

Anthony Harper

11 May 2017

Mr T Grafton
Chief Executive Officer
Insurance Council New Zealand
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AND BY COURIER

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Dear Sir

CANTERBURY EARTHQUAKE RESIDENTIAL CLAIMS - EQC - LIMITATION PERIOD

- 1 We wish to raise an issue with the Council in respect of the application of the Limitation Act 2010 to Canterbury earthquake residential claims that EQC has only very recently determined, or will, in the future, determine are over cap.
- 2 We represent a number of clients with homes damaged by the Canterbury earthquakes and who consider that EQC's assessment and / or repair of the earthquake damage was deficient. EQC has reviewed some of our clients' claims and it has agreed that it failed to identify and/or repair all of the earthquake damage. EQC has assessed the cost of completing the repairs as being greater than the statutory limit and the claims have only very recently been transferred to the insurers. We expect that EQC will eventually determine that all of our clients' claims are over cap and that they will all be referred to the insurers.
- 3 We understand that EQC has received many thousands of requests for re-assessment, which EQC refers to as "remedials". The latest data released by EQC is that it has 4,943 unresolved remedial claims (as at 31 March 2017). In addition, we are aware of a large number of claims for "remedials" that have yet to be notified to EQC. We expect that EQC will determine that many of these claims are over cap and they will be referred to the insurers.
- 4 In our experience, EQC's processing of these claims appears to have slowed (with an EQC employee informing us, very recently, that there are now only a third of the staff at EQC compared with last year). Therefore, it will be months, if not years, before all of these claims and potential claims have been settled by EQC and referred to the insurers.
- 5 In anticipation of the six year anniversary of the 22 February 2011 earthquake, the Council acted proactively by announcing that its members would not rely on a limitation defence to any claims filed before 4 September 2017. (We note that, subsequently, the IAG brands have extended that deadline further to 30 June 2018). Unfortunately, given the circumstances set out above, many claims for remedials with EQC will not be determined by EQC prior to 4 September 2017.
- 6 Whether the limitation defence will be available to insurers is a matter for debate. However, we expect that most homeowners faced with this situation will be advised that, unless their insurer agrees to further defer any reliance on a limitation defence, they should file a claim in Court before 4 September 2017, to protect their position.
- 7 Our clients and we accept this predicament is not of the insurers' making. Nor is it of our clients' making. The problem lies entirely with how EQC has managed these claims.

- 8 In our recent experience, once EQC has determined that a claim is over cap, the insurers have acted promptly to assess and settle the claims. The vast majority of our clients' claims are resolved without the necessity of Court proceedings. Our clients wish to ensure that the insurers' claims management process can continue and that the insurers have sufficient time to resolve the claims, before Court is even considered. Therefore, on behalf of our clients, we request that the Council's members agree to defer any reliance on any limitation defence, for any claims which EQC decides are over cap, for a period of no less than 12 months after the homeowner receives notice from EQC that the claim is over cap and has been transferred to their insurer.
- 9 We would be grateful if you could acknowledge receipt of this letter and give an indication as to when you expect the Council will be able to consider this request. Our clients and we do hope that it will be able to do so promptly as, failing confirmation of a further deferment, we expect that they will take steps to file their claims in Court.
- 10 We look forward to hearing from you.

Yours faithfully
ANTHONY HARPER

A handwritten signature in black ink that reads "Peter Woods". The signature is written in a cursive style with a horizontal line underneath the name.

Peter Woods
Partner

Contact: Peter Woods +64 3 364 3816 peter.woods@ah.co.nz

Our reference: PJW-038716-29-128-4

25 May 2017

Peter Woods
Partner
Anthony Harper

Emailed to: peter.woods@ah.co.nz

Dear Peter,

RE: Canterbury Earthquake Residential Claims – EQC – Limitation Period

1. Thank you for your letter of 11 May 2017. We have raised your letter with our members for their consideration, and we provide the following response.
2. Whether the limitation defence will be available to insurers on the facts of any particular case is not settled. Different insurers have made different public statements about the particular approach they each intend to take to limitation issues.
3. Because of these different approaches, we are not in a position to agree to your proposal to defer reliance on any limitation defence for 12 months after the homeowner receives notice from EQC that their claim is over cap and has been transferred to the insurer.
4. Each homeowner will need to approach their insurer to discuss this kind of proposal, in the circumstances of their particular claim.
5. We confirm the commitment that was made in our 18 December 2015 media release that the insurers will not rely on limitation defences in any proceedings filed before 4 September 2017.
6. We acknowledge the difficult position your clients and other homeowners are in because of remedials. Insurers continue to work closely with EQC to expedite settlement of all outstanding claims.

7. We would encourage all homeowners with unsettled claims to be in close contact with their insurer to understand that insurer's precise position on limitation periods and how that may affect the circumstances of their particular claim, rather than file proceedings first.

Yours sincerely,

A handwritten signature in black ink that reads "Tim Grafton". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Tim Grafton
Chief Executive