



CHAIR'S DIRECTIONS

(for Lower Value Claims)

1. Introduction

- 1.1 These directions are effective from 14 September 2015 and are issued pursuant to s 114 of the Weathertight Homes Resolution Services Act 2006 (the Act) and set out the procedure which is to apply to all applications in the Weathertight Homes Tribunal where the amount claimed is under \$20,000 (lower value claims).

2. How the Tribunal will deal with lower value claims

- 2.1 The Tribunal must deal with lower value claims on the papers unless there are good reasons for holding a hearing.
- 2.2 The Tribunal will reach a decision on the claim on the basis of the written material provided by the parties.
- 2.3 The Tribunal can make a final decision on the claim even if there is failure by any party to comply with these Directions, or failure to provide information within the time allowed. Therefore not participating after being served with the claim documents does not prevent orders being made against that party.
- 2.4 Where a hearing is required, parties will appear in person, or with leave by telephone, and will only be able to be represented by a lawyer with the leave of the Tribunal.
- 2.5 The Member of the Tribunal assigned to the claim will give a written decision, including reasons, within 15 working days of either:
- the receipt of the reply filed by the claimant, or
 - the expiry of the time limit in which such a reply should be made if no reply is filed, or
 - the date of the hearing in claims where a hearing is required.
- 2.6 The Tribunal will provide a copy of the decision to each party as soon as practical after the decision is made.
- 2.7 In all cases, the Tribunal's decision will be published and will be posted on the Tribunal's website (at <http://www.justice.govt.nz/tribunals/whl>).

3. Lodgement of application

- 3.1 Application can only be made to the Tribunal after the claimant has received from the Chief Executive of the Ministry of Business, Innovation and

Employment (MBIE) a certificate that confirms that the claimant has made reasonable steps to resolve the claim under the lower-value claims process.

- 3.2 Applicants should only make an application when they have their claim quantified and ready to proceed, having obtained all the necessary evidence, costings and other relevant documents.
- 3.3 Applications are to be lodged on the official Tribunal application form and are to contain sufficient information to fairly inform the other parties of the substance of the claim. The application should include, or have attached, a typed document summarising, in numbered paragraphs, the basis of the application, the orders sought against each respondent, the amount of the claim, and the ground or grounds in relation to each respondent.
- 3.4 The following documents should be filed with the application:
 - A copy of the MBIE Assessor's report
 - A copy of the Chief Executive's certificate confirming that the claimant has made reasonable steps to resolve the claim
 - Any other report or information that will be relied upon to confirm the orders sought
 - Statements from the claimant and any other people whose evidence the claimant wants the Tribunal to consider when reaching a decision on the claim
 - Receipts for repairs, or quotations or estimates for repairs, where appropriate
 - A list of all the relevant documents that relate to the property
 - The required application fee.
- 3.5 Applications must name the respondent(s) accurately and clearly state the addresses of the respondent(s).

4. Responses to the claim (and replies)

- 4.1 The Act states respondents must file their responses within 25 working days after receiving the claim. This time limit will only be extended in exceptional circumstances.
- 4.2 To prepare their formal responses, respondents need to analyse the application and accompanying documents, including the Assessor's report, and then state in writing:
 - which matters in the claim are accepted or agreed
 - which matters are disputed, with reasons why
 - the matters for which responsibility/liability is accepted
 - the matters for which responsibility/liability is denied.

The written response should address each cause of water entering the applicant's dwelling identified in the Assessor's report, and/or any other evidence, and either accept liability for it or deny liability for it, with reasons why.

Respondents should include with their response all evidence the respondent wishes the Tribunal to consider in reaching a decision.

4.3 The claimant will then have 10 working days from the receipt of the responses to file any further statement, evidence or submission.

4.4 Each party is to serve on all other parties with copies of the information and documentation filed with the Tribunal.

5. Joinder of parties

5.1 Where respondents identify other persons or companies who they think should be involved in the claim, they may seek joinder of that party as a party or additional respondent. This can be done by written application, giving the reasons why the named person or company should be joined and also providing the address for service of that person/company. This application should be made within 15 working days of the receipt of the claim.

5.2 Any party seeking to join another party must provide reasonable evidence of the new party's breach of duty to the claimant, and a causative link to leak/s or remedial work required.

6. Removal of parties

6.1 Applications for removal of parties for lower-value claims will generally not be considered in advance of consideration of the substantive claim.

7. Provision of documents

7.1 All documents that any party wishes the Tribunal to consider in reaching its decision must be provided to the Tribunal and all other parties within the time frames set within these Directions. Documents must be electronically and in hard copy, unless it is impracticable or impossible to do so.

7.2 The documents to be filed and served by the parties, subject to any specific Tribunal directions, should include:

- any contracts relevant to the claim (such as building documents and sale and purchase documents), or a written statement explaining how the parties agreed for the building work to be done
- any experts' reports on which the party intends to rely at the hearing
- statements by any witnesses
- any relevant photographs, video or audio tapes, or other evidence
- a concise chronology of relevant events
- applicants must state the points of claim (that is, details of the basis of the claim being made against each party).
- respondents must state the points of defence (that is, details of the defence, and the reasons the claim is opposed).

7.3 Parties and witness statements must set out the whole of their evidence and should be typewritten with paragraphs numbered sequentially. The parties' statements and submissions should be typed with numbered paragraphs, be clear, concise, and easy to follow, and only include what is relevant. Any documents referred to in the statements and submissions should be attached to them and referred to by an appendix number. If a party is presenting a large number of documents, they should be placed in folders and indexed for easy reference.

8. Compliance with Tribunal timetables

8.1 Compliance with the timetable, fixture dates and other directions set by the Tribunal is mandatory, and cannot be altered, even if the parties consent, except with the leave of the Tribunal.

8.2 If parties wish to depart from any other direction made by the Tribunal, they must seek leave.

8.3 Applications for leave to depart from Tribunal directions, including these Directions, will be required to establish that the departure from directions is necessary for the adequate running of the case, was not avoidable by management of the proceedings with due diligence, and that the leave, if granted, will not unduly disadvantage any other party(ies).

9. Experts' reports

9.1 Where any party instructs an expert to provide a report that is to be part of that parties' application, response or evidence, they must ensure the expert complies with the following guidelines.

9.2 The duty of every expert witness is to assist the assigned Member of the Tribunal impartially in relation to technical matters that lie within that expert's area of expertise. All expert witnesses should be familiar with, and at all times comply with, the Tribunal's Code of Conduct for expert witnesses.

9.3 Expert witnesses who provide evidence or reports on defects should include in their reports a summary along the same lines as in the leaks list or the schedule in the Assessor's report, setting out their views on the:

- location of each incidence of water penetration
- cause of each incidence of water penetration
- extent of the resulting damage
- extent of any probable future damage
- recommended remedial work in relation to each incidence of water penetration
- cost of the remedial work.

10. Inspections and site visits

10.1 Respondents or their expert advisors are entitled to inspect the claimant's property for the purpose of responding to the claim, but the timing and length of any inspection must be reasonable and arranged by appointment. Arrangements for inspections should be made directly with the claimants or, if specified, through their representative. Where this is not possible, inspections may be arranged through the assigned Case Manager.

11. Withdrawal of application

11.1 A claim can only be withdrawn with the consent of the other parties or by order of the Tribunal. Where a claimant wishes to withdraw an application to the Tribunal they must serve written notice of withdrawal on the Tribunal. The Tribunal will then circulate that notice to all other parties and:

- If no party objects the claim will be withdrawn, or
- If a party objects set a timetable within which submissions can be made at the end of which the Tribunal will decide whether or not the claim should be terminated.

P A McConnell
Chair, Weathertight Homes Tribunal
1 September 2015