



## NCAT Consumer and Commercial Division Procedural Direction 1

### ADJOURNMENTS

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 direction is issued pursuant to section 26 of the *Civil and Administrative Tribunal Act 2013* (NCAT Act) and sets out the procedure which is to apply to requests for adjournment by parties to Consumer and Commercial Division proceedings.
2. The Tribunal's duty to ensure that its proceedings are efficient and effective requires that it supervise, control and consent to all requests for adjournment of proceedings. The Tribunal will therefore consider all adjournment requests and whether the reasons given justify an adjournment.
3. Unless notified by the Tribunal of an adjournment, a party must assume that the hearing will proceed in their absence.

#### Adjournment requests

4. Any request for an adjournment must be in writing addressed to the Divisional Registrar. The request must identify the Tribunal file number and set out the reasons the adjournment is sought. The request should be made as soon as a party becomes aware that an adjournment may be necessary. A copy of any supporting documents (e.g. medical certificate, airline ticket) must be attached. If the other party's consent to the adjournment has been obtained, a copy of that party's written consent must be provided.
5. If the hearing is scheduled for one day or more, an application for adjournment should be made at least five clear working days before the hearing.

6. Any requests for adjournment made less than two clear working days before the hearing date may be referred to the hearing for determination.
7. An adjournment request may be made at hearing, on the same grounds as an application made before a hearing.

### Adjournment orders

8. If a matter is adjourned all parties will be notified. If the party applying for the adjournment is not notified, parties should attend the hearing and the adjournment request can be decided at the hearing.
9. If a matter is adjourned, procedural directions may be made by the Tribunal to facilitate the resolution of the dispute.

### Alternatives to adjournment

10. If a party cannot attend the hearing personally, the party may:
  - (a) Apply to the Tribunal to be represented by another person. The person must give reasons why they cannot attend and why it is necessary they be represented. A signed authority will need to be produced. The Tribunal will consider the request for representation.
  - (b) Present the party's information in written form (for example, a statutory declaration, letter or affidavit) containing as much detail as possible. Any documents such as receipts, the residential tenancy agreement or contract, quotes, photographs, reports etc. which would support the party's argument should also be forwarded and referred to in the written statement. Any information received by the Tribunal will be given appropriate consideration and weight.
  - (c) Consider giving the party's evidence by telephone. If the party would like to do this the party must contact the Divisional Registrar within 7 days of the date of the Notice of Hearing and supply a daytime telephone number, so that the possibility of telephone hearing can be discussed with the party. Telephone hearings are not granted as a right, and the Tribunal will decide if a telephone hearing will be granted.

### Unwarranted adjournment requests

11. Parties should be aware that obstructing the Tribunal proceedings may jeopardise their case. Schedule 4, clause 10 of the NCAT Act provides for circumstances where a party acts to disadvantage another party to an application.

#### **10 Proceedings causing disadvantage**

- (1) The Tribunal may exercise the powers conferred by this clause if the Tribunal is of the opinion that a party in any proceedings for the exercise of a Division function is conducting the proceedings in such a way that unreasonably disadvantages another party in the proceedings by any conduct (including by failing to comply with an order or direction of the Tribunal).

- (2) The Tribunal may:
  - (a) if the party causing the disadvantage is the applicant—order that the proceedings (or part of the proceedings) be dismissed or struck out, or
  - (b) if the party causing the disadvantage is not the applicant:
    - (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
    - (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).
- (3) Before making any order under subclause (2) against a party, the Tribunal is to have regard to the following:
  - a) the extent to which the party is familiar with the procedures of the Tribunal,
  - b) the party's capacity to understand, and act on, a direction of the Tribunal,
  - c) whether the party suffers from a disability,
  - d) whether the party is acting deliberately in failing to comply with the Tribunal's directions.
- (4) The provisions of this clause are in addition to, and do not limit, the provisions of section 55 (Dismissal of proceedings) of this Act.

(Sgd)

24 December 2013

STUART WESTGARTH

Deputy President