

Claimant Reference Group Minutes 22 August 2019

Date: 22 August 2019

Time: 9am -4pm

Location: Ministry of Business, Innovation and Employment, 161 Cashel Street, Christchurch

Attendees

CRG Members:
Tom McBrearty
Mel Bourke
Dean Lester
Phillipa Moore
David Townshend
Jo Petrie
Ali Jones
Linda Ngata

Minute Taker: Annika Seddon

Guests: Renée Walker and Tupou Havea (EQC)

Agenda Items

#	Item	Time	Notes
1.	Welcome & housekeeping		
1.1	Confirm today's agenda	9.00am	
2	Renee Walker (EQC)	9.15am-11am	<p>Suggested topics: (note addition from Phillipa)</p> <p>On Solds update: the process for people (to register and once they register), expert reports needed to progress a claim, what standard of repair is going to be used (EQC or insurance policy, and what happens when there's a gap?), repair of rubble foundations?</p> <p>The Shine case – clarification as to EQC's role. Grant Robertson said EQC wasn't going to pursue the case – how can EQC say that when we understand it is a Shine case, funded by a litigation funder and the claimants paying a % of any win? Is EQC still using NZSCE – I don't think we have had this answered yet and are aware of a recent case where they are being used. Any other updates? Questions from the group.</p> <p>Note: if possible to email questions to the Chair beforehand, that would be helpful. Ref: email trail regarding inconsistent knowledge / application of process among EQC claims handlers / staff. Attachment included.</p>
	Morning break	11am	

3	Chair debrief re: recent meetings: Tom	11.15am – 11:45	See attachment. Record outcomes / resolutions and have a mover, seconder and vote for each item.
4.	Address recent list of items emailed by Mel. Propose half an hour spent on the items, to progress them, on each meeting day.	11.45am-12.15am	See attachment. Record outcomes / resolutions and have a mover, seconder and vote for each item.
5.	Approve July meeting minutes – any discussion	12.15-1:15	Accept minutes
	Lunch	1.15pm	
6.	Discuss actions checklist to update / progress.	2.15pm-3.15	See attachment. Discuss current items, update and add as necessary. Make resolutions and vote as necessary.
7.	Update CRG on Guidance 10: history and plans to give this visibility: David Townshend	3pm-3.30pm	Any resolution to be proposed and voted on
8.	Open to group business	3.30pm	
	Meeting closed	4pm	

Tracking for future meetings

Item outline	Action required	Person or group responsible & Action Date for reply
Future agenda items	EQC to present to CRG on undercap Kaikoura claims returning to EQC. Construct a document detailing what CRG has agreed with EQC (Re: Action point 131 and 87)	Tom
Future guests	John Goddard	
Future Long Term Planning Ideas		

Minutes 20 August 2019

The meeting commenced at 9.05am

1.	Confirm today's agenda
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Tom reminded the group to let him know about any amendments to conflicts of interest.

Phillipa asked that her conflicts of interest be amended to “pre-Existing claims including on-solds”

Tupou had sent in a late discussion point that Renée would like to cover: EQC to share third party manuals as an example of how they are working towards the future.

Mel asked that in Item 4 the word "issues" be amended to "items" on both agendas. The Chair clarified that the whole agenda item should be 30 minutes long, not 30 minutes for each item.

At 9.36am the group discussed Agenda Item 7.

7. Update CRG on Guidance 10: history and plans to give this visibility: David Townshend
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David gave some background about the facts from the OAA.

From May to August 2015 the rubble foundation issue was very topical.

MB had no idea what rubble was and wanted to make solutions about how to repair it.

Fletchers got involved with MB engineers saying they couldn't fix it.

By the end of 2015, not much more happened.

In 2017 a couple of people approach MB and say that the guidance covers rubble, but MB says it doesn't cover rubble – not in modern standard concrete.

In 2018 there is the Glasson case, an engineer approached MB and MB said it hadn't been misquoted, that there is no guidance that covers rubble.

Dave Brunsten then noted that there was a problem with previous advice causing issues in court cases.

An engineer approached Dave Brunsten who approached MB and asked him to write the advice.

The Minister gets involved, briefed by MB and just prior EQC said we need better advice, MB worked very hard to change the narrative from what was being put in the press.

The discussion was paused at 9.43am

Renée Walker and Tupou Havea joined the meeting at 9.43am

2. Renée Walker (EQC)

Item commenced: 9.45am

The group discussed the Test case which was still under embargo.

Renée gave an update on on-solds

She had received a positive responses from everyone. There were 67 people register. They are now just awaiting the Minister so they can pay. The will be working through each case individually. The project team leader starts in two weeks.

Renée informed the group about the public education campaign. EQC are hoping to partner with Master Builder, Law Society and. Real estate organisations to add information on their websites in an effort to change the language about repair and due diligence. EQC are hoping to use these other organisations to relay the information about the reporting they require due to a lack of trust in EQC.

David noted that a court issue is that EQC went on observable damage. He suggested the need to make it an independent perspective, what are the real indicators of structural damage. A simple house check to check if you have structural damage. He added that he believes it needs to be solved by an independent body.

Ali asked if the CRG could be an appropriate group to raise this issue and frame it?

There was discussion around real estate agents involvement in the education of the on-solds perhaps through the advertising material on what EQC repaired is (i.e. after the 15th August you cannot enter into the on solds program (the over cap, crown program)).

Renée noted that this would mean real estate agents taking professional responsibility and telling people they should get a house check.

However there is a loop hole to come back in.

Mel mentioned that based on the type of insurance policy it may impact the perceived value of a home.

Tom – which policy will be used?

Renee – The Act policy will be used

Dean – The EQC is the minimum value that exists.

Renee – is working more on the “as new”

Ali – it is significant, it was a problem for EQC.

David - The Q and A said they would meet the EQC act and the insurance policy.

Dean – the EQC act sets out a standard of repair that EQC under the direction of the ex gratia of payments is taking that standard of repair as being their guide and having discussions of concluding the on solds by way of the ex gratia payments.

I’m not sure if they will make one payment now and then a second payment – don’t know until the end what it will cost.

EQC will be case by case with rubble repairs.

David – time and time again – this is great news but the damage described is done by experts from preferred experts. How you’ve dealt with that case?

Renee – team for on solds and David Ash he was at Tower and Suncorp, the team leader is coming from Suncorp. Renee told them we need to operate – if someone has an engineers and builders report – review that first before getting another one. We will take this approach.

Shine framework – take that approach specialist team review – negotiate settlement then we use the ISSS way instead of getting a bunch of new reports

David – are we saying to homeowner you may engage an expert on your own accord and we will review that.

Mel asked if there was grace period after the cutoff date 15th August

Renée – because it's not an act it would not be hard and fast – we will review on case by case (common sense)

Ali – Grant Roberston comments – EQC would not be perusing the case. Where did that confusion come from?

Renee – Until we had a signed agreement was signed it wasn't settled, we were still going to court. We had a framework but Gibblings (Test case) it was very specific.

Ali – how is the percentage of legal fees shown?

Renee – basis of settlement is confidential but they have paid for the legal on top of experts and cost of repair.

Renee – Still using NZSCE? We haven't given them any new claims still we got the feedback. I did not sign off on the extension of contracts of engineers.

David – NZSCE are still being proposed as an engineer that EQC are going to use. Mel and David had instances of it last night.

Renee – tell them to say no

CRG said – we can feed that back to the public.

Jo – why so hard to make a change

Renee – everyone has their favorites, if I say don't use NZSCE, they might already have had a good relationship its hard to change that.

David – need to inform them why you don't think they are good

David shared – his claim back to EQC. After the assessment Gallagher Basset they said they would get the experts even though he's going to cash claim.

Renee – Andrew Hooker this morning – this wouldn't have happened if the changes in EQC hadn't of happened. It was a totally different experience. It takes time but its about role modelling good behaviour.

Mel – are the the pods autonomous, i.e. what are the challenges to obtain consistency across each pod?

Renee – EQR came in house, and they came in with a view and we needed to break them down. The team leaders will take the information and take it on board.

Tom – how do EQC make sure it doesn't revert back to the old way of thinking because of lack of training.

Renee – it will be an ongoing battle.

Renee – our settlement rate has slowed. Because we are working on processes and trying to settle the enduring claims. It looks bad on paper, but we are implementing the new processes. Our variation rates have gone for 50% to 10%. It just means that the time to settle is longer but will be a better settlement.

David – struggling to figure out how helpful we've been. Can we look at the core issues and how we are solving them. We can make a Q and A for people. An agreement.

Ali -what has changed with the anniversary coming up. Because I've understood nothing has changed- If there was an event tomorrow, I'm not 100%

Renee to circulate a board document – what we have learned and how we are better prepared. We've done a great document showing all the reasons why we are doing it. And I've laid out the risks around the insurance model. The paper raises the risks.

Action: Renée Walker to circulate document in confidence

David struggling with perspective out there that we have made any difference to EQC, how can EQC put it out there that the CRG has brought these issues and has it been a help. We need the public to know that we have been helpful and that the money has been well spent.

Renee – will present at insurer tech conference and the whole presentation is on tone of voice and in each session, I've done I've said it's because of CRG. And internally as well, it should be our culture. I was giving the example of getting a call 9 pm at night, he needs that, how do be responsive to his need and I often credit the CRG.

Board has been debating a public apology to Canterbury. Do we do it, when and what to say. Renee thinks we need to do it and before the submission to Dame Silvia and not after the recommendations come back. As a staff member, I need the board to take responsibility. At that time, we could talk about the engagement and what we have achieved and that it will be ongoing.

Ali – credibility - we have a long way to go, the devil in the details.
People who have filed against the insurer and EQC,
I'm nervous about withdrawing taking the insurer off, people distrustful.

David – a recent case – judge –EQC subjective opinion is their opinion, you are the insurer you should've made your own opinion.

Renee - FMG sent to a homeowner, you need to withdraw, or we'll charge you.

The group discussed repercussions of the Gibbling case to insurers saying to withdraw claims.

Chris Summerville – can fast track points of law to the court.

Dean – EQC how close they want their relationship to be with private insurance. To write an aggressive letter to claimants because Zou settled so you better settle now or you'll be up for all the costs. But Zou is a different case (not been touched by EQC)

Renée Walker started answering rapid fire questions from a document that I did not have

Renee – How long until implemented – depends I would like to pay before ministerial direction. It will be days or weeks not months. I'd say we can start paying within weeks.

Some repairs 20K question? – we don't limit to 20Gs now and it won't be covered by ex grata, it will be our cost. The 20G figure came from private insurers.

Building contract question – I'm pushing back more on builders, we would go back to the builder to fix the faulty workmanship. We won't leave pp in a situation.

Can pp come to EQC to challenge a builder – a private insurer will help with that.

What is liability to EQC with builder with respect to onsolds – if we were involved in the engagement then yes.

D - If someone takes the money and walks away they are taking the risk.

P – are they going to be made aware that that is happening?

Renee – if cash and they have engaged the builder then the liability to EQC ends.

P – they need to be made aware of that.

Renee – we can make sure that Master builders are giving that advice (don't pay in advance)

Yes

When and how extensive marketing – it is starting, we will bring back media schedules.

It will include the engineering report?

Renee – there needed to be a public education campaign. They have said they will drive it. And CRG can help with the input and the dissemination

Mike Haywards sound bites – insurance business news – don't know where that came from – can I have an update on how many people have applied.

Mel asked about a possible perception that some people might feel that on-sold repair issues could be prioritised over the 'unsolds'? How will that be managed? .

Renee – new team will be 11 people. Dedicated team. Shines the light

Renee – what she thinks can happen post October

My observation is we now have home owner advisory group and CRG looking at similar things.

Minister and new chair and how to do we take what we've learnt and move us forward in a national way.

Rejig of agenda and members – take more of a insurance and national focus.

CRG has been a good thing and the focus is right.

The HOAG would still advise on a more of a Canterbury focus and the CRG more of a nationally focused group.

Andrew has come back with his comments and the media release will come out midday. Embargoed until midday. Renee to send the group.

Phillipa Blockages with what you're saying and the claims handlers – email from last night, to set up a meeting.

CRG perceived as not doing anything because of the claim handler issues.

Esp. using our preferred experts.

Jo – re: apology. Maori perspective (the Ngai Tahu one as a template) – they have the apology framed. Very important thing to have. A permanent apology. Will be a significant thing for many things.

Bonita working on the apology and we will add this.

Tom – should just be an apology nothing more.

CRG strongly support the apology.

Renee – to suggest meeting in Chch and get CRG around the table. 30th of September Board 10.30-4.

Action: What part of the day would be best to attend. 1ish 2ish would be best. Lunch meeting

Renee thanked the group for all their hard work over the last little while

Renee and Tupou left the meeting 11:08

The meeting adjourned at 11:08 and reconvened at 11.25

7 Cont'd Update CRG on Guidance 10: history and plans to give this visibility: David Townshend
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David continued the conversation about guidance 10.

In summary, when they wrote the advice, the new version said that rubble was always included, but there is proof to the contrary. It is undermining natural justice and has been used as an independent regulatory advice by a judge.

This has been misrepresented to the Minister.

David proposed that the CRG writes to the Minister saying that they have no confidence in update 10. Ask that it be removed on these grounds (give 3 points). Insurance companies are still relying on update 10 to say it applied to rubble, but it can't. CRG can show them the email trail.

Phillipa, Tom and Jo agreed that CRG should ask for extra time to deal with this issue.

Jo noted that the public will be interested in how people can make a change in government.

Linda agreed that a resolution can be reached by CRG to support David's proposal.

Dean noted that a guidance is only a guidance it is not a building code. We don't want to put any credence on the guidance being the way forward.

Ali added that it should be made clear that what has happened is unethical. It's important as we are still hearing that the MB guides can contribute and are being used in advice being given.

The group discussed if it was appropriate for the CRG to write a letter regarding update 10 and it was resolved:

That David draft a proposal regarding the issue related to MBIE guidelines update 10 (history to date) supported by OIA documentation, to be agreed on by the group via email and be forwarded by the group to appropriate government contacts ASAP. End of day Tuesday 27th August.

Action point may have to renumber

3. Chair debrief re: recent meetings: Tom

Item commenced: 11.53am

The Chair noted several meetings he had recently attended:

John Paterson – three meetings in MBE – Older people in communications.

A meeting with Renée, Roger and Mel, Regarding Claimants program

Two GCCRS advisory group meetings

4. Address recent list of items (Mel's email)

Item commenced: 11.56am

The group discussed the items from Mel's email.

CRG

The group discussed the current terms of reference and made the following recommendation:

The CRG recommends that the incoming CRG reviews the terms of reference when their tenure begins.

Moved: David

Seconded: Ali

Conflict of interest

The group resolved that the conflict of interest reminder be added as an item in each agenda.

Moved: Phillipa

Seconded: Ali

The group discussed the level of detail in the conflict of interest section of the terms of reference and made the following recommendation:

The CRG recommends to the incoming group that there be a more detailed conflict of interest be included in the CRG terms of reference and that it be accessible and understandable.

Moved: Ali

Seconded: Linda

Measurement

The group discussed the need for KPI's and made the following recommendation:

The CRG recommend to the incoming group that some group KPIs are established and are regularly reviewed to enable them to monitor performance.

Moved: Jo

Seconded: Phillipa

Role descriptions

The group agreed that the item around role descriptions and diversity is adequately covered in item 4 of the current CRG terms of reference.

Moved: Ali

Seconded: Dean

Vacant position

The group discussed the current vacant position and agreed that filling it would not be a priority considering the end of current the tenure is the 31st of October. Mel noted that she particularly valued the LPB expertise. The group agreed that that EQC need to be clearer what representation is essential on the CRG and made the following recommendation:

That the CRG recommend to the incoming CRG that more consideration be given to the composition of the group to ensure that the diversity and representation is maintained.

Moved: Jo

Seconded: David

Use of skill

Dean noted in item 8.4 in the terms of reference, that the CRG is only a meeting-based organisation. The remuneration is specific around each meeting or attending workshops. So there is no role for CRG outside of a meeting or workshop.

The group agreed this point is covered under the conflict of interest resolution.

The discussion was paused at the "Intellectual property" item, to be resumed at tomorrow's meeting.

5. Approve July meeting minutes – any discussion
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It was resolved that the minutes be received

Moved: Tom

Seconded: Ali

The group member who gave the presentation in item 3.1 asked that their name be removed from the item, and that it be noted that confidentiality had been requested at the outset of the presentation.

It was resolved that the minutes be accepted as a true and accurate record.

Moved: Ali

Seconded: Jo

It was noted that of the group, Tom, Ali, Jo, Linda and Phillipa agreed with the motion, Dean abstained and Mel voted against.

The group discussed Action 129:

In light of the on-solds development, CRG needs to have a workshop with EQC to participate in the development of this checklist Tom agreed to take action to set up the workshop and Dean said would attend the workshop as a CRG representative.

The group discussed Action 131:

Phillipa noted that people dealing with claim handlers are not being given the proper insurance response.

The group decided to set aside time to construct a document detailing what CRG has agreed with EQC with the intention of making it accessible to claimants (uploaded to the website and sending it out).

Mel added that the completed action items list will serve as proof of what has been accomplished.

Dean noted that there are two matters that consistently being readdressed by CRG about the EQC:

- 1) not seeing EQC use the ENZ engagement with amendments
- 2) not seeing tone of voice way forward to the homeowner, not even being up front with them that "you need to do the repairs"

Mel added that a third point would be

- 3) Lack of consistency through the pods (deliverables)

The meeting adjourned at 1:21pm and reconvened at 2.19pm

6. Discuss actions checklist to update / progress.
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The group discussed the outstanding action points.

43 & 50: The tenure of the group is up for review at the end of October, CRG has had some agreement with EQC that there should be a discussion in written form regarding the issues that have been raised, what has been addressed and what is still outstanding. We propose a deadline on these outstanding issues be the 12th of September.

65: awaiting feedback

Consider addressing 69,70 and 71 together – The EQC were given an undertaking to use the ENZ structural engineering instructions but the feedback from claimants is that it is not consistent. If the EQC are rejecting it, it needs to be in writing. Deadline is the 5th of September for a response.

72: complete

75: carried forward – David to add to action items folder

76: no response as yet – add to list – resend the statements and the deadline

81: on hold until 31 October 2019

87: merge this action point with 131

The following new action point was missed from the previous meeting minutes:

Action 133: EQC legal guidance note (August 2015) discussed in 4th July meeting. EQC was approached before meeting for comment and whilst unable to discuss at last meeting were hoping to propose alternative dates. Tom to prompt EQC to attend day 2 (23 August 11.45-12.45).

Concerning the agenda for CRG Day 2 meeting (August 23rd), Dean reconfirmed he will be an apology after 12pm. Mel confirmed she will be an apology from 9.30-10.30am and 11.45am-1.30pm.

91: on hold, until 31 October 2019

93: reminder to everyone to review the Dropbox version and to email the chair any changes/additions by next meeting.

Phillipa reminded the group to put the action item on email correspondence to Tom so he can keep track and forward on.

98: awaiting EQC to deliver, Tom to follow up with Tupou by next meeting

99: reminder to contact Tupou regarding payments to EQC claimants

100: Policy statement regarding reimbursement to claimants, how is this communicated to EQC staff?

101: If EQC is not reimbursing, what does the customer do?

102: Include all current text and add: EQC to present to CRG on under cap Kaikoura claims returning to EQC. Add as an agenda item for September meeting.

103: Still to meet with Ngai Tahu – no deadline was decided

Mel Bourke left the meeting at 3.28pm

104: Some members would like access to the EQC Manual. Please request a link to this for CRG members. Deadline September meeting.

105: Complete – issued without CRG input

106: Tom sending email to make sure Pat be a key part

108: Closed – superseded by 112

109: Baden still to do this. We would like position statement from EQC on this (BMC report) by 31 August.

110: Baden to attend September meeting. Update closer to the time.

112: Email Sid / Renee (copy in Baden / Martin) to confirm (by end of Aug) that EQC is using the ENZ document - as per our CRG meeting with them in May (with attachments as recommended). We are aware of a “hybrid” ENZ instruction being used by EQC and we would be keen to understand why this is happening.

113: The group discussed concerns with the use of Dropbox

115, 116 and 117: John Goddard and the EQC be invited to speak at the September meeting.
Note: Lee Graham’s concerns re: land need to be responded to from CRG after the above meeting

Actions 118-132 were not addressed today

The meeting closed at 4 pm

EMAIL questionf

Hi Tom

Sorry for the late email. I have a some questions regarding the new on-sold policy for Renee tomorrow.

- How long until it is implemented / claimants start receiving payouts?

- What is the likely processing time for claim acceptance? ie What additional steps are required above a standard claim?
- As some repairs are quite extensive and will be time consuming, it is foreseeable that some people will be out of their homes for an extended period where the current \$20k allowance for alternate accommodation will not cover the duration of displacement. Will there be an extension to the ex gratia allowance above \$20k? If 20k was for a \$100,000 cap, will it be extended for larger claims?
- If a building contract is signed, and EQC have approved the building contract, does the liability for faulty workmanship remain with EQC? ie. if the building company goes under or refuses to remediate? Will claimants be notified of this?
- Will EQC be checking building contracts are fulfilled to prevent claimants cancelling contracts and walking off with payout?
- If the EQC approved repair methodology fails, can claimant return to EQC for further payments for additional/different repair strategy?
- When and how extensive will the marketing campaign be, advising current/future property purchasers they are responsible for identifying the integrity of a house before purchasing? Will it include suggestions about different sorts of reports to obtain?

That's all for now.

See you tomorrow.

Phillipa