



Weathertight Homes **TRIBUNAL**

RESOLUTION

***AN OCCASSIONAL NEWSLETTER FROM
THE CHAIR OF THE TRIBUNAL***

New Directions for Multi-Unit Claims

This addition of Resolution launches the new application form and practice directions for multi-unit claims. These Directions reflect the added complexity and additional documentary disclosure requirements in dealing with multi-unit complexes. A copy of these directions is attached and is also available on the Tribunal website.

Whilst the Tribunal has only had 15 multi-unit claims filed to date we are expecting a significant increase in the number filed within the next year. The Department of Building and Housing statistics show that over 80% of all new claims being filed with them are in relation to multi-unit complexes.

Changes to our Website – Search facility for Tribunal Decision

The Tribunal's website (<http://www.justice.govt.nz/wht>) was designed to allow people quick and easy access to relevant information regarding the Tribunal's processes, its determinations and other information which may assist those involved in adjudication. Since the website's launch, the Tribunal has received a lot of positive feedback regarding the convenient information available on the website as well as some suggestions on how this resource could be better utilised.

In response to such feedback, the Tribunal is currently undergoing some changes to the website in order to make this resource even easier to use. These changes include:

- A search engine that searches the key terms of determinations made under the 2002 and 2006 Acts
- Printable summaries of determinations made under the 2002 and 2006 for quick reference

It is anticipated that the search engine and summaries will be available by mid-November 2008. Updates will be given on the website as to its progress.

Experts Report or Technical basis of Claim required on Filing

The Tribunal is primarily an investigative and evidence based adjudicative body. We do not require the claim to be pleaded in a formal statement of claim, although this at times can be useful. We do however require claimants to provide the expert or technical evidential basis of their claim. This can be done by way of filing experts' reports or witness statements. Where claimants are relying on the assessor's report



then the Tribunal accepts the assessor's report as the technical or expert basis for the claim. Where however a party only has an eligibility report or is basing their claim on expert reports or information other than, or in addition to, the assessor's report we require the technical report or evidence that supports their claim to be filed in order for the claim to proceed.

The clear intention of the legislation is that the adjudication of claims commences with the claimants providing an application for adjudication summarising their claim, together with a technical report or expert evidence. This report or evidence should detail the matters set out in s 42 of the Weathertight Homes Resolution Services Act 2006 (the Act). In particular it should set out the cause and extent of the damage caused by water penetration, the work needed to repair the dwelling house and the estimated or actual cost of the remedial work. In most cases the assessor's report

fulfils this requirement. Where however claimants elect to proceed on the basis of an eligibility report or are relying on their own experts rather than the assessor's report we require them to provide their expert's reports or brief of evidence with the application.

Management of Claims



When a claim is filed with the Tribunal it is assigned to a Tribunal Member and a case manager who are based in either our Auckland or Wellington offices. All case management of Auckland and Northland claims is carried out in Auckland and the majority of other claims are managed in Wellington. Once a claim is registered with the Tribunal all correspondence, documentation, applications and communication on that claim should be directed to the office where the claim is managed. The contact and address details will be provided in the initial service or acknowledgement of claim letters.

The most significant cause of delay in the adjudication of claims continues to be claimant driven. This is either where claimants are not adequately prepared at the time they file their claim or they change their minds after filing and, for example, decide that they will carry out the remedial work before proceeding further with adjudication.

Where a claim is adequately prepared and quantified at the time of filing the timeframes within the Tribunal are tight. We operate under statutorily imposed time restrictions and accordingly all parties need to act promptly in complying with directions and timetable orders made. Where dates for such things as mediation and hearings are set in consultation and agreement with the parties, adjournments are only likely to be granted with the consent of parties and on the agreement of all parties to an alternative date.

There is also still some confusion as to the roles of the Tribunal and of the Department of Building and Housing. The Tribunal is not part of the Department of Building and Housing. We are an independent Tribunal administered by the Ministry of Justice.

Initial claims under the Weathertight Homes Resolution Services Act 2006 are filed with the Department of Building and Housing who are responsible for the assessment process. The mediators are also contracted by the Department of Building and Housing. However mediation is case managed by the Tribunal and all communication or information in relation to scheduled mediation should be directed to the Tribunal. In addition any requests, clarifications or documents in relation to adjudication of claims should be directed to the Tribunal.

The Tribunal does not hold copies of the Department of Building and Housing records or information. Whilst, where appropriate, we can request copies of documents from the Department of Building and Housing, parties in Tribunal cases should not assume that we have copies of documents held by the Department of Building and Housing or copies of communications with them.

Tribunal Statistics

In the 19 months from 1 April 2007 to 30 September 2008 the Tribunal received 338 applications. Of those 131 have been resolved with the average length of time between filing and resolution being 19.8 weeks. Settlement rates are still high with

approximately 85% claims being settled either at mediation or by direct negotiation between the parties prior to a formal adjudication.

New Members and Staff



We were also very pleased to welcome Kevin Kilgour as a new Member of the Tribunal in June 2008. Kevin Kilgour has been in legal practice for 35 years and was most recently a partner in Hesketh Henry specialising in business and commercial law. He has been actively involved in the Auckland and New Zealand Law Society and is the convenor of the New Zealand Law Society Admissions and Credentials Committee and a member of the newly formed Standards Committee.

Kevin's arrival brings the number of Auckland based Tribunal Members to six with two Wellington based Members.

We have also had a number of new case managers joining the Tribunal with Patrick Davidson, Saniya Wadham, Linda Cooley and Maja Jovanovic joining the Auckland team in July 2008 and Rachael Cole and Sharnel Kapua joining the Wellington team.

Public Seminars

The public seminars run by the Tribunal for parties involved in leaky home claims continue to be popular. The regular sessions we hold in both Auckland and Wellington are well attended. Due to demand from other areas we now also run seminars in Christchurch and Tauranga. These seminars cover not only Tribunal processes but also assist parties in preparing and presenting their claim or defences within the Tribunal and cover the causes of action and defences in leaky home claims.

Conclusion

The Tribunal continues to work at improving our services to ensure the case management and adjudication of all claims is speedy, flexible and cost effective. Over the next two months we will be reviewing the Directions in relation to single unit claims. This may also include changes to the current application forms. We welcome any feedback or suggestions on changes that should be implemented. Feedback can be provided directly to Mark Wager Tribunal Manager or to me on 0800 777 757 or via post to Private Bag 92535, Auckland or by emailing us at whitenquiries@justice.govt.nz.

Patricia McConnell
Chair
October 2008

