



NCAT Administrative and Equal Opportunity Division Procedural Direction 2

REVENUE MATTERS

This Procedural Direction applies to:	Proceedings in the Administrative and Equal Opportunity Division
Effective Date:	13 February 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 www.ncat.nsw.gov.au

Purpose

1. The purpose of this procedural direction is to provide information to parties about the practice and procedure followed in revenue matters.

Relevant Legislation

2. Legislative provisions relating to revenue matters in the Tribunal include the:
 - *Civil and Administrative Tribunal Act 2013* (“NCAT Act”)
 - *Administrative Decisions Review Act 1997*
 - *Taxation Administration Act 1996*
 - *Betting Tax Act 2001*
 - *Duties Act 1997*
 - *Gaming Machine Tax Act 2001*
 - *First Home Owner Grant Act 2000*
 - *Health Insurance Levies Act 1982*
 - *Insurance Protection Tax Act 2001*
 - *Land Tax Act 1956*

- *Land Tax Management Act 1956* (except disputes over land valuations, they are heard by the Land and Environment Court)
- *Parking Space Levy Act 2009*
- *Payroll Tax Act 2007*
- *Regional Relocation (Home Buyers Grant) Act 2011*

Objects

3. The Tribunal is required to resolve the real issues in proceedings justly, quickly, cheaply and with as little formality as possible. To ensure that these objectives are met the Tribunal has issued standard procedural directions for the progress of all revenue matters.

Commencing a Revenue Matter

- 4.1 Revenue matters are commenced by filing an Administrative Review Application Form in the Administrative and Equal Opportunity Division and paying the prescribed filing fee. Three copies of the application and attachments are to be filed. The form and current fee can be found on the Tribunal's website www.ncat.nsw.gov.au.
- 4.2 The registry gives the proceedings a file number which parties are to quote on all documents filed. The registry sends the parties a letter to advise the time and date for the directions listing. The parties can expect to be allocated a hearing date within three months of the application being filed. Suitable arrangements must be made to ensure representatives and witnesses are available within that timeframe.
- 4.3 The Chief Commissioner of State Revenue ("the respondent") will file a statement of reasons for the decision and a copy of every document relevant to the determination of the application by the Tribunal within 28 days of receiving notice of the application (Section 58 Administrative Decisions Review Act 1997).
- 4.4 The directions listing will be approximately 6 weeks after the application is filed. This will ensure that there is sufficient time for the respondent to file and serve the section 58 documents.

Legal representation

- 5.1 If either party intends to be represented by either an agent or a legal practitioner that party must serve on the other party and file in the Tribunal a Notice of Representation.
- 5.2 The parties must ask the Tribunal for permission to be represented by an agent who is not an Australian lawyer at the directions listing.

Directions Listing

- 6.1 Either on the day of or before the directions listing the parties are to discuss the future progress of the matter. The discussions may result in the identification of the relevant facts and issues in dispute, agreement as to a timetable for the filing of evidence, submissions and hearing dates that is in accordance with the standard timetable, see 8.2.
- 6.2 The person who attends the directions listing must have full knowledge of the facts of the matter including the details of their witnesses and the dates they are available to attend a hearing.
- 6.3 If the parties are unable to agree on a timetable or it is not in accordance with the timeframes below the Tribunal member will impose a timetable.
- 6.4 When the parties have had their discussions they can approach the presiding member who will:
 - (a) make a timetable for the filing and serving of documentary evidence;
 - (b) fix a date to determine any preliminary issues;
 - (c) fix a date for the hearing of the substantive matter.

Stay

- 7.1 An applicant can ask the Tribunal to suspend (stay) the decision of the respondent pending the outcome of the matter. A stay may not prevent interest accruing on any money that is determined as owing to the respondent.
- 7.2 To ask the Tribunal to stay the decision the applicant must fill out the application for stay form. It can be found on the forms page of the NCAT website www.ncat.nsw.gov.au. The applicant must give reasons why the decision should be stayed.
- 7.3 The stay will be considered by the Tribunal at the directions listing if the respondent consents to the stay or at a preliminary hearing if the stay application is contested.

Standard timetable

- 8.1 Parties will be directed to file (lodge with the registry) and serve (give to the other party) written evidence in the form of affidavits, statements and other documentary evidence prior to hearing in accordance with the standard timetable.
- 8.2 The standard timetable is:
 - (a) The applicant is to file and serve evidence and submissions 2 weeks after the directions date;

- (b) The respondent is to file and serve evidence and submissions 4 weeks after the directions date;
- (c) The hearing to take place within 3 months of the application being filed.

Variations to this timetable will only be considered in exceptional circumstances.

- 8.3 The member may give a decision at the conclusion of the proceedings or reserve and give a written decision at a later date. Reserved decisions will be delivered approximately 8 weeks after the hearing date.

Expert evidence

- 9.1 If a party wishes to rely on expert evidence permission must be obtained from the Tribunal at the directions listing.
- 9.2 If both parties are seeking to engage experts the Tribunal may give a direction that the experts are to confer and file a joint report or the Tribunal may order that a single independent expert give the relevant evidence with the costs to be borne equally by the parties.
- 9.3 For more information see the NCAT Procedural Direction #3 Expert Witnesses.

Summonses

10. A summons return date will be allocated at the directions hearing. All summonses are to be issued in sufficient time for them to be returnable on this day. A further return date will not usually be allocated. For more information see the NCAT Procedural Direction #2 Summonses found on the Tribunal website www.ncat.nsw.gov.au.

Onus of proof

11. The applicant has the onus of proving that the decision made by the respondent is incorrect, s100 of the *Taxation Administration Act 1996*. The applicant must provide evidence of facts and make legal submissions that establish the applicant's case.

Outcomes

12. The Tribunal will decide what the correct and preferable decision is having regard to all the material before it including any relevant factual material and the applicable law. Section 101 (1) of the *Taxation Administration Act 1996* and Section 63 of the *Administrative Decisions Review Act 1997* specify the orders that the Tribunal can make.

Under the *Taxation Administration Act 1996* the Tribunal may:

- (a) confirm or revoke the assessment or other decision to which the application relates,
- (b) make an assessment or other decision in place of the assessment or other decision to which the application relates,
- (c) make an order for payment to the Chief Commissioner of any amount of tax that is assessed as being payable but has not been paid,
- (d) remit the matter to the Chief Commissioner for determination in accordance with its finding or decision,
- (e) make any further order as to costs or otherwise as it thinks fit.

Agreement by the parties

13. The parties are encouraged to continue to discuss the matter as it progresses to hearing to attempt to narrow or resolve the issues in dispute. If the parties reach a settlement the Tribunal may make an order to give effect to it or the applicant can withdraw the application, s55(1)(a) NCAT Act

Failure to appear or prosecute

- 14.1 If an applicant fails to appear in the proceedings the Tribunal can dismiss the application, s55 NCAT Act. The Tribunal can reinstate the proceedings if there is a reasonable explanation and the application to reinstate is made within 7 days.
- 14.2 The Tribunal can dismiss an application if it considers that it is frivolous or vexatious or otherwise misconceived or lacking in substance, s55(1)(b) NCAT Act, or if there has been a want of prosecution, s55(1)(d) NCAT Act. An application under these sections is generally made by the respondent and is listed for a separate short hearing with both parties being given an opportunity to make submissions about the dismissal.

Sound recording and transcript

15. A sound recording of the proceedings is available to the parties on the payment of the relevant fee. Transcripts will not usually be available except in the circumstances described in the Tribunal's sound recording and transcript policy.

Adjournment

16. When a date for hearing is listed it will only be changed if circumstances arise that are beyond the control of the parties or their representatives.

17. The general rule is that each party pays his or her own costs. However, one party may be ordered to pay another party's costs in certain circumstances. For more information see section 60 of the *Civil and Administrative Tribunal Act 2013*.

(Sgd)

13 February 2014

MAGISTRATE NANCY HENNESSY

Deputy President