

# Guidelines for Hearing Preparation and Hearings

## 1 Hearing preparation and Documents

- 1.1 All people whose evidence will be relied upon in the adjudication are required to provide a written witness statement in advance of the hearing in accordance with the timetable set by the Tribunal.
- 1.2 Parties and witness statements must set out the whole of their evidence, in writing. Headings and subheadings should be used where possible.
- 1.3 All witness statements:
- Must be in the words of the witness and not the words of the lawyer or representative involved in drafting the statement.
  - Typed with numbered paragraphs and pages.
  - Signed by the witness by whom the brief is made.
  - Must not be repetitive or contain irrelevant or inadmissible information.
  - Must not contain information that is in the nature of a submission.
- 1.4 All parties must either serve all other parties with a hard copy of their witness statements and hearing documents or provide the Tribunal case manager with sufficient paper copies for service on all other parties.

## 2. Bundles of documents

- 2.1 It is desirable that a common bundle of documents is prepared for all cases (other than small claims) and they will be ordered for large, complex cases and multi unit claims. The bundle of documents must include all the documents parties will be seeking to rely on at the hearing or which may be referred to in questioning of witnesses. The bundle should not simply include all discovered documents.
- 2.2 Documents should be grouped where convenient with each grouping clearly divided and all pages indexed and number sequentially.
- 2.3 The claimant will have the responsibility for preparing the common bundle of documents unless otherwise ordered. To achieve this:
- The claimant will, In accordance with the timetable set, serve on all other parties and the Tribunal a proposed index to the common bundle of documents in electronic format, and
  - The other parties must provide to the claimant and the other parties a list in electronic format of any additional documents they want included and provide, to the claimants only, copies of any additional documents they wish to have included in the bundle, and

- The claimant must either provide all other parties with a copy of the bundle of documents or make a copy of the bundle of documents available for other parties to copy and return before the hearing. A timetable for the filing of the common bundle will be set as part of the hearing timetable.

## **2 Experts' Reports and Witness Statements**

- 2.1 Where any party instructs an expert to provide a report or statement that is to be part of that party's application, response or evidence they must ensure the expert complies with the following guidelines.
- 2.2 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 Code of Conduct for expert witnesses set out in the Tribunal's Code of Conduct for expert witnesses which is based on schedule 4 of the High Court Rules.
- 2.3 Expert witnesses should, wherever these matters fall within their expertise and terms of engagement, include in their reports or statements a summary setting out their opinion of:
- The cause or causes of the leaks, i.e. the defects
  - The contribution of each particular cause or defect to the damage
  - The evidence of the resulting damage, or future probable damage, for each cause / defect and the extent of that damage
  - Recommended remedial work
  - Summary of any maintenance or betterment issues that affect the claim

## **3 The Hearing**

- 3.1 The Tribunal must manage proceedings, including the hearing, in a manner that best ensures a speedy, flexible and cost-effective service.
- 3.2 The Tribunal is not generally 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.
- 3.3 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.
- 3.4 Hearings are conducted in public, which means that any member of the public or the media may attend the hearing. It can be reported unless there is a very good reason to restrict reporting or to hold part of, or all of, the hearing in private.
- 3.5 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.

- 3.6 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.
- 3.7 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 to all other parties. This includes any reports that parties may wish to refer to in questioning of parties and witnesses.
- 3.8 A proposed agenda for the hearing of evidence will be circulated in advance of the pre-hearing case conference. As far as possible the agenda will be finalised at or following the conference.
- 3.9 Parties will be required to confirm and define the issues that are in dispute at the pre-hearing case conference.
- 3.10 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. The same person however cannot be both an expert witness for a party and that party's advocate or representative.
- 3.11 All hearings are recorded. The Tribunal will on request provide each party with an audio copy of the recorded evidence free of charge.
- 3.10 Each party will be invited to make a brief opening statement, then each party and any witnesses shall answer any questions asked by the assigned Member of the Tribunal, and then questions raised by the other parties or their representatives.
- 3.11 The Tribunal may time-limit cross examination and will restrict repetitive, irrelevant and unnecessary questions. Any questioning should be confined to the issues in dispute. The Member may also limit questioning of experts on all matters agreed to at an experts' conference.
- 3.13 At the conclusion of the hearing, each party will be given an opportunity to make closing statements or submissions. These may be given orally or a timetable set for the filing of written submissions.
- 3.14 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.
- 3.15 The Tribunal will provide a copy of the decision to each party as soon as practical after the decision is made. It will then be published on the Tribunal's website at [www.justice.govt.nz/tribunals/wht](http://www.justice.govt.nz/tribunals/wht).