

How do I prepare documents for a building dispute at VCAT?

Fact Sheet



This fact sheet covers:

- ✔ How to commence proceedings
- ✔ Points of Claim
- ✔ Points of Defence
- ✔ Use of expert reports
- ✔ How to prepare affidavits and witness statements
- ✔ Filing and service of documents
- ✔ How to amend documents

This fact sheet provides information about how to prepare the legal documents commonly required in the Building and Property List at the Victorian Civil and Administrative Tribunal (VCAT).

This fact sheet is relevant to homeowners who have either, been through the Domestic Building Dispute Resolution Victoria (DBDRV) process, or fit within one of the [exceptions](#) to the requirement that a matter go through the DBDRV process.

DOMESTIC BUILDING DISPUTE RESOLUTION VICTORIA

From 26 April 2017, except in some limited circumstances, you must make an application at DBDRV – and complete the DBDRV process – before you can commence domestic building proceedings at VCAT.

You should check with VCAT to see if you need to go to DBDRV before making an application to the Building and Property List.



1. How do I commence proceedings?



TIP

If you start a domestic building proceeding at a court, the other party can require the proceeding to be “stayed” (this means

Domestic building disputes are heard in the Building and Property List at VCAT.

suspended), until the proceeding is dealt with at VCAT.

Application forms are available on [VCAT's website](#).

What information do I need to start a proceeding?

In your VCAT application form, you will need to include:

- ✓ Contact details for you and the other party, including their address.
- ✓ If the other party is a company – attach a Current Company Extract to your application. This shows the company's name, status and registered address. You can buy a current company extract through the [Australian Securities & Investments Commission](#).
- ✓ The site address (this is the property where the works were performed by the builder).
- ✓ Details about the contract (you need to show that the builder agreed to do work at your property).
- ✓ Itemised details of your claim, including a list of any incomplete and/or defective works.
- ✓ The amount of your claim (or what you want from the builder if it is non-monetary). You will need to provide details about how the sum is calculated.
- ✓ The orders you want VCAT to make, and the grounds you are relying on.
- ✓ A 'points of claim' document, or a document setting out the details of the claim (this requirement will be discussed below).

Other documents

- If applicable, provide a copy of the Certificate of Conciliation issued by DBDRV.
- If you have other supporting documents like expert reports, quotations for the cost of completing the work or fixing defects, or other relevant documents like copies of invoices, photographs etc., you can provide these when you file your application. If you don't provide them, VCAT may make orders asking you to provide the documents later.

REVIEW OF DBDRV OR VBA DECISIONS



If you are applying to have a decision of DBDRV or the Victorian Building Authority reviewed, you need to supply documents relating to the decision:

- If you are seeking a review of DBDRV's decision to issue or amend a dispute resolution order, you must provide a copy of the dispute resolution order.
- If you are contesting DBDRV's decision to issue a notice of breach of dispute resolution order, you must provide a copy of the notice.

If you are challenging a decision to pay money out of the DBDRV Trust Fund, you need to provide a copy of the decision.

1.1 Fee to lodge an application

VCAT charges a fee when you lodge an application in the Building and Property List. The amount of the fee will depend on the value of your claim against the builder.

If your matter proceeds to hearing, you may also be required to pay hearing fees. The amount of hearing fees you may need to pay will depend on the amount you are claiming, and the number of days the hearing goes for.

Check the VCAT [website](#) to work out how much you will be required to pay when you lodge your application.

1.2 Notifying the other party about your application

VCAT will generally send a letter to the other party after you lodge your application with VCAT.

You can also notify the other party that you have lodged an application with VCAT. This is done by “serving” the other party with a copy of the VCAT application and any supporting documents.

You can serve a party by:

- by handing the application to the person
- by sending the application by post, fax or email at their last known residential or business address, or
- by leaving it at the person's last known residential or business address with a person who is at least 16 years old. If you choose this option, make a note of the date and time you delivered the document, and name of the person you left the document with.

More formal service obligations apply if you have filed a [Summons to Appear](#). If you serve a Summons to Appear, an “Affidavit of Service” is required. The Affidavit sets out who you served, what you served on that person, when you served that person, and how you served the document. You will need to file the affidavit of service with VCAT.

SERVICE

Service is a common legal term. It refers to specific ways of providing, or delivering, a legal document to another person so that the court or tribunal is satisfied that the other person has received the document.

2. How do I prepare a Points of Claim?

2.1 What are “Points of Claim”?

A Points of Claim is a written statement that sets out the facts of the applicant’s matter and what result the applicant is seeking. If possible, you should lodge a Points of Claim document with your VCAT application.

A Points of Claim is not compulsory – you can just prepare a less formal document setting out the details of your claim. However, a formal Points of Claim must be filed if it is requested by VCAT or opposing party.

DO I HAVE TO?

Even though it’s not compulsory, VCAT may order you to prepare a formal Points of Claim if the other party requests one at a directions hearing.

2.2 Drafting Points of Claim

2.2.1 Form

VCAT doesn’t have a set format for Points of Claim documents.

That said, you can use the below general format on the first page of the document to help VCAT identify the document as your Points of Claim.

TIP – WHICH FONT?

It’s a good idea to use a plain font on all documents, such as Arial, size 11.

Example Points of Claim

**IN THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
CIVIL DIVISION
BUILDING AND PROPERTY LIST**

VCAT Reference: [no/year]

BETWEEN

[APPLICANT NAME]

Applicant

and

[RESPONDENT NAME]

Respondent

POINTS OF CLAIM

Date of document: [insert date]
Filed on behalf of : The Applicant

Prepared by:
[name]
[Address]

Tel: [telephone]
Fax: [fax no. (if you have one)]
E-mail: [email]

2.2.2 What do I include in my Points of Claim?

Your Points of Claim should be written as a series of numbered short paragraphs, each containing a separate fact that is central to your claim. It should:

- include details of the building contract, including the full name of the parties
- state the address of the property
- contain fully itemised particulars of the claim and the relief or remedy sought
- identify any incomplete and defective works (which may be by reference to an attached expert's report providing such report is clearly itemised), and
- refer to relevant standard form contract clauses. E.g. "*clause 1.2*". It is not necessary to recite clauses in full unless the words are significant to the claim.

2.2.3 What are particulars?

You should include “particulars” in your Points of Claim. Particulars of a pleading provide details about how a general allegation is founded and will be proved at trial.

Examples of particulars

The Contract:

*“On 11 July 2016, the Applicant entered into a domestic building contract with the builder to construct a two storey house at the property (**Contract**).*

Particulars

The Contract is in writing. A copy can be provided on request”.

▶ **Terms of the contract:**

“The terms of the Contract included:

- (a) The builder warranted that the work would be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract.*
- (b) The builder warranted that all materials to be supplied by the builder for use in the work would be good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials would be new.*
- (c) ... etc.*

Particulars

*Statutory warranties implied by section 8 of the Domestic Building Contracts Act 1995 (**Act**) “*

▶ **The defective / incomplete works:**

“In breach of the terms of the Contract, the building works performed by the Respondent were defective and incomplete”.

Particulars

The particulars of the building works that were defective and incomplete are contained in the expert report of Jane Citizen dated 11 July 2017. A copy of the expert report of Jane Citizen can be provided on request.

▶ **The amount claimed:**

“As a result of the builder’s breach of the Contract, the Applicant has suffered loss and damage of \$11,111.

Particulars

\$11,111 is the cost to rectify the defective works and complete the incomplete works at the property as detailed in the quotation by John Smith dated 11 July 2017. A copy of the quotation can be provided on request”.

PARTICULARS OF CLAIM

If you don't provide proper particulars about your claim in your Points of Claim, the other party can make a request for "further and better particulars".

Information about how to make request for particulars is included in VCAT's Building and Property List [practice note](#).



2.3 Common mistakes – Points of Claim

Make sure that your points of claim adequately outlines your claim.

Some of the common mistakes made in preparing a Points of Claim include:

- **Points of Claim is *too long*** – You do not need to include every single detail about what happened or to repeat yourself for emphasis. A short and concise statement will make it easier for VCAT to understand the issues in your claim.
- **Points of Claim *lays out the defence*** – Avoid drafting your Points of Claim to address matters you think the other side will raise as a defence to your claim. Your Points of Claim should only deal with the facts of your claim. You will have an opportunity to respond to the respondent's version of the facts at the later stage.
- **Points of Claim *withholds information*** – Do not hold back key parts of your claim to try and surprise the other side at your VCAT hearing. If you do, you may not be permitted to raise this information later.

VCAT's Building and Property List [practice note](#) includes more information about Points of Claim.

3. How do I prepare a Points of Defence?

3.1 What are "Points of Defence"?

A Points of Defence is a written statement that is similar to a Points of Claim. It is prepared by the respondent to the claim, and responds to the points raised in the applicant's Points of Claim.

Just like the applicant's Points of Claim, a Points of Defence is not compulsory – you can just prepare a less formal document setting out the details of your defence. However, a formal Point of Defence must be filed if it is requested by VCAT or the other party.

3.2 Drafting Points of Defence

3.2.1 Form

VCAT doesn't have a set format for Points of Defence documents.

You can adopt the same formatting as our example for Points of Claims (see page 4 of this fact sheet) – just make sure you label the document "Points of Defence", instead of "Points of Claim".

3.2.2 What do I include in my Points of Defence?

Your Points of Defence should be written as a series of numbered short paragraphs, each responding to a point within the applicant's Point of Claim.

You need to make it clear which paragraph of the Points of Claim you are responding to when drafting your Points of Defence. For example, you could say:

Example Response to Points of Claim

▶ *“As to the Applicant's Points of Claim dated 11 July 2017, the Respondent says as follows:*

- 1. The Respondent denies the allegation at paragraph 1.*
- 2. The Respondent admits the allegation at paragraph 2.”*

Points of Defence should:

- ✗ **not contain bare denials or refusals to admit** – You shouldn't simply deny or refuse to admit the applicant's claims without elaborating on why you disagree with the allegation.
- ✓ **set out the material facts of your case** – A material fact is a fact which is significant or essential to the issue. Set out the material facts of your case in a logical order.
- ✓ **include any set-off claimed** – A set-off is a claim by the respondent that the applicant also owes the respondent money, and therefore the applicant's original demand should be reduced to reflect this.

Example wording for set-off claim

To claim a set-off, you will first need to justify any claims that were raised in the Points of Claim.

▶ *“As to the Applicant's Points of Claim dated 11 July 2017, the Respondent says as follows:*

- 1. The Respondent denies the allegation at paragraph 1.*
- 2. ... etc.*

And the Respondent otherwise says as follows:

- 3. The final progress claim was not paid in full because the work was not completed by the agreed date, and \$1,000 was deducted as delay damages.”*

Or alternatively, you may say:

▶ *“And the Respondent otherwise says as follows:*

- 3. The Respondent says because the works were not complete on time, it is entitled to deduct damages for delays pursuant to [reference clause in contract].”*

3.2.3 What do I include in my Points of Defence?

In your points of defence you can:

- ✔ **Admit:** If the allegation is correct and you do not dispute it, you can admit the allegation.

Example wording for making an admission

If the applicant alleges in paragraph 2 of the Points of Claim that:

“On 11 July 2017, the Applicant entered into a contract with John Smith”

And the contract was in fact dated 11 July. You might say in your defence:

- ✔ *“As to the Applicant’s points of claim dated 11 July 2017, the Respondent says as follows:*

1. ...
2. *It admits the allegation in paragraph 2.”*

If you need to make a minor correction to the allegation, but you otherwise agree, you can still admit the allegation. For example:

- ✔ *“As to the Applicant’s points of claim dated 11 July 2017, the Respondent says as follows:*

1. ...
2. *The respondent says that the correct spelling of his first name is “Johnathan”, but otherwise admits the allegation in paragraph 2”.*

- ✔ **Deny:** If you do not agree with an allegation, you can deny it.

Example wording for making a denial

If you disagree with the applicant’s allegations in paragraph 2, you might say in your defence:

- ✔ *“As to the Applicant’s points of claim dated 11 July 2017, the Respondent says as follows:*

1. ...
2. *It denies the allegation at paragraph 2 and says that the Applicant entered into a contract with John Citizen, and that contract was dated 13 July 2017.”*

- ✔ **Do not admit:** If you don't agree with what is being said, and don't admit it, you can "not admit" what is said.

Example wording for non-admission

- ✔ *"As to the Applicant's points of claim dated 11 July 2017, the Respondent says as follows:*

1. ...

2. It does not know and does not admit the allegation in paragraph 2."

Or alternatively, you may say:

- ✔ *"2. It does not admit the allegation in paragraph 2".*

- ✔ **Do not plead:** If the paragraph of the points of claim doesn't contain an allegation against you, you can "not plead".

Example wording for not pleading

- ✔ *"As to the Applicant's points of claim dated 11 July 2017, the Respondent says as follows:*

1. ...

2. It does not plead to the allegation at paragraph [x] as it contains no allegations against it."

For more information about Points of Defence, click [here](#).

4. Do I need to provide an expert report?

- ✔ A copy of any available expert report should accompany the application if your claim involves incomplete and/or defective building works.
- ✔ If you don't provide a copy of any expert reports when you file your application, VCAT may make orders for providing the information later.
- ✔ If you are a respondent to a proceeding, VCAT can make orders so that you have the opportunity to provide your own expert material.
- ✔ The [Expert Evidence Practice note](#) discusses what expert reports must include.

5. Affidavits and witness statements

5.1 What is an affidavit?

An affidavit is a written statement that sets out evidence that can be used in VCAT.

It contains factual information, that is, things that you have personally done, seen, heard or experienced first-hand. The contents of an affidavit are sworn or affirmed to be true by the person who writes it.

You can adopt the same formatting as our example for Points of Claims (see page 4 of this fact sheet) – just make sure you label the document “Affidavit of [person’s name]”, instead of “Points of Claim”.

NOTE: If you are preparing a witness statement, the same general principles relating to affidavits will also apply.

TEMPLATE

You should use the VCAT [template](#) form to draft your affidavits.

5.2 When can you be asked to file an affidavit?

A general application for the Building and Property List does not require an affidavit. However, if your application is an urgent application for an injunction, you will need to file an affidavit.

Affidavits will be required if certain applications are made during your VCAT proceedings, such as an injunction application or summons to appear.

FURTHER READING

Injunction Applications:

An injunction application may be required during your VCAT proceedings if a substantive issue arises. Click [here](#) for further information.

Summons to appear:

A summons to appear may be requested by a party or VCAT for a person to attend a hearing and give evidence or produce certain documents. Click [here](#) for further information, and [here](#) for the standard summons to appear form and affidavit of service.



5.3 Structuring your affidavit

Affidavits must be easy to read and understand. The most effective approach is to use headings that identify the subject matter of your affidavit and what each part is about.

Under the headings you should then divide your facts into paragraphs that are short and numbered. The outline of the relevant facts may follow a chronological order that maintains a narrative of the relevant facts of the situation that has occurred.

Aside from including facts that are relevant to your claim, your affidavit should be supportive of the orders you are asking VCAT to make in your application or response.

Formatting of your affidavit

- ✓ Affidavits should be typed.
- ✓ Affidavits should be printed on one side of the page only.
- ✓ Affidavits should include content which is divided into numbered paragraphs.
- ✓ Each paragraph of the affidavit should, if possible, cover only one topic or subject matter but can include a series of subsequent details of events for this topic.
- ✓ A separate affidavit must be filed for any witness evidence relied upon.

NOT ALL "FACTS" ARE ADMISSIBLE IN AFFIDAVITS

- ✗ Do not refer to anything said or documents produced in an attempt to negotiate or settle the dispute that were made *without prejudice*. This is not admissible as evidence. If you are unsure about what can and cannot be included in an affidavit, you should seek legal advice.
- ✗ Do not include facts based on information received by others. This is known as *hearsay*. If relevant, this witness should produce their own affidavit detailing these facts to avoid this.

5.4 Common mistakes in affidavits

Some of the common mistakes that people make in preparing an affidavit include:

- **Affidavit is too long** – You do not need to include every single detail about what happened or to repeat yourself for emphasis. A short and concise statement will make it easier for VCAT to understand the issues in your claim. Try to avoid reciting conversations you had or heard.
- **Affidavit withholds information** – Do not hold back key parts of your claim to try and surprise the other side at your VCAT hearing. If you do, you may not be permitted to raise this information later.
- **Affidavit lacks truth** – Affidavits are sworn or affirmed to be true, so make sure everything in the affidavit is truthful or you may face penalties for perjury.
- **Affidavit includes an opinion rather than facts**– Only include relevant facts rather than opinion. Facts are anything that was seen, heard, or experienced first-hand by you. Do not include information that was told to you by someone else or that is based on your beliefs or views. This is an opinion and should not be included in an affidavit.

5.5 Attaching documents to your affidavit or witness statements

Any document that you refer to in your affidavit or witness statement must be copied and attached to the back of your document. This is known as an 'annexure' or 'exhibit'. More than one annexure or exhibit can be referred to, however you must number or letter each one consecutively in the order you refer to them.

DEFINITION

The deponent is the person making the affidavit.

- When you refer to a document which will be exhibited to your affidavit, you should describe the document, and where it will be exhibited. It is helpful if you indent the description of your exhibits in the body of the affidavit, this will help you to check your numbering before you finalise the document.

Example wording for attaching an annexure

"As to the Applicant's points of claim dated 11 July 2017, the Respondent says as follows:

1. ...

2. On 10 July 2017, the builder issued an invoice to the Applicant for \$11,111.

Attached and marked "JS-1" is a copy of the invoice issued by the Builder on 10 July 2017."

- A certificate must be attached to the first page of each annexure/ exhibit (we have included an example of a certificate on the next page of this fact sheet). The certificate must be headed in the same way as the affidavit and identified by the deponent's initials followed by the number of the annexure e.g. if the person signing the affidavit is 'John Smith', the exhibits could be labelled 'JS-1', 'JS-2' etc.
- The person who witnesses your affidavit will need to sign each certificate for each separate annexure or exhibit you have attached to your affidavit. They sign where it says "before me", and must indicate in what capacity they have signed. Lawyers usually use a stamp.
- Make sure you don't attach original documents to your affidavit.
- You can attach larger documents to your affidavit, but you will need to make sure the documents can be copied.
- You will need at least three copies of your affidavit after you swear or affirm it. You should file the original affidavit at VCAT, keep a copy for yourself, and serve a copy of the affidavit on any other party in the proceeding.

Example certificate identifying affidavit

IN THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
CIVIL DIVISION
BUILDING AND PROPERTY LIST

VCAT Reference: [no./year]

BETWEEN

[APPLICANT NAME]

Applicant

and

[RESPONDENT NAME]

Respondent

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: [insert date]

Filed on behalf of : The Applicant

Prepared by:

[name]

[Address]

Tel: [telephone]

Fax: [fax no. (if you have one)]

E-mail: [email]

This is the exhibit marked "JS-1" now produced and show to John Smith at the time of [swearing / affirming] the person's affidavit on 11 July 2017.

Before me:

Exhibit 'JS-1'

Copy of invoice dated 10 July 2017.

6. What do I do with my finished documents?

Once you have finished preparing your document, you will need to file the documents along with your application to VCAT. You can submit your documents by:

- **Email:** civil@vcat.vic.gov.au
- **Fax:** (03) 9628 9988
- **Post:** Victorian Civil and Administrative Tribunal
Building and Property List
GPO Box 5408
Melbourne VIC 3001
- **By hand delivery:** Victorian Civil and Administrative Tribunal
VCAT Service Counter
Ground Floor, 55 King Street
Melbourne VIC 3001
Office hours: 9am – 4:30pm Monday to Friday

NOTE – HARD AND SOFT COPY SUBMISSIONS

When you file your application at VCAT (by post or by hand delivery), make sure you have at least two copies. The original is kept by VCAT, and the photocopy becomes your copy.

When you file the application by email or fax, you keep the original copy.



7. What happens if I want to make changes to my documents?

If you need to make changes to documents that you have already filed, call the VCAT Building and Construction (Building and Property List) on **03 9628 9999**.

All parties will need to be notified of any changes. A record **must** be kept of how and when the other party was notified of the changes. VCAT members may check this record. Click [here](#) for more information.

WAS THIS FACTSHEET HELPFUL TO YOU?

Please take the time to give us some feedback by completing a quick survey [here](#).
Your comments and suggestions will help us to develop tailored content in the future.