

# Should Homeowners Get Legal Representation for their NCAT Dispute?

When it comes to resolving building disputes under the [Home Building Act](#), many homeowners may wonder whether they should engage a lawyer to represent them at the New South Wales Civil and Administrative Tribunal (NCAT). While it is possible for homeowners to represent themselves at NCAT, there are certain circumstances where it may be beneficial to have legal representation.

## When is Legal Representation Necessary in NCAT Proceedings for Homeowners?

First and foremost, it is important to note that NCAT encourages individuals to run their own cases without the need for a lawyer or other representative. This is because it provides a low-cost, accessible, and efficient means of resolving disputes. However, there are certain situations where representation may be necessary.

### Representation in Cases Involving Claims or Disputes Over \$30,000

One such situation is when the proceedings involve a claim or dispute for more than \$30,000. In these cases, the Tribunal will usually permit a party to be represented, especially by an Australian legal practitioner. This is because the stakes are higher and a legal professional can better advise on the merits of the case and the appropriate course of action.

### Representation When Another Party is Represented by an Australian Legal Practitioner

Another situation where representation may be beneficial is when another party in the proceedings is, or is to be represented by, an Australian legal practitioner. In these cases, it is important to have legal representation on your side to ensure your rights and interests are protected.

### Representation in Applications for Penalties Under Strata Schemes Management Act 2015 or Community Land Management Act 1989

Additionally, representation may be necessary if the application is for a penalty to be imposed under the Strata Schemes Management Act 2015 or the Community Land Management Act 1989. These types of applications can be complex and a legal professional can provide guidance and advice on how to navigate the process.

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the right legal advice.

## Representation When Proceedings Involve a Government Agency

Representation may also be necessary if another party in the proceedings is a government agency. In these cases, it is important to have legal representation to ensure that you are able to effectively argue your case and protect your rights and interests.

## Representation When the Tribunal Requires or Suggests Representation for Fairness and Complex Issues

Finally, representation may be necessary if the Tribunal is of the opinion that the party would be placed at a disadvantage if not represented at the hearing, or if the Tribunal is of the opinion that representation should be permitted due to the likelihood that complex issues of law or fact will arise in the proceedings.

While homeowners may choose to represent themselves at [NCAT](#), there are certain situations where it may be beneficial to engage a lawyer to represent them. This includes cases where the proceedings involve a claim or dispute for more than \$30,000, when another party in the proceedings is, or is to be represented by, an Australian legal practitioner, when the application is for a penalty to be imposed under the Strata Schemes Management Act 2015 or the Community Land Management Act 1989, if another party in the proceedings is a government agency and if the Tribunal is of the opinion that the party would be placed at a disadvantage if not represented at the hearing or if the Tribunal is of the opinion that representation should be permitted due to the likelihood that complex issues of law or fact will arise in the proceedings.

If you're a homeowner who is currently facing a [building dispute](#), it is advisable that you seek legal representation to ensure that your rights and interests are protected. You can reach out to legal professionals and get a consultation to know more about your options.

## Can You Recover Your Legal Costs in NCAT Proceedings?

In the Consumer and Commercial Division of the NCAT, in general, each party pays their own costs of running a case. However, there are certain circumstances in which the Tribunal can order that one party must pay the costs of the other party.

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This can happen if the Tribunal agrees that there are "special circumstances" warranting an order for costs, if Rule 38 applies, or if particular legislation allows for an order for costs. Section 60(3) of the Act explains the types of special circumstances in which the Tribunal can decide that someone else should pay another party's costs. These include if a party has conducted their case in a way that unnecessarily disadvantages another party, if a party has been responsible for unreasonably making the case take longer, if the relative strength of a party's case or whether the case was hopeless, if the nature and complexity of the case, if a party's case was frivolous, vexatious or misconceived, if a party has not cooperated with the Tribunal in providing a just, quick and cheap resolution of the real issues in dispute, if a party has not followed Tribunal orders or directions, or if any other matter the Tribunal thinks is relevant.

## Costs Allowed Under Rule 38

Rule 38 also allows the Tribunal to make an order for costs if the claim is more than \$10,000 but no more than \$30,000 and an order is made under clause 10 of Schedule 4 of the Act because a party has conducted the proceedings in a way that unreasonably disadvantaged another party in the proceedings, or if the claim is more than \$30,000.

### Asking for Costs

A party can ask for costs such as the fees charged by their lawyer or professional agent for preparing or running the case, the "disbursements" of their lawyer or professional agent, such as Tribunal filing fees, witness expenses, and photocopying charges, and disbursements of a self-represented party or non-professional agent. However, a party cannot ask for their own travelling costs or their own time spent in preparing or running the case, or lost earnings of a self-represented party or non-professional agent.

Any party to a case who thinks their case meets the rules outlined above can ask for their costs to be paid by someone else. This can include another party, anyone else who intervened in the case, another party's lawyer or professional agent, or a witness.

### Determining the Amount of Costs

When determining the amount of costs, the Tribunal can either do so by agreement, by assessing the costs under the Legal Profession Uniform Law Application Act 2014, or by fixing an amount to be paid or specifying how costs are to be otherwise fixed.

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A party may apply for costs when they lodge an application, when another party has failed to comply with a Tribunal order, or at a final hearing or immediately after a decision is made. The application can be made in writing or orally at a hearing unless an order is made specifying the form of application. The Tribunal will then ask each party to explain why a costs order should or should not be made, decide if a formal hearing is necessary, consider the costs application, and make its decision as soon as possible. The decision of the Tribunal may be given orally or in writing, and a party may ask for written reasons as allowed by the Act.

## Get Expert NCAT Legal Representation for Your Home Building Disputes

If you are a homeowner and you have a dispute with a builder or contractor in the NCAT and your dispute exceeds \$30,000 then call us for a free 15 minutes phone consultation with [John Dela Cruz](#) a specialist building and construction lawyer with expertise with NCAT and the Home Building Act.

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