

**Practice Note – PNB1  
Building and Property List (building disputes) - General Procedures**

<b>Application</b>	Building and Property List (building disputes)
<b>Effective date</b>	13 December 2018
<b>Supersedes</b>	PNBP1 effective 1 August 2014
<b>Special note</b>	Please ensure that you are using an up-to-date version of this practice note. Other practice notes may also apply.
<b>Further information</b>	A complete set of current practice notes are available on the Tribunal's website at <a href="http://www.vcat.vic.gov.au">www.vcat.vic.gov.au</a>

**Contents**

<b>Topic</b>	<b>Page No</b>
Introduction	2
Definitions	2
How do I commence a proceeding?	2
Points of Claim, Points of Counterclaim and Points of Defence	2
Dealing with applications	3
What to bring to the hearing	3
Joinder of other parties	4
Directions	4
Filing and service of documents	6
Witness statements	6
Tribunal Books & transcript	7
Forms	8

## Introduction

- 1 This practice note applies to the practice of the Tribunal in exercising a function allocated by the Rules to the Building and Property List of the Civil Division in relation to building disputes.
- 2 In any proceeding, the Tribunal may at its discretion vary the operation of a practice note by direction or order.
- 3 This practice note has been issued by the Rules Committee pursuant to s 158 of the *Victorian Civil and Administrative Act 1998*.

## Definitions

Word	Definition
Act	<i>Victorian Civil and Administrative Tribunal Act 1998</i>
Rules	<i>Victorian Civil and Administrative Tribunal Rules 2018</i>

- 4 A word or term used in this practice note has the same meaning if defined in the Act or in the *Interpretation of Legislation Act 1984*.

## How do I commence a proceeding?

- 5 A party wishing to make application to the Tribunal must lodge with the Tribunal two (2) copies of an application in the form available on the Tribunal's website and pay the prescribed application fee.
- 6 The application should be accompanied by Points of Claim (or a document setting out details of the claim). Any counterclaim should be lodged promptly with the prescribed application fee.
- 7 Where the claim relates to incomplete and/or defective building works a copy of any available expert report, which must comply with [Practice Note VCATPN2 – Expert Evidence](#), should accompany the application or counterclaim.

## Points of Claim, Points of Counterclaim and Points of Defence

- 8 Although the Tribunal is not a court of pleadings, Points of Claim or Points of Counterclaim should include:
  - (a) details of the contract (if any) including the full names of the parties as set out in the contract;
  - (b) fully itemised particulars of the claim and the relief or remedy sought;

- (c) clearly identify any incomplete and defective works (which may be by reference to an attached expert's report providing such report is clearly itemised);
  - (d) where the claim arises under a standard form contract it is sufficient to refer to a particular clause of the specified contract. It is not necessary to recite that clause in full unless the words are of particular significance.
- 9 Points of Defence should:
- (a) not contain bare denials or refusals to admit;
  - (b) set out the material facts relied upon, properly particularised;
  - (c) include any set-off claimed.
- 10 In the interests of avoiding requests for further particulars, all necessary particulars should be provided in the Points of Claim, the Points of Counterclaim or the Points of Defence.
- 11 A request for further particulars may be made at any time without leave of the Tribunal. A copy of any request should be filed when it is served. However, if a request is contested and subsequently disallowed costs may be ordered. A request:
- (a) must not contain a request for 'the usual particulars' or 'the usual details' – the particulars sought must be clearly specified;
  - (b) must not be in the form of interrogatories.
- 12 Particulars should be provided within 14 days of any request or as otherwise ordered by the Tribunal.

### **Dealing with Applications**

- 13 Upon the filing of an application in the Building and Property List the principal registrar will classify the proceeding according to the amount claimed.
- 14 Where the amount claimed is less than \$25,000 the application will be reviewed by a member and will usually be listed for hearing without any orders being made.
- 15 Where the amount claimed is between \$25,000 and \$100,000 the first listing will usually be a mediation.
- 16 Where the amount claimed exceeds \$100,000 the application will be reviewed by a member and may be listed for mediation or for a directions hearing.
- 17 If a counterclaim is received, the Tribunal may vacate any hearing and list the matter for a mediation or a directions hearing.

### **What to bring to the hearing**

- 18 Where a proceeding is listed for hearing and unless otherwise ordered by the Tribunal parties should send copies of all documents on which they will rely at the hearing

including any expert reports, quotations and/or invoices to the other parties within 28 days of receiving the Notice of Hearing.

- 19 Parties should bring to the hearing all evidence and documents on which they rely which may include:
- (a) the building contract, any notices under the contract, and any written variations;
  - (b) quotations and/or invoices;
  - (c) expert reports;
  - (d) witnesses (including experts in person).
- 20 Unless all parties agree, legal representation will only be permitted by order of the Tribunal under s62 of the Act (see [PNVCAT1 – Common Procedures](#)).

### Joinder of other parties

- 21 An order of the Tribunal is required for joinder of parties. Parties should take all reasonable steps to identify potential parties to a proceeding as soon as practicable, and make applications for joinder in a timely manner and in accordance with this practice note and any directions that may be made.
- 22 Any application for joinder of a party, whether as respondent or joined party, should be made using the [Application for Directions Hearing or Orders form](#). The application for joinder must be accompanied by affidavit material in support and draft Points of Claim as against the proposed party or draft Points of Defence where the proposed party is to be joined as a concurrent wrongdoer for the purposes of Part IVAA of the *Wrongs Act 1958*.
- 23 The applicant for joinder must serve a copy of the joinder application and the supporting material on the proposed party and must advise them of the date and time when it will be heard.
- 24 An application for joinder will be listed for a directions hearing at which time the parties should expect the application to be heard and determined and directions made for the further conduct of the proceeding.

### Directions

**Note:** The Tribunal may issue directions on its own initiative in the Building and Property List without a directions hearing. A directions hearing may be listed for a procedural timetable to be set, to determine any interlocutory application, to resolve a preliminary or procedural issue or if the Tribunal considers it desirable to do so to facilitate the fair and efficient conduct of the proceeding.

- 25 Any application by a party for a proceeding to be listed for a directions hearing should be made in accordance with [PNVCAT5 – Directions Hearings and Urgent Hearings](#)

- 26 An application for consent directions to be made without the parties appearing before the Tribunal should be made in accordance with [PNVCAT1 – Common Procedures](#).

#### Compliance with Directions

- 27 Where a party anticipates they will not be able to comply with the timetable set by the Tribunal they should advise the other parties and the Tribunal immediately in writing.
- 28 Where a party fails to comply with directions, a directions hearing may be requested by a party or a compliance hearing may be convened by the principal registrar at which time the Tribunal may:
- (a) amend the timetable;
  - (b) dismiss or strike out the proceeding if the non-complying party is the applicant, or may otherwise be determined as against the non-attending party under s 78 of the Act;
  - (c) order the party in default, or its representative, to pay costs under s 109(3) or s 109(4) of the Act;
  - (d) require any costs order to be satisfied before continuing with the proceeding; or
  - (e) make any other order that is just.

#### Amendment to Timetable

- 29 Any party wishing to amend the timetable must first seek the consent of all other parties.
- 30 Where the parties consent in writing to an amended timetable, Minutes of Consent Orders signed by all parties should be filed by the person seeking the amendment to the timetable. Such Minutes of Consent Orders should provide for the extension of dates for compliance.

#### **Examples:**

- (i) The date by which the applicant must *file and serve* Points of Claim is extend to [new date].
- (ii) The date by which the parties must *serve* their Lists of Documents is extended to [new date]

- 31 Should the Tribunal decline to approve the Minutes of Consent Orders, any directions hearing already listed will proceed, or the proceeding will be listed for a directions hearing as soon as practicable.

- 32 Should the agreed amendments to the timetable result in an adjournment of the next listing (hearing, compulsory conference or mediation) the Tribunal may require the parties to attend at a directions hearing where the timetable will be reviewed and directions made for the further conduct of the proceeding.

**Note:** Where a compliance hearing has been listed, parties should expect that it will proceed, even if Minutes of Consent Orders have been filed, unless advised by the Tribunal that it has been vacated.

### Filing and service of documents

- 33 Orders will generally be made for the *filing and service* of pleadings and expert reports. Orders will generally be made for the *service* only of lists of documents and witness statements.
- 34 Where orders are made for the *filing and service* of documents, only one copy need be filed.
- 35 Where orders are made for the *service only* of documents, written confirmation that the documents have been served must be filed with the Tribunal by the date for service specified in the orders. Where written confirmation that documents have been served is not filed, the proceeding may be listed for a compliance hearing.
- 36 Where an Application for Directions Hearing or Orders is made copies of all relevant documents must be exhibited to any affidavit filed in support of the application.

### Witness statements

- 37 Where witness statements are ordered, each statement must consist of a narrative of the evidence to be given by each witness. Documents exhibited to a party's primary witness statement may be cross-referenced in other witness statements filed by such party. Witness statements are not required for those experts whose expert reports comply with VCATPN2 – Expert Evidence and which have been filed and served.
- 38 Leave of the Tribunal is required to call evidence of material facts that is not included in a witness statement. If leave is granted and this causes a delay to the hearing, costs may be ordered against the party seeking to call the additional evidence.
- 39 All parties must arrange for their witnesses to attend the hearing for the purposes of cross-examination unless advised by the other parties at least seven (7) days before the hearing date that they do not wish to cross-examine another party's witnesses.

## Tribunal Books & transcript

- 40 It is desirable that Tribunal Books be prepared for all hearings (other than where matters are listed for hearing without an order of the Tribunal) and they will be ordered in appropriate cases including where orders have been made for the *service* only of witness statements.
- 41 Unless otherwise ordered by the Tribunal, two copies of the Tribunal Book should be filed, and one copy served on each other party to the proceeding at least 7 days prior to the final hearing.
- 42 Unless otherwise ordered, the applicant will generally be responsible for preparing the Tribunal Book in consultation with the other parties with the costs of preparation of the Tribunal Book being costs in the proceeding.
- 43 A Tribunal Book must not simply include copies of all discovered documents.
- 44 Documents should be grouped where convenient, with each grouping clearly divided and all pages indexed and numbered sequentially.
- 45 A Tribunal Book should contain:
- (a) an index of its contents; and
  - (b) copies of all pleadings between the parties; and
  - (c) copies of all witness statements including exhibits;
  - (d) copies of all relevant documents i.e. those on which a party will seek to rely in evidence in chief, or which they reasonably expect will be referred to in cross examination.
- 46 Whilst it is expected that copies of all relevant documents will be included in the Tribunal Book, leave may be sought to tender further documents during the course of the hearing, which, subject to the direction of the Tribunal, may be included in the Tribunal Book. Unless a party seeks to remove a particular document/s and such removal is not opposed by another party, all documents included in a Tribunal Book will, unless the Tribunal decides otherwise, be received into evidence.
- 47 Tribunal Books should not contain duplicate or multiple copies of the same document - any unnecessary duplication of documents may be taken into account in the exercise of the Tribunal's discretion under s109 of the Act.
- 48 Where objection is taken by one party to the admissibility of any document it must not be included in the Tribunal Book.
- 49 Orders will generally be made for the provision of a transcript of the hearing of all complex cases, and in other cases, may be ordered at the discretion of the Tribunal. Unless otherwise directed, the cost of providing the transcript will be shared equally by

the parties in the first instance subject to any order for costs which may be made by the Tribunal.

## Forms

50 All forms referred to in this practice note are available on the Tribunal's website at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

**- END OF PRACTICE NOTE -**