



CHAIR'S DIRECTIONS

(for Standard Dwellinghouse claims)

1. Introduction

- 1.1 These directions are effective from 21 September 2015 and are issued pursuant to s114 of the Weathertight Homes Resolution Services Act 2006 (the Act). They set out the procedures which are to apply to applications for adjudication by the Weathertight Homes Tribunal for single dwellinghouse claims where the amount claimed is over \$20,000.
- 1.2 The Tribunal is not a court of pleadings. Tribunal applications and responses are however required to contain sufficient information to fairly inform the other parties of the nature of the claims being made or defences being raised.
- 1.3 Applications are to:
- Include clear particulars of the claims being made against each party including both the factual and legal basis of each claim.
 - Clearly identify the defects in the dwelling for which it is alleged each party is liable.
 - Include the amount being sought against each party.
- 1.4 Responses should not just contain bare admissions, denials or refusals to admit but:
- Set out which matters in the claim are accepted or agreed
 - Set out the material facts relied upon
 - Include details of any affirmative defences
 - Include any set-off, claim for apportionment or cross claim

2 Filing applications for adjudication

- 2.1 Claimants should only make an application for adjudication when they are ready to proceed with their claim having obtained all the necessary information, costs and relevant documents.
- 2.2 Claimants who wish to file an application before final costs and other necessary information is available should note this in a covering letter and provide reasons why all information is not yet available and an appropriate timeframe within which final information will be filed.
- 2.3 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 have attached to it, a typed

document summarising, in numbered paragraphs, the basis of the application, the orders sought, the amount of the claim, and the ground or grounds in relation to each respondent including both the legal and factual basis of the claims being made against each party.

2.4 Claimants who have only an eligibility report can not file for adjudication until the remedial work has been completed.¹ When filing for adjudication they will need to provide invoices or receipts confirming the amounts being claimed as well as a report or witness statement from their expert setting out the defects to the dwelling, the damage that has resulted from the defects and the scope and cost of the remedial work undertaken.

2.5 The following documents should be filed with all applications for adjudication:

- A copy of any Ministry of Business Innovation and Employment (MBIE) Assessor's reports;
- Confirmation of eligibility from the MBIE;
- Any other technical report or information that the claimants intend to rely upon to confirm the orders sought;
- Receipts for repairs, or quotations or estimates for repairs,
- A defects list, if not included in the assessor's or other expert's report, detailing the defects with the dwelling, the damage resulting from those defects and the remedial work required / undertaken;
- A list of all the relevant documents that the claimants are likely to produce as evidence and rely on if the claim goes to a hearing;
- The required application fee.

2.6 Applications must name the respondent(s) accurately, and clearly state the addresses of the respondent(s), unless further steps need to be taken to ascertain the identity and location of specific potential parties.

3 Addresses for service

3.1 All parties are required to provide the Tribunal with their appropriate address for service. The address for service must include:

- A street address
- A postal address (if different from the above)
- An email address, and
- A telephone number

4 Representatives

4.1 Parties may represent themselves in the Tribunal or may appoint a legal or lay representative. When a party appoints a representative the address for service of the representative must be provided in accordance with 3.1 above.

¹ s 60(8) Weathertight Homes Resolution Services Act 2006

- 4.2 Where a party appoints a representative the representative, and not the party, will be the person served with all notices, documents and other communication in relation to the claim. It is the representative's responsibility to ensure all information is then passed on to the party he or she represents.
- 4.3 If a party appoints an expert to represent them in the hearing that expert can not act as both a representative and an expert witness in the same claim. (ref para 6 Chair's Directions – Expert Witnesses)

5 Service of documents

5.1 The Tribunal will serve:

- All respondents who are named in the claim with the claimant's documents.
- All respondents subsequently joined to the claim with the relevant adjudication documents.
- All parties with notices of conferences, mediation and hearings.
- Procedural orders issued by the Tribunal.

5.2 Parties are responsible for serving the following documents on other current parties in the manner set out in the Chair's Directions (as to service):

- Procedural applications filed by them such as applications for joinder or removal
- Opposition, responses and replies to procedural applications
- Memorandum filed in advance of conferences
- Hearing documents

6 Preliminary conferences

6.1 A preliminary conference will be convened within 10 to 25 working days of the respondents being served with the application for adjudication.

6.2 The purpose of the preliminary conference is to:

- Determine the issues in dispute
- Ensure that the parties understand what they are required to do, so that the matter can proceed in a timely manner
- Obtain further information on the people involved in the construction of the dwelling and the nature of their involvement
- Identify the documents that need to be produced
- Set a timetable for the further steps in the adjudication of the claim.

6.3 All parties are required to attend the preliminary conference. Legal or lay representatives may accompany the parties but each party is required to appear in person (or by telephone where it is a telephone conference).

6.4 Where the claimant's dwelling is located within the greater Auckland region the conference is likely to be convened at the Tribunal's hearing rooms at level

8, 99 Albert Street, Auckland City. In other locations the preliminary conference is likely to be convened by telephone.

7 Documents / Discovery

- 7.1 Parties are required to provide documents, and have access to documents held by other parties, that are relevant to the claim. This usually includes documents relating to the development, design, building consent approval, construction, inspection, certification, occupation, repair and maintenance, and the sale or conveyance of the relevant dwelling. These documents include all contracts, quotations, invoices, correspondence, meeting minutes and notes, and reports, and the arrangements and contracts with sub-contractors and others involved in construction.
- 7.2 Parties are required to provide these documents, or make them available for inspection, to all other parties. The production of relevant documents will be included in the agenda at the Preliminary Conference. Specific directions will be issued following the conference, and when new parties are joined, as to the type of documents to be provided, the process for providing them and the timeframe within which documents are to be provided.
- 7.3 Any documents that a party will be seeking to rely on at mediation or adjudication must be provided to the Tribunal and all other parties as part of the exchange of documents process.

8 Joining parties

- 8.1 Where a party identifies other persons or companies who they think should be involved in the claim, they may seek to join that party as an additional respondent. This can be done by written application, giving the reasons why the named person or company should be joined, and providing the address for service of that person/company. A timetable will be set for dealing with applications to join new parties at the preliminary conference.
- 8.2 In order for a party to be joined to a Tribunal claim there needs to be tenable evidence of that party's alleged breach of duty together with evidence of a causative link to the damages claimed or remedial work. Accordingly the applicant for joinder must provide details of the claim being made and also produce or point to already filed sufficiently compelling evidence to establish that the claim against that party is capable of succeeding. This will, in most cases, require evidence of that party's involvement in work that has contributed to the dwelling leaking

9 Removing parties

- 9.1 Respondents may seek to be removed as a party on the grounds that they have no liability to the claimant or other respondents. The party seeking to be removed will be required to show that the claim against them is so untenable that it is unlikely to succeed.

- 9.2 If there are genuinely disputed issues of fact which can not be resolved in the context of a removal application then the removal application will be dismissed. Where a party is opposing a removal on the basis of disputed facts they must produce or point to some cogent evidence in support of their opposition. It is insufficient to say that there are disputed facts without providing some detail of what they are. In addition it is insufficient to say there could be disputed facts or to require the Tribunal to go on a fishing expedition to see if some conflicting evidence may arise in the course of adjudication.
- 9.3 Any party seeking removal should raise the matter with all other parties because if they agree that the party seeking removal should be removed, they are expected to consent to the removal, which can then be formalised by the assigned member of the Tribunal.

10 Responses to the claim (and replies)

- 10.1 The Act states that respondents must file responses to the claim. A timetable for filing responses will in most claims be set at the preliminary conference.
- 10.2 To prepare their formal responses, respondents need to analyse the application and accompanying documents (including the Assessor's report and other material or reports relied upon by the claimant), 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.
- 10.3 Where a party is contesting the claimants defects list or causes of damage their written response, or experts report filed with the response, should address each cause of water entering the claimant's dwelling and state:
- whether or not they agree or disagree that it was a defect, and state the reasons why, and
 - either accept liability for this defect or deny liability for it, and state the reasons why.
- 10.4 Responses must also include details of any affirmative defences a respondent is intending to raise and any set-off, counter or cross claim or claim for apportionment against other respondents. Responses should also outline any dispute with the quantum being claimed and the reasons for the dispute.

11 Compliance with tribunal timetables & adjournments

- 11.1 Timetables, fixture dates and other directions set by the Tribunal can only be altered with the leave of the Tribunal.

- 11.2 Applications for adjournment must, unless precluded by the circumstances, be made in writing and in advance of the date set by the Tribunal. Applications for adjournment must clearly state the reasons for the application, and be accompanied by supporting documentation, where available. The party seeking the adjournment must advise the other parties to the claim, and obtain the written consent of the other parties, where possible.
- 11.3 Where a party is seeking an adjournment of a date which has previously been agreed it will be that party's responsibility to get the consent of the other parties to an alternative date.
- 11.4 Unless an adjournment is expressly granted, the parties should assume that the conference, mediation or hearing for which the adjournment is sought will proceed, and attend as directed with all appropriate witnesses, representatives and documentation.
- 11.5 Applicants for leave to depart from Tribunal directions, including these Chair's 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 reasonable diligence, and that the leave, if granted, will not unduly disadvantage any other party.

12 Experts' reports

- 12.1 Where any party instructs an expert to provide a report which is to be part of that party's application, response or evidence they must ensure the expert complies with the following guidelines.
- 12.2 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.
- 12.3 Expert witnesses should, where reporting on or giving evidence of the causes of leaks to the dwelling, include in their reports a defects list or summary setting out their conclusions on the:
- causes of water penetration
 - extent of the resulting damage and the contribution of each defect to the damage
 - extent of any probable future damage
 - appropriate remedial work

13 Experts' conference

- 13.1 An experts' conference is a meeting between the expert witnesses at which the experts discuss the issues on which they have prepared reports, with a view, as far as possible, to clarifying matters in dispute and reaching agreement or narrowing points of difference.

- 13.2 Conferences will be chaired or facilitated by a member of the Tribunal, an independent expert or another appropriately qualified person appointed by the Tribunal. The role of the experts' conference chair does not include the making of orders or directions in the claim. Evidence of things said and done at the conference is not admissible in the hearing unless all parties agree. If a member of the Tribunal chairs the conference, that member will not be the member assigned to the claim.
- 13.3 The Case Manager assigned to the claim will arrange the date and venue of the conference, and advise the parties and the experts. It is noted that:
- the experts will confer in the absence of the parties and their legal advisors
 - the experts must try to reach agreement on the items set out in the agenda for the conference which is likely to include the defects, each defect's contribution to the damage and the scope and cost of remedial work required.
- 13.4 At the conclusion of the conference, the experts should prepare and sign a joint statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for disagreement. This joint statement must be prepared without the assistance of the legal advisors to the parties.
- 13.5 The joint statement will be provided to the assigned Case Manager, who will circulate it to all parties to the claim. The Tribunal member is likely to limit questioning of experts on matters agreed to at the experts' conference.

14 Withdrawal of applications

- 14.1 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 can be withdrawn.

15 Inspections and site visits

- 15.1 When claimants intend to complete the remedial work prior to filing a claim with the Tribunal they should give notice to all known potential respondents prior to commencing the remedial work and give those potential parties a reasonable opportunity to inspect the property before, and during, the remedial work. A copy of the assessor's report should be included with the notice given to potential respondents.

- 15.2 Respondents or their expert advisors are entitled to inspect the claimant's property for the purposes of responding to the claim. The timing and length of any inspection must be reasonable. Arrangements for inspections should be made directly with the claimants or, if specified, through their lawyer or representative. Where this is not possible, inspections may be arranged through the Tribunal.
- 15.3 The assigned member of the Tribunal will generally view the claimant's dwelling prior to the hearing. All parties will be given notice of the time of the site visit, and each party is entitled to attend.
- 15.4 A site visit is to enable the member of the Tribunal to view the subject matter of the dispute. Observations made during the site visit may be used to assist understanding of the evidence and also in determining the issues in dispute.

16 Hearing documents

- 16.1 All documents to be relied on at the hearing must be provided to the Tribunal and all other parties within the timeframes set within these Directions or by procedural order of a member of the Tribunal.
- 16.2 The whole of the evidence each party is seeking to rely on at hearing must be contained in witness statements or technical reports referred to in those statements.
- 16.3 Material to be provided must, unless it is impracticable or impossible to do so, be provided both in an electronic version (for example, by email, or on disk or memory stick) and in hard copy. The parties' statements and submissions should be typed with numbered paragraphs, be clear, concise and easy to follow, and should only include what is relevant. Any documents referred to in the statements and submissions should either be included in an indexed bundle of documents or attached and referred to by an appendix number in accordance with the directions made by the Tribunal in relation to each claim.
- 16.4 Failure to comply with a member of the Tribunal's requests and directions, or failure to provide information within the time allowed could preclude that information or evidence from being admitted at a hearing but does not affect the assigned member of the Tribunal's power to make decisions on a claim.

17 The Hearing

- 17.1 The Tribunal must manage proceedings, including the hearing, in a manner that best ensures speedy, flexible and cost-effective dispute resolution.
- 17.2 The Tribunal is not bound by the Evidence Act 2006 but is bound by the rules of natural justice. This does not, however, require it to permit cross-examination, although generally it will permit relevant and appropriate questions of parties and witnesses.

- 17.3 The purpose of the hearing is to clarify and test the written evidence and witness statements that will have been provided prior to the hearing by the parties and their witnesses. The focus of the process will be an inquiry on the part of the member of the Tribunal.
- 17.4 Hearings are conducted in public, which means that any member of the public or the media may attend the hearing. A hearing can be reported unless there is a very good reason to restrict reporting or to hold part of, or all of, a hearing in private.
- 17.5 Party and witness statements and expert's reports will in most cases be taken as read, and will not be read out at the hearing. All witnesses who have filed statements or reports are expected to be available to attend the hearing so they can answer questions put to them. Parties will be asked to indicate in advance of the hearing which of the other parties' witnesses they will require to be present at the hearing for questioning.
- 17.6 No person shall, without the leave of the assigned member of the Tribunal, be called as a witness unless that person's statement or report has been provided to the Tribunal and circulated to the other parties.
- 17.7 No document shall be relied upon without the leave of the assigned member of the Tribunal unless it is included in the party's material previously provided as noted above.
- 17.8 A party may represent themselves or may have legal, technical or other representation at the hearing. The costs of any such representation will be borne by that party.
- 17.9 All hearings are recorded. In general written transcripts will not be prepared but any party may request a copy of an audio recording of the hearing.
- 17.10 Each party will be invited to make a brief opening statement, then each party and any witnesses shall answer any questions raised by the assigned member of the Tribunal, and any question raised by the other parties or their representatives that the Tribunal permits.
- 17.11 The claimant will present their case first and then the respondent(s), usually in the order in which they are listed in the proceedings.
- 17.12 At the conclusion of the hearing, each party will be given an opportunity to make, or file, closing statements.
- 17.13 The assigned member of the Tribunal will give a written decision, including reasons, as soon as practical after the hearing. This will generally be within six weeks of the hearing or the final date for filing submissions.
- 17.14 The Tribunal will provide a copy of the decision to each party as soon as practical after the decision is made.

17.15 In all cases, the Tribunal's decision will be published on the Tribunal's website at www.justice.govt.nz/tribunals/wht.

P. McConnell
Chair, Weathertight Homes Tribunal
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