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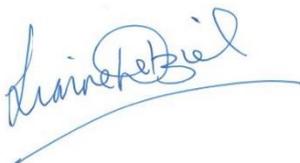
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**Christchurch City Council submission on the Insurance Contract Law Review**

1. The Christchurch City Council (the Council) thanks the Ministry for the opportunity to submit on the Insurance Contract Law Review.
2. Please find attached the Council's submission as a governance stakeholder of the Residential Advisory Service (for local consumers of insurance) with regard to the settlement of earthquake claims.
3. The Council welcomes further discussions or investigations in terms of the Christchurch experience to share with the Ministry in regards to the review of Insurance Contract Law.
4. If you require clarification on the points raised in this submission, or additional information, please contact Jenny Hughey, Principal Advisor Strategic Policy at [jenny.hughey@ccc.govt.nz](mailto:jenny.hughey@ccc.govt.nz)

Yours faithfully



Lianne Dalziel

**Mayor**  
**Christchurch City Council**

# Submission on discussion document: Insurance contract law review

## Your name and organisation

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<b>Organisation</b>	Christchurch City Council

## Responses to discussion document questions

### Christchurch City Council submission to the Ministry of Business, Innovation and Employment Review of Insurance Contract Law – Issues Paper May 2018

#### Part 2: Submissions as a governance stakeholder of the Residential Advisory Service (for local consumers of insurance) with regard to the settlement of earthquake claims.

#### Conduct and Supervision

#### Background introduction

1. The Canterbury Earthquakes of 2010 and 2011 caused many of the citizens (consumers<sup>1</sup>) in the Christchurch City Council (Council) district to experience a wide range of issues with settlement of their insurance claims.
2. Arising from continual complaints about lack of progress with settling claims and the need for consumers to be provided with support services the Christchurch City Council entered into an agreement to assist with creating and funding a residential advisory service to assist consumers to resolve their complaints.
3. The Residential Advisory Service (RAS) was established in 2013 as a stakeholder collaboration between the Canterbury Earthquake Recovery Authority (CERA), the Earthquake Commission (EQC), the Insurance Council New Zealand (ICNZ) and the Council. Its role was to provide an independent and impartial service to assist residential property owners progress their insurance claim. An adapted service continues to operate in 2018 together with the Department of Prime Minister and Cabinet (DPMC) and the Ministry of Business, Innovation and Employment (MBIE).
4. To meet the needs of property owners the service focuses on providing legal advice and brokering solutions with support from a technical panel by:
  - a. enabling all issues to be identified upfront and addressed as a whole
  - b. proactively working with homeowners to engage with insurers and EQC
  - c. enabling issues to be resolved efficiently through effective utilisation of resources
  - d. providing an opportunity to bring all relevant parties together to help reach agreement
  - e. being scalable, flexible and agile
  - f. negotiating and brokering tailored solutions to help reach agreement.
5. Since its launch on 16 May 2016, the Residential Advisory Service has received 17,870 contacts from residential property owners to end of business on 20 April 2018. Of those

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<sup>1</sup> The Review of Insurance Contract Law Issues Paper May 2018 refers to citizens involved in insurance claims as consumers.

contacts received, the Service has progressed 5,314 residential property owners to a meeting with an Independent Advisor or Broker. (RAS monthly report April 2018)

6. The Council provides material in this submission gained from its role in the governance stakeholder group of the Residential Advisory Service. The Council is submitting information on a non-technical basis in answer to the Review of Insurance Contract Law Issues Paper 2018 (Issues Paper) questions 15, 18 and 19 in this section of the submission.

### **Key relevant Questions: Responses to key questions in the issues paper:**

#### **15. What do you think fair treatment looks like from both an insurer's and consumer's perspective? What behaviours and obligations should each party have during the lifecycle of an insurance contract that would constitute fair treatment?**

Fair treatment from a consumer's perspective should include adherence to the following principles and standards by the insurer, their associated intermediaries and all professionals involved:

- Transparency and honesty in all dealings
- Clear processes around all aspects of the insurance cycle process including plain English policy statements
- Consistent clear and ongoing communication
- Finite timelines with reasonable time frames for all processes and undue delay is avoided
- Conduct towards consumers should be clearly explained and codified so that the consumer understands due care, skill and diligence. ( International Association of Insurance Supervisors' Insurance Core Principle 19 (IAISI)
- All associated engineers, loss adjustors, soil testing experts, repair estimators, quantity surveyors and builders involved should follow consistent briefs for work in the settlement process. All professionals should be regulated through Codes of Conduct. The respective roles should be clearly outlined for the consumer
- Support and advocacy with an easily accessible and independent complaint process with mediation.

The insurer and the homeowner will need to follow the principles of "utmost good faith" as a requirement to achieve fair treatment. The 2016 High Court decision which found that a mutual duty of utmost good faith was implied in every insurance contract should be codified. Further the Issues Paper states that the Australian legislation provides guidance to this review. (Issues Paper para 73)

It is relevant to this review to note that in 2012 the Australian House of Representatives *Inquiry into the Operation of the Insurance Industry during Disaster Events* concluded that "the self-regulatory Code places little onus on insurers to achieve benchmark performances in the claims handling process, particularly during disaster events". The Committee concluded that the voluntary Code should be "subject to regulation of efficient, honest and fair dealings in relation to claims handling", and recommended that the Code "cannot be waived during disaster events". ([https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=spla/insurance/report/index.htm](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/insurance/report/index.htm))

Consumer protection should be mandated in insurance claims handling processes to ensure fairness. The provisions should be clear in the contract so that the consumer knows what to expect from the commencement of the claim process.

Evidence for the provision of the fair treatment principles listed above is provided through the Councils involvement in the RAS, with examples provided below.

### **Evidence – Question 15 Fair treatment from a consumer's perspective**

#### **15.1 Establishment of RAS**

The establishment of RAS is evidence of the need for legislative change to ensure fair treatment for consumers. It was established as a direct result of consumers becoming engaged in protracted complaints with regard to claim handling. Consumers were not able to fully understand the process

involved in the claim settlement processes. Evidence of this need was recorded in a 2013 report to the Council about the RAS as follows:

Canterbury Earthquake Recovery Authority (CERA) held a series of meetings with stakeholder groups to identify the issues that property owners face during the EQC/insurance settlement process and the subsequent repair and rebuild process for property owners.

The stakeholder groups identified a gap in support for residential property owners who are caught up in these insurance and repair/rebuild processes. The needs of residential property owners were identified and included a lack of understanding of their policies and where they were in the EQC/insurance process. The stakeholder groups suggested an independent service to respond to this gap in advice and support for property owners. (Christchurch City Council meeting 12 December 2013)

RAS provided an advice service and assistance with settling claims to counter the perceived lack of fair treatment for the consumer in dealing with the insurers and associated intermediaries.

The RAS experience demonstrates that fair treatment should include remedying the gaps in New Zealand's regulation of insurers when compared with the IAIS principles. In addition, the law should be updated with guidance from the Australian and United Kingdom reforms. (Issues Paper para 27)

More explicitly the experience of RAS has demonstrated the need for fair treatment principles to be codified in future Insurance Contract legislation requirements as evidenced by the comments provided below collected from RAS exit interviews.

## **15. 2 Psychological and wellbeing issues related to settlement of claims**

It is important to understand the psychological impact of protracted claims settlement on consumers, when formulating fair treatment principles for consumers.

Throughout the operation of RAS it has been reported that consumers are emotionally impacted by dealing with their claims. Consumers feel that they are being subjected to a process designed to "wear them down" with constant changes in processes and lack of communication. The process erodes the confidence of the consumer worsening the balance of power between the consumer and the insurer.

RAS is continuing to find that some clients attending the service are visibly impacted by issues related to resolving earthquake damage to their home. Some consumers demonstrate such severe emotional impact at interviews that they are assessed as not being capable of handling their own case through to settlement.

Within RAS wellbeing issues have been discussed at governance meetings. For example, under the heading 'Hot Topic' in the RAS August 2017 monthly report it was noted that "mental health is an ever present issue" for consumers contacting RAS. (RAS report 11 August 2017). Further the April 2018 monthly report noted that:

"Brokers are seeing an emergence of suicidal men coming to the fore – the stress is very real and is often based on financial stress...The brokers are relying on the well-being pathway to refer those in need for help although a dedicated person supporting both home owners and the brokers is required" (RAS report April 2018)

RAS collects vulnerability data constantly and in April 2018 the report noted that "over the last 4 weeks vulnerability data rose ...which is reflective of the state that the individuals are presenting to RAS". (RAS report April 2018)

Ongoing concerns raised at the governance meetings resulted in a pathway being developed for people with stress related issues without any real ability for RAS to provide on the ground psychological/wellbeing support. In April 2018 the RAS monthly report stated:

“The Wellbeing Referral Pathway recently developed will assist suppliers identify the ways to assist those vulnerable residents whom are expressing difficulties, for whatever reason, settling their claim. It is still concerning that we cannot get any consistent wellbeing support for those home owners that are not at the extreme end of the spectrum”.

In addition the RAS exit survey asks consumers to rate how their insurance claim situation is impacting on their wellbeing. Consistently 80% of consumers agree that the situation is impacting on their wellbeing with 50% strongly agreeing. (RAS advisory service exit survey April 2018)

In order to determine what fair treatment looks like from a consumer’s perspective the psychological/wellbeing impact of the claim resolution process must be given high priority.

The following examples of consumers exit comments to RAS illustrate the psychological/wellbeing and other issues related to settlement of claims:

### Example 1

*“I am writing to share with you my very positive experience with the Residential Advisory Service (RAS) in Christchurch. My partner X endured being mucked around by EQC, CERA and then Southern Response for seven years. He was at breaking point late last year when I contacted RAS for help. I immediately felt an immense weight lift off my shoulders. RAS was able to assess the situation over the phone and get the right people to support my partner and X had zero trust in Southern Response after years of repeated errors, deadlines that came and went with no action or communication or Southern Response failing to give any timeframes at all because they knew they couldn't meet them anyway (yes they said this!)*

*RAS quickly realised it was important that X needed someone intelligent to deal with at Southern Response and was able to get this arranged immediately. She also knew that X would need a lot more information about what he was and wasn't entitled to in order for the claim to be settled. Again she was able to get him in the room with the right people who were a solicitor from Community Law and her colleague from RAS. I was not present at this meeting as RAS knew I needed some time out. I am sure X did not like everything he was told but the information was delivered in a way he could understand and accept.*

*RAS also arranged for psychological help so X had that option if he wished to accept it.*

*After that RAS organised a meeting with the builder, Southern Response, RAS people and Arrow so again X could get more information to help him assess whether or not he agreed with what Southern Response proposed to settle his claim. It was a surprise to everyone in the room when X and the person from Southern Response reached an agreement on a cash settlement. There wasn't a dry eye in the room. I believe that having RAS in that room meant for the first time in 7 years X felt informed and had some control.*

*RAS staff continued to work with X to get all the final details of the contract sorted out and were incredibly patient and compassionate.*

*I do not know if X got everything he was entitled to after paying his insurance premiums for decades. We will never know because the stress, time and legal fees was too much to bear. The system is broken, very broken, but I really feel like the RAS helped get us out of a very dark place that was only going to get darker the longer we stayed there. As far as I am concerned the RAS is an A-team. They are an essential service that needs to remain in place as long as people like X have unsettled claims.*

*X signed his contract yesterday and so today was the beginning of the rest of our lives. We still can't feel anything but with absence of the Southern Response stress I am sure we'll both be feeling a lot better soon, as our relationship and X's health has been sorely tested.*

*X and I are both middle class people who haven't had a lot to do with the State. We are the sort of people who fend for ourselves and pay our taxes but avoid dealing directly with the IRD if possible. We have now had 7 years of our lives being on hold because of the State. It has bordered on abuse. We don't know if we want to keep living in New Zealand. Perhaps the sour taste in our mouths will fade in time. I certainly know that we are very different people than 7 years ago...tougher and more compassionate for the underdog but with a very low opinion of large organisations whether Government agencies or insurance companies. The RAS, in contrast...well we can't speak highly enough. (RAS report March 2018)*

**Example 2**

*"I was given advice to contact EQC one more time after my own dealings with them and two assessments of land damage. It was beyond my emotional and mental energy levels at that point to deal with EQC again. I decided that after four and a half years dealing with EQC it was detrimental to my wellbeing to continue..." (RAS exit data April 2018 133)*

**Example 3**

*"I could not praise your service more highly. I felt support, was provided with clear sound help. Your service advocated for me with regards to the insurance company and attended meetings. Without your help this would have been stressful and confusing. I had a really good outcome and I put this down to the help from your service." (RAS exit data December 2015)*

**Example 4**

*"Thank goodness for RAS – I was getting extremely stressed with my insurer and their unfair bullying tactics. The RAS representative gave me legal advice but more than that I felt listened to, understood and supported. IAG have behaved atrociously. I would not have believed it if I had not experienced it myself. I was able to get through this but I wonder about older people and people more vulnerable than me. I feel glad that RAS is there to support them. It is a shame that such a service is needed (i.e. that insurers behave so badly) but it is. So I am very grateful and I will recommend it to anyone I know who is having trouble with their insurers. Do insurers realise that their customer base is being eroded by such awful behaviour? No one trusts them anymore." (RAS exit data 27 December 2015)*

### **15.3 Transparency and honesty in all dealings**

RAS heard from consumers about the lack of transparency on the part of insurers during the claims handling process with regard to not supplying documents requested by the insured in relation to their claim.

Comments made to RAS contained throughout this submission demonstrate the need for codified transparency and honesty in settlement processes. The following comments are further examples of the comments consumers made to RAS.

**Example 5**

*"Within 3 days of meeting with the RAS lawyer, we had a phone call from EQC to inform us that they had miraculously found our engineering report and that they wished to proceed and have the 'opt-out' process completed with a site visit and hand-over to Rebuild Me. We are now officially opted out and Rebuild Me have been able to start the work required on our property." (RAS exit data 27 May 2014)*

*"Because of the intervention of RAS I was finally able to find out what was happening with my claim with EQC, after nearly three years of no communication. Within a matter of weeks I*

*learnt I was over the cap and out of their clutches. I am now with my insurer, where slow progress has been made.” (RAS exit data 16 May 2014)*

*“Insurers move at a glacial pace, progress only seems to occur when a lawyer becomes involved or request for information is pursued through official channels.” (RAS exit data 16 May 2014)*

#### **15. 4 Clear processes around all aspects of the insurance cycle process including plain English policy statements**

The RAS experience demonstrated that many consumers do not understand the processes or the policy statements. Comments throughout this submission demonstrate that the more clearly stated the processes, the more the consumer understands the processes and the balance of power between the insurer and the consumer is adjusted toward fairness.

It is important to ensure that all processes involved in the insurance cycle are made clear to the consumer at the commencement of the insurance process. The use of plain English expression should be mandatory.

The following examples of consumers’ exit comments to RAS illustrate the need for clear processes around all aspects related to settlement of claims:

##### **Example 6**

*“The advice from RAS helped me clarify what the options were to progress my claim with the insurance company, as well as being able to ask for details from EQC about unresolved land settlement issues. Having an independent and neutral RAS advisor talk through the situation and to determine whether I was asking the right questions of my insurer was invaluable. Also having them clarify and explain some of the language used by my insurer helped me feel less stonewalled and rail-roaded by my insurer.” (RAS exit data 5 August 2015)*

##### **Example 7**

*“I’m glad that your brain can handle all this and make some kind of sense out of it, and respond appropriately. Mine gets frazzled just reading it through!” (RAS report April 2018)*

#### **15.5 Consistent clear and ongoing communication**

Consistent clear and ongoing communication is essential to the fair treatment of consumers during the claims settlement processes. Many consumers reported to RAS difficulties with communication, non-consistent communication and a total lack of communication at times throughout the claim resolution process.

It is essential that ongoing communication is required and codified to achieve fair treatment for consumers.

The following examples of communication issues faced by consumers in resolution of their insurance claims illustrate the experience of RAS consumers:

##### **Example 8**

*“Our claim is still ongoing as our insurer has not communicated very much, through minimal communication our insurer has committed to continuing our repair. We have now had soil testing done at insurer’s expense, however after a few months we are still awaiting on results and where we go from here”. (RAS exit data 22 June 2015)*

##### **Example 9**

*“Our insurance company would not help with our repairs any longer as they said they had spent way too much money on our house. I thought it was still going to be straight forward from then on and I opted out of EQC-managed repair and signed a contract with a builder. This year as time moves closer to the repair of my house (to be in March 2015) I have had more problems concerning my insurance and EQC payments which are now difficult to understand. I’m overseas currently so*

*I am unable to just call and discuss anything with anyone. It all has to be done by email. Currently I'm stuck" (RAS exit data 22 October 2014)*

**Example 10**

*"I am grateful for the professional assistance that I received and the way things were negotiated when meetings were held with the insurer and other interested parties. Having an expert who had the contacts certainly allowed my situation to reach closure. Prior to contacting RAS I felt that I was not being listened to and things were just at a stalemate. The communication between builders and insurers was not happening and I was like the silent on in between. Once RAS were involved action commenced (RAS exit data 23 June 2016)*

**15.6 Finite timelines with reasonable time frames for all processes and undue delay is avoided**

Many consumers have indicated to RAS that they have experienced undue delay and large numbers of consumers have not reached final settlement seven years after the earthquakes. One set of figures from the Department of Prime Minister and Cabinet (DPMC) Insurance Monitoring report indicates there are 3500 EQC remedial and 2,500 over cap claims remaining unsettled.

If fair treatment of consumers is to be delivered finite timelines for claim settlement with reasonable timelines throughout the process need to be established.

The Issues Paper acknowledges disputes around claim settlement negatively impacts consumer outcomes. (Issues Paper para 74) The evidence from RAS strongly indicates that time frames should be stipulated for claim handling processes and for settlement.

Provisions are time frames should be updated to meet best practice standards contained in international insurance laws and be mandated.

There is an urgent need for legislative change in order for fair treatment of consumers to be established. Intervals of up to seven years to settle a claim are clearly not consistent with fair treatment. The Australian House of Representatives Committee of Inquiry into the Operation of the Insurance Industry during Disasters heard claims from consumer and legal organisations criticising delays of six months in claim handling following major disasters in Australia. The Committee recommended that consumer protection be codified in Australia as outlined above.

The pressure to act urgently to increase consumer protection under the Insurance law is intensified given the identified earthquake risk in New Zealand. In order to avoid a repeat of the insurance settlement delay for many consumers following the Christchurch earthquakes.

Comments made through the RAS exit survey data include the following examples:

**Example 11**

*My wife and I had been struggling with making any productive headway for some years following the earthquakes. Our insurer, Vero, was clearly in no mood to be reasonable so we were forced to reach out to an organisation by the name of KSL. The Director of this company, represented us until such time as Vero stated they would enforce the Statute of Limitations. In panic, we reached out to friends who put us in touch with RAS.*

*Immediately after our first email to RAS, I met with him at their office in the HKSBC building. We immediately formed a meeting with the Head of Vero Claims and our Vero case manager - none of which would have been possible without RAS involvement.*

*I feel because of the RAS officer's experience, position at RAS and relationship with those at Vero, we were able to move ahead very quickly. A few months down the track and Vero have miraculously decided to settle our claim.*

*I will never know what conversations took place within Vero of late but I am sure that settlement would not have occurred if RAS was not involved. We are grateful to those who provide funding for RAS, who moved things through with such a quick and professional manner. RAS email responses were immediate, irrespective of the time of day or night. The communication skills are excellent and the RAS officer was able to get along with the multitude of personalities that are tied up in this aftermath. I have great respect for the RAS staff who assisted us. (RAS exit data)*

**Example 12**

*An example of a RAS round table meeting including insurers, engineers, the loss adjuster, the consumers and RAS staff included a discussion around fixing foundations. A way forward was agreed. There is no follow up communication with the consumer for the next 10 months and no satisfactory response to their inquiries. Finally a letter from the insurer is received agreeing to fix the heater and other minor details with no reference what so ever to the foundations at all less alone the agreement that was reached. The claimants got nothing and their home was still broken. The claimants were not taken on the journey with the insurer. The home owner was blindsided. (RAS case study May 2018)*

**Example 13**

*“Yesterday was an exciting day – builders arrived to start repairs on our property. We couldn’t let the day pass without a very big thank you for all you did to help us being about a resolution with EQC and later Tower. We have no doubt that without your help we would still be locked in conflict with EQC and possibly facing very expensive legal fees.*

**Example 14**

*We didn’t know what to expect when we approached you for help, to be honest we didn’t hold very high hopes that we’d get the sort of help that we knew we needed. How wrong we were. From our very first meeting we felt a huge sense of relief – we had met someone who listened to our somewhat emotional rant and seemed to understand our anger and frustration.*

*Who was able to make sense of our situation and was willing to approach EQC on our behalf. It was as if a huge load had been lifted off our shoulders. You were able to present our case to EQC in a way that helped bring about an acceptable resolution – something we’d spent the previous 6 years trying to achieve. Once more a very big thank you. (RAS exit data Sept 2017)*

**Example 15**

*“EQC are still refusing to remove liquefaction under my unit, even though earthquake repairs are due to start next week. The RAS barrister has been excellent in communicating with me and intervening with EQC on my behalf. The Insurance Company has been more involved since RAS came on board. The EQR contract supervisor has made some progress with EQC but the battle is not over yet. (RAS exit data 12 Feb 2014)*

**Example 16**

*“I haven’t had any progress yet. Southern Response just like to ignore you full stop. They haven’t even acknowledged my email”. (RAS exit data 12 March 2013)*

**Example 17**

*“I cannot speak highly enough of the help I have received from RAS thank you. X was extremely helpful and her interventions on my behalf with IAG and EQC have been extremely valuable. My residential property claim is ongoing and I feel we are making progress now, whereas I had spent years trying to progress it previously (first with EQC and then after with IAG) Although my contents claim with EQC has recently taken a backwards turn, I regard that as no fault of RAS, but likely due to major failings in EQC’s internal systems. (RAS exit data 23 June 2016)*

**15.7 Conduct towards consumers should be clearly explained and codified so that the consumer understands due care, skill and diligence. (International Association of Insurance Supervisors' Insurance Core Principle 19 (IAISI))**

A number of consumers pointed out to RAS that working through an insurance claim to get your home repaired is a difficult experience. The home is often the largest asset a consumer owns therefore conduct towards consumers should clearly follow the principle of due care, skill and diligence.

**Example 18**

*“Working through getting your home repaired is quite an experience and the team at RAS have been great in providing calm rational advice. They have obviously dealt with a lot of people in a similar situation and this definitely helps in that they understand those coming to them are likely to be quite emotionally involved and the way they deal with you shows empathy which makes a huge difference. I have been happy to recommend RAS to everyone in a similar situation to mine and I look forward to working with them as I work through reinstating my property.” (RAS exit data 2018)*

**15.8 All associated engineers, loss adjustors, soil testing experts, repair estimators, quantity surveyors and builders involved should follow consistent briefs for work in the settlement process. All professionals should be regulated through Codes of Conduct. The respective roles should be clearly outlined for the consumer.**

RAS became aware of a range of issues related to the various professional work undertaken during the settlement process. It is important that consumers are clearly informed and understand the professional's role in the settlement process. In addition it needs to be made clear to the consumer how the work relates to the settlement in order to achieve fair treatment.

Consumers who sought the assistance of RAS present with a range of matters related to the work of various professionals. RAS recorded the spread of consumer issues throughout its operation. Overall the spread of issues included the scope of works, repair strategies, cash settlement, foundations, delays, rebuild vs repair, apportionment, standard/quality of repair, out of scope work, opt out, multiple insurers, retaining walls, weather tightness, remediation, body corporate, elevated flood risk and liquefaction(risk out). (RAS monthly report March 2017)

In addition consumer contact with RAS resulted in identification of the inability of many property owners to gain access to technical experts to enable them to progress their individual claims. A technical panel came into operation on 10 August 2014. The panel consisted of structural engineers and quantity surveyors. RAS had referred 753 cases to the panel by 20 April 2018. (RAS Monthly report June 2018/April 2018)

The technical panel was required to assist with unblocking protracted disputes. It provided a low level view on the technical response provided by the insurer to start the conversation with the insurer and provide support to home owners that settlement was on track. (RAS monthly report 22 Sept 2017) The RAS advisors meet with the panel on a monthly basis and this is a useful forum to discuss individual cases and to up skill on current issues that impact on the delivery of the service. (RAS Monthly Report May 2016)

The fact that RAS required a technical panel to start consumer conversations with the insurer and to provide home owners with support during settlements illustrates the need for the principles and standards outlined above to be codified in order to ensure fair treatment for consumers.

This range of consumer issues requiring RAS assistance demonstrates the lack of due care, skill and diligence required to achieve fair treatment for consumers. It raises questions about guidance around the process followed, the standards applied and communication around the work undertaken. If consumer fairness applied it could be assumed that very few consumers would have approached RAS for assistance.

## 15.9 Support and advocacy with an easily accessible and independent complaint process with mediation

It is clear from the RAS experience that consumers need access to support from the commencement of an insurance claim. If a consumer is to get a fair outcome under any Insurance Contract consumers must have access to support services together with an easily accessible complaint process with a mediation. This is because the RAS experience has shown that consumers are powerless against the insurance company when it comes to their number one investment, their home.

Consideration should be given to a permanently available RAS service with a legislative provision which would trigger the establishment of a larger RAS body automatically when natural disasters occur and a large number of insurance claims need to be settled. RAS has in recent times assisted consumers with insurance claims arising from the floods in Edgecumbe and the earthquakes in Kaikoura/Hurunui/Waiiau and Blenheim regions.

The following comments from RAS consumers indicate the need for RAS and the support it has provided:

### Example 19

*"I am so glad that the RAS exists – I am fairly young and articulate and I was struggling so I can't imagine how someone older or with learning disability would be able to stand up for themselves without such a service. The service must remain in place while the ramifications of the earthquake repairs are still going through. It protects vulnerable, honest citizens who simply want a fair go. The way the insurance companies have behaved is appalling and the RAS goes some way to supporting people so that they end with up with a reasonable deal." (RAS exit data 23 February 2016)*

### Example 20

*"If it wasn't for this service, myself and people like me would be left with costly lawyers' fees or worse have no way of defending their position and ultimately be ripped off by EQC. This is such an invaluable service to anyone who needs legal help. It's just a shame that companies aren't honest and we need a service like this to keep them honest. It's funny that if an insurance company tries to cheat you out of what you are entitled to and get caught out, nothing happens! But if the person claiming the insurance commits fraud and found out, they get into trouble. How ironic is that!" (RAS exit data 1 May 2015)*

It is clear from the RAS experience that many consumers require support from the commencement of an insurance claim.

## • 18. What has your experience been of the claims handling process? Please comment particularly on:

- **information from the claims handler about:**
  - **timeframes and updates on timeframes**
  - **reasons for declining the claim (if relevant)**
  - **how you can complain if declined**

### **The handling of complaints (if relevant)**

RAS consumers have reported problems with all aspects of the issues outlined in question 18. Overall many consumers reported concerns about time frames and lack of ongoing communication which is shown in the examples of comments to RAS contained in this submission.

The Council points out that the experience of residents with insurance claims following the series of Canterbury earthquakes is a unique opportunity for our democracy to understand the collective experience of consumers with regard to this review.

There is a significant amount of evidence of residents' experiences as consumers contained in the RAS files. The case facts would serve to directly answer the questions listed and provide a quantification aspect to this review. A review of these files would provide further evidence from which to identify and assess the issues in New Zealand which you refer to in the Issues Paper at paragraph 91.

The Council recommends that this review should immediately sponsor a study of the thousands of case files held by the RAS to inform the review, subject to the necessary Privacy Law considerations. These files will tell the story of residents' experiences with insurance claim handling and are essential information to inform this review for law reforms purposes.

Many of the exit comments provided in this report cover these issues. Additional exit comments from RAS are provided below but first a brief case study from the RAS service which illustrates the handling of claims.

**Example 21**

*"In November 2016 earthquake repairs were completed on the property. Despite their garage being fully replaced the house was deemed a repair. 2 Weeks after moving back in they noticed cracks appearing in the gib and door and windows began to stick.*

*In early 2017 the insurers team of professionals agreed that further remedial work was required, accepting that the repair was the right methodology however it didn't work. They went further to discuss alternate accommodation for the Home Owners as they would need to be out of the house for a period of time and they were comfortable with this and that they had agreed to additional work being undertaken.*

*Communication went quiet and after a number of months and changes of claims handlers and other personnel. They were then informed that their case had been referred to the "Audit Team". Attempts to get any details or information about the reasons for this referral or the extent of the audit and purpose was not explained and they were kept in the dark.*

*After nearly 8 months of silence the insurer advised that following the audit they believed they had met their obligations under the policy and that while they had a few minor issues to remedy they would not be revisiting the foundation issues". (RAS case study May 2018)*

**Example 22**

*"In this case the Insurer provided an expectation to the Home Owners on a pathway to resolution then disengaged from them while independently reviewing their response to the claim and arbitrarily determining the extent of their policy response. In this instance the Home Owners have lost trust and confidence in the Insurer and have, in their view been left in a house that is now in a worse state than before the earthquakes".(RAS report)*

**Example 23**

*"The so- called contact at Southern Response was a complete waste of time. We have never saw nor heard from the person after the mediation process". (RAS report)*

**Example 24**

*"RAS is marvellous. I was at my wits end trying to deal with EQC and a very aggressive Fletchers, until you got involved and set up meetings and thus made direct connection with EQC. X has been great. (They sent around folk from Cook Costello, but I have not heard ... recently. Nothing is happening at the moment) Anyway, RAS solved the immediate problem when I was being monstered. I just wish I had known about the mediation service long before." (RAS report April 2018)*

**Example 25**

*"Until RAS came on board we had no progress with EQC or EQR. We were being treated as though it was all in our mind and we were bullied and treated like dirt. Once RAS came on board their attitude completely changed and then things started to go our way."(RAS exit data 1 August 2018)*

**19. Have you ever felt pressured to accept an offer of settlement from an insurance company? If so, please provide specific examples.**

Some consumers reported to RAS that they had experienced pressure to settle. This experience is the opposite of fair treatment.

### **Example 21**

*“Again I found everything very helpful and reassuring, though unfortunately due to pressure from the insurance company saying if I didn’t accept their offer within days, they would withdraw it and probably pay less, I had to finish.” (RAS exit data 29 September 2016)*

### **Additional issues**

#### **Issues with Multi-unit blocks**

The RAS has been assisting title holders in multi-unit buildings (MUBs) since June 2016. The MUBs matters are complicated because several insurers may be involved. RAS aims to support and assist all title holders through their decision making process, and has successfully assisted over 400 individual MUB home owners in this time. A multi-party meeting consisting of all the relevant parties called by RAS was successful in progressing claims. Strategies included arranging informal meetings with a facilitator on site or at the offices of the insurer. The introduction of a facilitator at the meetings assisted to process matters and enabled all parties to participate fully and equally.

The same consumer principles and standards outlined under questions 15 and 18 above apply to multi-unit buildings.

Consumers’ issues with RAS around the resolution of MUBs could be solved by mandating that all units have the same insurance cover.

The following comments received by RAS illustrate issues with MUB settlements.

### **Example 22**

*Thank you for your help. The task of working through the complexities of earthquake insurance and gaining a working agreement between owners can be highly problematic. With varying agenda and knowledge, many owners can be alone and uncertain of the most appropriate approach to take. The expertise you provided gave us a great guiding hand towards a mutually beneficial agreement among all unit owners. I have no doubt that without your assistance we would not be in the favourable position we are now in. Your facilitation has helped us get a faster and more advantageous solution for which we are very grateful for. Owner flat 1 (10 flat complex – case closed- with joint law firm) (RAS exit data 11 August 2017)*

### **Example 23**

*“When we first phoned you in June 2016 we were getting to the desperate stage of wanting something final to be happening with the earthquake damage/repair at our flat in Christchurch. The years of having our life on hold and in the meantime our retirement arriving and still no end to the worries of a flat that was habitable but no longer at the standard we would like our rental property to be at because of the ongoing lack of repair. The calming influence of that first phone call you set our minds at rest as we believed we had finally found a person and service centre which could and was willing to assist us with support and advice that not just us but all the owners of the flats at the address were in desperate need of.*

*During the next few months we were further reassured as we attended a number of meetings arranged by you, where, as flat owners we were able to say our piece, sort out the lease agreement and with assistance come to a decision on where to go next. Having the meeting facilitated by X and receiving the expertise and input from the RAS lawyer were much appreciated by us as you three people made our life appear so much more organised over the that period. Thank you also goes to XX and everyone else who helped to get us back on track. We would like to say a big thank you to RAS for being there and having them employ people with the expertise to take care of Christchurch residents in their time of need.*

*Although the final outcome has not yet been met, we are well on the way to hopefully a perfect solution and certainly would not be there if not for the professional way the people mentioned above conducted their business.” (RAS monthly report October 2016)*

### **Example 24**

*“Thank you for your support. From my perspective, the final stages of achieving a settlement were given a huge boost when you came on board. It has been an incredible difficult journey. Because it was uncharted, we had little idea as to what direction to head, or what questions to ask. Your wise counsel was a huge boost to my energy levels and provided me with a lot more hope than an*

*agreeable solution could be achieved. I must admit I was often lost when you spoke fluidly about considerations and was pleased that you were able to stay patient with us and continue to explain until the penny dropped. We still have a little way to go but the foundations are now there for us to achieve our goals. Thanks so much" (RAS exit data March 2018)*