



# The Canterbury earthquake insurance tribunal

FOUR YEARS ON – LESSONS

# Canterbury Earthquakes Insurance Tribunal (CEIT)

- ▶ The Tribunal was established 10 June 2019.
- ▶ The Tribunal can hear disputes between homeowners, Toka Tū Ake Earthquake Commission (TTA/EQC), their insurers, and related parties regarding earthquake damage which occurred during the Canterbury Earthquake Sequence
- ▶ During the four years of its existence the Tribunal has had 160 applications (at today's date), of which 149 have been accepted.
- ▶ Over four years the majority of applications has shifted from disputes about the extent of EQ damage, to alleged defective or underscoped repairs. These matters are more complex.

# Canterbury Earthquakes Insurance Tribunal (CEIT)

- ▶ Tribunal practices have evolved to deal with common problems in this jurisdiction
  - homeowners are often, rightly, or wrongly, aggrieved at their situation;
  - a high proportions of homeowners are self-represented;
  - the issues presented by expert capture and a small pool of qualified experts particularly in the engineering fields; and
  - that 12-13 years has passed since the CES events.

# Canterbury Earthquakes Insurance Tribunal (CEIT)

- ▶ To deal with these issues Tribunal uses:
  1. close case management, emphasis is placed on the first case management conference
  2. early identification of issues to be better identified, (the tribunal is not a pleadings based jurisdiction).
  3. the appointment independent experts, usually engineers, to conduct expert conferrals.
  4. less emphasis on formality. If pleadings are unclear conferencing will be used where the member can assist in clarifying the issues.

# Lesson 1 – Listen

- ▶ 12 years out parties are often very strongly convinced their positions are correct. But there are always shades of grey. Aggressive responses to claims are unlikely to produce good settlement outcomes. In the words of Harold Macmillan (often attributed to Winston Churchill) “to jaw, jaw, is always better than to war, war”.
- ▶ Some homeowners take the view that all insurers are crooks, and some insurers take the view that applicants are trying it on. With a few rare exceptions neither view is correct.
- ▶ A significant minority of cases in the tribunal settle at or soon after first case management conferences as the process forces both sides to listen to each other in a neutral environment.

# Lesson 2 – death by a thousand reports

- ▶ Experts and their needs were often driving the process, leading to delay and deadlock.
- ▶ CEIT processes are designed to “de-engineer” the process and this has been successful.
- ▶ Facilitated experts conferrals are a success. Issues are resolved early and effectively by the process.
- ▶ Practice shows that “hot-tubbing” works.
- ▶ The Tribunal appointed experts help to reality check and break deadlocks.

# Lesson 3 – Hearings = W.A.T.N.A.

- ▶ Legalities (and lawyers) are important and add value but cannot be at the heart of the process.
- ▶ Tactical superiority ≠ a positive outcome
- ▶ The CEIT process uses:
  - ▶ more disciplined issue identification;
  - ▶ “chunked” hearings, and separate issue processes;
  - ▶ changes to the formalities and language; and
  - ▶ member led questioning.