

15 February 2022

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Our ref: OIA 93091

Tēnā koe John

**Official Information Act request: Disputes Tribunal rules on evidence**

Thank you for your email of 20 January 2022 requesting information about evidence in the Disputes Tribunal.

Specifically, you requested:

*I'd like to know if there are any rules relating to the presentation of witnesses and evidence in a disputes tribunal.*

*Can a party to a hearing just show up on the day of hearing with a witness and/or evidence which the tribunal hasn't been made aware of previously?*

*If a referee allows the testimony of the witness and/or evidence presented which is a surprise to the other party is it admissible?*

*Is there a rule which is publicly available regarding testimony and evidence in the disputes tribunal?*

*Is the party obligated to make the tribunal and other parties aware of witnesses and/or evidence before the hearing?*

*If there is an obligation regarding the previous what is the deadline for this?*

Your request has been treated as a request under the Official Information Act 1982 (the OIA).

The Disputes Tribunal hears cases in accordance with the Disputes Tribunal Act 1988 (the Act). The rules governing evidence in the tribunal, which includes evidence given by witnesses, are set out in section 40 of that Act. This information is publicly available at: [legislation.govt.nz/act/public/1988/0110/latest/DLM133690.html](https://legislation.govt.nz/act/public/1988/0110/latest/DLM133690.html).

The Principal Disputes Referee can provide legal advice to referees to ensure consistency of decision-making and can also issue practice notes on matters such as evidence. These can interpret but not override the provisions of the Act. However, under section 2(6)(b) of the OIA, judicial advice such as this is not subject to the official information legislation.

Neither the Tribunal nor the Ministry advises presenting evidence at the last minute. Parties are actively encouraged in the Notice of Hearing to submit their supporting written evidence well in advance. The Ministry, however, has no role in deciding how evidence is accepted in proceedings before the Disputes Tribunal.

Referees, as independent judicial officers, have the power to solely determine the way a hearing is conducted, what evidence is admitted or excluded, and the decisions (orders) made in the Disputes Tribunal. This means that referees have the discretion to allow evidence submitted with little or no advance notice. The procedural avenues to challenge a decision of the tribunal are an application for rehearing or an application for appeal under sections 49 and 50 of the Act.

You may wish to seek independent legal advice for further assistance. Lawyers are best placed to answer legal questions and they can help you understand how the law applies to specific cases. Free legal advice may be accessed at your local Community Law Centre. You can find more information at: [communitylaw.org.nz/our-law-centres](http://communitylaw.org.nz/our-law-centres)

The Ministry does not hold any other information within scope of your request. I also have no grounds for believing that this information is held by another department, interdepartmental venture, Minister of the Crown, organisation or local authority subject to the OIA.

If you are not satisfied with this response, you have the right to complain to the Ombudsman under section 28(3) of the OIA. The Ombudsman may be contacted by email at: [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz)

Nāku noa, nā

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Sam Kunowski  
**General Manager, Courts and Justice Services Policy**