

# 10 Tips for Successfully Resolving Residential Building Disputes at NCAT

Resolving residential building disputes at the New South Wales Civil & Administrative Tribunal (NCAT) can be a challenging process. Here are some tips that can help homeowners navigate the process and increase their chances of successfully resolving their dispute.

## Consider Your Jurisdictional Limitations

NCAT has jurisdiction over residential building disputes up to a value of \$500,000. If your claim exceeds this limit, you may need to consider other avenues for resolving your dispute, such as the District Court or Supreme Court.

## Understand the Types of Claims NCAT Can Hear

NCAT can hear a variety of building disputes, including disputes relating to defective building work, non-payment, variations to the building contract, and more. Make sure your dispute falls within the scope of NCAT before filing your claim.

## Be Prepared Before Commencing in NCAT

Before commencing a building claim in NCAT, it is necessary to approach the Department of Fair Trading for the appointment of an investigator to attend and make orders or attempt to bring the parties to an informal agreement. A Fair Trading investigation can provide a cheap and easy solution to a building dispute, so potential claimants should carefully consider their time limits so they don't miss the opportunity for an investigation to occur.

## NCAT Member Risk

NCAT members come from a variety of backgrounds, including lawyers, architects, engineers, project managers, and other building-based disciplines. Consider the background of the member hearing your case on the hearing day. Risks include the member's decision being appealed or the member having more favourable decisions to the owner or builder.

You can be confident that you are getting  
the right legal advice.

## Understand Your Entitlement to Legal Representation

In NCAT, there is no general right to legal representation. However, under certain circumstances, such as where a party has a disability or where the dispute is particularly complex, parties may be entitled to legal representation. If your claim exceeds \$30,000 then you should seriously consider engaging a construction lawyer.

## Understand the Rules of Evidence in NCAT

Unlike the courts, NCAT is not bound by the formal rules of evidence. However, many members will still adhere to those rules, and even apply the requirements of the Evidence Act 1995. Be prepared to present your evidence effectively in accordance with NCAT's requirements.

## Consider Expert Evidence

Expert evidence can be an effective tool in building disputes. Consider retaining an expert to prepare a report in accordance with NCAT's requirements, such as a Scott Schedule. You should engage an expert witness who is qualified and experienced like Mr Mario Bournelis from City Wide Building Consultants.

## Understand NCAT's Preferred Outcome

In a claim alleging defective building work, NCAT's preferred outcome is that rectification of that work is to be performed by the responsible party. This principle is enshrined in section 48MA Home Building Act 1989 (NSW).

## Understand the Cost Implications

The starting point in proceedings before NCAT is that parties will pay their own costs. However, there is scope for NCAT to make an award of costs if special circumstances are present. Be prepared for the cost implications of your dispute.

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## Understand Your Right to Appeal

Appeals to a decision of the Consumer and Commercial Division are generally available to a dissatisfied party, however, leave to appeal may be required in certain circumstances. Understand your right to appeal and the process involved.

## Consider Hiring a Specialist Construction Lawyer

If you are in a building dispute at NCAT, it is advisable to engage a specialist construction lawyer. A construction lawyer can provide you with expert legal advice and representation, and can help you navigate the NCAT process effectively.

In conclusion, resolving residential building disputes at NCAT can be a complicated and time-consuming process. However, by understanding the NCAT process and following the tips provided in this article, homeowners can increase their chances of successfully resolving their dispute. Additionally, homeowners are encouraged to consider engaging a specialist construction lawyer to assist them with the process and represent them.

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