

Guidelines for self-represented applicants in the CEIT

These guidelines are to assist self-represented applicants when appearing before the Canterbury Earthquake Insurance Tribunal (CEIT).

The purpose of the CEIT is to provide fair, speedy, flexible, and cost-effective dispute resolution. The Tribunal has powers to resolve disputes between homeowners and their insurers, which are set out in the Canterbury Earthquakes Insurance Tribunal Act 2019. The Tribunal is a judicial body, so it must act in a fair and independent manner and not show favour to any of the parties before it.

While it has the same powers as a Court, the CEIT is not a Court, and is not bound by rules of Court, or by the Evidence Act 2006. This allows the Tribunal a high degree of flexibility in carrying out its functions. This flexibility is limited by the requirements of natural justice, and by the need for the Tribunal to make decisions based on evidence and the law.

Jurisdiction

The Tribunal has the power to decide disputes between claimants and their insurers (including EQC) about claims made for damage from the Canterbury Earthquakes Sequence events between 4 September 2010 and 31 December 2011. The disputes can include claims for defective repairs and can involve building companies and individuals who were involved in repairs.

The Tribunal cannot consider applications for disputes where the applicant was not the owner of the property when the earthquake damage occurred.

Natural justice

Natural justice has been defined by the Court of Appeal as having two key principles:

*“that the parties be given adequate notice and opportunity to be heard... And that the decision-maker be uninterested and unbiased”.*¹

These two principles work together. The CEIT member presiding over an application cannot fairly decide on an issue unless both parties have been given the opportunity to have their say. To preserve neutrality any communications a party has with the Tribunal and any information a party provides to the Tribunal must also be provided to the other party(s).

Evidence

Any decision that the CEIT makes must be supported by evidence. Evidence in CEIT cases usually involves expert evidence on the nature of earthquake damage and the work required to repair the damage. Experts before the CEIT need not be engineers but need relevant expertise either from experience or formal qualifications to be able to assist the Tribunal. Even though they are employed by the parties, an expert's duty is to the Tribunal rather than to the party who employs them. The Tribunal has the power to appoint its own experts to assist with resolving the dispute.

The cases often involve written reports and records of correspondence. Natural Justice requires that all relevant documents are provided to the parties. The CEIT member will make directions about what documents are required at the first case management conference.

¹ *Combined Beneficiaries Union v Auckland City COGS Committee* [2009] 2 NZLR 56 at [11]

The law

The CEIT must apply the law of New Zealand. For instance, the rules of contract will be applied when interpreting insurance policies. As the Tribunal is a judicial body relevant statements about the law made by higher Courts are binding on the Tribunal.

An important aspect of the CEIT is that its decisions are final; once the Tribunal has issued a decision on a matter, that decision can only be overturned by appealing to the High Court. This is designed to provide an endpoint to disputes. Once a decision is issued the Tribunal cannot recall it except under very limited circumstances².

Lawyers, Advocates, and Tribunal staff

You do not need a lawyer or advocate to appear before the CEIT. The inquisitorial processes of the CEIT allow the presiding Member to provide balance and encourage a non-confrontational approach. All Tribunal members are experienced lawyers. If you are unable to represent yourself, or do not feel able to, you can instruct another person to appear on your behalf.

At a case management conference the Member can provide general advice about what information you should provide, or the process for completing a form, such as a joint memorandum for instance. However, the Member must remain neutral so cannot provide specific advice. If you are unsure about anything let the member know.

Tribunal staff must remain neutral. This means they cannot provide advice on matters in dispute. However, they can offer information on procedural matters and may help direct applicants to services which can provide advice.

Forms

Apart from the application form, the CEIT does not require that particular forms or formats of documents are used. Processes in the CEIT do not normally require the drafting of long detailed submissions and do not need to take the form of legal pleadings or arguments. What is important is that it is clear what you are asking the Member to do and that the documents contain the information necessary to make the decision or direction required. If you are unsure about what is required please ask the Member either at a Case Management Conference or, if none is scheduled, you can request a teleconference.

Working together

Often in the CEIT there are a number of issues which the parties can reach agreement on without needing the Member to make a decision. The process is more efficient if the parties can discuss issues amongst themselves to resolve areas of agreement and then the Tribunal Member can focus on the areas which cannot be agreed.

A useful mechanism during the case management process is the joint memorandum, a document which sets out areas of agreement or steps which both parties agree need to happen to resolve the dispute between them.

² *G v EQC* -Decision #2 (CEIT 20-010) - 20 Nov 2020