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# CANTERBURY EARTHQUAKES INSURANCE TRIBUNAL

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Practice Notes 2022

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## Introduction

The Canterbury Earthquakes Insurance Tribunal (Tribunal) has been set up to assist with the process of resolving residential insurance claims.

The purpose of the Tribunal is to provide a pathway to resolution that is speedy, flexible and cost-effective.<sup>1</sup> It is targeted at resolving long-standing disputes about insurance and the Earthquake Commission (EQC) claims for physical loss or damage to residential buildings, property and land arising from the Canterbury earthquakes that occurred in 2010 and 2011.<sup>2</sup>

The Tribunal's processes are:<sup>3</sup>

- inquisitorial, enabling it to investigate the claim in a nonconfrontational way; and
- subject to the principles of natural justice to ensure that its processes are fair and transparent.

From the outset, the parties will be encouraged to work together on matters that are agreed.<sup>4</sup>

The Tribunal is governed by the Canterbury Earthquakes Insurance Tribunal Act 2019 (the Act). These Practice Notes have been prepared by the Chair in accordance with cl 2 of the First sch to the Act and have been updated to reflect current practices.

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<sup>1</sup> Canterbury Earthquakes Insurance Tribunal Act 2019, s 3.

<sup>2</sup> Section 8.

<sup>3</sup> Sections 20, 40 and 56.

<sup>4</sup> Section 37(2)(a).

## Chapter 1

# Commencing Claims

### Applications

A claim may be brought by a policyholder or an insured person against an insurer or EQC (or both) by making an application.<sup>5</sup>

An application must be in the approved form and filed directly with the Tribunal, at the Christchurch District Court, by email or by completion of an online form.

The application must contain **sufficient information** to fully inform the other parties and the Tribunal of the substance of the claim and allow the Tribunal to determine whether the claim meets the eligibility criteria.<sup>6</sup>

### *Eligibility criteria*

To be eligible, the dispute must be between the policy holders and/or EQC and/or the insurer about an insurance claim for physical loss of damage to a residential building, residential property, or residential land (the insured property), arising from the Canterbury earthquakes.<sup>7</sup>

If the insured property has been transferred to the applicant under a sale and purchase agreement after the physical loss or damage occurred, then the Tribunal does not have the jurisdiction to hear the claim, unless the original policyholder brings the claim to the Tribunal.<sup>8</sup>

### *Additional documents*

In addition to the completed application form, all documents referred to in the application and any other documents the applicant wishes to rely on must be provided. These documents might include proof of insurance, technical reports, scopes of work, quotations, letters, and emails.

After the application and supporting documents has been filed with the registry of the Tribunal and is regarded by the case manager as complete, it will be referred to the Chair of the Tribunal who will then decide whether the claim can be accepted.

### *On acceptance*

When the claim has been accepted:

- a Tribunal member and a case manager will be assigned to the case;
- that case manager will contact the applicant to confirm a date for the first meeting between all parties. This is known as the first case management conference;
- the date of that conference will be communicated to the applicant in writing; and
- the case manager will arrange for the application and supporting documents to be served on EQC and/or insurer, along with notice of the date for the first case management conference.

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<sup>5</sup> Section 10.

<sup>6</sup> Sections 8 and 9.

<sup>7</sup> Section 8.

<sup>8</sup> Section 8(4).

## Responses

EQC, the insurer and/or any other party named in the application (the respondents) must file a response in the approved form and lodge all relevant documents with the Tribunal within 15 working days of receiving service of the application.<sup>9</sup>

Respondents can request more time to respond if they believe that 15 working days is insufficient. This request must be made within five days of being served. The request should outline the reasons for the belief that 15 days is insufficient time, should nominate the period they consider to be sufficient and propose a date for the case management conference.

The Member will consider the request, the overall interests of justice and the competing interests of the parties before deciding if to extend the time to file a response.

Respondents unable to file a detailed response due to a lack of clarity in the application should still file a response and orally request further details about the claim at the case management conference. The Tribunal is not a pleadings-based forum, and any allegations which require further detail will be addressed during the case management conference.

The response must contain **sufficient information** to fully inform the other parties and the Tribunal of the case.<sup>10</sup>

In addition to the completed response form, the response should be supported by **all documents** referred to in the response and any other documents upon which the respondent intends to rely on. These documents might include a copy of the full terms of any insurance policy relating to the claim, technical reports, and scopes of work obtained by the respondent concerning the claim alleged by the applicant.

A copy of the response and all supporting documents must be served by the respondent on the applicant at the same time that those documents are filed with the Tribunal.<sup>11</sup>

## Address for service and contact details

Every application and response must provide:<sup>12</sup>

- an address, both email and postal, to which documents may be sent for the party filing that application or response; and
- an address, both email and postal, at which the person filing the document wishes to be contacted. The Tribunal would prefer, if possible, to contact the parties and make notifications by email.

If a party nominates a representative to receive documents on their behalf, all notices, documents and other communication relating to the claim will be served on that representative and not on the party. It is the representative's responsibility to ensure that the party they represent receives everything served on the representative.

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<sup>9</sup> Section 15.

<sup>10</sup> Section 15(2)(c).

<sup>11</sup> Section 15(3).

<sup>12</sup> Section 12.

When any proceedings are transferred to the Tribunal from a court, the addresses for service of the parties shall be as specified in the Court proceedings transferred. Parties might like to consider changing this address for service to their own address if they think this is appropriate.

Whenever a party, or their representative, changes their address for service or contact details they must immediately notify the Tribunal and the other parties of those changes.

#### Service of documents

All relevant documents (except the application which will be served by the Tribunal) are to be served, on the Tribunal and other parties to the proceedings, by the person who is relying upon the document. Service will be deemed to be effective:<sup>13</sup>

- at the time it is personally delivered to the intended recipient's address for service;
- five working days after it was posted to the intended recipient's address for service; or
- on the first working day after the day on which it was sent to any email address provided by the intended recipient.

Documents may also be served in any other manner approved by the Chair of the Tribunal.

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<sup>13</sup> Section 12(2).

## Chapter Two

# Managing Claims

### Self-represented applicants

The Tribunal processes are designed so that a homeowner can represent themselves. While the Tribunal is inquisitorial which by its nature it will aid self-represented applicants, neither the Tribunal member nor the case manager can provide advice. If necessary, referrals can be made to community law so self-represented applicants can obtain legal advice.

The GCCRS is available to provide support to self-represented applicants.

The Chair has published guidelines to assist self-represented applicants.

### Using advocates

Parties may have their case presented at conferences or hearings by anyone they choose. Such a person, referred to in these Practice Notes as an advocate, might be: an engineer, builder, lawyer, friend, family member, councillor or care-worker.

There is no requirement that a party must use an advocate or that they use the same advocate on each occasion.

An expert **cannot** act as both an expert witness and an advocate for a party in the same claim.<sup>14</sup>

If a party is using a litigation funder, they will be required to provide copies of the funding agreement, as the funder is and their involvement are subject to the oversight of the Tribunal.

### Code of Conduct for Parties and Advocates

The Tribunal always expects that the parties and their advocates will:

- Act honestly.
- Cooperate with the other parties, their advocates, and the Tribunal.
- Act respectfully towards other parties, their advocates, and the Tribunal.
- Not engage in conduct which is misleading or deceptive or knowingly encourage or assist any other participant to engage in conduct which is misleading or deceptive.
- Not make any claim or respond to any claim where a reasonable person would believe that the claim or response to claim is frivolous, vexatious, for a collateral purpose, or does not have merit.
- Use reasonable endeavours to resolve the dispute by agreement between the parties, including, by negotiation, mediation, or the use of settlement conferences.
- In cases where the dispute is unable to be resolved by agreement, use reasonable endeavours to resolve such issues as may be resolved by agreement and to narrow the real issues remaining in dispute.
- Use reasonable endeavours to ensure that the legal and other costs incurred in connection with the proceeding are minimised and proportionate to the complexity or importance of the issues and the amount in dispute.
- Use reasonable endeavours to act promptly and to minimise delay.

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<sup>14</sup> Section 14(3).

- Disclose, at the earliest practicable time, to each of the other relevant parties, the existence of all documents in their possession, custody or control of which they are aware, and which they consider are relevant to any issue in dispute and the proceeding, other than any documents the existence of which is protected from disclosure on the grounds of privilege.

### Case Management

The Tribunal uses close case management with a single Member managing each claim.<sup>15</sup> This enables the Member to become familiar with the parties and the issues. They can then provide guidance and direction to effectively resolve the dispute. The Member will set timetables and issue directions.

Experience has shown that close case management is an effective tool in resolving disputes speedily.

There is a presumption that the Member will require an update at least every two months. This ensures that resolution of issues stays front of mind for the parties and their advocates.

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<sup>15</sup> Section 60.

## Chapter Three

# The First Case Management Conference

The First Case Management Conference (first CMC) is an important step in the process. It allows the parties to come together, to meet with the presiding Tribunal Member, and to hear each other.

The Chair has issued guidelines to assist parties in what to expect and how to prepare for the first CMC.

### *Preparation*

Prior to the first case management conference, all parties should complete the pre-conference form sent with the notice of the conference, which is for the benefit of that party only and is not required to be filed with the Tribunal.

### *Exchange of documents*

No later than five days before the first case management conference the parties must supply the other parties with:

- any documents they possess that are relevant to the case, whether those documents are adverse to their own case or not; and
- all reports and scopes of works they have obtained in relation to the claim, including those on which they no longer rely.

### *Attendance at the first case management conference*

All parties are required to attend the first case management conference. Advocates may accompany the parties, but each party is required to attend in person.<sup>16</sup>

### *The conference process*

The conference will take the form of a non-threatening, less formal discussion between the Tribunal and the parties.

Applicants will be asked to describe in their own words their experience of the relevant earthquakes and the damage caused to their home. They will be able to tell the Tribunal about their claim and express their feelings about how it has been managed. The respondent will be invited to respond.

The Tribunal will then lead a discussion focussed on:<sup>17</sup>

- identifying what is agreed and what is in dispute;
- ensuring that the Tribunal and the parties fully understand the nature of the dispute;
- deciding whether other parties should be added;
- identifying the issues which need to be resolved;
- identifying whether there are documents that should be made available to the parties; and
- deciding how best to proceed to achieve a speedy, just and cost-effective outcome for the parties.

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<sup>16</sup> Section 22.

<sup>17</sup> Section 24.

### *Encouraging settlement*

The Tribunal will encourage everyone to settle and do everything it can to assist.<sup>18</sup> The parties should think creatively when seeking the Tribunal's assistance. For example, the Tribunal:<sup>19</sup>

- can actively seek evidence or make appropriate enquiries;
- can appoint an independent expert to assist on technical issues by: review existing reports; offering an expert opinion; convening and facilitating a meeting of the experts;
- can hold preliminary hearings on disputed facts or contested legal issues and give a decision;
- can refer the parties to a settlement conference run by the Tribunal;
- convene an expert's conference to address technical issues in advance of a hearing;
- can hear the issues and make a decision;
- can direct that the parties' experts give evidence together at a hearing and be able to ask each other questions under oath;
- can hold a special sitting at which the expert evidence from a number of claims can be heard together so that consistent rulings can be made on complex technical issues; and
- can ask the High Court for a ruling on a question of law that has not previously been determined by a court.

### *At the conclusion of the conference*

At the conclusion of the conference, the parties will be asked to confer with their advocates and each other and advise the Tribunal on how they would like the claim to proceed. If agreement can be reached, the next steps will be detailed and set out in a Tribunal Minute.<sup>20</sup> The minute may also record an issues list to assist with the next steps.

If no agreement can be reached, the Tribunal, having heard from all parties will determine the course to be followed.<sup>21</sup> These steps will be set out in a Tribunal Minute.

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<sup>18</sup> Section 3.

<sup>19</sup> Sections 40, 24(1)(f), 27(1)(f), 39(1)(f), 49, s 27(1)(g), s 40(1), 43(1) and 53.

<sup>20</sup> Section 24(1)(i).

<sup>21</sup> Section 26.

## Chapter Four

# Resolution Processes

The Tribunal is not a court and has flexibility in process and procedure. It can design a process that is particular to the issues of the claim. This may involve:<sup>22</sup>

- further case management;
- expert assistance;
- mediation or a Tribunal led settlement conference;
- expert conferral; and
- a hearing.

Pre-hearing issues can be identified and determined prior to a hearing of the substantive claim.

### *Assistance from experts*

The Tribunal has the power to appoint an expert advisor to assist the Tribunal.<sup>23</sup> In respect of engineering assistance, a referral is made to Engineering New Zealand (ENZ). ENZ will select an appropriately qualified expert from their panel of experts. How the expert is to assist, is determined by the Member in consultation with the parties. The conference Minute will set out what is expected of the expert. It may be that the expert is asked to facilitate an expert conference, provide an opinion, or sit with the Member in a hearing to assist with questioning the parties' experts. Further information on the use of experts is set out below.

### *Settlement conferences*

A Tribunal Member may direct that the parties attend a settlement conference.<sup>24</sup> The conference will be chaired by that Member, or another appointed for that purpose. The conference is without prejudice and confidential so whatever is said in that conference cannot be referred to if the matter later goes on to a hearing. The Chair has issued guidelines to assist parties in preparing for settlement conferences.

### *Further case management*

All claims will be managed by the Member allocated.<sup>25</sup> Subsequent conferences can be in person or via video and/ or audio link.<sup>26</sup> Direction will be given at each case management conference that are to be followed.

### *Hearings*

At a hearing each party will present evidence that supports the position they have taken on an issue. After hearing all the evidence from the witnesses and reviewing all relevant documentation the Member will decide the issues that are in dispute. See notes below for further details on how hearings operate.

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<sup>22</sup> Section 27.

<sup>23</sup> Section 27(f).

<sup>24</sup> Section 27(1)(k).

<sup>25</sup> Section 60.

<sup>26</sup> Section 26(3).

## Ending a claim

There are several ways in which claims can be ended.

### *Withdrawal of claim*

A claim may be withdrawn at any time if the applicant has made the request to withdraw in writing and the other party doesn't object.<sup>27</sup>

If the other party objects, the Tribunal will decide whether the claim will be withdrawn or whether the objection will be upheld.

### *Settlement*

If the claim is settled by agreement the parties are to notify the case manager that an agreement has been reached and that the claim can be terminated. This will be referred to the Tribunal member. If requested by the policyholder or the insurer the Tribunal may record the settlement in the form of a decision of the Tribunal.<sup>28</sup>

If settlement is reached at mediation the mediator must promptly provide a copy of the agreed terms of settlement to the Tribunal.<sup>29</sup> The Tribunal must record the agreed terms as a decision of the Tribunal which is enforceable.<sup>30</sup>

If settlement is reached at a Tribunal led settlement conference the presiding Member will record reference to the settlement in the form of a Minute.

Any settlement recorded as a decision of the Tribunal may be enforced as if it were an order of the District Court.<sup>31</sup> An application to the District Court must be made and the requirements of s 52 followed.

### *By Decision*

Following a hearing, the Tribunal Member will issue a decision in writing which will set out the Member's reasons for the decision.<sup>32</sup>

The Tribunal will provide a copy of the decision to each party as soon as practical after the decision is made.

In all cases, the Tribunal's decision will be published on the Tribunal's website. The Tribunal has the discretion to suppress the publication of a name and applicant's address if it believes it is in the best interest of a party.<sup>33</sup>

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<sup>27</sup> Schedule 2 pt 1 cl 11.

<sup>28</sup> Section 46(8)(b).

<sup>29</sup> Section 34(1).

<sup>30</sup> Section 35.

<sup>31</sup> Section 52(1).

<sup>32</sup> Section 49(1).

<sup>33</sup> Section 51.

## Chapter Five

# The Use of Experts

All experts, whether representing a party or appointed by the Tribunal must comply with the Code of Conduct for Expert Witnesses.<sup>34</sup>

An expert witness is not an advocate for the party who engages the witness. An expert therefore cannot act as a representative or an advocate for a party in a claim in which he or she is giving evidence.<sup>35</sup>

### *Code of Conduct for Expert Witnesses*

The Tribunal expects the expert witness will at all times, including when participating in a mediation, settlement conference or a hearing:<sup>36</sup>

- act honestly;
- assist the Tribunal **impartially** on relevant matters within the expert's area of expertise;
- cooperate with the parties, other experts, their advocates and the Tribunal;
- not advocate for the party who engages the witness;
- exercise independent and professional judgment based on their knowledge and expertise;
- not act on the instructions or directions of any person to withhold data or information, or withhold or avoid agreement;
- comply with directions of the Tribunal; and
- use reasonable endeavours to act promptly and to minimise delay.

### *The Evidence of an Expert Witness*

The report, or witness statement of an expert must include the following matters:

- name of the expert;
- acknowledgement that the expert witness has read the Code of Conduct and agrees to comply with it;
- the witness's qualifications and experience;
- a statement identifying the expert's area of expertise;
- all instructions that define the scope of the report;
- describe the ambit of the evidence given and state either that the evidence is within the expert's area of expertise, or that the witness is relying on some other (identified) evidence;
- set out the data, information, facts, and assumptions upon which inform the expert's opinion;
- state the reasons for the opinions expressed;
- state that the expert witness has not omitted to consider material facts known to the witness that might alter or detract from the opinions expressed;
- specify any literature or other material used or relied upon in support of the opinions expressed;
- describe any examinations, tests, or other investigations on which the expert witness has relied upon, and identify, and give details of, the qualifications of any person who carried them out;

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<sup>34</sup> Section 2(1)(e).

<sup>35</sup> Section 41(3).

<sup>36</sup> Sections 41(3) and 25.

- identify any provisional opinions that are not fully researched (identifying the reasons why such opinions have not been or cannot be fully researched); and
- if quoting from statutory instruments (including policy statements and plans), to do so sparingly. A schedule of relevant quotations may be attached to this a bit of evidence, or a folder produced containing relevant excerpts.

If any expert witness believes that his or her evidence, or any part of it, may be incomplete or inaccurate without some qualification, that qualification must be stated in the evidence.

If an expert witness believes that his or her opinion on any issue is not a concluded opinion because of insufficient research or data, this must be stated in their evidence.

If an expert witness has any reservations about the facts or opinions upon which their opinions are based, then they should give the reasons for their reservations.

If an expert witness changes any of their opinions after providing a report or a brief of evidence, that must be communicated without delay to the party or parties wishing to call the witness and that party shall forthwith notify the Tribunal in writing of such change of opinion.

#### *Attendance by the party's experts*

The parties' experts are welcome to join any case management conference and are expected to attend mediations, settlement conferences or hearings.<sup>37</sup>

Any expert who has not read or does not agree to comply with the Code of Conduct for expert Witnesses may only be adduced with the leave of the Tribunal.

Any expert who is advocating, in breach of the Code of Conduct at a sitting of the Tribunal, or acting in contempt of the Tribunal, may be asked to leave by the convener.<sup>38</sup>

#### *Expert conferral*

The Tribunal may direct that the experts meet to discuss the evidence. This may be an expert-to-expert conferral or a facilitated expert conference.<sup>39</sup>

#### *Experts Appointed by the Tribunal*

The presiding Member may, at their discretion appoint an expert to assist.<sup>40</sup> Depending on the circumstances, this expert may be called as a witness, or may act in an advisory capacity, assisting the Member.

If the Tribunal's expert is appearing as a witness, they are subject to the same directions and duties as other expert witnesses and may be cross examined by the parties.

#### *Expert facilitations*

The Tribunal's expert will normally convene a facilitation for the parties' experts. The outcome of the facilitation may be a Scott Schedule, a table which documents the various expert's positions, recording areas of agreement and disagreement. In some cases, there may also be facilitated experts' meetings chaired by a Tribunal Member.

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<sup>37</sup> Section 23(1)(b).

<sup>38</sup> Section 64.

<sup>39</sup> Sections 27(1)(g) and (k).

<sup>40</sup> Section 27(1)(f).

## Chapter Six

### Hearings

The Tribunal must manage proceedings in a manner that best ensures fair, speedy, flexible and cost-effective dispute resolution. The process for hearing the claim will be determined by the Member in consultation with the parties.<sup>41</sup>

The Chair has prepared guidelines to assist the parties with what to expect and how to prepare for a hearing.

#### *Pre-hearing conference*

A pre-hearing conference will be held to discuss the issues that need to be determined. Directions will be given regarding:<sup>42</sup>

- what witnesses are to be called;
- what evidence needs to be filed, when and how;
- whether a site visit is needed, and when this will occur; and
- what documents are to be in the bundle of documents for the hearing.

If the hearing is likely to exceed one day, then separate days may be allocated. Each party will have equal opportunities to provide evidence.

#### *Site visit*

The purpose of the site visit is to provide the Tribunal Member with the opportunity to view the damage which is the subject of the dispute. It will assist the Member to understand the evidence and issues in dispute. The Tribunal Member may take photographs or other digital recordings which will be distributed to the parties.<sup>43</sup>

The timing for the visit will be agreed between the parties and the Tribunal.

If a site visit is needed early on the claim process, the respondent will be advised of the date for the visit and invited to attend but the visit will proceed, whether the respondent is present/represented.

During the visit, neither party may advance their own case or prejudice the case of the other party by making comments to (or in the hearing of) the Tribunal Member. To safeguard the parties and the Tribunal Member, the entire visit will be recorded by the Tribunal Member. The audio recording will be sent to each party as soon as possible following the visit.

#### *Witnesses*

Evidence shall be given by a witness in accordance with the Oaths and Declarations Act 1957.<sup>44</sup>

#### *Factual witnesses*

The applicant, the respondent and the non-technical witnesses called by either party, may only give evidence if their statements of evidence have been filed and circulated to the other parties. It must be compliant with the Tribunal's directions.

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<sup>41</sup> Sections 20(1) and 37(1).

<sup>42</sup> Section 38.

<sup>43</sup> Sections 24, 27(i) and (k).

<sup>44</sup> Section 15.

At the hearing:

- the focus will be on clarifying and testing the evidence contained in the statements filed;
- each witness will be asked a few clarifying questions by the party calling them (or that party's advocate if they have one) before answering questions from the Tribunal;
- the other party (or their advocate if they have one) will be permitted to ask questions; and
- the party/advocate who has called a witness will then be able to ask questions that clarify anything arising out of the questions asked by the Tribunal or the other party/advocate.

The Tribunal has power, where appropriate, to take the evidence of any witness by telephone, A/V link, or other remote access facility.<sup>45</sup>

#### Expert Witnesses

Expert witnesses must circulate a witness statement attaching their technical report on which they intend to rely on. It is expected that each expert will have participated fully in any expert facilitation and/or experts conference prior to the hearing. If not, then the Member has the ability to exclude that expert from giving evidence.

If any expert witness who is to give evidence fails to attend, then their statement may be introduced into evidence by any party and may be given whatever weight the Tribunal considers appropriate.

The expert witnesses will not give their evidence until all factual evidence relevant to the issue or issues concerned, or such evidence as may be specified by the Tribunal, has been given.

Expert witnesses will generally be sworn and heard simultaneously in a so-called "hot-tub" for each area of expertise. This allows for discussions and questioning between the experts. In certain circumstances, such as when an individual witnesses' evidence is subject to a challenge, this may not be appropriate. The manner in which evidence is given and heard is at the discretion of the Member.

During the hearing, the expert witnesses:

- will each be asked to give an oral statement of their opinion(s) on the issues(s) before the Tribunal;
- will each be asked to comment on the opinions expressed by the other expert witnesses;
- will be permitted to ask questions of those other expert witnesses; and
- will answer questions put to them by the Tribunal's expert advisor and the Tribunal.

Where any party instructs an expert to give evidence or provide a report that is to be part of that party's application or response evidence, they must ensure that the expert understands that they have a duty to assist the Tribunal Member impartially in relation to technical matters that lie within that expert's area of expertise. All expert witnesses should be familiar with, and always comply with, the Tribunal's Code of Conduct for Expert Witnesses.<sup>46</sup>

#### Submissions

At the prehearing conference the Member will make directions on when opening and closing submissions are to be made. These can be oral and/or written.

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<sup>45</sup> Section 40.

<sup>46</sup> Section 41(3).

### *The Decision*

As soon as practical after the hearing, the Tribunal will then give a written decision which sets out the reasons in writing.<sup>47</sup> The Tribunal's decisions are final and binding on the parties, unless appealed.

### *Appeals*

A party to a claim may appeal the Tribunal's decision to the High Court on questions of law and fact.<sup>48</sup> The leave of the High Court is required. A notice of appeal and application for leave to appeal must be filed in the High Court within 20 working days of the Tribunal's decision, unless the High Court allows further time.<sup>49</sup>

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<sup>47</sup> Section 49.

<sup>48</sup> Section 54

<sup>49</sup> Section 54(3)

## Chapter Seven

### Other matters

#### Ongoing communication

Communication with the case managers should be copied to all parties. The case manager is neutral and is not able to provide advice. Communication to be considered by the Member is to be addressed as such and sent to the case manager. Tribunal Members are judicial officers whose independence and neutrality are essential aspects of this role.<sup>50</sup> Therefore, the Tribunal Member will not engage in direct correspondence with the parties. Requests for procedural directions are to be made through the Tribunal case manager.

#### Documents to be relied on

If a party reasonably believes that another party has not exchanged all documents relevant to the application, they may seek an order from the Tribunal requiring that party exchange those documents in its possession or control which are relevant.<sup>51</sup>

The only documents that may be introduced into evidence at the hearing are:

- those contained in the bundle of documents filed in compliance with the Tribunal's directions; and;
- any other documents produced under an order for discovery by a third party after the bundle of documents has been filed;
- any other documents produced by a witness summoned by the Tribunal to attend and produce documents; and,
- any other documents that the Tribunal has specifically permitted a party to introduce into evidence.

#### Joining and Removing Parties

The policyholder or the insurer may request that a person be joined as a third-party respondent. For example, in the case of failed repairs, the builder and/or various sub-contractors may need to be joined as parties. If the Tribunal considers it necessary for the fair and speedy resolution of the claim, it may make this order.<sup>52</sup>

On being joined as party, the third-party respondent has 15 working days to respond to the claim and must disclose all documents in their possession or control that are relevant to the claim.<sup>53</sup>

A party may be removed if the Tribunal considered is necessary for the fair and speedy resolution of the claim. If the claim involves more than 2 parties and a party/parties are removed, the claim may only continue in the Tribunal if a least 1 person is a policyholder and at least 1 insurer or EQC remains involved.<sup>54</sup>

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<sup>50</sup> Schedule 2 pt 2 cl 28.

<sup>51</sup> Schedule 2 pt 1 cl 13.

<sup>52</sup> Section 11.

<sup>53</sup> Section 15.

<sup>54</sup> Section 11.