



CHAIR'S DIRECTIONS (for Multi Unit Claims)

1 Introduction

- 1.1 These directions 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 for adjudication by the Weathertight Homes Tribunal of multi unit claims.

2. Lodgement of Applications

- 2.1 Claimants are encouraged to contact the Tribunal Manager before filing a multi unit claim with the Tribunal.
- 2.2 Claimants should only file their application with the Tribunal when they are ready to proceed with their case having obtained all the necessary evidence, costings and relevant documents.
- 2.3 Applications are to be lodged on the Multi unit application form and must 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, and attached schedules, the following information:
- a chronology of events
 - a summary of the damage to the complex and the causes of the damage
 - the ground or grounds in relation to each respondent including both:
 - (a) the legal basis indicating for example whether it is in contract or tort and specifying the precise nature of the legal breach alleged; and
 - (b) the factual basis of the claims against each respondent
 - a breakdown of the amounts being claimed
 - The ownership details in relation to each unit included in the claim including the date of purchase
 - The occupation status of each unit, i.e. whether it is owner occupied or tenanted

2.4 Applications are to be signed by the representative, or the duly authorised agent of the representative. Who can be the representative is prescribed in section 8 of the Act as:

- The company – for the owners in a company-share complex
- The body corporate – for the owners in a unit title complex
- The person authorised by the owners in a cross lease complex or standalone complex

2.5 The following documents should be filed with the application:

- Confirmation of the authority of the representative to bring the claim, for example, that the person acting on behalf of the Body Corporate is the duly authorised representative of the Body Corporate.
- A copy of the Department of Building and Housing's Assessor's report/s.
- Receipts for repairs, or quotations or estimates for repairs, if not relying on the assessor's report.
- If relying on additional technical information to the assessor's report copies of those reports or briefs of evidence of expert witnesses.
- The required application fee.

In addition to the above documents claimants will be required to disclose the documents listed in 8.4 of these directions.

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. Particular care is required in the case of limited liability companies, trading partnerships and where company directors are being named as parties.

2.7 Claimants who are intending to effect service of the claim on respondents themselves should not arrange service until the claim is filed and registered with the Tribunal.

3. Transitional Claims (i.e. claims filed before 1 April 2007)

3.1 Single unit claims that form part of the same multi-unit complex will be consolidated into as few adjudications as possible.

3.2 When a new single unit claim that forms part of a multi-unit complex is filed with the Tribunal, the Tribunal will give notice to other claimants in the same complex that have filed a claim but have not yet applied for adjudication. The notice will set out the steps that must be taken by the other claimants and the timeframe within which they must take those steps. The notice will include:

- A direction to attend the preliminary conference
- A requirement to confirm in writing whether they are intending to file a claim with the Tribunal and if so when it is likely to be filed. If they are

intending to delay filing they will be requested for provide the reasons for the proposed delay.

- Notification that if they are wishing to proceed to adjudication their claim will be consolidated with the other claim/s already filed unless leave of the Tribunal is granted for their claim to proceed separately. Very good reasons will be need to be provided for the claim not to be consolidated.

3.3 Where a multi unit claim is filed with the Tribunal in accordance with the provisions of ss19 – 21 of the Act (eg a claim filed by a Body Corporate on behalf of the majority of unit owners) the following directions will apply to any single unit claim not incorporated into that representative multi-unit claim:

- The single unit claimant/s will be given notice that the “representative” claim has been filed and of the date of the preliminary conference.
- The single unit claimant will be required to attend that preliminary conference and advise the Tribunal and other parties of the status of their claim and whether they are intending to lodge an application with the Tribunal.
- The single unit claim/s will be consolidated with the “representative” claim unless leave of the Tribunal is granted. If leave is not granted and the single unit claim does not complete and file the appropriate application form they can be prevented from having their claim adjudicated in the future.
- The single unit claimants will be entitled to separate representation even if their claim is consolidated to be heard together with the “representative” claim.
- Failure to comply with the timetable for filing their claim or providing any other documentation directed by the Tribunal could result in the claim by the single unit owner being terminated.

4. Preliminary Conferences

4.1 A preliminary conference will be convened within 12 to 25 working days of the respondents being served with the application for adjudication.

4.2 The agenda for the preliminary conference will include:

- confirmation of the parties’ details, including those of their legal or other representatives
- provision and exchange of relevant documents by the parties
- a discussion on who was involved in the development and construction and their various roles
- consideration as to whether there are other parties who should be joined to the claim
- confirmation that the parties understand what they are required to do, so that the matter can proceed to a hearing at the earliest practicable time
- determination of any other procedural matters raised by any party

- determination as to whether the application should be referred to mediation.
 - setting a timetable for the further adjudication of the claim
- 4.3 All parties are required to attend the preliminary conference in person. Legal or lay advisors may accompany the parties **but each party is required to appear in person (or where appropriate by telephone) including the representative (see 2.4) and all respondents** even if they are legally represented.
- 4.4 Preliminary conferences will generally be convened at a venue in the region of the complex or, where this is not practicable, by teleconference. Where the complex is located within the Auckland or Wellington regions, the conference will be convened at the Tribunal's hearing room in that centre.
- 4.5 The Tribunal generally does not adjourn preliminary conferences unless the majority of the parties agree to an adjournment. Claimants should advise the Tribunal when filing applications if they, or their lawyer or representative, are unavailable on any days during the period when the preliminary conference is likely to be convened.

5. Joinder of Parties

- 5.1 Where any party identifies another person or company 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 providing the address for service of that person/company. Joinder applications are to be made within the table-table set by the Tribunal. Late applications that if granted will require the timetable to be revised are only likely to be considered if they are supported by the majority of the parties.
- 5.2 Any party seeking to join another party must provide an address for service for the proposed party and reasonable evidence of the new party's breach of duty to the claimant and a causative link to the remedial work required to be done. In other words they must provide a legal and factual basis for the new party to be joined to the claim.

6. Removal of Parties

- 6.1 Respondents may seek to be removed as a party on the grounds that they have no liability to the claimant or other respondents.
- 6.2 There is no formal third party claim procedure under the Act but s 72(2) empowers Members of the Tribunal to determine liability of any respondent to any other respondent.

- 6.3 Where a removal application results in a factual dispute and cannot be decided without hearing the evidence from witnesses, the assigned Member of the Tribunal will generally wait until the formal hearing to decide if such a party does have liability. 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.
- 6.4 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.
- 6.5 Applications for removal will be dealt with on the papers unless the member assigned directs otherwise.

7. Responses to the Claim

- 7.1 The Act states respondents must file their responses within 25 working days after receiving the claim. With multi-unit claims however the Tribunal is likely to authorise an extension of this time limit to enable documents to be exchanged, all parties to be identified and where appropriate respondents' experts to inspect and provide reports for parties.
- 7.2 To prepare their formal responses, respondents need to analyse the application and accompanying documents (including the Department's 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.
 - Details of any defences or mitigation issues intended to be raised at mediation or adjudication.
- 7.3 The written response should address the causes of water entering the complex identified in the claim filed. The response should either accept liability for the leaks or deny liability, and state the reasons why.
- 7.4 Copies of any written expert's reports, summaries or costings that will be relied on at mediation should be filed with the response if not adequately covered in the responses filed.

8. Disclosure of Documents

- 8.1 In general, the Weathertight Homes Tribunal does not require the formal “discovery” of documents. However, one of the first steps required in the adjudication process is for parties to provide documents, and have access to, documents held by other parties. This includes all documents that are **relevant** 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. It also includes all conveyancing files and body corporate minutes and records.
- 8.2 Parties are required to provide these documents, or make them available for inspection, to all other parties. This process may be carried out informally, with each advising the others of the documents held or able to be accessed and then arranging for inspection or provision of requested documents. Alternatively this can be co-ordinated through the Tribunal with the case manager assisting parties with this process.
- 8.3 Where the Tribunal is requested by parties to provide hard copies of discovery documents the party requesting the copy (or return of the original) will be required to pay the copying costs incurred by the Tribunal.
- 8.4 Parties will be required to provide an affidavit in the course of the proceedings, and / or swear on oath or affirm at the hearing, that all relevant documents have been produced or identified to the other parties. Parties may also be required to file a list of documents on which privilege has been claimed and therefore not disclosed. Parties can be precluded from producing or relying on documents that have not been disclosed to other parties in accordance with the timetable set
- 8.5 The documents to be provided, subject to any specific Tribunal directions, should include:
- any contracts (for example building documents, sale and purchase documents, and other relevant contractual documents)
 - Any invoices, receipts relating to the construction and any remedial work
 - the conveyancing files for each unit owners purchase including any pre purchase inspection or reports
 - Body corporate or company share minutes, reports and other documentation including authorities given for the representative to bring the claim
 - documents that relate to any tenancy agreement or lease of any of the units where claims of loss of rent form part of the claim
 - plans, scopes of work, building permits and consents for both the original construction and any remedial work
 - any expert’s reports and pre purchase inspections
 - any relevant photographs, video or audio tapes, or other evidence

- 8.6 Material to be provided, including discovery documents, is to be provided both in an electronic version (for example, by email, on CD or memory stick) and in hard copy unless this is impractical or impossible (eg large format plans). Documents provided should be indexed and all documents paginated (all pages numbered).

9. Hearing preparation and Documents

- 9.1 All people whose evidence will be relied upon in the adjudication will be required to provide a written witness statement in advance of the hearing in accordance with the timetable set.
- 9.2 Those statements will be taken as read and there will be no need for direct oral evidence from that party unless the Tribunal or another party wishes to question that party or witness.
- 9.3 It is likely that each unit owner will need to file a witness statement detailing circumstances of purchase, discovery of leaks and information on special and general damages claimed such as interest or loss of rent etc.
- 9.4 Parties and witness statements must set out the whole of their evidence, and should be typewritten and 1.5 line spaced. Headings and subheadings should be used where possible. 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, attached to them and referred to by an appendix number, or referred to by index reference and page number from the schedule of documents or bundle of documents filed. If a party is presenting a large number of documents, they should be placed in folders and indexed for easy reference
- 9.5 All documents to be relied on at the hearing must be provided to the Tribunal and all other parties before the hearing within the timeframes set by procedural order of a Member of the Tribunal. This includes any reports or information that parties will be using or referring to the course of cross examination of other parties or their witnesses.

10. Compliance with Tribunal Timetables & Adjournments

- 10.1 Compliance with the timetable, fixture dates and other directions set by the Tribunal is mandatory, and can only be altered with the leave of the Tribunal.
- 10.2 Applications for adjournment must, unless precluded by the circumstances, be made in writing and well 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 should advise the other parties to the claim,

and ascertain and obtain the written consent of the other parties, where possible.

- 10.3 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.
- 10.4 Applications 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 due diligence, and that the leave, if granted, will not unduly disadvantage any other party.
- 10.5 Failure to comply with a Member of the Tribunal's requests and directions, or failure to provide information within the time allowed, does not affect the assigned Member of the Tribunal's power to make decisions on a claim. Failure, without reasonable cause, to provide documents in accordance with the timetable may preclude a party producing or relying on a document if the claim goes to a substantive hearing.

11. Experts' Reports

- 11.1 Where any party instructs an expert to provide a report that is to be part of that party's application, response or evidence they must ensure the expert complies with the following guidelines.
- 11.2 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 Schedule 4 of the High Court Rules.
- 11.3 Expert witnesses should, wherever these matters fall within their expertise, include in their reports a summary setting out their views on the:
 - The cause or causes of the leaks
 - Whether each particular cause is a primary or secondary cause of leaking
 - Extent of the resulting damage, or future probable damage, for each cause
 - Recommended remedial work
 - Cost of the remedial work.
 - Summary of any maintenance issues that affect the claim

12. Experts' Conference

- 12.1 An experts conference is likely to be convened before the hearing for all multi unit claims. With the agreement of the parties an experts conference can be convened prior to mediation.

12.2 An experts' conference is a meeting between the expert witnesses at which the experts discuss the issues on which they have prepared reports, for the purposes of identifying:

- Factual matters on which the experts agree
- Matters in dispute and the reasons for the disagreement.

The process is designed to narrow points of difference and save hearing time.

12.3 Conferences will be chaired or facilitated either by a Department of Building and Housing Assessor, a Member of the Tribunal, a senior Tribunal registrar or an independent expert. The role of the experts' conference chair does not include the making of orders or directions in the claim, or the giving of evidence as to the conference. Apart from the agreed statement evidence of things said and done at the conference is not generally admissible in the hearing. If a Member of the Tribunal chairs the conference, that Member will not be the Member assigned to the claim.

12.4 The duty of every expert witness is to assist 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 Schedule 4 of the High Court Rules.

12.5 It is for the Tribunal to determine whether a person qualifies as an expert and may attend the experts conference. Such decisions will generally be made by the member assigned to the claim but may also be determined by the person chairing the expert's conference.

12.6 Any expert who acts as an advocate for a party or who does not act impartially during the course of the experts' conference may have their involvement in the experts' conference limited, or in extreme examples be excluded from the conference, by the facilitator or chair.

12.7 Any expert who is not authorised to reach agreement on appropriate factual matters or to participate appropriately in the experts' conference may have their role in conference limited. In addition any party who does not allow their expert to attend or participate in the experts' conference, without good cause, may be restricted in the ways they can challenge the matters agreed to at the experts' conference.

12.8 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:

- Experts should, unless directed otherwise by the Tribunal member, prepare their reports or briefs of evidence in advance of the conference and they are to be circulated to all the other experts attending the conference.
- The Tribunal member assigned to the claim will set out the agenda for the conference which will be circulated before the conference.

- The experts will confer in the absence of the parties and their legal advisors
- The experts must try to reach agreement on the agenda which will generally include items in the leaks list or schedule (that is, the location and / or causes of leaks, the extent of damage, and the remedial work required and remedial costs) or state their reasons for disagreement.
- The agenda and matters agreed to at the conference should not cover decisions as to the liability of any particular party for the damage.

12.9 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.

12.10 The joint statement will be provided to the assigned Case Manager, who will circulate it to all parties to the claim.

12.11 The Tribunal may restrict the calling of any further evidence and limit cross examination of experts on the factual matters agreed to at the experts' conference. The Tribunal will however allow further evidence and questioning of experts on the issues of liability.

13. Inspections and Site Visits

13.1 Respondents and 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 and arranged by appointment. Arrangements for inspections should be made directly with the claimants or, if specified, through their lawyer or representative.

13.2 The assigned Member of the Tribunal will generally view the claimant's complex prior to the hearing. All parties will be given notice of the time of the site visit, and each party is entitled to attend.

13.3 The site visit is to enable the Member of the Tribunal and other parties to view the subject matter of the dispute. Observations made on the site visit may be used to assist understanding of the evidence and also in determining the issues in dispute.

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 should be terminated.

15. The Hearing

- 15.1 The Tribunal must manage proceedings, including the hearing, in a manner that best ensures a speedy, flexible and cost-effective service.
- 15.2 The Tribunal is not bound by the rules of evidence but is bound by the rules of natural justice. It is not however required to permit cross-examination, although generally it will permit relevant and appropriate questions of parties and witnesses.
- 15.3 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.
- 15.4 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.
- 15.5 All party and witness statements and expert's reports will 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.
- 15.6 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 in advance of the hearing.
- 15.7 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.
- 15.8 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.
- 15.9 All hearings are recorded. A party may apply to the Tribunal for an audio copy of the recorded evidence, copying costs will be met by the person seeking the record.

- 15.10 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.
- 15.11 The Tribunal may time-limit cross examination and will restrict repetitive, irrelevant and unnecessary questions. The Member may also limit questioning of experts on the matters agreed to at an experts' conference.
- 15.12 As far as practicable the dates and times various witnesses must attend will be time tabled in advance.
- 15.13 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.
- 15.14 The assigned Member of the Tribunal will give a written decision, including reasons, as soon as practical after the hearing. It is likely that only one decision will be issued in relation to the whole complex. However, where appropriate, the determination will include a discussion and findings in relation to each unit included in the claim and also the common property
- 15.15 The Tribunal will provide a copy of the decision to each party as soon as practical after the decision is made.
- 15.16 In all cases, the Tribunal's decision will be published on the Tribunal's website at www.justice.govt.nz.

P. McConnell
Chair, Weathertight Homes Tribunal
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