



**EARTHQUAKE COMMISSION**  
Kōmihana Rūwhenua

Item 1

## Earthquake Commission briefing:

Date:	22 May 2013
Ref number:	BN 12-13 013
EQC priority:	Medium
Confidentiality classification:	In Confidence

## Ministerial Action Sought

	Action Sought	Deadline
Minister Responsible for the Earthquake Commission (Hon Gerry Brownlee)	Note the proposed response to the Official Information Act Request from the Campbell Live news programme	As soon as possible

## Earthquake Commission Contact

Staff Name	Position	Telephone	Primary Contact
Ian Simpson	Chief Executive	[REDACTED]	
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## Enclosures

1. Correspondence between Dr Humphrey and EQC between 14 August 2012 and 10 January 2013 including two letters dated 22 November and 10 December 2012.
2. Timeline showing the development of guidelines for managing asbestos.
3. Proposed letter of response to the Official Information Act Request, providing information and background context.
4. Records it is proposed are released in response to an Official Information Act request regarding asbestos, unredacted version.
5. Records proposed to be released, shown redacted.
6. EQC's key messages regarding asbestos.

## **Briefing**

### **Introduction**

1. On 18 March 2013, Zoe Duffy, a producer on the current affairs show Campbell Live, made a request to EQC under the Official Information Act 1982 (the OIA).
2. The purpose of this briefing is to provide details on the proposed information release to Campbell Live in response to the OIA, and commentary on the asbestos issue more generally.

### **Request**

3. The request to EQC was for:
  - Copies of all notes or records of any sort that relate to communication or meetings with regard to houses with asbestos that have been identified as requiring a second ceiling – in house and externally with contractors.
  - Names of contractors who have worked on homes with asbestos and were second sealed as a result.
  - Names of everyone (officials, Ministers, health and safety experts etc) who signed off on the EQC asbestos second ceiling policy for Christchurch.
  - The number of Christchurch homes that have been identified for second ceiling asbestos encased by EQC contractors.
  - The total number of Christchurch homes that have been to date second ceiled/asbestos encased by EQC contractors.
  - Names of the people who were on the working group that developed the EQC asbestos policy, including the chair and independent health and safety consultant.
4. The request was due on 17 April 2013 and is now overdue.
5. Dr Alistair Humphrey, Medical Officer of Health (Canterbury) at Canterbury District Health Board, has also made a very similar request that relates to asbestos. EQC is currently working on that request and will provide you with further details shortly.

### **Background on asbestos issues**

6. As you are aware, asbestos was widely used in both commercial and residential buildings as cladding, insulation, or fireproofing material. It is common in houses built between the 1940s to the 1990s. EQC's early estimates, based on the age of Canterbury dwellings, indicate that approximately 40,000 houses could potentially be affected by asbestos.
7. The subject of how buildings containing asbestos are repaired under the Canterbury Home Repair Scheme (CHRP) has been the subject of media interest over the last 6 to 8 months. In particular, Dr Humphrey and others have questioned EQC's repair strategies when dealing with properties with asbestos. In particular, Dr Humphrey is concerned about the practice where asbestos is "enclosed" – which involves battening and lining: attaching battens to the existing ceiling structure and fixing a new ceiling in place over the damaged one.
8. Please find attached to this briefing (Tab 1 of the folder) correspondence between Dr Humphrey and EQC which sets out the respective views. In essence, Dr Humphrey has concerns that the repair strategies used by contractors carrying out work under the CHRP are "illegal" and in any

event unsafe and that unlicensed builders are doing the repairs. In addition, he has requested information about the properties in the CHRP where asbestos is present. Campbell Live has similar questions and concerns and that is the reason for the OIA.

Set out below are details of how EQC has dealt with asbestos generally, and a summary of EQC's response to those concerns.

#### EQC and Fletcher EQR approach to Asbestos Management

10. EQC's policy with regard to asbestos management has always been to follow the New Zealand Guidelines for the Management and Removal of Asbestos, developed by the Department of Labour, now the Ministry for Business, Innovation and Employment (MBIE). Those Guidelines allow for enclosing of asbestos in certain circumstances. Over time, in an effort to improve consistency across the CHRP, Fletcher EQR and EQC have developed a set of standardised guidelines and repair strategies to be used where asbestos is present. These were confirmed by the Ministry of Health (MoH) and MBIE as meeting legislative requirements. A timeline showing how EQC's documentation regarding repair strategies has developed is attached to this briefing as Tab 2. In summary,

- As part of the terms of their engagement, all contractors repairing houses in the CHRP are required to comply with all statutes, regulations and public authority by-laws, including those related to asbestos.
- To ensure consistent practices, Fletcher EQR issued standardised guidelines for asbestos management in February 2011, based on the then Department of Labour's New Zealand Guidelines for the Management and Removal of Asbestos. These guidelines were updated in June 2011 and April 2012. These guidelines were made known to all Fletcher Staff and Contractors.
- Between October 2012 and January 2013, EQC and Fletcher EQR set up a working group that consulted with MBIE to develop enhanced guidelines setting out repair strategies to be used when dealing with asbestos. (Asbestos Repair Strategies Guideline). In summary, the Asbestos Repair Strategy Guideline provides that the decision to remove or enclose the asbestos is consistently applied by EQC and EQR using a 7 point decision checklist. Full consultation with the homeowner is a key component of the decision making checklist.
- EQR's asbestos repair strategies guideline is based on asbestos management guidelines developed by MBIE. MBIE has stated that it is satisfied that EQC's Asbestos Repair Strategy guidelines meet legislative requirements.

11. In summary, it is EQC's view that:

- It has taken proactive steps to ensure compliance with the relevant regulations and guidelines, including the Health and Safety in Employment (Asbestos) Regulations 1998 and MBIE's Guidelines for the Management and Removal of Asbestos
- EQC has worked over time to develop consistent practices across CHRP and has developed repair strategy guidelines, which have been agreed as meeting legislative requirements
- EQC understands that in some cases, removing asbestos if no damage has been caused to it can be more dangerous to health than enclosing it.
- To remove asbestos that is not damaged or which does not need to be removed to effect the repair is outside the scope of EQC's cover and EQC's statutory powers.

- While Dr Humphrey has addressed his concerns to EQC, managing asbestos in Canterbury dwellings as part of the rebuild is an issue that other insurers will also face. Accordingly, Dr Humphrey should be addressing his concerns to a wider group for consideration.

EQC has been proactive in promoting safety of its employees and contractors and has identified asbestos as one of the high risk hazards in its safe6 health and safety initiative.

12. However, one issue EQC has faced is that in the establishment phase of the CHRP, there were not always consistent practices and centralised record keeping about identification, testing and repair strategies used when dealing with asbestos. In some cases, records are contained in the hard copy version of the file for the relevant property. In other cases, discussions about repair strategies were held onsite and not always recorded in writing. In relation to testing, mandatory testing for houses built between 1940 and 1990 did not come into effect until mid-2012. Accordingly, to date, it has not been possible for EQC to provide precise information about the numbers of houses affected by asbestos, total numbers tested or what the repair strategy was used in each case.
13. In addition, EQC has been reluctant to name the personnel involved in the development of the guidelines publicly. This is because of previous issues with EQC and Fletcher EQR staff being subject to intense media scrutiny and in some cases, harassment and defamatory comments. EQC's Health and Safety register identifies personal threat as the most common work-related hazard experienced by EQC and Fletcher EQR staff.
14. The circumstances outlined in paragraph 12 and 13 have resulted in frustration for Dr Humphrey and others.

#### Proposed Response to OIA request

15. EQC proposes to release the letter attached to this briefing (Tab 3) in response to the OIA request and in addition, the following documents (Tab 4)

Item	Document Description
1.	Three emails dated 14-15 January 2013 between Bruce Emson (EQC) and David Kelly (MBIE) confirming that MBIE is satisfied that the Asbestos Repair Strategy meets legislative requirements
2.	Minutes of Meetings taken during a meeting with MBIE, MoH and EQC in March 2013 confirming that the Ministry was satisfied that the approach complies with MBIE's "New Zealand Guidelines for the Management and Removal of Asbestos".
3.	Guideline no HS-GL0614 (final copy of the guidelines produced by the Asbestos Repair Working Group), approved March 2013.

#### Information withheld and/or not provided in the response

16. Regarding the request for records (including numbers) about houses with asbestos and repair strategies used (refer to paragraph 3 above), discussions with Fletcher EQR have revealed that because of the constraints described at paragraph 12 above, to provide the information requested under the OIA would involve reviewing a large number of files. Fletcher EQR have estimated that to review all files and determine how many had a second ceiling fitted would take a 20-person team approximately one year. Accordingly, EQC proposes to refuse this section

of the request under section 18(f) of the Act (substantial collation or research). The proposed response does, however, provide some background information and estimates of the likely numbers involved.

17. With regard to the requested details of contractors used to carry out repairs where asbestos is present, EQC considers that the request can be satisfied by releasing the names of specialist contracting firms who have been engaged to deal with asbestos. EQC considers that providing names of individuals employed by contracting firms would require substantial collation or research to provide; and be subject to privacy concerns. Should the requestor seek this information as a follow up to their original request, it is likely to be refused for the reasons detailed above.

18. With regard to the names of the members of the working group that developed the Asbestos Repair strategies Guideline, EQC's view is that these should be withheld under section 9(2)(a) (protect the privacy of natural persons) and section 9(2)(g)(ii) (the protection of such Ministers, members of organisations, officers, and employees from improper pressure or harassment) of the Act (see paragraph 13). External members of the working group have indicated that they are not prepared to have their names be released. It will also be harder for EQC to access contractor's skills and expertise if their names are released to the media without their consent.

9(2)(g)(i)

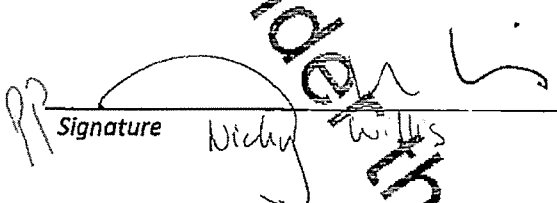


**Recommended Action**

The Earthquake Commission recommends that you

Note the contents of this briefing

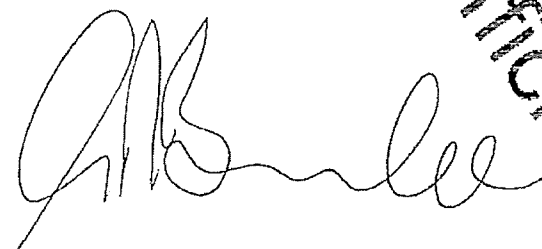
Noted Yes/No ☒ Yes

  
Signature

Bryan Dunne

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Earthquake Commission

  
Signature

Hon Gerry Brownlee

Minister Responsible for the Earthquake Commission

  
Date