

# Understanding the Hot Tub Process in NCAT Home Building Disputes

If you are a homeowner involved in a home building dispute in the NCAT (New South Wales Civil and Administrative Tribunal), you may have heard the term "hot tub" being used in the context of expert evidence. While this term may sound confusing, it refers to a unique process that can help expedite the resolution of your dispute.

## Introduction

The hot tub process allows experts to be cross-examined simultaneously, providing parties with the opportunity to have their experts discuss and debate key issues in real-time. This process is meant to help facilitate the just, quick, and cheap resolution of the real issues in the proceedings, as outlined in the Civil and Administrative Tribunal Act 2013 (NSW).

In this article, we'll explain the hot tub process in more detail, including what it involves, how it works, and the benefits it can offer to parties in home building disputes in the NCAT. We'll also reference relevant laws and procedural guidelines to provide a comprehensive overview of this unique process.

## What is the Hot Tub Process?

In home building disputes in the NCAT, the hot tub process is a unique form of expert evidence. This process allows expert witnesses to be cross-examined at the same time, in an informal and interactive setting.

During a hot tub, the expert witnesses are permitted to be questioned on the same topic simultaneously and may be asked to make observations or comments on the opinions of other expert witnesses. The tribunal member and the parties' legal representatives may all ask questions on the same topic. This process is meant to facilitate an open and collaborative discussion between experts, with the aim of resolving any differences in their opinions and reaching a mutual understanding of the key issues.

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The hot tub process is an essential tool for achieving the guiding principle of the Civil and Administrative Tribunal Act 2013 (NSW), which requires the just, quick, and cheap resolution of the real issues in the proceedings. By allowing expert witnesses to participate in a shared discussion, the hot tub process can help parties to resolve disputes more efficiently, potentially avoiding the need for lengthy and costly court proceedings.

NCAT Procedural Direction 3 sets out the requirements for experts' conclaves, conferences, and evidence in home building disputes, including the use of hot tubs. An expert witness must abide by any direction of the Tribunal to give evidence concurrently with other experts.

## How Does the Hot Tub Process Work?

The hot tub process typically starts with the selection of experts by each party. These experts will prepare their reports and be cross-examined separately in advance of the hearing. Once this is done, the Tribunal will schedule a hot tub session where the experts will be questioned simultaneously on the same topic. The session is generally more informal than a traditional cross-examination, and the experts may be asked to make observations or comments on each other's responses.

During the hot tub session, the Tribunal member and legal representatives for each party may ask questions of the experts. The purpose of the hot tub is to facilitate the just, quick, and cheap resolution of the real issues in the proceedings, as mandated by Section 36 of the Civil and Administrative Tribunal Act 2013 (NSW). By allowing the experts to provide their evidence concurrently, the hot tub process aims to promote efficiency and cost-effectiveness in the dispute resolution process.

## Benefits of the Hot Tub Process

The hot tub process has several benefits, which is why it is widely used in home building disputes in NCAT. One of the main advantages is that it helps to expedite the resolution of the dispute. Instead of each expert providing their evidence separately, the hot tub process allows them to give evidence together, which saves time and reduces costs.

Additionally, the hot tub process encourages cooperation between the experts. By having to discuss their views with each other, they may be more likely to reach a consensus on certain issues. This can help to simplify the case and narrow down the issues in dispute, which can make it easier for the parties to come to a settlement.

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The hot tub process can lead to better quality evidence being given. By allowing the experts to question each other and clarify any misunderstandings, the evidence provided is likely to be more accurate and reliable. This can benefit both the tribunal and the parties in making an informed decision. The experts' evidence may be better tested if experts are able to effectively engage in dialogue about their differences.

Overall, the hot tub process is an effective tool for resolving disputes in a timely, cost-effective and cooperative manner.

## Participating in a NCAT Hot Tub

If you are a homeowner involved in an NCAT home building dispute, you may be required to participate in a hot tub process. It is important to understand what to expect during this process so that you can adequately prepare.

During the hot tub process, expert witnesses are questioned on the same topic simultaneously, and may be asked to make observations or comments on the testimony of other expert witnesses. The process is informal and is designed to allow the tribunal to quickly and efficiently resolve the issues in dispute.

As a participant, you can expect to have your expert witness present during the hot-tub process. Legal representatives (or self-represented litigants) and the presiding Tribunal Member will also have the opportunity to ask questions and clarify any points with the experts. It is important to note that the process is guided by the principles of just, quick, and cheap resolution of the issues in dispute. Therefore, you should be prepared to work collaboratively with the other parties involved in the dispute to reach a resolution.

## Conclusion

The hot tub process can be an effective way to resolve disputes in a timely and cost-effective manner. By allowing expert witnesses to give evidence concurrently and facilitating a collaborative approach, parties can save time and costs associated with traditional methods of litigation.

If you are a homeowner involved in a building dispute and need legal assistance, don't hesitate to reach out to me. With over 10 years of experience as a construction lawyer, I can help you navigate the complexities of the legal system and ensure that your rights are protected. Contact me today to schedule a consultation and learn more about how I can assist you in your dispute.

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