



## NCAT Consumer and Commercial Division Procedural Direction 3

### CONCILIATION AND HEARING BY SAME MEMBER

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. These directions are issued pursuant to section 26 of the *Civil and Administrative Tribunal Act 2013* (NCAT Act) and set out the procedure which is to apply when the same Member assists in conciliation of a dispute in Consumer and Commercial Division proceedings and then if the matter fails to resolve, determines the matter at hearing.
2. The Tribunal is obliged pursuant to section 37 of the NCAT Act to promote the use of resolution processes such as conciliation to resolve or narrow the issues between them in the proceedings. The Tribunal's duty is also to resolve the real issues in proceedings justly, quickly, cheaply and with as little formality as possible. To meet both of these requirements the Tribunal may use the same Member to both conciliate and hear a matter, particularly in regional areas.

#### Conciliation

3. Conciliation is an informal process to produce agreed outcomes that are lawful and acceptable to both parties.
4. Where there is no Tribunal Member or Deputy Divisional Registrar allocated to assist parties to reach an agreement, the Member hearing the list will explain the conciliation process to the parties in accordance with Tribunal procedures.
5. The Member will establish with the parties that there are no serious impediments to attempting to resolve the matter by conciliation.

6. The Member may facilitate discussions to assist resolution but will not provide legal advice or opinion to the parties. Legal questions and issues may however be canvassed with the parties.
7. Should the parties reach an agreed settlement by conciliation, the Member will establish that the agreed settlement is one which is within the powers of the Tribunal to make. The Member will also confirm the agreement is voluntary and that the parties understand the agreement.
8. The Member will explain to the parties that the agreed settlement will be made into legally binding orders as it thinks fit to give effect to the agreed settlement reached by the parties.

## Hearing

9. If a matter is not resolved by conciliation the Member will advise the parties that the conciliation process has been concluded.
10. The Member will ask the parties whether they are ready to proceed to have their matter heard.
11. If the Member has taken part in the conciliation of the matter, the Member will ask the parties if they object to the Member proceeding to determine the matter. The Member will, in considering the objections raised, determine whether he/she will conduct the hearing or adjourn the matter to a later date before another Member.
12. If the matter is ready to proceed to hearing, the Member will outline to the parties that:
  - (a) proceedings are no longer private and confidential and, where recording equipment is available, will be recorded;
  - (b) any statements that were made or any concessions given in conciliation cannot be raised at the hearing unless both parties agree;
  - (c) information about any settlement offers made in conciliation by either party cannot be raised during the hearing;
  - (d) the inability to informally resolve the dispute by conciliation will not affect the outcome of the hearing.
13. When the hearing begins the Member will enquire of the parties whether there is agreement about any facts and issues so that only those issues still in dispute need to be determined at hearing.

## Adjournments

14. Where the parties are not ready to proceed to hearing or the Member decided he/she will not conduct the hearing, the Member will make appropriate procedural direction to ready the matter for hearing on the next occasion.

(Sgd)

24 December 2013

STUART WESTGARTH

Deputy President