

# How to prepare for the final hearing in a building dispute at VCAT

## Fact Sheet



### This fact sheet covers:

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- ✔ What happens during VCAT hearing
  - ✔ Witness examinations
  - ✔ When judgment is given
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This fact sheet provides some general information about VCAT hearings. It does not relate to direction or interlocutory hearings; or mediations or compulsory conferences.

For information about mediations or compulsory conferences, please see our [factsheet](#) on Alternative Dispute Resolution.

## 1. Key terms

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- ✔ **Applicant:** the party that starts the proceeding.
- ✔ **Respondent:** the party who the proceeding is brought against.
- ✔ **Expert:** an expert who has prepared a report for one of the parties to the proceeding.
- ✔ **Witness:** a person who gives evidence at a hearing. This might be done by a witness statement, or in person at the hearing. Non-expert witnesses are also called “layperson witnesses”.
- ✔ **Summons to appear:** a document which is filed at VCAT and served on the person you want to appear at a VCAT hearing.

## 2. What happens during the hearing

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The hearing allows all parties to make submissions about their case. Once the VCAT member has listened to all the submissions, they will make a decision. Sometimes, you may need to attend more than one hearing before the VCAT member is able to make a decision.

## 2.1 Preparing for the hearing

The hearing is a chance for you to present your case to the VCAT member by making submissions and putting forward the evidence which supports those submissions. This may include evidence from you and your witnesses, as well as any supporting documents you have.

By the time your matter progresses to hearing, usually you will have already participated in a mediation or a compulsory conference at VCAT. The preparation you will have done for the mediation or compulsory conference will be very useful for the VCAT hearing.

Before the hearing, prepare what you are going to say to the Tribunal, the questions you are going to ask your own witnesses, as well as questions you intend to ask the other party's witnesses.

### RELATED RESOURCES

- VCAT - [Evidence](#)
- VCAT practice note - [Expert Evidence](#)
- VCAT practice note - [Hearing Room Technology](#)

#### HEARING PREPARATION CHECKLIST

- Notice of hearing:** This document contains the date, time and location of your hearing.
- Special requests:** Tell VCAT if you have any special disability or technology needs.
- Points of claim:** Give VCAT and the other side a copy of your points of claim/defence within the timeframe directed by VCAT.
- Witnesses:** Tell VCAT and the other side who you intend to call as your witnesses.
- Witness statements:** Give VCAT and the other side a copy of the witness statements within the timeframe directed by VCAT
- Expert Report:** Give VCAT and the other side a copy of any expert reports you intend to rely on within the timeframe directed by VCAT
- Supporting documents:** If required, provide VCAT and the other party with a list of documents relevant to your case (this will include documents which help you, and documents which might help the other party) within the timeframe directed by VCAT. The other party will be able to request copies of those documents.
- Other party's documents:** Make sure you read any documents provided to the other side, including witness statements, expert reports, and points of claim/defence.

## 2.2 At the hearing

- At the VCAT hearing, the Applicant will be asked to make opening submissions first. The Respondent will then be given an opportunity to make their own opening submissions.
- Both sides will then call witnesses to support their case.
- Once all the witnesses have been examined, all parties will have an opportunity to make closing submissions.

## VCAT MEMBERS AND SELF-REPRESENTED LITIGANTS



VCAT members will help self-represented parties to achieve a fair hearing.

For example, the VCAT member may try to work out the true legal character of the claims made by helping parties to identify relevant legal issues.

VCAT members won't act as your advocate. You will still need to prepare your own case for hearing.

## 3. Calling witnesses

Witnesses are a useful way of putting evidence and important information before the VCAT member. This may include:

- a layperson's first-hand knowledge of facts which support your case, or
- an expert's specialist knowledge which is relevant to the case.

The Tribunal is likely to make an order for witness statements and expert reports to be filed.

- ✔ **Witness statements** are documents that set out the evidence your layperson witnesses will give. You will need to provide a separate statement for each of your witnesses. Witness statements should be in the witnesses own language, and will need to be signed by the witness as a record of their recollections of events.
- ✔ **Expert reports** are reports prepared by experts, which need to comply with the expert evidence [practice note](#).

You will need to send a copy of the witness statement and expert reports you are relying on to VCAT and the other parties.

For more information about preparing witness statements, please see our factsheet on [Preparing VCAT Documents](#).

### 3.1 Summons to appear

If a person you need as a witness cannot or will not attend willingly, you can ask VCAT to issue a "summons to appear". This request must be made after VCAT sets a date for the hearing, but before the day of the hearing itself.

## HOW TO FILE A SUMMONS TO APPEAR



VCAT has a "[summons to appear](#)" form on their website.

The VCAT [website](#) also includes more information about the process on how to file and serve the form, and the the fee required to issue the summons.

## 3.2 How are witnesses called?

In VCAT, orders will usually have been made at the directions hearing about when expert witness reports, and witness statements for laypersons have to be filed.

You will know in advance which experts or witnesses the other party is going to call at the hearing.

Usually, all of the Applicant's witnesses will be called first, and then the Respondent's witnesses.

Each witness will be examined in the following order:

- 1. Examination-in-chief:** the party who called them will ask questions.
- 2. Cross-examination:** the other party will then have a chance to ask questions to challenge the witness's story.
- 3. Re-examination:** the party who called the witness will have the option to ask a few more questions in response to the witness's answers in cross examination.

How you question a witness will depend on whether you called the witness, or the other party did.

## 3.3 Questioning your own witnesses

### Examination in Chief: Questioning your own witnesses

- ✓ **Preparation:** Make a note of the information which you would like the VCAT member to hear from the witness.
- ✓ **Practice:** Before the hearing, write a list of the questions you want to ask your witnesses. Consider if the questions are open or 'leading' (see below).
- ✓ **Ask open questions:** You should ask 'open questions' that allow the witness to tell their story. Try to start your questions with 'who', 'what', 'when', 'where' or 'why'
- ✓ **Don't ask questions which suggest the answer:** When questioning your own witness, be careful not to ask questions that suggest the answer to the witness. These are known as 'leading questions'. For example, a question that begins with 'Isn't it true that...' is likely to be a 'leading' question and may be objected to by the other party.
- ✓ **Listen:** Listen to the answers as you question your witness, and tick off each point as it is covered by your witness. Has your witness's answer provided all of the information you want the VCAT member to consider.

Remember, the VCAT member cannot consider any information that has not been provided when making their decision

## 3.4 Cross-examining the other party's witnesses

You should think carefully about the questions you would like to ask the other party's witnesses.

The answers should either help your case or create doubt on the other party's case. One way you can do this is to suggest a different version of events to the witness. You can say: *'I put to you that you said X to me'* or *'I put to you that you did X'*.

Don't ask any rude questions or argue with the other party's witness. Instead, try to challenge the other party's case by asking leading questions, or questions that suggest an answer.

If you have filed affidavits or witness statements by witnesses who support your case, then the other party may wish to cross-examine those witnesses.

### LEADING QUESTIONS

-  Do not ask leading questions when examining your own witnesses.
-  Do ask leading questions when you cross examine the other party's witnesses.

## 3.5 Re-examination

After your witness is cross-examined by the other side, you will have an opportunity to ask a few more questions on topics raised during cross-examination. With these questions, you can give the witness an opportunity to explain or correct anything raised during cross-examination.

The questions you ask in re-examination should also be open ('who', 'what', 'when', 'where', or 'why') and cannot suggest an answer or 'lead' the witness.

## 3.6 Objections during witness examination

VCAT is less formal than Courts. Therefore, the Tribunal won't apply any strict rules about asking questions of witnesses.

Even so, the other party may try to formally complain about the evidence a witness has given, the questions you are asking, or something else that occurs during a hearing. This is known as an 'objection'.

If the other party raises an 'objection' when you are questioning a witness, listen to the VCAT member and be guided by what they say.

The objections may be on the grounds of:

-  **Relevance:** questions you ask need to be relevant to the dispute.
-  **Hearsay:** a witness can only give evidence about things they have personally observed or have direct experience of.
-  **Opinion evidence:** generally, a witness can only give evidence about things they have observed, and are not allowed to give their opinion on what the evidence means. However,

experts can give opinions. For example, a building expert can provide evidence about their opinion on whether a builder's work is defective.

- ✔ **Improper, offensive or repetitive questions:** don't ask questions that are misleading, confusing, annoying, harassing, intimidating, offensive, rude or inappropriate.
- ✔ **Privileged evidence:** some evidence can't be used at a VCAT hearing because it is "privileged". This can include legal advice, evidence about what the parties have said in trying to settle the dispute (if they have sent you a letter with the words "without prejudice" that includes an offer of money to settle the dispute), and evidence given by a witness about a crime they have committed.

## 4. When judgment is given

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When your hearing is finished, the Tribunal will either make a decision, or put off making the decision until later.

- ✔ If a decision is made on the day, write down what has been decided and what you have to do or not do.
- ✔ If a decision isn't made on the day, the Tribunal will contact you later to let you know when a decision or judgment will be given (this is sometimes called "handed down" or "delivered").

Make sure you read the Tribunal's order very carefully and that you understand what it means – especially if it requires you or the other party to do something within a particular period of time.

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