

Still waiting to resolve
your earthquake claim?

Let's get it settled

Homeowners' Guide to the
Canterbury Earthquakes Insurance Tribunal



MINISTRY OF
JUSTICE
Tābū o te Ture

About the Tribunal

The Canterbury Earthquakes Insurance Tribunal (the Tribunal) is here to provide homeowners affected by the 2010 and 2011 Canterbury earthquakes with a fair, speedy, flexible and cost-effective way to resolve long-standing claims with insurers (including Southern Response) and the Earthquake Commission (EQC).

Features of the Tribunal include:

- Located in Christchurch.
- Only homeowners can apply.
- If the homeowner agrees, a Tribunal member may visit the affected property.
- Homeowners can request that their case to be transferred to the Tribunal from the High Court or District Court.
- Insurers and EQC cannot file claims with the Tribunal, but they must take part in the process.
- Hearings are broken down into separate events held on different days.
- The Tribunal can compel people to provide evidence.
- Tribunal decisions are binding and enforceable but may be appealed to the High Court by either party.
- The Tribunal will make binding and enforceable decisions based on existing and relevant insurance contract terms.
- The Tribunal is inquisitorial and can investigate the facts of a case. It will also be subject to the principles of natural justice and be guided by what is fair.
- If parties reach a settlement through mediation, it is confidential, binding and enforceable.
- Settlements made outside of the Tribunal can also be sealed at the homeowner's request and enforceable by the District Court.

Support

You can choose to have a representative or an advocate to support and assist you, or speak on your behalf in the Tribunal, or you can do it yourself.

The representative and advocate can be the same person.

Representative: Someone to receive communications from the Tribunal for you

- If you don't want to receive communications from the Tribunal yourself, you can choose someone else to get them instead.
- You can choose anyone to be your representative – a friend, lawyer, workmate or family member.
- They don't have to be the same person who speaks for you at Tribunal conferences and hearings (i.e. your advocate).
- If you plan to use a representative, you should let the Tribunal know as soon as possible who they are and how to contact them.

Advocate: Someone to speak on your behalf at the Tribunal.

- If you don't want to speak at the Tribunal, you can choose someone else to speak on your behalf.
- If your advocate is also your representative, this person will receive all your documents and communications.
- You can choose different advocates for different stages of the proceedings. For example, you may choose your counsellor for your evidence as the homeowner; your neighbour for the other non-technical evidence; your friend's engineer son when the engineers are giving their evidence; and your lawyer for the submissions.
- You don't need to let the Tribunal know who this person is in advance. They can just introduce themselves at the meeting or hearing.

Support person

- You can bring a support person with you to Tribunal meetings and hearings.
- This person's only role is to support you – they don't speak in any of the conferences or hearings.
- Again, this person can be anyone you choose – a friend, colleague or family member.



About this guide

In this guide we explain how the Canterbury Earthquakes Insurance Tribunal works from the time an application is made to the time it is resolved.

We want everybody involved to know what to expect as they participate in the process.

There are five parts:

1. Who can apply – this is the first step in the process, and this section lets you know if your case is eligible.
2. How it works – each step explained
3. Other useful information – including information on mediation, using representatives, withdrawing a claim and reaching settlement.
4. Conduct expectations – a guide for all parties as to the behaviour and conduct expected of them during the Tribunal process.
5. Glossary of terms



Who can apply?

You can apply to the Tribunal if you:

- are the homeowner
- have an unresolved insurance claim relating to the Canterbury earthquakes of 2010/2011. Damage that occurred **after** December 2011 may be considered if at least **some** of the damage occurred during the 2010/2011 earthquakes
- have a claim involving a private insurer, Southern Response, and/or the Earthquake Commission
- held the insurance policy at the time the initial damage occurred.

Your claim can be any of the following:

- a new claim for first-time settlement
- a claim re-opened because additional earthquake damage or bad repairs were found
- a claim that's gone through other resolution services but remains unresolved
- a claim already filed with the court, which you can apply to have transferred to the Tribunal.

More details about the Tribunal

- Applying to the Tribunal is free of charge.
- You can apply online or by mail.
- The Tribunal will make binding and enforceable decisions based on existing law and relevant insurance contract terms.
- The Tribunal can investigate the facts of a claim. It will also be subject to the principles of natural justice and be guided by what is fair.
- The Tribunal page on the Ministry of Justice website www.justice.govt.nz/CEIT has information on the Tribunal's criteria, application process and requirements, and who homeowners can contact if they need assistance.

Not sure if you're eligible?

If you're not sure whether you're eligible to apply to the Tribunal, we still encourage you to apply. You can also contact the Tribunal on 0800 268 787 for assistance.

* NOTE: The Tribunal will **not** consider other types of insurance disputes, such as claims relating to the Kaikōura earthquake or other natural disasters.

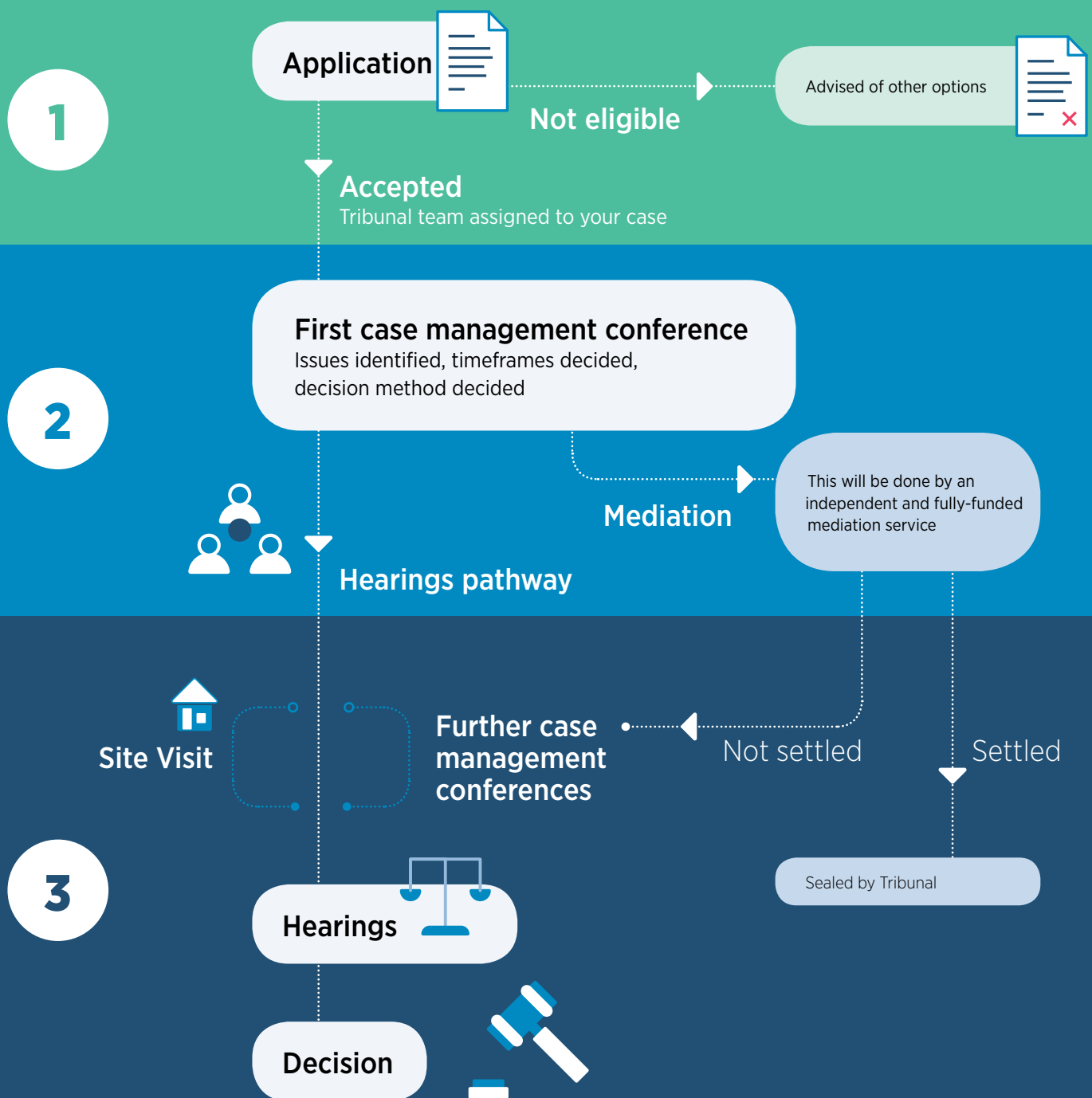
How the process works

An overview

From application to resolution, this is how the Canterbury Earthquakes Insurance Tribunal process looks. The Tribunal also can tailor the process to provide the best resolution for each case.

NOTE: Settlement can be reached at any stage of the process.

The Steps



How it works

Each step explained

At every step, you will be informed of what the next step is and anything you need to do to prepare.

1

Making an application

Applying to the Tribunal is free of charge.

You can apply to the Tribunal either:

- Directly, using one of the application methods further below in this page

or

- Indirectly (if your case is already with the courts, you can apply to have the court transfer it to the Tribunal).

You can apply directly to the Tribunal using any of the following ways:

- Online, by completing and submitting the online form.
- By email, by downloading and completing the application form, and emailing it to the Tribunal.
- By post, by downloading, printing and completing the application form, and posting it to the Tribunal.

If you'd like an application form and Homeowner's Guide posted to you, please ring or email the Tribunal. You can find the Tribunal email and postal addresses at the end of the Guide.

What you'll need to provide with your application:

- The completed application form, including your contact details and those of your representative (if you choose to have one).
- Additional documents to support your application. This is so the Tribunal can understand as much about the claim as possible. It might include emails, letters, photos, and/or technical reports.
- If you apply online or by email, please attach all your supporting documents to your application. If your supporting documents are too large to submit or email, please send them to the Tribunal **by courier, post, or in person.**

Your application is assessed

The Tribunal will go through your application and additional documents and decide whether your claim qualifies using the criteria listed on page four of this guide. If you aren't sure if you qualify, we recommend applying anyway or phoning the Tribunal for further information.

If your claim is accepted:

- A Tribunal member and a case manager will be assigned to your case.
- Your case manager will contact you (or your representative) to make a date for the first case management conference. (You will get a written confirmation of this date).
- Your application and supporting material will be sent to the respondent (ie your insurance company or EQC or their representative), giving them the date for the first case management conference.
- The respondent must forward any documentation relating to your case to the Tribunal and to you.

If your claim isn't accepted

You will be told the reasons for this and advised of other available options. You can ask for a review of this decision.

2 Case management conferences

The first case management conference

You and your insurer will be notified of the date for this when the claim is accepted. All parties must attend the conference in person. You can bring an advocate and a support person if you wish.

Before the conference, make sure you have supplied all documents (reports, letters, photos and emails) that are important to the case.

The purpose of the first case management conference is to:

- meet the parties and their advocates
- see what is agreed and what's in dispute
- make sure everyone fully understands the nature of the dispute
- decide whether other parties should be added (eg experts)
- decide on the best way to achieve a speedy, fair and cost-effective outcome for you.

At the end of the conference, the Tribunal consults with you and your insurer and then decides whether your claim goes to:

- Hearings (leading to a Decision); or
- Mediation (leading to a mediated settlement sealed in the Tribunal).

If the claim goes down the hearings pathway, the Tribunal will ask your permission to visit the home that's the subject of the claim.

If the claim doesn't go down the hearing pathway, the Tribunal will arrange for mediation through the Ministry for Business, Innovation and Employment (MBIE). MBIE will provide more information on the mediation process for those who take this pathway.

Additional case management conferences

The Tribunal can call as many case management conferences as it decides is necessary to work through your claim. You'll need to attend some of these in person, while others may be held over the phone.



3

Hearings

- Hearings are judicial proceedings that are open to the public.
- They are run by a Canterbury Earthquakes Insurance Tribunal member.
- The purpose of a hearing is to clarify and test the evidence.
- To help you prepare, a pre-hearing conference is held before all hearings.
- All hearing pathways result in the Tribunal issuing a decision, unless the parties withdraw or come to an agreement before the decision is issued.
- You and your advocate, and the insurer and their advocate, must attend all hearings.

Most hearing pathways will follow these steps, which are separate events, held on different days:

- hear your evidence
- hear the respondent's evidence.
- hear submissions
- issue a decision.

Some cases may also include:

- evidence from experts
- other evidence.

The hearings will commence soon after the first case management conference and after the site visit. The hearing of your evidence, as detailed below, will take place first.

In some cases, non-technical evidence will also be presented. Evidence from experts can only be presented after all the specific evidence relating to the case has been heard.



Site visits

If your claim goes down the hearings pathway, a Tribunal member will visit the affected property with your permission.

Visiting the property helps the Tribunal get a clearer picture of what's happened and what things are in dispute.

Site visits take place soon after the first case management conference on a day and time you agree to with the Tribunal.

If you don't agree to a request for a site visit, it won't go ahead.

At the site visit:

- A Tribunal member will visit your property for about an hour.
- They'll keep an audio recording of all discussions you have.
- They may take photos.

Who can come to the site visit?

- You can bring your advocate and/or support person to the site visit.
- Your insurer is invited to the site visit, but it will still go ahead if they decide not to come.
- If your insurer asks to attend the site visit, but you do not want them to, the site visit won't go ahead.

Your evidence

This is a discussion between you, your advocate and the member of the Tribunal. This is your chance to tell the member about your claim and how you feel it's been managed. You can expect this to take no longer than half a day. It will take the following steps:

- you'll describe your experience of the earthquakes and the damage caused to your home
- you'll discuss how you would like your claim resolved
- the member may then ask you to clarify any areas of confusion or things you may have left out
- when you have finished, the respondent or their advocate will have some time to ask you questions

The hearing of evidence from the insurer and others

The insurer and the non-technical witnesses called by either party may only give evidence if their evidence has:

- been filed in affidavit form; and,
- circulated to the other parties; and
- is in compliance with the Tribunal's directions.

At any of the pre-hearing conferences, either party may ask the Tribunal to hear other evidence. If such evidence is considered useful, affidavits will be asked for and a date set to hear this evidence. All witnesses who have provided affidavits will be required to attend the hearing so they can answer questions about their affidavits.

At the hearing of this evidence, the focus will be on clarifying and testing the evidence contained in the affidavits.

Expert evidence

The Tribunal can appoint experts to help them to understand and assess the technical issues of a claim.

This may be in a hearing, where expert witnesses will give their evidence. This will only take place after all specific evidence relevant to your case has been assessed.

At the expert evidence hearing, the expert(s) may:

- state their opinions on the case
- give their view about the opinions given by other expert witnesses
- ask questions of any other expert witnesses also giving evidence
- answer any questions put to them by the expert appointed to assist the Tribunal
- answer any questions put to them by the representatives of the parties, as directed by the Tribunal.

Closing submissions and decision

Once all the evidence has been heard, there will be a submissions hearing. This is when both parties present their closing statements. These statements outline the main points of their case, and are based on a written submission already provided.

As soon as possible after the submissions hearing, a member of the Tribunal will arrive at a decision. Written copies of the decision, along with the basis for reaching that decision, will be provided to each party.

The Tribunal's decisions are binding and enforceable

In all cases, except those where claims have been settled in mediation or during the Tribunal process, the Tribunal's decision will be published on the Tribunal's website.

Mediation

The Tribunal may send your claim to mediation at any point after the first case management conference. Mediation allows the parties to agree the process and outcome, and is less formal than a hearing.

The Ministry for Business, Innovation and Employment (MBIE) will make all arrangements for mediation, including appointing the mediator. Information on MBIE's mediation process can be found on their website:

<http://mbie.govt.nz/ceit-mediation>

MBIE is experienced in delivering mediation.

If the claim, or part of the claim, is settled at mediation, the Tribunal will be notified and will provide a copy of the agreed terms of settlement to all parties.

Mediation settlements are confidential, binding and enforceable.



Other useful information

Experts

In addition to expert reports and advice provided by the parties, the Tribunal may arrange for:

- an independent expert report, which will be sent to all parties
- a meeting of the parties' experts to review and discuss existing reports, and come back with a joint statement on the matters they agree or disagree with
- advice from technical experts, which will be sent to all parties
- experts to attend a Tribunal hearing.

An expert cannot be an expert witness for the Tribunal **and** represent either party in the same claim.

Response by insurer

The insurer should provide enough information to fully inform you and the Tribunal of their case. They should include all documents they'll use to support their case, such as:

1. the relevant insurance schedules
2. the full terms of any insurance policy relating to the claim
3. all technical reports concerning property damage.

A copy of the insurer's response, including all supporting documents, must be sent to both you and the Tribunal at the same time.

Withdrawal of claim

You may withdraw your claim at any time. If the insurer objects, the Tribunal will decide whether the withdrawal can be made.

Settlement between parties

Parties can settle at any time up until the Tribunal has made their decision.

Seeking an opinion from the High Court

If the Tribunal considers the claim involves an important legal issue that has not previously been determined by a court, it may refer the question to the High Court for its opinion.

The Tribunal may defer hearing the claim until it has received the High Court's opinion.

Once the Tribunal receives the High Court's opinion, it will continue with the hearing in accordance with that opinion.

Conduct Expectations

The Canterbury Earthquakes Insurance Tribunal expects that, at all times, the parties, their advocates and their support people will:

- act honestly
- cooperate with the other parties, their representatives, and the Tribunal
- act respectfully towards other parties, their representatives, and the Tribunal
- not engage in conduct which is misleading or deceptive
- not make or respond to any claim that might be considered frivolous, vexatious, for a collateral purpose, or does not have merit
- act promptly and minimise delay
- disclose, at the earliest practicable time, to all relevant parties, the existence of all documents in their possession, and which they consider are relevant to any issue in dispute and the proceeding.

Compliance with directions

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

Contempt

The Tribunal has the power to eject any person from a sitting of the Tribunal or have them committed for contempt (punishable by a fine of up to \$2,000) if that person:

- wilfully insults or obstructs any member or staff of the Tribunal, or a witness, during any part of the proceedings, including when any of the above persons are going to, or returning from, a sitting of the Tribunal
- wilfully insults or obstructs a person attending a sitting of the Tribunal
- wilfully interrupts, or otherwise misbehaves at a sitting of the Tribunal
- wilfully and without lawful excuse disobeys an order or direction of the Tribunal during the hearing of a claim
- fails to attend at the Tribunal after receiving a witness summons
- fails to produce any book papers, documents, records or things that the Tribunal has required be produced.

Glossary of Terms

The following terms are used throughout this guide.

- *Advocate* – this is the person parties choose to speak on their behalf at the Tribunal. The advocate can be the same as the representative.
- *Affidavit* – this is official written evidence submitted on behalf of a party.
- *Applicant* – this is the residential insurance policyholder, or homeowner, who is making the claim.
- *Case management conference* – these are discussions between parties on next steps. After the first case management conference, subsequent conferences will generally be held prior to any hearings.
- *Decision* – this is the formal ruling that the Tribunal will make at the end of a process.
- *Hearing* – these are formal court hearings where evidence is heard and parties can be questioned by a member of the Tribunal.
- *Mediation* – allows the parties to agree the process and outcome. Mediation is an independent service, provided by the Ministry of Business, Innovation and Employment.
- *Member* – a judicial officer of the Tribunal appointed by the Governor General.
- *Parties* – this is the collective term for the applicant, the respondent and any third party respondent(s)
- *Respondent* – the primary respondent will be the applicant's insurance company (including Southern Response) or EQC, but other (third) parties may also be joined to a claim.
- *Representative* – this is the person parties choose to receive all documents and communications. The representative can be the same as the advocate.
- *Support person* – this is someone an applicant nominates to accompany them at site visits, case management conferences and hearings. It can be anyone the applicant chooses, including friends or family members.



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