

# **ACT Civil and Administrative Tribunal Procedural Directions 2010 (No 1)\***

**Notifiable Instrument NI2010-551**

The ACT Civil and Administrative Tribunal makes the following procedural direction under the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2)*

Dated 28 September 2010.

LINDA CREBBIN  
General President

BILL STEFANIAK  
Appeal President

PETA SPENDER  
Presidential Member

\*Name amended under Legislation Act, s 60

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

# ACT Civil and Administrative Tribunal

## Procedural Directions

### Explanatory Memorandum

The ACT Civil and Administrative Tribunal (ACAT) commenced operation on 2 February 2009. It was established by the *ACT Civil and Administrative Tribunal Act 2008* (the Act). The combined effect of the Act, consequential amendments to over 150 laws and the *ACT Civil and Administrative Tribunal (Transitional) Regulation 2009* has given the ACAT responsibility for resolving disputes previously dealt with in 16 different tribunals and jurisdictions. They are:

- Architects Board;
- Consumer and Trader Tribunal;
- Credit Tribunal;
- Discrimination Tribunal;
- Energy and Water Consumer Council;
- Guardianship and Management of Property Tribunal;
- Health Professionals Tribunal;
- Legal Practitioners Disciplinary Tribunal;
- Liquor Licensing Board;
- Mental Health Tribunal;
- Residential Tenancies Tribunal;
- Small claims and other civil disputes (\$10,000 and under);
- Unit title disputes; and
- Various regulatory bodies such as the Commissioner for Fair Trading (when acting as a tribunal in relation to motor vehicle dealers and finance brokers), the Constructions Occupations Registrar (when acting as a tribunal in relation to construction occupations) and the Chief Surveyor (when acting as a tribunal in relation to surveyors).

Since 2 February, the ACAT has been responsible for new matters in those jurisdictional areas and in most cases, for applications that had commenced in the replaced jurisdictions but had not progressed to hearing. The ACAT takes an approach which is focussed on the early resolution of disputes and is as quick, simple, inexpensive and informal as is consistent with achieving justice.

The ACAT should take full advantage of the benefits of consolidation, the synergies that exist between many areas of jurisdiction and the opportunities that come from a focus on problem solving in a less adversarial framework.

Managing the transition of a large number of existing applications from such diverse areas to a new decision-making body in a way that ensures both existing and new applications are progressed in a timely fashion and in a way that is consistent with the objects of the ACAT requires careful planning and flexibility.

The Act gives the ACAT power to decide its own procedure in relation to a particular matter in a hearing where no procedure is prescribed under a relevant law or under formal rules. Section 24 gives the ACAT power to make rules in relation to the practice and procedure of the tribunal and the tribunal registry. The section sets criteria that need to be considered when making rules. It also indicates that the section does not limit the power of the tribunal or a tribunal member to control proceedings.

The tribunal recognises that rules provide consistency and certainty of practice. They can however take time to develop and evolve. The tribunal wishes to allow itself and tribunal users a more flexible framework in this transition phase so that the opportunities and synergies referred to above can be explored.

Initially then, in order to provide certainty but a degree of flexibility, the ACAT's practice and procedure will be contained mostly in directions. At the moment the ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2) (the Rules) deal with a small number of important matters as well as the procedures that apply to the tribunal's appeals function.

Experience gained in the first 12 months of operation will be drawn on to identify additional matters that should be dealt with in the rules. The Procedural Directions provide a framework for that process. The Procedural Directions may be refined from time to time. An alert will be published on the tribunal's website to draw attention to changes.

## Procedural Directions

### General

#### 1. Object

The object of these Procedural Directions is to guide practice and procedure in the ACT Civil and Administrative Tribunal.

#### 2. Definition

In these Procedural Directions -

*“the Act”* means the *ACT Civil and Administrative Tribunal Act 2008*.

*“authorising law”* means a territory law that provides that an application may be made to the tribunal. For civil disputes, the term includes the Act.

**“replaced entity”** means an entity –

- a. that immediately before 2 February 2009 could consider an application made to it, and
- b. that has ceased to exist; and
- c. 1 or more functions of which have been taken over by the ACAT

**“the Rules”** means the *ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2)*

**“the tribunal”** means the ACT Civil and Administrative Tribunal

**“a person with a legal disability”** means a child or a person who is not legally competent to be a party to an application because of a mental disability

### **3. Authority to make Procedural Directions and when they apply**

- 3.1 The Procedural Directions are made under Rule 6 of the Rules and under the powers given to the tribunal in the Act to control proceedings and decide its own procedure.
- 3.2 The Procedural Directions apply only if there is no procedure prescribed or contrary provision in the Act, authorising laws, or in the Rules.
- 3.3 Parties should check the provisions of the Act, authorising laws and the Rules before using the Procedural Directions. There are General Procedural Directions relevant for all applications and Procedural Directions that are relevant to specific jurisdictional areas.
- 3.4 The Procedural Directions do not limit the power of the tribunal to decide that a different procedure should be followed in a particular application.

### **4. Commencement date**

- 4.1 The Procedural Directions come into operation on the day after notification.

## **General Procedural Directions**

These Procedural Directions apply to all matters.

### **5. Use of Forms**

- 5.1 The tribunal has its own forms but will accept documents that substantially comply with approved forms.
- 5.2 The tribunal may annotate or attach a notice to an old form indicating that it has been accepted and will be dealt with as a tribunal form notwithstanding any reference to a replaced entity.

### **6. Starting an Application**

- 6.1 Applications should be made using the appropriate form identified in these directions. If there is no applicable form an application may be accepted by the Registrar if it contains the following minimum information:
  - 6.1.1 the applicant's name and contact details;
  - 6.1.2 if the applicant is represented, the name and contact details of the representative;
  - 6.1.3 the respondent's name and contact details;
  - 6.1.4 the type of claim made and the reasons or grounds for it;
  - 6.1.5 the orders or remedy sought.
- 6.2 An application may be lodged in person, by post or by facsimile.
- 6.3 Any fee payable in relation to an application must be paid at the time the application is lodged.
- 6.4 The Registrar of the tribunal can consider a request to waive, remit or defer payment of a fee in accordance with the provisions of the *Court Procedures Act* if the request is made before or at the time an application is lodged.
- 6.5 An application for waiver of fees should be made using the relevant approved form.
- 6.6 An application must be signed and dated by the applicant or by a person authorised to be a representative of a party.

## **7. Representation of Parties**

- 7.1 A party can start and conduct a proceeding in the tribunal in person or by a representative who is –
  - 7.1.1 a lawyer admitted to practise; or
  - 7.1.2 if the party is a corporation – an officer or employee who files an affidavit verifying that they are authorised to represent the corporation. The affidavit should be in the approved form; or
  - 7.1.3 a person who is authorised to represent the party by a Power of Attorney made under the *Powers of Attorney Act 2006*. A sample power is provided by the tribunal.
- 7.2 The tribunal will register a Power of Attorney or an affidavit authorising a person to represent a corporation when asked to do so. The registration number can be provided on subsequent documents lodged with the tribunal provided the representative is able to establish on request that the relevant the Power of Attorney or authorisation is current.
- 7.3 A representative can sign and file documents and attend conferences and hearings on behalf of a party. The tribunal may however require a party to attend a preliminary conference or a hearing in person whether or not they are represented.

- 7.4 A representative must have sufficient knowledge of the matter to enable effective participation in an application and to discuss settlement or resolution of the dispute where appropriate. A representative must be able to contact a party during any tribunal conference or hearing at which the party is not present in order to receive or confirm instructions.

## **8. The Representation of people under a legal disability**

- 8.1 A person who is under a legal disability may only be a party to an application if they are represented by a litigation guardian unless the Act or an authorising law or these Directions provide otherwise.
- 8.2 In addition to proceedings identified in authorising laws, a child may start and carry on an application to recover an amount owing to the child in relation to the child's employment or a contract for services for work done by the child, as if the child were an adult.

## **9. Appointment of a litigation guardian**

- 9.1 A person may be a litigation guardian of a person with a legal disability if the person—
- 9.1.1 is an individual, the public trustee, or a trustee company under the *Trustee Companies Act 1947*; and
  - 9.1.2 is not a person with a legal disability;
  - 9.1.3 and has no interest in the proceeding adverse to the interests of the person with a legal disability; and
  - 9.1.4 has agreed to be the person's litigation guardian.
- 9.2 If a person is authorised under a territory law to conduct a proceeding in the name of or for (however described) a person with a legal disability, the authorised person is entitled to be litigation guardian of the person with a legal disability in any application to which the authorised person's authority extends, unless the tribunal otherwise orders.
- 9.3 Unless a law otherwise provides, a person may become the litigation guardian of a person with a legal disability without the need for any formal instrument of appointment or any order of the tribunal.
- 9.4 Unless a person is appointed as a litigation guardian by the tribunal, a person becomes the litigation guardian of a person with a legal disability for an application by filing—
- 9.4.1 an affidavit by the solicitor for the person with a legal disability, or someone else with knowledge of the facts, stating that the person-
    - 9.4.1.1 has agreed to be the litigation guardian; and
    - 9.4.1.2 is an appropriate person to be the litigation guardian; and

9.4.1.3 does not have an interest in the proceeding adverse to the interest of the person with a legal disability; and

9.4.2 the person's written consent to be the litigation guardian of the person with a legal disability; and

9.4.3 if the person with a legal disability is an applicant—an acknowledgement by the person that the person will be liable for any costs that the person with a legal disability might be required to pay in the application.

## **10. Serving Applications and other documents**

10.1 Subject to anything else in the Act, an authorising law or these Procedural Directions, an applicant will usually be expected to serve a sealed copy of their application on each other party as soon as practicable after it is issued and no later than 7 days before any return date allocated by the tribunal.

10.2 The tribunal may arrange service of some applications.

10.3 A party can serve an application by following the procedures set in the *Court Procedure Rules 2006* at rules 6405, 6410 to 6412, and 6430 to 6438.

10.4 The tribunal Registrar can provide information about how to effectively serve an application or another document if necessary.

10.5 The tribunal may make orders in relation to service of an application or other document including an order—

10.5.1 that service be dispensed with; or

10.5.2 approving an alternate or substitute way of serving an application or other document; or

10.5.3 approving a shorter period of time for service.

## **11. Proof of Service**

11.1 Service of a document may be proved—

11.1.1 by an affidavit sworn by the person who served the document;  
or

11.1.2 by oral evidence; or

11.1.3 by production of a certificate of postal service; or

11.1.4 in any other way the tribunal decides is appropriate.

## **12. Service outside Australia and in New Zealand**

Where an application or other document has to be served outside Australia or in New Zealand the provisions of Divisions 6.8.9 and 6.8.10 of the *Court*

*Procedures Rules 2006* will apply. The tribunal Registrar can provide information about how to effectively serve a document outside Australia if necessary.

### **13. Responding to an Application**

A respondent must respond to an application with which they have been served in accordance with any Procedural Directions relating to the specific jurisdiction.

### **14. Requirement to provide contact details**

14.1 A respondent who is not required to lodge a formal response, must lodge a document providing details of their full name, address, telephone number, any facsimile number and any email address as well as the same details for any representative as soon as practicable after being served with an application.

14.2 If the respondent is a company, the document should include the relevant ACN and the company's registered office address.

14.3 If the respondent is a body corporate or incorporated association, the address of the corporation or association must be included.

14.4 A party whose contact details or representation arrangements change while the tribunal is considering an application must lodge a document setting out the new contact details.

14.5 A party should use the approved form to provide contact details.

### **15. Address for Service**

15.1 The address for service of documents on a party to an application will be –

15.1.1 if the party has provided details of a representative, the address of the representative;

15.1.2 Where a party is not represented, the address provided by the applicant in the application and for the respondent the address provided in any response.

15.1.3 if a party lodges a document providing changed contact or representation details, the address in that document.

### **16. Focus on dispute resolution**

16.1 It is the policy of the tribunal to manage all applications from the moment an application is lodged with the tribunal.

16.2 The tribunal will facilitate the resolution of applications in the first instance by listing applications for conference, directions, a preliminary conference under section 33 of the Act or mediation where appropriate.

16.3 The tribunal may refer parties to other dispute resolution services at any time.

16.4 The Tribunal may set time limits for case preparation, monitor the progress of an application against time limits and vary or enforce compliance with time limits in order to ensure that applications are dealt with as quickly as is consistent with achieving justice.

## **17. Asking the Tribunal to make an Interim or Other Order when an Application has been lodged**

17.1 The tribunal will consider a written application for an interim or other order made in the approved form or in a letter. The application or letter must say what order is sought and why the order is sought. It should contain details of the information the applicant relies on to support the application and should be accompanied by copies of any documents relevant to the application. Each party should receive notice of the application sufficient to enable them to respond to it.

17.2 The tribunal will consider an oral application for an interim or other order if-

17.2.1 The preparation of a written application or its filing or its service would cause unreasonable delay or other prejudice to the applicant; or

17.2.2 when each party to the application agrees to the application being made orally; or

17.2.3 where the tribunal decides that it is otherwise appropriate or necessary or convenient to do so.

## **18. Documents/Correspondence relating to proceedings**

18.1 Where a party sends the tribunal a document relating to an application or writes a letter to the tribunal, the party must, unless a request for a suppression order is made-

18.1.1 send a copy of the letter or document to each other party to the application, and

18.1.2 indicate on the document or letter that a copy has been or is being sent to each other party.

18.2 All documents sent to or lodged with the tribunal must be clearly marked with the file number of the relevant application, identify the parties and show the name of the party on whose behalf the document has been sent or lodged.

## **19. Requests for Adjournments**

19.1 To facilitate the quick resolution of applications, parties should anticipate that requests for the adjournment of a conference, mediation or hearing will be granted sparingly.

19.2 In considering an application for adjournment the tribunal will consider the reasons put forward for the request and-

- 19.2.1 the attitude of each other party to the application to the request for an adjournment; and
- 19.2.2 any serious disadvantage the requesting party or where relevant the public, may suffer if the adjournment is not granted; and
- 19.2.3 any prejudice to each other party or where relevant, to the public, if the adjournment is granted; and
- 19.2.4 the appropriateness of an order requiring the requesting party to pay costs if an adjournment is granted; and
- 19.2.5 any other relevant matter.

## 20. Subpoenas

- 20.1 A subpoena must be in the approved form.
- 20.2 The last day for service of a subpoena must be-
  - 20.2.1 5 days before the date stated in the subpoena for compliance; or
  - 20.2.2 if the tribunal sets a different date, the date set.
- 20.3 Subject to anything to the contrary in the Act or an authorising law, the procedure set out in rules 6605 to 6611 of the *Court Procedures Rules 2006* will be adopted by the tribunal in relation to the following-
  - 20.3.1 service of a subpoena;
  - 20.3.2 notifying each other party and any person with a sufficient interest about a subpoena;
  - 20.3.3 compliance with a subpoena;
  - 20.3.4 the production, removal, return, inspection and disposal of subpoenaed documents and things;
  - 20.3.5 the costs and expenses of compliance with a subpoena.
- 20.4 The Registrar will provide information about these rules and about issuing and complying with a subpoena to assist a party or an addressee.

## 21. Taking part in an Application other than in person

- 21.1 Section 45 of the Act makes provision for a person to participate in a preliminary conference or hearing other than in person.
- 21.2 A party or witness who wishes to give evidence or take part in a conference or hearing by telephone or some other method of communication that accords with section 45, must apply to the tribunal for a direction as soon as practicable after they receive notice of the conference or hearing and in any event, no later than 5 days before the conference or hearing.
- 21.3 In considering the request the tribunal will consider –
  - 21.3.1 any views expressed by a party;
  - 21.3.2 the reasons for the request; any prejudice or disadvantage that the person might suffer if the direction is not made;

- 21.3.3 any prejudice or disadvantage a party might suffer if the direction is made;
- 21.3.4 any delay that might occur if the direction is not made;
- 21.3.5 any other matter the tribunal considers relevant.

**22. Failing to attend a Conference or other Tribunal Process**

- 22.1 Section 44 of the Act sets out the procedure the tribunal may follow when a party fails to appear in person or by a representative at a hearing. The same procedure may be followed by the tribunal if a party fails to appear at a conference including a preliminary conference, a directions hearing, a mediation or any other tribunal process of which the party has been notified.

**23. Expert Evidence**

- 23.1 Where a party to an application in the tribunal commissions a report from an expert the party shall provide the expert with a copy of the tribunal's approved "Expert Witness Code of Conduct".
- 23.2 An expert's report should contain an acknowledgement by the expert that he or she has read the code and agrees to be bound by it.

**24. Withdrawing From or Discontinuing Proceedings**

- 24.1 An applicant who wishes to discontinue an application or a respondent who wishes to discontinue participation in an application should notify the tribunal and each other party in writing by using the approved form.

**25. Chambers**

- 25.1 Subject to any requirement in the Act or an authorising law, a presidential member or non-presidential member may make an order in Chambers when he or she considers it appropriate to do so.

**26. Lapsing of Proceedings**

- 26.1 An application will lapse and be taken to have been withdrawn if an applicant has taken no action on the application for a period of 12 months.

### **Procedural Directions for Specific Matters**

**27. Applications for Review of a Decision**

- 27.1 An application for review of a decision should be accompanied by a copy of the reviewable statement and any reasons statement the applicant has been given.

**28. Applications for Occupational or Other Disciplinary Action**

28.1 An application for occupational or other discipline should be accompanied by an affidavit or statement setting out the reasons for the application. The affidavit or statement should attach copies of relevant documents relied on by the applicant to support the application.

**29. Applications made under the *Guardianship and Management of Property Act 1991***

29.1 Applicants seeking the appointment of a guardian or a manager for a person should try to ensure that their application is accompanied by the following when it is lodged –

29.1.1 copies of any report available to the applicant prepared by a health professional, social worker or other professional person relating to the person’s health, welfare or decision-making ability; and

29.1.2 a statutory declaration made by each person who it is proposed should be appointed as a guardian or manager informing the tribunal of the matters detailed in section 10(2) of the *Guardianship and Management of Property Act 1991*; and

29.1.3 the written consent of each person who it is proposed should be appointed as a guardian or manager; and

29.1.4 for applications for the appointment of a manager, a statutory declaration informing the tribunal about the income, assets and debts of the person.

29.2 Direction 58 does not apply where the application seeks the appointment of the Public Advocate as guardian or the Public Trustee as manager.

**Civil Dispute Applications**

*Subject always to the power to determine procedure in a particular application, the tribunal intends that the procedure for civil dispute applications should generally reflect the procedure in use before 2 February 2009 for claims made in the Small Claims Court wherever that procedure is consistent with the Act, the Rules and the General Directions. However, there are several examples of procedures previously in use that are now the subject of provisions of the Act or are included in the General Directions.*

*The directions that appear below are adapted from rules contained in the Court Procedures Rules 2006. The rule used as the basis for the adaptation is shown for the convenience of regular tribunal users. Lawyers should remember the need to comply with the requirements of section 188 of the Civil Law (Wrongs Act) 2002.*

30. A person may file an application for a debt declaration only if the person named as respondent has made or attempted to have made a written demand on the person for payment of the debt.

**31. Claim for interest (CPR 3740)**

31.1 This direction does not apply to an application under the *Common Boundaries Act 1981*.

- 31.2 This direction applies if interest up to the day of judgment is claimed in an application—
- 31.2.1 under a contractual agreement between the parties to the proceeding; or
  - 31.2.2 for a debt or liquidated amount.
- 31.3 The claim for interest—
- 31.3.1 must state the period or periods for which interest is claimed; and
  - 31.3.2 must state the amount or amounts for which interest is claimed; and
  - 31.3.3 may state the rate or rates at which interest is claimed.
- 31.4 If a rate is not claimed under sub-direction 31.3.3, the rate is taken to be the rate applying, from time to time, under schedule 2, part 2.1 (Interest up to judgment) of the *Court Procedures Rules 2006*.
32. **Service of Civil Dispute Application etc** (CPR 3741)
- 32.1 This direction does not apply to an application under the *Common Boundaries Act 1981*.
- Note* The *Common Boundaries Act 1981*, s 18 deals with the service of an application under that Act.
- 32.2 If a civil dispute application is filed in the tribunal, the Registrar must—
- 32.2.1 serve on the respondent—
    - 32.2.2 a sealed copy of the application; and
    - 32.2.3 a written notice summarising the possible courses of action open to the respondent in the proceeding and when a conference or hearing may be directed.
- 32.3 A person authorised by the Registrar to serve a civil dispute application must—
- 32.3.1 if the application is served by post complete and file a certificate of postal service for the application; or
  - 32.3.2 if the application is served otherwise than by post file an affidavit of service; or
  - 32.3.3 if service is attempted but the application is not served—endorse on the application the reason for non-service, sign the endorsement and return the application to the Registrar not later than 14 days after the day service is attempted.
33. **Response to Civil Dispute Application** (CPR 3742)
- 33.1 This rule does not apply to an application under the *Common Boundaries Act 1981*.
- 33.2 The respondent may file a response to a civil dispute application in the form attached to these directions not later than—

- 33.2.1 21 days after the day the application is served on the respondent; or
  - 33.2.2 any shorter period directed by the Registrar.
- 33.3 If a respondent files a response, the Registrar must serve a sealed copy of the response on the applicant.
  
- 34. **Counterclaim and set-off** (CPR 3743)
  - 34.1 This direction does not apply to an application under the *Common Boundaries Act 1981*.
  - 34.2 The respondent may make a counterclaim in a response instead of filing a separate civil dispute application.
  - 34.3 The respondent may rely on set-off (whether or not of a known amount) as a response to all or part of the applicant's claim for relief, whether or not it is also included as a counterclaim.
  
- 35. **Response to nuisance application or trespass application** (CPR 3743)
  - 35.1 This direction applies to a nuisance application or trespass application.
  - 35.2 The Registrar may, on written application by the applicant; order that any response to the application be filed less than 21 days after the day the application is served if satisfied that the order is necessary or desirable to avoid unreasonable hardship to the applicant.
  - 35.3 If the Registrar makes such an order, the Registrar must serve a sealed copy of the order on the respondent.
  
- 36. **Third-party notice** (CPR 3747)
  - 36.1 A respondent may file a third-party notice if the respondent wants to—
    - 36.1.1 claim a contribution or indemnity against a person who is not already a party to the application; or
    - 36.1.2 claim relief against a person who is not already a party to the application that—
      - 36.1.2.1 relates to or is connected with the original subject matter of the application; and
      - 36.1.2.2 is substantially the same as some relief claimed by the applicant; or
    - 36.1.3 require an issue relating to or connected with the original subject matter of the application to be decided not only as between the applicant and respondent but also between either of them and a person not already a party to the proceeding.
  - 36.2 A third-party notice—
    - 36.2.1 should not without leave of the tribunal be filed by a respondent until the respondent has filed a response; and

- 36.2.2 must be filed not later than 21 days after the end of whichever of the following periods ends last:
  - 36.2.2.1 the time limited for filing the response of the respondent who is filing the third-party notice (the *prescribed period*);
  - 36.2.2.2 if the applicant agrees to an extension of the prescribed period—the agreed period.
- 36.3 A third-party application starts on the day the third-party notice is filed in the tribunal.
- 36.4 The third-party notice should be in the approved form and must state—
  - 36.4.1 The nature of the claim and the relief sought; and
  - 36.4.2 any claim for interest up to the day of judgment; and
  - 36.4.3 the respondent’s address for service
- 37. **Service of third-party notice** (CPR 3748)
  - 37.1 If a third-party notice is filed, the Registrar must—
    - 37.1.1 serve on the third party—
      - 37.1.1.1 a sealed copy of the notice; and
      - 37.1.1.2 a copy of a sealed copy of the application; and
      - 37.1.1.3 a copy of a sealed copy of the respondent’s response to the application; and
      - 37.1.1.4 a written notice summarising the possible courses of action open to the third party in the proceeding and when a conference or hearing may be directed; and
    - 37.1.2 serve on the applicant a sealed copy of the notice.
  - 37.2 A person authorised by the Registrar to serve a third-party notice on a third party must—
    - 37.2.1.1 if the notice is served by post complete and file a certificate of postal service for the notice; or
    - 37.2.1.2 if the notice is served otherwise than by post, file an affidavit of service; or
    - 37.2.1.3 if service is attempted but the notice is not served—endorse on the notice the reason for non-service, sign the endorsement and return the application to the Registrar not later than 14 days after the day service is attempted.
- 38. **Response to third-party notice** (CPR 3749)
  - 38.1 A third party may file a response to a third-party notice using the form attached to these directions not later than 21 days after the day the notice is served on the third-party.
  - 38.2 If a third party files a response, the Registrar must serve a sealed copy of the response on the other parties to the application.

39. **Counterclaim and set-off by third party** (CPR 3750)
- 39.1 A third party who has a claim against the respondent who included the third party may counterclaim against the respondent.
- 39.2 A third party may rely on set-off (whether or not of a known amount) as a response to all or part of a respondent's claim for relief against the third party, whether or not it is included as a counterclaim.
40. **Default by third party** (CPR 3751)
- 40.1 This direction applies if—
- 40.1.1 a default judgment is entered for the applicant against the respondent who included the third party; and
- 40.1.2 the third party is in default in relation to the third-party notice.
- 40.2 The third party is bound by the default judgment between the applicant and respondent as far as it is relevant to a claim or issue stated in the third-party notice.
- 40.3 The respondent at any time after satisfaction of the default judgment, or, with the tribunal's leave, before satisfaction, may file in the tribunal an application for default judgment.
- 40.4 If the respondent applies for default judgment under sub-direction 41.3, the tribunal must—
- 40.4.1 if the amount of damages claimed is stated in the third-party notice—enter default judgment for the respondent against the third party; or
- 40.4.2 if the amount of damages claimed is not stated in the third-party notice, or another order is sought—enter default judgment for the respondent against the third party for damages to be assessed or the orders sought to be decided.
- 40.5 If sub-direction 41.4.1 applies, the Registrar must—
- 40.5.1 serve a sealed copy of the judgment on the respondent and third party; and
- 40.5.2 tell the respondent and third party about the right to apply for a restoration order.
- 40.6 If sub-direction 41.4.2 applies, the Registrar must—
- 40.6.1 serve a sealed copy of the judgment on the respondent and third party; and
- 40.6.2 tell the respondent and third party about the right to apply for a restoration order; and
- 40.6.3 set a date for a hearing to be held to assess damages or decide any other orders sought; and
- 40.6.4 tell the respondent and third party the date set for the hearing not later than 10 days before the date set.

40.7 If the third party does not have an address for service, the Registrar may serve the copy of the judgment on the third party by post by sending the copy by prepaid post to the third party's last known address.

40.8 The tribunal may enter default judgment under this rule in favour of the respondent without a hearing.

41. **Judgment between respondent and third party** (CPR 3752)

41.1 The tribunal may enter judgment in favour of—

41.1.1 a respondent who included a third party against the third party;  
or

41.1.2 the third party against the respondent.

41.2 If—

41.2.1 judgment is entered in favour of the applicant against a respondent; and

41.2.2 judgment is entered in favour of the respondent against a third party;

the respondent must not enforce the judgment against the third party unless the judgment against the respondent is satisfied, or the tribunal otherwise orders.

42. **Admission of liability** (CPR 3754)

42.1 A respondent to a civil dispute application may file a response in the form attached to these directions that —

42.1.1 admits liability for all or part of the applicant's claim for relief;  
and

42.1.2 states any conditions on which liability is admitted, for example, time for payment or payment by instalments.

42.2 If the respondent admits liability, the applicant may accept the admission of liability by filing a notice in the form attached to these directions accepting liability not later than 21 days after the day the response is served on the applicant.

42.3 The tribunal must enter judgment for the applicant by consent if—

42.3.1 the respondent admits the whole of the applicant's claim for relief without any condition; or

42.3.2 the applicant accepts the respondent's admission of liability, subject to the conditions (if any) on which the respondent admitted liability.

43. **Default judgment** (CPR 3757)

43.1 This direction does not apply to an application under the *Common Boundaries Act 1981*.

43.2 This direction applies if the respondent to an application —

- 43.2.1 does not file a response to the application; or
  - 43.2.2 files a response to the application but later withdraws the response by written notice filed in the tribunal.
- 43.3 The applicant may file an application for default judgment in the form attached to these directions not later than 1 year and 21 days after the day the originating application was served on the respondent.

- 43.4 If the applicant applies for default judgment under sub-direction 44.3, the tribunal must—
- 43.4.1 if the amount of damages claimed is stated in the application, or the application is for a debt declaration—enter default judgment for the applicant against the respondent; or
  - 43.4.2 if the amount of damages claimed is not stated in the application, or another order is sought—enter default judgment for the applicant against the respondent for damages to be assessed or the orders sought to be decided.
- 43.5 If sub-direction 44.4.1 applies, the Registrar must—
- 43.5.1 serve a sealed copy of the judgment on the parties; and
  - 43.5.2 tell the parties about the right to apply for a restoration order.
- 43.6 If sub-direction 44.4.2 applies, the Registrar must—
- 43.6.1 serve a sealed copy of the judgment on the parties; and
  - 43.6.2 tell the parties about the right to apply for a restoration order; and
  - 43.6.3 set a date for a hearing to be held to assess damages or decide any other orders sought; and
  - 43.6.4 tell the parties the date set for the hearing not later than 10 days before the date set.
- 43.7 If the respondent does not have an address for service, the Registrar may serve the copy of the judgment on the respondent by post by sending the copy by prepaid post to the respondent's last known address.
- 43.8 The tribunal may enter default judgment under this rule in favour of the applicant without a hearing.

#### 44. **Disputed Civil Application**

- 44.1 If the respondent to an application files a response denying liability for an applicant's claim the tribunal may refer the parties to a dispute resolution service, set a date for a conference, mediation or other dispute resolution process or set a date for a hearing.

#### 45. **Restoration of proceeding** (CPR 3780)

- 45.1 On application by a party the tribunal may order that a proceeding be restored (a *restoration order*) if—
- 45.1.1 the proceeding has been dismissed because the party failed to attend a conference; or,
  - 45.1.2 the proceeding has been discontinued; or
  - 45.1.3 default judgment has been entered in the proceeding; or
  - 45.1.4 consent judgment has been entered in the proceeding
- 45.2 If the tribunal makes a restoration order, it may also make any of the following orders:

- 45.2.1 an order setting aside a judgment, including a judgment entered by default or by consent;
  - 45.2.2 an order for the payment of costs;
  - 45.2.3 an order staying a proceeding until costs are paid;
  - 45.2.4 an order setting aside any proceeding taken to enforce a judgment set aside under this rule;
  - 45.2.5 any order the tribunal thinks appropriate for the future conduct of the proceeding, including an order that a conference be held between the parties, or an order about the priority of a hearing;
  - 45.2.6 any other order the tribunal considers just.
- 45.3 The tribunal may set aside a consent judgment only if any of the following apply in relation to the application for judgment or the entry of judgment:
- 45.3.1 fraud;
  - 45.3.2 duress;
  - 45.3.3 suppression of relevant information or evidence;
  - 45.3.4 false evidence or information given and relied on;
  - 45.3.5 change of circumstances;
  - 45.3.6 impracticability of enforcement;
  - 45.3.7 any other ground the tribunal considers just.
- 45.4 If the tribunal does not make a restoration order on an application under sub-direction 46.1, the tribunal may make any order for costs it considers appropriate.
- 45.5 If the tribunal makes an order under this rule, the Registrar must serve a sealed copy of the order on the parties to the proceeding.

**46. Consent judgment in a Civil Dispute Application** (CPR 3782)

- 46.1 A party to a civil dispute application may file a draft consent judgment in the form attached to these directions at any time before judgment is entered by the tribunal if—
- 46.1.1 the parties agree on the judgment; and
  - 46.1.2 the judgment is signed by, or on behalf of, each party and
  - 46.1.3 the judgment is witnessed by the Registrar, a lawyer or a justice of the peace.
- 46.2 If a consent judgment is filed under this direction the tribunal must enter judgment in accordance with the draft consent judgment.
- 46.3 If sub-direction 47.2 applies, the Registrar must—
- 46.3.1 serve a sealed copy of the judgment on the parties; and
  - 46.3.2 tell the parties about the right to apply for a restoration order.

**47. Counterclaim or set-off** (CPR 3783)

47.1 This direction does not apply to an application under the *Common Boundaries Act 1981*.

47.2 This direction applies if—

47.2.1 the respondent relies on set-off or makes a counterclaim; and

47.2.2 the set-off or counterclaim is successful; and

47.2.3 the total amount of any successful set-off and counterclaim exceeds the amount for which the applicant is otherwise entitled to judgment.

47.3 The tribunal must enter judgment for the respondent for the amount of the excess.

**48. Order to perform work etc** (CPR 3784)

48.1 This direction does not apply to an application under the *Common Boundaries Act 1981*.

48.2 This direction applies if the tribunal enters judgment in a civil dispute application.

48.3 The tribunal may order a respondent either to—

48.3.1 perform work, or do something else, to rectify a defect in goods or services related to the applicant's claim for relief in accordance with any conditions the tribunal considers appropriate; or

48.3.2 pay an amount to the applicant.

48.4 Alternatively, the tribunal may order a respondent—

48.4.1 to pay an amount to the applicant; and

48.4.2 either to—

48.4.2.1 perform work, or do something else, to rectify a defect in goods or services related to the applicant's claim for relief in accordance with any conditions the tribunal considers appropriate; or

48.4.2.2 pay a further amount to the applicant.

**49. Order for the detention of goods** (CPR 3786)

49.1 This direction applies to a civil dispute application in relation to the detention of goods.

49.2 The tribunal may give judgment for the applicant against the respondent, in accordance with the applicant's claim for relief, for either—

49.2.1 the return of the goods to the applicant, or the retention of the goods by the respondent and payment to the applicant of the value of the goods; or

49.2.2 payment to the applicant of the value of the goods.

- 49.3 If the tribunal gives judgment for the return of goods, it may state a date before which the return must take place.
- 49.4 If the tribunal gives judgment for the return of goods, but the goods are subsequently damaged, destroyed or otherwise made unavailable for return, the tribunal may, on the applicant's application, order the respondent to pay the value of the goods to the applicant.
- 49.5 If the tribunal gives judgment under sub-direction 50.2.1 and the applicant subsequently applies for an order under this sub-direction, the tribunal may make an order for the return of the goods to the applicant without the option of the respondent retaining the goods and paying their value.
- 49.6 In this direction:  
*value*, of the goods, means the value assessed by, or in accordance with the directions of, the tribunal.

50. **Joint liability** (CPR 3790)

- 50.1 This direction does not apply to an application under the *Common Boundaries Act 1981*.
- 50.2 This direction applies if—
- 50.2.1 2 or more people are jointly liable in relation to a cause of action in a civil dispute application; and
- 50.2.2 1 or more, but not all, of the people jointly liable are served with the application.
- 50.3 The tribunal may enter judgment in relation to the cause of action against any 1 or more of the people served with the application, and the judgment may be enforced against anyone against whom judgment is entered.
- 50.4 If judgment is entered in relation to the cause of action against 1 or more, but not all, of the people jointly liable in relation to the cause of action—
- 50.4.1 the liability of the people jointly liable against whom judgment is not entered (the *other people*) is not discharged by the judgment or any enforcement of the judgment; and
- 50.4.2 the people against whom judgment is entered (the *judgment parties*) and the other people are, as between the judgment parties on the one hand and the other people on the other hand, liable severally but not jointly; and
- 50.4.3 if there are 2 or more other people—the other people are jointly liable as between themselves; and
- 50.4.4 if the judgment is satisfied or partly satisfied—the liability of the other people is discharged to the extent to which the judgment is satisfied.
- 50.5 Sub-direction 51.4 does not affect a person's right to contribution or indemnity in relation to the person's satisfaction of all or part of a liability that the person has (whether jointly, severally or jointly and severally) with anyone else.

50.6 This rule does not apply to a proceeding to which the *Civil Law (Wrongs) Act 2002*, section 107F (Proportionate liability for apportionable claims) applies.