



## NCAT Consumer and Commercial Division Procedural Direction 4

### HOME BUILDING DISPUTES

This Procedural Direction applies to:	Consumer and Commercial Division
Effective Date:	1 January 2014
Replaces Procedural Direction:	Not Applicable
Notes:	You should ensure that you are using the current version of this Procedural Direction. A complete set of Procedural Directions and Guidelines is available on the Tribunal website at <a href="http://www.ncat.nsw.gov.au">www.ncat.nsw.gov.au</a>

#### Introduction

1. This procedural direction applies to all applications in the Home Building list.

#### Lodgement of Applications

2. Applicants should only make an application when they are ready to proceed with their case, having obtained all the necessary experts reports and other relevant documents.
3. Applications are to be lodged on the approved Tribunal form and are to include, or have attached, a short typed document summarising, in numbered paragraphs, the basis of the application, including the final orders sought from the Tribunal. Applications should name the respondent(s) accurately, and clearly state the address or addresses of the respondent(s).

#### Cross-applications

4. If a respondent wishes to seek an order or orders against the applicant, the respondent must lodge a separate application, referred to in this procedural direction as a 'cross-application'.
5. Cross-applications should be lodged no later than the first directions hearing. Generally all applications and cross-applications about a matter will be heard and determined together, unless circumstances (for example, delay in lodging a cross-application) preclude such a course of action.

## Before the first Directions Hearing

6. If you are the applicant:

Clearly identify in the application, (or in correspondence with the other parties)

- the exact orders you seek e.g. work order, money order
- the precise claims you intend to make against the respondent
- the issues the Tribunal must decide;
- the names of your witnesses (expert and non-expert).

N.B.: If the application does not clearly identify the claims to be made and the issues in dispute, you will need to apply to the Tribunal to amend the application at the first directions hearing.

7. You must advise the respondent at least one week prior to the date of the first directions hearing if the application is to be amended.

## All parties

8. All parties:

Both **applicants** and **respondents** must contact their witnesses to ensure that they will be available to assist in providing relevant statements of evidence and reports

## The first Directions Hearing/listing date

9. The Tribunal hears from the applicant and respondent in relation to the matters referred to above. A copy of the contract must be handed up on this occasion if not already provided to the Tribunal.

10. If you are the respondent, hand up a brief statement that:

- Outlines your response to the claims made
- Identifies your witnesses and their availability, to comply with the requirements of the Tribunal's directions.

11. The Tribunal may make directions in relation to the following:

- the filing of points of claim and points of defence;
- the filing of any cross application, including points of cross claim and points of defence;
- the preparation, service and filing of evidence by each party including expert reports, a Scott Schedule and a chronological bundle of documents;
- the meeting of experts, including in conclave (if appropriate) and the preparation of joint expert reports;
- conciliation or mediation as a means of alternative dispute resolution;

- any other directions required in a particular case. (including the filing of an amended application if necessary).
12. The applicant and respondent must provide to the Tribunal a list of their witnesses and expert witnesses.
  13. Ordinarily, the applicant will not be given lengthy periods to comply with the directions outlined above. This is because the Tribunal expects the applicant to have sufficiently prepared its claim prior to filing. Generally, time for compliance with directions will be as quick as circumstances reasonably permit.
  14. Parties should ensure that they have sufficient authority to discuss, and if possible agree, a resolution to the dispute. Where the claim is less than \$30,000, the application may be listed in a group list and may be referred to conciliation on that day.

### Legal representation

15. At the first directions hearing, the parties should, if they wish, make an application for legal representation. The *Civil and Administrative Tribunal Act 2013* (NCAT Act), Rules and Guidelines set out the circumstances in which leave may be granted.
16. An application can be made in writing before the first directions hearing.

### After the first Directions Hearing

17. When you complete the timetable set by the Tribunal the Registrar will allocate a further directions hearing or final hearing date and notify you of that date.

### Compliance with Tribunal timetables

18. Compliance with the timetables and other directions set by the Tribunal is mandatory, and cannot be altered, even if the parties consent, except with leave of the Tribunal.
19. If parties wish to depart from any direction made by the Tribunal, whether seeking extensions of time, adjournment of hearings (including directions hearings) they must seek leave.
20. If leave is granted the party seeking leave may be required to pay the costs of any other party inconvenienced by the alteration, including costs of any future hearing which does not proceed.
21. Applicants for leave to depart from Tribunal directions or their representatives 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(ies).

22. An applicant who fails to comply with directions may have their claim dismissed. A respondent who fails to comply with directions may have their defence struck out and/or final orders made against them.

### Further Directions Hearings

23. A directions hearing may be listed at any time if the matter requires it, or the parties have not complied with these Directions or with specific directions made by the Tribunal. Either party may make a request for a directions hearing if the need arises. The request should be in writing, be sent to the Tribunal and all other parties, and set out the reasons for which the directions hearing is sought..

### Settlement

24. The Tribunal actively promotes and encourages settlement at all stages of proceedings. At any time the Tribunal may order, or a party may request, that conciliation, mediation, or other alternative dispute resolution process take place, assisted by a Tribunal mediator or conciliator as appropriate.

### Expert Conclaves

25. An expert conclave is a meeting between the expert witnesses, usually on site, at which the experts discuss the issues on which they have prepared reports, with a view, as far as possible, to clarifying matters in dispute and reaching agreement or narrowing points of difference.
26. Conclaves may be chaired or facilitated by a Tribunal member.. Evidence of things said or done at a conclave is not admissible in the hearing unless all parties agree or the Tribunal otherwise directs.
27. Unless otherwise ordered, the applicant is to liaise with the respondent(s) and arrange a suitable date for a conclave to be held on site, and advise the Tribunal of that date no later than 14 days after the second directions hearing.
28. Subject to any direction of the Tribunal, a revised Scott Schedule is to be prepared and signed by the experts and filed no later than 28 days after the date of the conclave.
29. Parties are responsible to ensure that their experts comply with Tribunal timetables.
30. Experts are expected to comply with the Expert Witness Procedural Directions.

### Tribunal appointed experts

31. In appropriate cases, generally with the parties' consent, the Tribunal may appoint an independent expert to assess the issues in dispute and prepare a report for the advice of the Tribunal and the parties in accordance with section 48N of the *Home Building Act 1989*.

32. The expert's costs are to be borne equally by both parties.
33. Where the Tribunal appoints an expert the parties may not call their own expert witness or tender any other expert report except with the leave of the Tribunal.

### Summonses to Produce Documents

34. The Tribunal encourages parties to arrange informal disclosure of relevant documents.
35. Summonses to produce documents should be requested by parties as early as possible, preferably in a document annexed to the application or at the first directions hearing and return dates will be set, where possible, before a Tribunal member well in advance of the hearing.
36. Return dates will not normally be set less than 14 days before the hearing; late applications for summonses to produce will usually be returnable at the hearing. The Tribunal will determine issues of access, photocopying, and the like on the return date.
37. The procedures which are to apply to summonses are set out in Summons Procedural Direction.

### Adjournments

38. No Tribunal process or fixture (including final hearing, directions hearing, mediation, conciliation or expert conclave) may be adjourned without the express approval of the Tribunal.
39. 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 an adjournment must advise other parties of the application, and obtain the written consent of the other parties where possible.
40. Unless an adjournment is expressly granted, parties should assume that the listing for which the adjournment is sought will proceed, and attend as directed with all appropriate witnesses, representatives, and documentation.

### Withdrawal of application

41. An application to the Tribunal may be withdrawn at any time by sending a notice in writing to the Registrar. A copy of the application to withdraw must also be sent to each other party to the proceedings.
42. If, immediately before the application to the Tribunal was made, the applicant was subject to a rectification order by an inspector, the application may not be withdrawn except with the leave of the Tribunal. When granting leave to withdraw the application, the Tribunal may restore the rectification order (section 48(1) of the *Home Building Act*).

43. Where an application is to be withdrawn, any application for costs by a party must be made within 14 days of the application for withdrawal being made. The Tribunal may extend the time to make such an application for costs.

#### Expeditious finalisation of applications

44. Once an application has been filed, the case should proceed as quickly as is reasonably possible and parties must assist the Tribunal in achieving this goal. The Tribunal will not permit a case to become inactive unless there is an appropriate basis for that to occur.

(Sgd)

24 December 2013

STUART WESTGARTH

Deputy President