

# Practice Note No 3 (March 2021)

## Defective repair claims

Since the release of the High Court's decision in *Sleight v Beckia Holdings Ltd [2020] NZHC 2851*, some insurers are settling their claims with homeowners but continuing to seek contribution from builders, building consent authorities, and others. This raises jurisdictional issues for the Tribunal as it is required by s46(8) of the Act to terminate any claim that is settled by agreement between the parties before the Tribunal's decision is given.

The Tribunal appreciates that insurers will wish to resolve their disputes with homeowners as soon as possible but may be worried about doing so if that automatically results in the proceedings being terminated, forcing them to litigate their claims against the other respondents in a different jurisdiction. The Tribunal is apprehensive, however, about some insurers in those circumstances deferring settlement with homeowners until they can also settle with the other respondents, as that would be contrary to the purpose of the Act.

To resolve this dilemma, the Tribunal will allow homeowners who have settled with their insurer to remain nominal parties to the wider claim and will excuse them further attendance.

Insurers might like to consider settling with homeowners and then exercising their rights of subrogation to continue homeowners' claims against the other parties or, in the event of the insurer having no rights of subrogation, taking an assignment of the sort approved in *L S Petrou v Weathertight Homes Resolution Service & Auckland City Council* 24 November 2009, High Court, Auckland: CIV-2009-404-1533 (Randerson J).

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