



COMMUNIQUÉ

Newsletter of the
New Zealand Architects Co-operative Society Ltd

December 2006

Chairman's Report

Hamish Wixon writes:

We are nearing the end of 2006 and it is timely to include a Chairman's Report in Communiqué. It is also just past the date for insurance renewals and Members should now have received confirmation of their new coverage for **2006-2007**.

Included in the new policy is a change to the Exclusions compared to the **2005-2006** year. Over the previous year notification of possible claims and the out turn of costs arising from "weather tightness" issues are continuing to deteriorate.

Increasingly Architects are being drawn into dealing with the Weathertight Homes Resolution Services (**WHRS**). Of the **129** claims registered at **20th November 2006** over the past year, **27** notifications related to **WHRS** matters.

A number of other claims which have not been to the **WHRS** relate to the ingress of water into buildings. The cost of dealing with all of these "weather tightness" matters has risen dramatically.

An Architect who has Professional Indemnity Insurance is seen as a target no matter where the fault lies. Often other parties who have contributed to the faults are no longer around. Also the legal costs associated with dealing with notifications have risen dramatically.

There has often been uncertainty with the claims coming through and how they relate to the previous exclusion clauses with respect to the ingress of water. We believe the new PI Policy Wording (with the changes as publicized in the Chairman's Renewal Letter that accompanies the Subscription Notices for **2006-2007**) removes some of the uncertainty surrounding claims where "weather tightness" issues are involved.

It also prevents Architects from being seen as having "deep pockets" during any resolution process. Whilst the new **Exclusion 2.04** confirms the removal of cover for any water ingress into any buildings, the new weather tightness **Extension 6.07** allows for a certainty of a maximum cover of **\$50,000.00** for any one claim and up to **\$100,000.00** for all claims in the aggregate during the insurance year.

The Board has worked hard to negotiate this new Extension with our Insurers in light of our claims history.

A Caution regarding Contract Liability Periods

The Directors of *NZACS* have become aware of instances where Clients are requesting an extension of time for the duration of the liability of the Architect for up to **10 years**. They are doing this when presenting their own conditions of engagement and, in some cases, under amended *NZIA Agreement for Services*.

Such client generated conditions can pose liability and insurability issues for the architect and extends to the Client the right to sue for breach of contract up to **10 years** from the date of the breach of contract.

Such conditions also provide an extension of time to the Client to bring a civil action in tort. Generally a time limitation in contract occurs when a cause of action accrues being the date on which a breach of contract took place.

Under the *Limitation Act 1950* a time bar applies to any action brought for damages limiting such an action in contract to within a **6 year** period of duration after the date of the breach of contract.

In tort, on the other hand, the cause of action only accrues for a breach of duty of care when a plaintiff has suffered legally recognised damage, or the date when the plaintiff ought to have been aware of such damage. The trigger point in relation to time for a tortious action (*e.g. negligence*) runs from that date.

The plaintiff again has a **6 year** period of duration under the Limitation Act 1950 to bring a civil action for damages. Under the *Building Act 2004* the long stop applies to any civil proceedings brought **10 years** after the date of the act or omission on which such civil proceedings are based. The time bars under the *Limitation Act 1950* still apply within this **10 year** time period.

NZACS recommends that its Members always seek to limit the duration in time for liability to a Client to no more than **6 years**. *Why would you want to expose yourself to a greater period anyway?*

The *NZIA Agreement for Services AAS 2005* recognises this under *Section B2 Clause 8.2*; and also in the *NZIA Agreement for Services SF12000* with the standard limitation period being **6 years**.

There is provision in the Special Conditions for an alternative period of duration of liability to be inserted in *Section B5 of NZIA Agreement for Services AAS 2005*, but this is only intended for the insertion of such lesser period of years as may be negotiated with the Client.

Members are cautioned not to agree to any longer contract liability period than 6 years.

Seasons Greetings

The Directors wish to express to Members their appreciation for their continued support throughout **2006** and wish you all a happy festive season, a restful holiday and a profitable year in **2007**.

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*We welcome contributions from readers,
on how they manage risk.*