, after a rather harrowing mediation.

Had it not been for your smile, calm demeaner [sic], and professionalism at the first hearing at the tribunal, I really don't think I would have been able to walk into the room. From a layman's perspective, it is a very daunting process. Certainly the first time in a Court building for me! No amount of preparation from your lawyer can help on the day.

Please also pass on my thanks and gratitude to [Member]McCormack. If it had not been for her help in moving things along, I have no doubt that the process would still be ongoing. Her wisdom and practical approach to the situation, was very much appreciated.

Once again, my heartfelt thanks to you both, for your help and all the very best for the work you are doing

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The SBS Bank confirmed yesterday the receipt of EQC and Tower agreed settlement funds into their account. We would like to personally thank you for all your assistance in achieving this outcome.

……

Thank you all in enabling Mrs [] to reach certainty with this claim.

……

Thank you for the help you have given me in trying to get my concerns settled. I would like to especially thank the Chair … for his concern and compassion during this time. It has been a long 10 years.

And it has taken a toll on my health as it did with my son. Some of my questions were answered and I am sure there will be more to come from this with a good resolution. Would you please pass on my sincere thanks as I am not sure if I should be contacting anyone personally.

C P Somerville
Chair
Canterbury Earthquakes Insurance Tribunal