

Practice Note No 2 (April 2020)

Covid-19

New Zealand is currently in lockdown under alert Level 4 and this could well be extended for an unknown period either nationally or regionally. Whenever it ends, continuing Covid-19 restrictions will limit the Tribunal's ability to operate under the previous Practice Notes as:

- any travel restrictions will have an impact on those members and counsel who live out of Christchurch;
- any continuation of isolation for the elderly and vulnerable will have an impact upon some applicants and two members of our Tribunal; and
- the courts in Christchurch are likely to face a large backlog of work which will impact on the availability of the courtrooms and AVL that we need to conduct hearings.

The combined effect of those issues means that at the present time, and until the travel restrictions and isolation requirements are lifted, the Tribunal cannot schedule any events involving attendance at the Justice Precinct. That situation will ease somewhat when our four new members (three of whom are from Christchurch) are appointed.

Innovation

The Tribunal is committed to making the best use of the technology available to us to avoid unacceptable delays. We are already holding many conferences by telephone and we'll continue to do so but we're recommending several changes to improve the process. We will need to deal with more issues on the papers, and some new processes will be introduced to aid settlement and reduce the need for in-person hearings.

New protocol for telephone conferences

The sound quality in telephone conferences has often been marginal and is likely to be worsened by the digital compression that telecommunications companies are using to relieve pressure on their networks. To improve the sound quality to an acceptable level it will be necessary for those attending to:

- use fixed lines wherever possible;
- use handsets rather than loudspeaker phones; and
- mute their microphones except when speaking.

Counsel must advise the Tribunal of the attendance of clients at any such telephone conferences.

Counsel who wish to have their clients participate in the conference should arrange with the case manager for the clients to be called on a separate number.

Resolving issues on the papers

Many cases involve issues that could be resolved on the papers but, until now, counsel have been reluctant to deal with these issues in isolation. We will now be directing that these issues be addressed early in the process by the filing of written submissions. Counsel will be asked to agree on the essential facts. If these facts cannot be agreed upon, the Tribunal will consider whether the facts themselves could also be determined on the papers.

Settlement conferences

We have always valued Mediation as an important tool in our Hearings. Both MBIE and the GCCRS offer remote mediation which is available free of charge to all Tribunal parties. They can alternatively choose to fund private mediation.

If parties do not elect to mediate, they will be directed to attend a settlement conference conducted remotely by video link. Settlement conferences are likely to end with a direction that the parties exchange written offers.

The settlement conference will be conducted by one of the Tribunal members. That member will not sit at any subsequent hearing (including conferences) of the claim.

Indicative ruling

If agreement is not reached at a settlement conference, we will direct parties to file submissions and statements from all witnesses relevant to the issue in dispute. They will then be referred to the Chair of the Tribunal for an indicative ruling.

The indicative ruling will be:

- non-binding on the parties;
- without prejudice should the matter proceed to a formal hearing;
- confidential to the Chair of the Tribunal and the parties; and
- distributed by the Chair directly to the parties and their representatives.

No copy will be retained by the Tribunal either electronically or in hardcopy except for the copy retained personally by the Chair.

The Chair may:

- receive any relevant evidence, whether or not it would be admissible in a court of law;
- require the applicant or another party to provide documents or other information relating to the application within any reasonable period that the Chair may, from time to time, specify;
- make the indicative ruling without the requested documents should they not be supplied within the specified time;
- issue directions to accompany the indicative ruling setting the claim down for hearing; or
- assign the hearing of the claim to any other member who has not conducted a settlement conference in relation to that claim.

The Chair may not:

- discuss the indicative ruling with anyone other than the parties and their counsel;
- publish the indicative ruling on the Tribunal's website; or
- preside over the hearing of the claim.

Hearings

All hearings, other than those currently part heard by the Chair, will take place at the Justice Precinct in Christchurch. Any witness unable to attend because of Covid-19 restrictions will be permitted to give evidence by video link, but all other witnesses must attend in person.

All parties should be aware that adjournments of hearings will not be granted on the grounds that their advocate is prevented from attending the hearing by Covid-19 restrictions. It is foreseeable

that travel restrictions of this kind might be imposed in the future and parties can avoid the impact of this by instructing an advocate/counsel who lives in Christchurch.

If Covid-19 restrictions prevent the parties and their witnesses from attending the Justice Precinct, arrangements will be made for the hearing to take place by video link unless the Tribunal directs otherwise.

Those hearings currently part heard by the Chair will continue by video link.