



Consumer and Commercial Division Guideline August 2017

Home Building Applications

What does this Guideline explain?

1. This Guideline explains the procedures which apply in the Home Building list.

Definitions

2. Definitions that explain words or concepts used in this guideline are at the back of the guideline.

Lodgement of Applications

3. 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.
4. 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).
5. Applications must be lodged within the applicable time limit, which is set out in sections 48K and 18E of the *Home Building Act 1989*.
6. If the respondent to the application is a business or a company, a recent ASIC company or business name extract must be provided with the application, showing the respondent's current registered office address or address for service of documents.

Lodgement of Cross-Applications

7. If a respondent wishes to seek an order or orders against the applicant, the respondent must lodge a separate application, referred to in this Guideline as a 'cross-application'.
8. Cross-applications should be lodged no later than the first date on which the application is listed before the Tribunal.
9. 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.

What should parties do before the first listing date?

10. The following applies whether the application is first listed for directions or for conciliation / hearing.

11. If you are the applicant, before the first listing date you must clearly identify in the application, (or in correspondence with the other parties)
 - a) the exact orders you seek e.g. work order, money order
 - b) the precise claims you intend to make against the respondent
 - c) the issues the Tribunal must decide;
 - d) the names of your witnesses (expert and non-expert).
12. 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.
13. 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.
14. 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.

What happens on the first listing date?

15. If the amount claimed or in dispute is less than \$30,000, the application will be listed for Conciliation / Hearing. If the amount claimed or in dispute is more than \$30,000, it will be listed for directions.
16. If the application is listed for Conciliation / Hearing, the parties will be given a specific opportunity to attempt to resolve their dispute through conciliation, with the assistance of a Conciliator if one is available.
17. Otherwise, the Tribunal will hear from the parties 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.
18. The respondent must hand up a brief statement that:
 - a) Outlines their response to the claims made
 - b) Identifies their witnesses and their availability to comply with the requirements of the Tribunal's directions.
19. The Tribunal may make directions in relation to the following:
 - a) the provision of points of claim and points of defence to the Tribunal and the other party;
 - b) the filing of any cross application, including points of cross claim and points of defence;
 - c) the preparation, service and filing of evidence by each party including expert reports, a Scott Schedule and a chronological bundle of documents;
 - d) a meeting of experts, including (if appropriate) in a conclave facilitated by a Tribunal Member, as well as the preparation of joint expert reports;
 - e) conciliation or mediation as a means of alternative dispute resolution;

- f) any other directions required in a particular case (including the filing of an amended application if necessary).
- 20. Ordinarily, the applicant will not be given a lengthy period 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.
- 21. Parties should ensure that they have sufficient authority to discuss, and if possible agree, a resolution to the dispute.

How can the dispute be settled?

- 22. The dispute may be settled in conciliation between the parties with the assistance of a Tribunal conciliator, or by the parties otherwise engaging in a mediation or negotiation process.
- 23. If the matter is settled, the parties should write down and sign their agreement, making sure that it is sufficiently detailed for each party to know exactly what needs to be done to comply with the agreement. For example, if a contractor agrees to rectify or complete building work that is the subject of the dispute, a detailed scope of work should be prepared and attached to the agreement.
- 24. If the Tribunal receives written terms of agreement, signed by the parties, it may make orders reflecting the agreement, as long as it has the power to do so.

What is the “preferred outcome” of a building claim?

- 25. Section 48MA of the *Home Building Act* states that when deciding a building claim involving an allegation of defective work undertaken by a party to the proceedings, the Tribunal is to have regard to the principle that rectification of the defective work by that party is the preferred outcome.
- 26. This means that unless there is a good reason not to do so, the Tribunal will generally order a party who is responsible for defective work to rectify the work.

What happens on the second listing date?

- 27. If the amount claimed or in dispute is under \$30,000 and the dispute is not settled, the Tribunal will generally make directions for the parties to give any documents they wish to rely on at the hearing to each other and the Tribunal by a particular date. The Tribunal will then adjourn the matter for a formal hearing on another day.
- 28. If the amount claimed on in dispute is over \$30,000 and the dispute is not settled, the Tribunal will also make directions for the parties to give their documents to each other and the Tribunal, but the matter may be listed for a further directions hearing in order to clarify the extent of the dispute and to determine whether it can be settled by a process such as a conclave of experts or mediation. The matter will generally be listed for hearing after the second directions hearing.

What can be done if parties do not comply with directions made by the Tribunal?

29. Parties must comply with the directions made by the Tribunal. If a party does not provide documents in accordance with the Tribunal's directions, the party may not be able to rely on the documents at the hearing unless the Tribunal gives permission to do so. A persistent failure to comply with Tribunal directions by an applicant may lead to their application being dismissed. A persistent failure to comply with directions by a respondent may lead the Tribunal to decide the case in favour of the applicant.
30. If there is a good reason a party cannot meet the timetable set by the Tribunal, they should write to the Registrar requesting an extension of time. This must be done before the documents are due to be provided. The Tribunal will advise the party if the request has been approved.
31. In the event that directions are not complied with, the parties should ask the Tribunal to list the matter for further directions. The Tribunal may also decide to list the matter for further directions if directions previously made by the Tribunal are not being complied with, or if there is another good reason to do so.

What do some of the words in this Guideline mean?

- **Act:** *Civil and Administrative Tribunal Act 2013* (NSW)
- **conclave:** An on-site meeting between the experts and a Tribunal Member to discuss the issues covered in the experts' reports. The purpose of the meeting is narrow points of difference between the experts in order to promote settlement of the dispute and, if the dispute cannot be settled, a shorter hearing.
- **expert:** An 'expert' is any professional person who has specialised knowledge, skills or qualifications and the ability to provide their expert opinion. An expert witness is not an advocate for the party. Experts must be neutral and independent.
- **party or parties:** A person or entitled involved in a particular case or joined to the proceedings under section 44 of the Act. The Tribunal calls the party or entity that brings an application 'the applicant' and the person or entity they seek orders against as 'the respondent'.
- **points of claim:** A document which sets out in point form the basis of the claim and gives details of the orders sought against the other party.
- **points of defence:** A document which sets out in point form the response to the claim made by the applicant.
- **Scott Schedule:** Is a form which allows parties to itemise defective and incomplete works which are the subject of a home building dispute. They are generally used in complex home building matters and/or where there are a number of defects.
- **Registrar:** The Principal Registrar or any other person employed as a Registrar of the Tribunal.

This Guideline applies to:

Proceedings in the Consumer and Commercial Division of the Tribunal.

Effective Date

1 August 2017

Notes

You must use the latest version of this Guideline. The latest version of this Guideline is on the [NCAT website](#).

The law about the information in this Guideline is mainly in:

- Sections 36 and 37 of the *Civil and Administrative Tribunal Act 2013*
- Sections 48K and 18E of the *Home Building Act 1989*.

There is a copy of this Act on the [NSW Legislation website](#).

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