

Victorian Civil and Administrative Tribunal
PRACTICE NOTE - DOMESTIC BUILDING LIST
PNDB1 (2007) – GENERAL PROCEDURES

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Victorian Civil and Administrative Tribunal
DOMESTIC BUILDING LIST
PNDB1 (2007) – GENERAL PROCEDURES

This Practice Note applies to the practice of the Tribunal in exercising a function allocated by the Rules to the Domestic Building List of the Civil Division and comes into effect on 13 June 2007. In any proceeding the operation of the Practice Note may be varied by order of the Tribunal at its discretion.

1 References

All references to the Act means the *Victorian Civil and Administrative Tribunal Act* 1998, to the Rules means the *Victorian Civil and Administrative Rules* 1998 and to the DBCA means the *Domestic Building Contracts Act* 1995. All references to the Deputy President mean the Deputy President in charge of the Domestic Building List for the time being.

2. Times

Where times are specified in this Practice Note they are indicative only and may be varied at the absolute discretion of the Tribunal.

3 Communications with Tribunal and other parties

3.1 Communications with the Tribunal

All written communications to the Tribunal must be addressed to the principal registrar quoting the number given by the Tribunal to the relevant proceeding.

3.2 No direct contact with Tribunal Members

Any communication by a person in relation to a proceeding with the Tribunal must be through the registry. A person must not contact a member of the Tribunal directly in relation to a proceeding.

3.3 Notification of communications to all parties

A party who at any time makes any written communication to the Tribunal must at the same time –

- a) serve a copy of that communication on all other parties; and
- b) notify the Tribunal in writing that they have done so. It is sufficient for the communication to state that a copy has been sent to the other parties.

4. Notice of Solicitor Commencing/Ceasing to Act

4.1 A solicitor must immediately file and serve on all other parties a ‘Notice of Solicitor Commencing to Act’, a ‘Notice of Solicitor Ceasing to Act’ or a ‘Notice of Change of Practitioner’ as the case may be.

4.2 In the case of a ‘Notice of Solicitor Ceasing to Act’ an address for service for the relevant party must be filed and served, together with all contact details for such party including, where available, telephone, mobile phone, and facsimile numbers. Such address will be the address for service until the principal registrar receives Notice in Writing of any alternative address for service, or as otherwise ordered by the Tribunal.

- 4.3 Where a solicitor receives correspondence from the Tribunal or another party, or is served with any documents in the proceeding before filing and serving a Notice of Solicitor Ceasing to Act, such correspondence must be promptly forwarded to their former client.

5. Commencement of a Proceeding

- 5.1 A party wishing to make application to the Tribunal must file three (3) copies of an application in the form of Form 8 as prescribed by the Rules.
- 5.2 Where practicable (and in all cases where the applicant is legally represented) the application shall be accompanied by Points of Claim, or otherwise by a document setting out in narrative form, the details of the contract, the site address, the claims made, any incomplete and/or defective works, the amount claimed and the relief and remedies sought.
- 5.3 A respondent who wishes to lodge a counterclaim may do so by filing Points of Counterclaim and paying the prescribed fee. Points of Counterclaim may accompany Points of Defence in the one document.
- 5.4 A respondent who wishes to lodge a counterclaim should do so promptly, and, in any event, where practicable, should advise the applicant of its intention to do so (together with details of the counterclaim) at least seven (7) days prior to any mediation.
- 5.5 Where the claim relates to incomplete and/or defective building works a copy of any available expert report identifying such incomplete and/or defective works should accompany the application or Points of Counterclaim, as the case may be, and, where practicable, should be sent to the other parties at least seven (7) days prior to any mediation.
- 5.6 To avoid unnecessary applications for joinder under s60 of the Act as person/s whose interests are affected, all applications seeking a review of a decision of an insurer should, generally, include the building owner, the builder or owner builder as a party. Where they are not included as a party a covering letter advising the reasons the applicant believes they should not be a party should be forwarded to the principal registrar with the application.

6. Pleadings

- 6.1 Although the Tribunal is not a court of pleadings, Points of Claim or Points of Counterclaim should:
- (i) include fully itemised particulars of the claim and the relief or remedy sought;
 - (ii) clearly identify any incomplete and defective works (which may be by reference to an attached expert's report providing such report is clearly itemised);
 - (iii) where a standard form contract is referred to it is sufficient to refer to a particular clause of a specified contract and is not necessary to recite that clause in full unless the words are of particular significance.
- 6.2. Points of Defence should:
- (i) not contain bare denials or refusals to admit;
 - (ii) set out the material facts relied upon, properly particularised;
 - (iii) include any set-off claimed.

- 6.3. In the interests of avoiding requests for particulars all necessary particulars should be provided in the Points of Claim, the Points of Counterclaim or the Points of Defence as the case may be. Where leave to request further particulars is ordered, the party in default may be ordered to pay all necessary costs in providing those particulars, including the costs of the request.
- 6.4. 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:
- (i) must not contain a request for ‘the usual particulars’ or ‘the usual details’ – the particulars sought must be clearly specified;
 - (ii) must not be in the form of interrogatories;
 - (iii) particulars should be provided within fourteen (14) days of any request or as otherwise ordered by the Tribunal.

7. Dealing with Applications

7.1 Upon the filing of an application in the Domestic Building List the principal registrar shall classify the proceeding as:-

(a) a *Small Claim* where:

- (i) the amount claimed is less than \$15,000; and
- (ii) the proceeding does not raise any complex issues of fact or law; and
- (iii) it appears the hearing will not take longer than one day

(b) a *Standard Claim* where:

- (i) the amount claimed is more than \$15,000 and less than \$100,000; or
- (ii) where an amount claimed is not specified in the application; or

(c) a *Complex Claim* where:

- (i) the amount claimed is more than \$100,000; or
- (ii) the application raises complex matters of facts or law.

7.2 The proceeding may be reclassified upon receipt of a cross application or counterclaim at the discretion of the Tribunal, and any small claim hearing may be cancelled and the proceeding referred to mediation or to a directions hearing.

8. Dealing with proceedings once classified

8.1 *Small Claims:*

- (i) Subject always to the discretion of the Tribunal these will be listed for hearing on the first available date which, generally, will be not less than six (6) weeks after the date on which the application is lodged. A hearing time of two hours will be allowed unless the parties advise the principal registrar, in writing (at the time of making the application or immediately upon receipt of the Notice of Hearing) that further time will be required in which case they shall also provide their estimate of the hearing time. If the estimated hearing time is longer than one day, the parties may apply by consent for the proceeding to be referred to mediation. Such consent must be in writing signed by all parties.

- (ii) Parties must send copies of any experts' reports, quotations and/or invoices on which they seek to rely to the other parties at least seven (7) days prior to the hearing.
- (iii) Parties should bring to the hearing all evidence and documentation on which they seek to rely which may include:
 - the building contract, any notices under the contract, and any written variations
 - quotations and/or invoices
 - expert reports
 - witnesses (including experts in person)
- (iv) Unless all parties agree, legal representation will only be permitted by order of the Tribunal under s62 of the Act except as otherwise provided in s62 including where:
 - (a) the application is an appeal against a decision of an insurer which is entitled to be legally represented under s62(2)(g) of the Act; or
 - (b) another party to the proceeding is a professional advocate.
- (v) Even where legal representation is permitted there should be no expectation that an order for costs will be made in favour of the successful party, in accordance with the provisions of s109 of the Act.

8.2 *Standard claims:*

- (i) These will be listed for mediation on the first available date which, generally, will be not less than five (5) weeks after the date on which the application is lodged.
- (ii) All parties are required to attend the mediation in person, or in the case of a company, by a representative who has personal knowledge of the issues in dispute, and who has written authority to settle.
- (iii) Should the mediation be unsuccessful the proceeding will be referred to a directions hearing, as soon as convenient, at which time directions will be made for the further conduct of the proceeding including the setting of a timetable for completion of all necessary interlocutory steps and where practicable the setting of a hearing date.

8.3 *Complex Claims*

- (i) These will be referred to a directions hearing at which time directions will be made for the further conduct of the proceeding which may include referral to mediation or compulsory conference, the setting of a timetable for completion of all necessary interlocutory steps and, where practicable, may include the setting of a hearing date.

9. **Joinder Applications**

- 9.1 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.
- 9.2 Leave of the Tribunal is required for joinder of parties. Any application for joinder of parties, whether as respondent or joined party, should be made on the Application for Orders/Directions form which must be accompanied by affidavit material in support and draft Points of Claim as against the proposed party.

- 9.3 Subject to clause 9.6, 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, subject to the discretion and direction of the Tribunal. Where the proposed party consents to joinder, orders in chambers may be made at the discretion of the Tribunal. Where the Tribunal declines to make such orders in chambers the directions hearing will proceed.
- 9.4 A copy of such application together with the supporting material must be served by the applicant for joinder on all parties to the proceeding, and the proposed party (who must also be advised of the date and time of the directions hearing at which the application will be heard) by 12 noon at least four (4) business days prior to the directions hearing (or as otherwise ordered).
- 9.5 Should any party to the proceeding, or the proposed party, oppose such application for joinder they must, where practicable, file and serve affidavit material in reply by 12 noon at least two (2) business days prior to the directions hearing.
- 9.6 Where the proceeding relates to an appeal by an owner or a builder of a decision of a warranty insurer, it is generally desirable that the owner or the builder as the case may be, is a party to the proceeding. Where they are not named as a party in the original application, orders for their joinder may be sought.

10. Directions hearings

- 10.1 A proceeding may be referred to a directions hearing by the Tribunal or at the request of any party to a proceeding. A party requesting a directions hearing is encouraged to use the Application for Directions/Order form.
- 10.2 The purpose of a directions hearing is to make orders or directions to facilitate the expeditious and just disposition of the proceeding.
- 10.3 At the initial directions hearing directions will be made for the further conduct of the proceeding including referral to mediation, a compulsory conference and/or the setting of a hearing date. Where practicable parties should confirm availability of all witnesses prior to attending the directions hearing, and should be in a position to indicate the likely number of witnesses, including experts they intend to call, and their estimate of the likely duration of the hearing.
- 10.4 Parties are expected to attend directions hearings personally, unless they are legally represented, in which case their legal representatives may attend on their behalf. Where a legal representative attends, the Tribunal expects that such representative will be familiar with the file, the availability of witnesses, experts and counsel and will be able to address any issues which might arise during the course of the directions hearing.
- 10.5 Attendance by telephone is not encouraged but where it is impracticable for a party or their legal representative to attend in person, arrangements may be made with the registry for attendance by telephone. A party wishing to appear by telephone must provide a telephone contact number where they can be reached at the time scheduled for the directions hearing. All attempts will be made to contact the party at the time scheduled for the directions hearing, or as soon as practicable thereafter. If the party cannot be contacted on the number provided the directions hearing may proceed in their absence.
- 10.6 Failure to attend either personally or by a representative at a directions hearing may result in the proceeding being determined pursuant to s78 or costs being ordered under s109 of the Act.

10.7 From time to time an application, which if successful will result in the final determination of a proceeding, will be set down for hearing, which for administrative purposes may be described as a 'directions hearing'. Providing the other party/ies have been given notice of the orders being sought, such orders may be made at the discretion of the Tribunal.

11. Consent directions in Chambers

11.1 Consent directions may be made in chambers at the discretion of the Tribunal without the need to appear at a directions hearing providing:

- (i) all parties are legally represented; and
- (ii) the estimated hearing time is less than ten (10) days; and
- (iii) the directions are as set out in the Directions by Consent Form and signed by the legal representatives of all parties.

11.2 All consent directions will be referred to the presiding member for consideration, and the proceeding may still be referred to a directions hearing at his or her discretion.

11.3 Consent directions will generally not be made in chambers where:

- (i) the estimated hearing time is longer than ten (10) days; or
- (ii) costs orders are sought (other than 'costs reserved'); or
- (iii) the parties seek the referral of the proceeding to a Compulsory Conference .

11.4 If the proposed dates as set out on the Directions by Consent form result in a hearing date more than four (4) months away, the proceeding may be referred to a directions hearing for review of the dates.

11.5 It is expected that parties will be ready to proceed on the day notified by the principal registrar as the date of the final hearing. Costs may be ordered where an adjournment is sought because a party is not ready to proceed on the date set down for hearing.

12. Hearings

12.1 The presiding member in his or her absolute discretion may at any time:

- (a) limit the time or times to be taken in examining, cross-examining or re-examining a witness;
- (b) limit the length of written and/or oral submissions,
- (c) limit the time to be taken by a party in presenting its case

13. Transcript

13.1 Orders will generally be made for the provision of transcript of the hearing of all complex cases, and in other cases, may be ordered at the discretion of the Tribunal. A list of Court Recorders and Transcript Services is available from registry.

13.2 Unless otherwise directed, the cost of providing transcript will be shared equally by the parties in the first instance but shall otherwise be costs in the cause.

14. Tribunal Books

14.1 It is desirable that Tribunal Books be prepared for all hearings (other than small claim hearings) and they will be ordered for Complex Cases.

14.2 The applicant will have responsibility for the preparation of the Tribunal Book, unless otherwise ordered.

- (i) At least twenty-one days (21) days prior to the hearing, the applicant should serve on each other party a proposed index to the Tribunal Book, in electronic format; and
- (ii) At least fourteen (14) days prior to the hearing the other parties must provide to the applicant and the other parties a list, in electronic format, and, to the applicant only, copies of any additional documents they wish to be included in the Tribunal Book; and
- (iii) The applicant must make a copy available to each party for copying and return at least 10 days prior to the hearing.
- (iv) At least two (2) business days prior to the hearing date, the applicant must file two (2) copies of the Tribunal Book

14.3 Tribunal Books must not simply include copies of all discovered documents.

14.4 Documents should be grouped where convenient, with each grouping clearly divided and all pages indexed and numbered sequentially

14.5 Tribunal Books should contain:

- (i) an index of its contents; and
- (ii) copies of all pleadings between the parties; and
- (iii) 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.

14.4 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.

14.5 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.

14.6 Where objection is taken by one party to the admissibility of any document it must not be included in the folder.

15. Final Directions Hearing:

15.1 In appropriate cases the proceeding may be listed for a final directions hearing before the Member allocated to conduct the hearing shortly prior to the hearing. At the final directions hearing, any further directions for the conduct of the hearing will be made and the following matters addressed:

- (i) confirmation that the parties will be ready to proceed on the date set for the commencement of the hearing and that the allocated hearing time is adequate. If a hearing is not completed within the allocated period the parties should expect the hearing to be adjourned part-heard;
- (ii) whether a further compulsory conference would assist the parties resolve their disputes;
- (ii) the length and order of opening submissions;

- (iii) the exchange of written outlines of opening submissions;
- (iv) the timing of and arrangements for, a view, where considered appropriate
- (v) any directions to ensure the parties' experts are available to give concurrent evidence.

16. Particulars of Loss and Damage

At least 7 days prior to a Compulsory Conference, or the commencement of the hearing (as the case may be), and in their final submissions, or as otherwise ordered by the Tribunal, the parties must file and serve updated particulars which must include details of all amounts the parties wish the Tribunal to take into account when assessing damages, and all necessary calculations including the balance outstanding under any contract.

17. Urgent applications

- 17.1 Any application for urgent relief must be made by lodging an application (either an originating application or an Application for Orders/Directions) and should be accompanied by affidavit material in support. Any such application must include all available contact details for all parties. Ex parte applications and/or oral applications will only be considered in exceptional circumstances.
- 17.2. Where practicable, a copy of any such application together with the supporting material should be served on the other party/ies by 12 noon on the day prior to the day on which it is to be heard.
- 17.3. The principal registrar will send a Notice of Hearing to all parties noted on the application by the most expeditious means available but in any event the applicant for urgent relief must take all reasonable steps to notify the other party/ies of the time and date of the hearing.

18. Expert Reports

- 18.1 Where experts are appointed they must prepare their reports in accordance with VCAT Practice Note 2. Expert reports which do not comply with this Practice Note may not be accepted into evidence, subject to the discretion of the Tribunal.
- 18.2 All expert reports filed must:
 - (a) have a cover page which clearly identifies:
 - (i) the address of the subject property, and
 - (ii) the party for which the report has been prepared, and
 - (iii) the person from whom the expert received his/her instructions, and
 - (iv) the date of any inspection, and
 - (v) the date of the report; and
 - (b) consecutive numbering must be used for each item of alleged defective and/or incomplete works. Numbering should not be restarted for each room/interior/exterior category. Where a report is prepared in response to another report, the same numbering must be used.
 - (c) where the original photographs are in colour, colour photographs or good quality colour photocopies. Black and white photocopies are not acceptable.

18.3 Where practicable, Experts Reports should be filed in A4 size, stapled not bound and two hole punched. However, where reduction to A4 renders a document illegible it should be filed, folded and two hole punched so that it may be read without being removed from the folder

19. Meetings of Experts

19.1 From time to time the Tribunal may order a meeting of experts – either between the experts themselves or facilitated by a mediator or member, with a joint report to be provided to the parties and the Tribunal.

19.2 Parties and their legal advisors shall not attend a meeting of experts ordered by the Tribunal unless granted leave to do so by order of the Tribunal.

19.3 Where a meeting of experts is ordered as part of a mediation or compulsory conference, unless the parties agree or it is otherwise ordered, all discussions, concessions and agreements reached, including any joint report prepared as part of the mediation or compulsory conference process, shall be on a ‘without prejudice’ basis and for the purpose of the mediation or compulsory conference.

20. Concurrent Expert Evidence

20.1 In appropriate cases the Tribunal may make orders as to the timing and manner of the giving of expert evidence.

20.2 The Tribunal may require the experts to attend at the same time for the purpose of giving concurrent evidence – sometimes referred to as ‘hot tubbing’ - where each of the experts will be ‘sworn in’ and then give their evidence in a panel format.

20.3 The conduct of the process of concurrent evidence will be at the discretion of the Tribunal. However, parties should expect that each item in dispute will be discussed by the experts who will be able to ask each other questions. The Tribunal may also ask questions and at an appropriate time invite the parties or their legal representatives where they are legally represented, to ask questions of the experts.

20.4 Cross-examination of expert witnesses shall take place at the conclusion of them giving concurrent evidence, or as otherwise directed by the Tribunal.

21. Expert Appointments

21.1 From time to time the Tribunal may appoint an expert under s94 of the Act or a special referee under s95 of the Act.

21.2 It should be expected that the costs of any expert or special referee so appointed will be shared equally by the parties or as otherwise ordered by the Tribunal.

21.3 The expert or special referee will be requested to provide an estimate of their costs and the parties may be required to deposit their respective shares into the Domestic Builders Fund, or as otherwise ordered, before the expert or special referee commences any work under the appointment.

21.4 If any party fails to make the payment, as ordered, the proceeding will be referred to a directions hearing.

22. Compliance with directions

22.1 Parties are expected to comply with all directions and orders made by the Tribunal.

- 22.2 Where a party anticipates they will not be able to comply with the timetable they should advise the other parties and the Tribunal immediately.
- 22.3 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:
- (i) amend the timetable;
 - (ii) the proceeding may be dismissed or struck out if the non-complying party is the applicant, or may otherwise be determined as against the non-attending party under s78 of the Act;
 - (iii) order the party in default, or its representative, to pay costs, including indemnity costs where appropriate, under s109(3) or s109(4) of the Act;
 - (v) require any costs order to be satisfied before continuing with the proceeding;
 - (iv) make any other order that is just.

23. Amendments to Timetable

- 23.1 Any party wishing to amend the timetable must first seek the consent of all other parties;
- 23.2 Where the parties consent in writing to an amended timetable, signed Minutes of Consent Orders should be filed by the person seeking the amendment to the timetable, and if approved, no appearance will be necessary and the orders will be made in Chambers. Such Minutes of Consent Orders should provide for the extension of dates for compliance, and should not simply be a restating of the previous directions with 'new' dates for compliance;
- 23.3 Should the Tribunal decline to approve the agreed orders, the proceeding will be listed for a directions hearing as soon as practicable;
- 23.4 Should the agreed amendments to the timetable result in an adjournment of the hearing date 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;

24. Witness statements

- 24.1 Witness statements will generally, be ordered for all proceedings where the duration of the hearing is estimated to be four or more days, or as otherwise ordered by the Tribunal.
- 24.2 Each statement must consist of a narrative of the evidence to be given by each witness.
- 24.3 Each party should, where appropriate, exhibit all relevant documents to the Witness Statement of their principal witness. The exhibits must be separated by file dividers clearly numbered. It is sufficient to incorporate such exhibits by reference to their primary exhibit number in all other Witness Statements.
- 24.4 Where an expert report has been prepared in accordance with VCAT Practice Note 2 there is no need to prepare a witness statement for such expert unless further expert or lay evidence is to be called from a particular expert.
- 24.5 A party will only be permitted to call evidence of any material facts not included in a witness statement with leave of the Tribunal. If this causes a delay to the hearing, costs may be ordered against the party seeking to call the additional evidence.

24.6 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) day before the hearing date that they do not wish to cross-examine another party's witnesses

25. Notices to Admit

A party may file and serve a Notice to Admit calling upon another party to admit any fact or matter specified in the Notice. A party served with a Notice who (within fourteen (14) days of service of the Notice) unreasonably fails to admit a fact or matter may be ordered to pay costs (regardless of the outcome of the proceeding) if the fact or matter must be proven

26. Documents filed by facsimile

Where documents are filed by facsimile, the filing of a hard copy is not required, except in the case of any affidavit where the original sworn affidavit must be produced to the Tribunal at the commencement of the relevant directions hearing/hearing.

27. Mediation

27.1 A proceeding may be referred to mediation under section 88 of the Act.

27.2 The conduct of the mediation shall generally be at the discretion of the mediator although it is to be expected that it will be conducted in accordance with the VCAT Mediation Code of Conduct.

27.3 Should a party fail to attend mediation the proceeding will be referred to a directions hearing where it may be determined in favour of the party who attended the mediation in accordance with the provisions of s78 of the Act.

28. Compulsory Conferences

28.1 Referral of a proceeding to a compulsory conference shall be at the discretion of the Tribunal.

28.2 The purpose of a compulsory conference is as set out in section 83 of the Act.

28.3 The conduct of the compulsory conference shall otherwise be at the discretion of the Tribunal.

28.4 Unless otherwise ordered, all parties must prepare a position paper which will not exceed four pages in length, and which the parties must exchange by 4.00 p.m. on the business day prior to the Compulsory Conference. A copy of each party's position paper must be handed to the Tribunal at the commencement of the Compulsory Conference.

28.5 All parties must attend a compulsory conference personally or be represented by a duly authorised person with personal knowledge of the issues in dispute, and who has, for all practical purposes, unlimited authority to settle.

28.6 Should a party fail to attend a compulsory conference, the proceeding may be determined adversely to the absent party with appropriate orders being made, including orders as to costs, or the absent party struck out of the proceeding under s87 of the Act.

28.7 Where a party does not attend personally but is represented by a person who has limited authority only to settle, or where a party fails to comply with any directions made for the conduct of the compulsory conference, which, in the opinion of the Tribunal, unfairly

disadvantages the other party/ies or impedes settlement discussions, costs may be ordered against such party.

29. Withdrawal of proceedings

- 29.1 At any time before the hearing a party may seek leave to withdraw their claim by written notice to the principal registrar and to the other parties.
- 29.2. Where application for leave to withdraw is accompanied by the written consent of all parties, orders will usually be made in chambers.
- 29.3 Where the written consent of all parties does not accompany a request for leave to withdraw a proceeding, or where a party objects to such application for leave, the application for leave to withdraw will be referred to a directions hearing where the request will be considered. If written consent of all parties is obtained prior to the directions hearing, orders may be made in chambers.
- 29.4. A copy of the orders will be forwarded to all parties by the principal registrar.
- 29.5 Any application under s74(2) of the Act should be made as soon as practicable after a party receives a copy of the order.

30. Settlement prior to mediation/compulsory conference/hearing

- 30.1 Where settlement has been reached parties must advise the principal registrar as soon as practicable.
- 30.2 Parties may apply for orders to be made by consent giving effect to the settlement reached between the parties which may include an order that the proceeding is struck out with a right to apply for reinstatement.

31. Adjournments

- 31.1 Where an adjournment is requested:
 - (i) The written consent of all other parties should be sought and, where obtained, must accompany the application for an adjournment.
 - (ii) If there will be a consequential amendment to the timetable the procedure in clause 11 should be followed.
 - (iii) Any application for an adjournment must be in writing addressed to the principal registrar and should be made as soon as practicable. Any request for an adjournment must be accompanied by copies of any supporting documentary evidence e.g. medical certificate, airline tickets, travel itinerary.
- 31.2 *Directions Hearings* – all requests for adjournments must include reasons for the adjournment and should be made, where practicable, by 12 noon on the day prior to the directions hearing. If all parties consent, the adjournment will generally be granted otherwise the directions hearing will proceed, subject always to the discretion of the Tribunal.
- 31.3 *Mediations* – all requests for adjournments should be made, where practicable, at least 7 days prior to the mediation. If all parties consent, an adjournment will generally be granted. However, if one party objects the application for an adjournment will be considered by the Tribunal who will direct whether the mediation should proceed, be adjourned or the proceeding referred to a directions hearing. Generally, a maximum of two adjournments will be granted by consent and any further applications will be referred to a directions hearing, subject always to the discretion of the Tribunal.

- 31.4 *Compulsory Conferences* – as for mediations. If the adjournment of a Compulsory Conference necessitates amendments to the timetable, these may be requested by consent but, subject to the discretion of the Tribunal, may be referred to a directions hearing.
- 31.5 *Hearings* - Applications for adjournments are not encouraged and there should be no expectation they will be granted even where the parties consent to an adjournment. All applications for an adjournment of a hearing will be considered by the Tribunal and may be referred to a directions hearing.

32. Entry of judgement in default under Terms of Settlement

- 32.1 Where Terms of Settlement provide for entry of judgement in default, the party applying for such judgement should make application for reinstatement of the proceeding and judgement on the Application for Orders/Directions form which should be accompanied by affidavit material in support.
- 32.2 A copy of the application for judgement in default and the supporting material must be served on the party against whom judgement is sought at the time the application is made.
- 32.3 Any affidavit material in reply must be filed and served as soon as practicable but no later than 12 noon two business days prior to the hearing.
- 32.4 The application will be set down for hearing at which time judgement will be entered if the Tribunal is satisfied that the party against whom judgement is sought is in default of its obligations under the Terms of Settlement, or make further directions.
- 32.5 Where judgement in default is sought under Terms of Settlement judgement will not be entered in chambers unless there are exceptional circumstances.

33. Transfer of proceedings between the Domestic Building and Civil Claims Lists

- 33.1 Where the amount claimed in an application to the Domestic Building List is less than \$10,000 the proceeding may be transferred to the Civil Claims List if, in the opinion of the Deputy Presidents in charge of both lists, it is the more appropriate list for determination of the issues in dispute.
- 33.2 Where the amount claimed in an application to the Civil Claims List in relation to a domestic building dispute exceeds \$10,000, the proceeding may be transferred to the Domestic Building List, if the Deputy Presidents in charge of both lists are of the opinion it is the more appropriate list for determination of the issues in dispute.
- 33.3 All applications seeking a review of the decision of an insurer will be heard in the Domestic Building List under sections 59A and 60 of the DBCA irrespective of the amount claimed.

34. Costs

- 34.1 Section 109 of the Act provides that each party shall bear their own costs unless the Tribunal is satisfied it should exercise its discretion under s109(2) taking into account the matters set out in s109(3).
- 34.2 Where parties are legally represented, their legal representatives must draw their client's attention to the provisions of s109 and advise them in writing of the **estimated** costs of and incidental to the preparation for the hearing, the cost of conducting the hearing and an daily hearing cost thereafter in the event it cannot be concluded in the time allowed.

34.3 Costs may be ordered if the failure by a party to a proceeding to comply with the requirements of this Practice Note causes an adjournment of a mediation, directions hearing, Compulsory Conference or Hearing, or otherwise disadvantages a party to the proceeding.

35. Exhibits

Exhibits will be available for collection 30 days from the date of delivery of the final decision for a period of 60 days. It is the parties' responsibility to arrange for the collection of their exhibits. They will not be returned to the parties by the Tribunal. Thereafter the exhibits, if not collected within the said 60 day period will be disposed of without further notice.

36. Publication of Decisions

36.1 Where written reasons are provided for a decision, they will be available on www.austlii.edu.au ('Austlii') five business days after the decision is handed down (for interlocutory and final determinations) unless the handing down of the decision is listed in the daily Law List in which case they shall be published on Austlii as soon as practicable thereafter.

36.2 At the same time as they are sent to Austlii, Decisions with Written Reasons will be distributed electronically to those who have requested they be included on the distribution list by contacting VCAT's Information & Knowledge Manager, Clare.O'Dwyer@justice.vic.gov.au.

37. Appeals

37.1 A party who makes application for leave to appeal and, where leave is granted, institutes an appeal, must notify the principal registrar in accordance with s148 of the Act.

37.2 A party applying for a stay of a decision of the Tribunal pending the hearing and determination of an appeal must do so in writing accompanied by appropriate supporting documentation.

37.3. Parties are requested to advise the principal registrar when an application for leave to appeal is granted or dismissed, and the outcome of any appeal.

38. Forms

All forms referred to in this practice note are available on the Tribunal's web page at www.vcat.vic.gov.au.

39. Users' Group

The Deputy President meets regularly with the Users' Group. For contact details for members of the Users' Group please refer to the link to Domestic Building on the Tribunal website.