

Non-compliance with NCAT Work Orders in NSW: What You Need to Know

As a homeowner in Sydney with building project issues, you may wonder about resolving disputes. The NCAT provides work and money orders to help with redress for defective building work. Pursuing these orders has risks and potential consequences, particularly if a builder fails to comply. As a [construction lawyer](#) with over 10 years of experience, I can guide you through the legal process. This article explores non-compliance with NCAT work orders in NSW and advises homeowners on their legal options.

What are NCAT Work Orders?

If you are a homeowner in Sydney who is experiencing issues with a residential building project, you may be able to seek redress through the NSW Civil and Administrative Tribunal (NCAT). One of the most common types of orders issued by NCAT in residential building disputes are work orders.

NCAT work orders

Work orders are a type of order issued by NCAT in residential [building disputes](#). NCAT Work orders require the responsible party (usually the builder or contractor) to complete or rectify defective building work or specialist work.

Preferred outcome of work orders

The preferred outcome of work orders is for the responsible party to rectify the defective work. The principle of rectification is enshrined in Section 48MA of the Home Building Act 1989.

Powers of NCAT in relation to work orders

NCAT is empowered to make work orders to require the responsible party to do specified work or perform any obligation arising under the [Home Building Act 1989](#) or the terms of any agreement. NCAT can also make work orders even if it is not the order that the applicant asked for.

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Obligation to cooperate

The parties to a building dispute are under an obligation to cooperate under Section 36(3) of the Civil and Administrative Tribunal Act 2013. This obligation extends to providing access to ensure that work orders can be implemented in an orderly manner.

Renewal of proceedings

If a responsible party fails to comply with an NCAT work order, the owner may renew the proceedings pursuant to Clause 8 of Schedule 4 of the Civil and Administrative Tribunal Act 2013. The owner may then seek a money order seeking the builder to pay specified money by way of debt, damages, restitution, or refund any money paid.

Consequences of non-compliance

If a builder fails to comply with an NCAT work order, the owner may seek a money order to recover costs. The builder may also face penalties or other consequences for failing to comply with the order, including having their licence suspended or cancelled.

Work orders are a powerful tool for homeowners to seek redress for defective building work or other issues with their contractor. However, if a builder fails to comply with an NCAT work order, there are serious consequences to be aware of. As a specialist construction lawyer, I can help you understand your legal rights and options and guide you through the process of seeking redress through NCAT.

What Are the Owner's Rights Under NCAT Work Orders?

When NCAT makes an order for a builder or contractor to complete defective building work, this order is referred to as a "work order". As an owner, it is important to understand your rights under a work order and what actions you can take if the builder or contractor does not comply with the order.

1. Owner's right to enforce the work order

Once a work order has been made, the builder or contractor is required to comply with the order. If the builder or contractor does not comply with the work order, the owner has the right to enforce the order.

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2. Renewal of proceedings

If the builder or contractor does not comply with the work order, the owner may renew the proceedings pursuant to Clause 8 of Schedule 4 of the Civil and Administrative Tribunal Act 2013 (NSW). This means the owner may seek to renew the claim in the NCAT against the builder or contractor.

3. Money order

In renewal proceedings, the owner may seek a money order seeking the builder or contractor to pay specified money by way of debt, damages, restitution, or refund any money paid.

4. Limitations on money orders

It is important to note that there are limitations on the amount that can be claimed as a money order. In NSW, the maximum amount that can be claimed as a money order in NCAT is \$100,000. If the amount of the claim exceeds \$100,000, the owner will need to take the matter to court.

5. Seeking legal advice

If you are a homeowner and are considering whether to claim a money order or work order, it is important to [seek legal advice](#) from a specialist construction lawyer. A construction lawyer with experience in NCAT proceedings can provide guidance on the best course of action to take and the likely outcomes of each option.

What Happens if a Builder Fails to Comply With an NCAT Work Order?

It is not uncommon for builders and contractors to fail to comply with NCAT orders, including work orders. If this happens, homeowners have options to enforce the orders and obtain the necessary remedies.

Renewal of proceedings

If a builder fails to comply with a work order, the homeowner may renew the proceedings pursuant to Clause 8 of Schedule 4 of the Civil and Administrative Tribunal Act 2013 (NSW). This means that the homeowner may seek a money order seeking the builder to pay specified money by way of debt, damages, restitution, or refund any money paid. It is

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essential to note that the renewal application must be lodged within 12 months of the end of the period specified by the Tribunal.

Enforcement Warrant

If the builder does not pay the specified amount of money after the homeowner has obtained a money order, the homeowner may apply for an enforcement warrant. This is a court order that authorises a Sheriff or Bailiff to take action to recover the debt, such as seizing the builder's assets and selling them to pay the debt.

Professional Disciplinary Action

In addition to the above options, the homeowner may also seek professional disciplinary action against the builder. Homeowners may report the builder to the relevant regulatory body or licensing authority, who may investigate the matter and take disciplinary action if the builder is found to have breached any professional standards or codes of conduct.

It is essential to note that homeowners should seek legal advice from a specialist construction lawyer to determine the best course of action to take if a builder fails to comply with an NCAT order. A construction lawyer can advise on the legal options available and assist in taking the necessary steps to enforce the orders and protect the homeowner's interests.

Should Homeowners Claim a Work Order or a Money Order?

When a homeowner has a dispute with their builder or contractor over defective residential building work or specialist work, they can apply to the NSW Civil and Administrative Tribunal (NCAT) for a work order or a money order. In deciding whether to claim a work order or a money order, homeowners should consider the benefits and risks of each option.

Work order

A work order requires the responsible party (the builder or contractor) to rectify the defective work at their own cost. The homeowner must provide reasonable access to their property to enable the work to be done. Work orders are the preferred remedy under the Home Building Act 1989 (NSW) (HBA), and the Tribunal will usually only make a money order if a work order is not feasible or appropriate.

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Benefits of a Work Order

- The [defective work will be rectified](#) at the responsible party's cost.
- The homeowner does not have to pay for the rectification work themselves.
- The homeowner has control over the rectification work and can ensure that it is done to their satisfaction.

Risks of a Work Order

- The responsible party may not comply with the work order.
- The rectification work may cause damage to the homeowner's property.
- The rectification work may be disruptive to the homeowner's daily life.

Money order

A money order requires the responsible party to pay the homeowner a specified amount of money by way of debt, damages, restitution, or refund any money paid. The homeowner can use the money to rectify the defective work themselves or to offset any costs associated with the defective work.

Benefits of a Money Order

- The homeowner receives a specified amount of money that they can use to rectify the defective work.
- The homeowner does not have to rely on the responsible party to rectify the defective work.

Risks of a Money Order

- The homeowner may not receive enough money to cover the cost of rectifying the defective work.
- The homeowner may not be able to find a contractor to rectify the defective work for the amount of money awarded by the Tribunal.
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Which Option Should Homeowners Choose?

Homeowners should consider the specific circumstances of their dispute when deciding whether to claim a work order or a money order. Homeowners should also seek legal advice before making a claim to ensure they understand the benefits and risks of each

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option and to help them prepare their claim. A specialist construction lawyer can assist homeowners to prepare and present their claim to the Tribunal and to advise them on the best course of action to achieve a satisfactory outcome.

Why Homeowners Should Seek Legal Advice From a Construction Lawyer

When dealing with issues of non-compliance with NCAT work orders, homeowners may benefit from seeking legal advice from a construction lawyer. Here are some reasons why:

1. Complex legal procedures and terminology

Construction law can be complex, and legal procedures and terminology can be difficult for homeowners to understand. A construction lawyer can explain legal concepts and procedures in plain language, making it easier for homeowners to understand their options.

2. Specialist knowledge

A construction lawyer has specialist knowledge of the laws and regulations that govern the building and construction industry. This knowledge can help homeowners to navigate the legal system and achieve the best outcome for their case.

3. Experience in negotiating with builders and contractors

A construction lawyer has experience in negotiating with builders and contractors. They can use their experience to negotiate with the builder or contractor on behalf of the homeowner, to resolve the dispute as quickly and efficiently as possible.

4. Representation in NCAT and court

If a dispute cannot be resolved through negotiation, a construction lawyer can [represent the homeowner in NCAT](#) or court. They can help homeowners to present their case and argue for the best possible outcome.

5. Peace of mind

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Engaging a construction lawyer can give homeowners peace of mind, knowing that their case is being handled by a legal professional with the knowledge and experience to achieve the best outcome.

6. Cost-effective

Engaging a construction lawyer can be cost-effective in the long run. A construction lawyer can help homeowners to understand their legal rights and options, which can help to prevent disputes from arising in the first place. If a dispute does arise, a construction lawyer can help homeowners to resolve the dispute as quickly and efficiently as possible, which can save homeowners time and money in the long run.

Get Legal Advice

In summary, homeowners should consider seeking [legal advice](#) from a construction lawyer when dealing with non-compliance with NCAT work orders. A construction lawyer can provide specialist knowledge, experience in negotiating with builders and contractors, representation in NCAT and court, peace of mind, and cost-effective solutions.

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