



# Good news for councils

*Ten year Building Act long stop does not apply to cross claims.*

**THIS IS AN EXCELLENT RESULT FOR COUNCILS.**

**W**e always argue that a council's contribution to defective building claims is much less than that of the other more culpable and blameworthy builders, developers and trades people. These arguments are ones that most lawyers expect to hear from us, but many do not know the interesting origin of contribution claims.

The right to recover contribution is a statutory right under the Law Reform Act 1936. It exists so that the court at the end of a trial, or trials, can sort out relative responsibilities between wrongdoers when they have arguably caused the same damage.

The statute fixed up the unfairness of the common law which did not allow for contribution. This meant that a wrongdoer could escape all liability if the plaintiff chose not to sue him or her, leaving just one party to shoulder the burden.

When asked to apportion damages, the court looks at the potency of what the party did and the relative blameworthiness. Usually the council's liability and assessed contribution is in the region of 10-25 percent (less than that of other construction parties). Because the council is a solvent party it is usually pursued first for the judgment. For that reason it is important that the council can recover from other wrongdoers.

The High Court recently addressed the important question of whether the 10-year long stop period – as provided for in section 393 of the Building Act 2004 – prevents the court from apportioning liability between various parties involved in the construction process. The outcome was important for councils because they are often the party that takes the last step in the construction process and issues the code compliance certificate.

If proceedings are issued close to 10 years

from the issuing of the code compliance certificate it usually means that all the other parties involved in the construction process did their work more than 10 years previously and were theoretically not able to be pursued.

The effect of the long stop on councils could have meant that if the council's cross claim was filed more than 10 years after the other parties worked on the development, the council could not claim a contribution from them.

In the case of *Body Corporate 330324 & Ors vs Auckland Council* the builder brought an application seeking to cross claim against the council more than 10 years after the council issued a code compliance certificate for the "City Gardens" development. The builder argued that it was in the interests of justice, that if the court found the builder and the council negligent, it would be able to apportion liability between them.

The court said that provided the owners had joined the wrongdoers within time the cross claims between them could be brought more than 10 years later. The court said there is no liability between wrongdoers until a judgment is recovered by the owner against one or more of them.

This is an excellent result for councils. Without this judgment councils would be severely prejudiced by any delay in them being served with proceedings as they would then not be able to claim a contribution back from the other construction parties.

To sum up, this judgment means that provided the council and the other construction parties are sued within time by the owner of a defective building, the court will be able to apportion liability between them regardless of whether the cross claim is outside of the 10-year long stop period. **LG**