

Appearing in the Queensland Building Tribunal

*Kylie Downes and Shane Wilson**

The Queensland Building Tribunal (QBT) is a tribunal set up by the *Queensland Building Tribunal Act 2000* (Qld) (QBT Act). Readers should be aware of procedure in that forum, as actions caught by the jurisdiction of the QBT are not infrequently remitted to it.¹ Before acting in any matter in the QBT, take the time to read the QBT Act. This article is designed to provide an introduction to relevant QBT procedure.

What are the advantages of making a claim in the QBT?

The QBT is a specialist forum established to deal with building disputes, reviews of decisions by the Queensland Building Services Authority (QBSA) and disciplinary matters involving those undertaking building work. As a specialist forum, the QBT is positioned to readily understand the jargon of the construction industry and is able to recognise and deal with issues prevalent in building disputes.

One of the objects of the QBT Act is to establish a system of dispute resolution which ensures that litigants in the QBT have an equal opportunity, regardless of their resources, to assert and defend their legal rights. This is achieved in part by the restriction of the rights of parties to legal representation,² and the informal nature of proceedings before the Tribunal, which is not bound by the rules of evidence.³ Indeed, the procedure is at the discretion of the Tribunal subject to the rules of natural justice⁴ and the QBT Act which provides that the proceeding is to be conducted with as little formality and

* Kylie Downes is a barrister in Queensland. Shane Wilson is a senior associate with McCullough Robertson. He specialises in construction law and regularly appears in the Queensland Building Tribunal.

1 Section 117(1) of the QBT Act provides that if a proceeding is brought in a Court, and the proceeding could be heard by the QBT under the QBT Act, the Court *must*, on the application of a party, order that the proceeding be removed to the QBT.

2 Section 66(1) of the QBT Act relevantly provides that a party to a proceeding must represent himself or herself. Not only is there a right of appearance for parties, but an obligation cast upon the parties to act for themselves.

3 See section 41(4) of the QBT Act which further provides that the Tribunal may inform itself in any way it considers appropriate.

4 See section 41(2) of the QBT Act.

technicality and with as much speed as the requirements of the QBT Act and a proper consideration of the matters before the QBT permit.⁵

The Tribunal attempts to minimise the cost of litigation before it. It has, for example, streamlined procedures to deal with disputes where the amount in dispute is less than \$10,000. A compulsory mediation is held in the morning of the hearing. If it does not settle, the matter moves straight into a hearing room, resulting in same day justice (assuming there is no reserved decision).

Other procedures implemented by the Tribunal to minimise costs is the requirement that all evidence in chief be done by way of statement, with all relevant documentary evidence attached. This greatly reduces the length of time required for the hearing of a matter and, through the early exchange of statements, informs each party of the other party's case thus encouraging settlement and avoiding trial by ambush.

The Tribunal encourages the early resolution of disputes by compulsory mediation before trained mediators from different fields with construction industry experience.

Are there any disadvantages?

The main disadvantage is a limited right of legal representation. However, if both parties consent to the representation no such problem exists. Legal representation may also be permitted when the QBT regards it as appropriate having regard to the amount of money involved, the complexity of legal and factual issues, the ability of the lawyer to help the QBT and the party represented⁶ and finally, the ability of the party to represent themselves.⁷

What are the procedural steps in an action?

Proceedings are commenced by application⁸ and the payment of a \$200 filing fee. An application is akin to a statement of claim. The person bringing the application is called the 'applicant' rather than 'plaintiff'.

Once the application has been served, the respondent is required to file a defence (and counterclaim if applicable) within 14 days⁹ — considerably less than the time period allowed in the Uniform Civil Procedure Rules. The Tribunal has the power to order

5 Among other things: see s 41(3) of the QBT Act.

6 This is a curious consideration. One wonders if it means the lawyer must tender a curriculum vitae.

7 Section 66(2)(b)(iv) of the QBT Act.

8 See s 29.

9 See s 30(3).

judgment by default if this is not done and the application seeks the recovery of a liquidated amount.¹⁰

The Tribunal has approved forms for both the application and the defence and counterclaim. These are available from the QBT website,¹¹ or from the Tribunal registry.

When a party wishes to be legally represented, a Form 4 'application in a proceeding' (which makes the application) will need to be filed. However, before doing this, be aware that the Tribunal requires parties to seek the other party's consent before making any application in a proceeding, including an application for legal representation.

Following the filing of the (originating) application and defence, matters are generally referred to compulsory mediation. The Tribunal's panel of mediators have appropriate qualifications and usually some experience in the construction industry. Mediators include barristers, solicitors, architects, engineers and building consultants.

Following an unsuccessful mediation, the matter is set down before a Tribunal member for a directions hearing. At the directions hearing, the Tribunal member will make directions for the future conduct of the matter.¹² The conduct of matters before the Tribunal are at the Tribunal's discretion. Directions which may be sought and made may encompass such procedural steps as the delivery and answering of interrogatories, if thought to be necessary.

The usual form of directions made by the Tribunal require the parties to provide witness statements to the other party or parties by stated dates, accompanied by relevant documents and an explanation of the relevance of those documents. Standard directions also provide for disclosure of all relevant documents by the parties.¹³

In appropriate cases, a direction may be made that disclosure be completed prior to delivery of any statements.

As a matter of practice, the Tribunal members attempt to progress matters as quickly as possible. Consequently, most directions require the applicant's statements to be delivered within two weeks from the date of the directions hearing and the respondent's statements in response within two weeks of delivery of the applicant's material. Parties are also generally required to inform the other party of the names of witnesses required for cross-examination.

A standard direction is to have the matter brought back before a Tribunal member for a pre-hearing conference after all interlocutory steps have been performed. At this pre-hearing conference, the Tribunal member ascertains whether the matter is ready for a

10 See s 121.

11 To be found at <www.qbt.qld.gov.au>.

12 See s 42.

13 See s 42(3)(b)(i) of the QBT Act but note s 43 which limits the duty of disclosure.

hearing and, if so, allocates a hearing date.

Hearings are generally conducted at the Tribunal's rooms in Brisbane.¹⁴ The Tribunal does, however, hear many matters in regional centres depending upon the most appropriate forum.

How are witnesses called?

The Tribunal has the power to issue a summons requiring a witness to attend the hearing.¹⁵ This is akin to a subpoena in the court system.

The Tribunal has the power to summons witnesses to give evidence, or produce documents, or both.

A party is required to make an application to the Tribunal for the issue of a summons. The Tribunal has a discretion whether or not to issue a summons and therefore in some cases it may be appropriate to explain the relevance of the witness' evidence, and what, if any, attempts have been made to procure a statement from the witness.

Applications for the issue of a summons are done by way of a letter to the QBT. There is no prescribed form. The application must be accompanied by the payment of a fee (\$13.20) for the issue of the summons. Witness fees must also be paid.

How are the Tribunal members addressed?

Tribunal members are addressed by their name or by their title, which should be ascertained before the hearing commences.

Where do you sit at the bar table?

Although you are not in court, the general rule that the more senior person sits at the right of the bar table should be observed.

What other procedures are relevant at a hearing?

It is not necessary to stand when appearing in the QBT. Hearings are conducted before a single member (or Chairperson or Deputy Chairperson).

A member may ask a witness questions. A member may even summons a witness or require a witness to give evidence.

14 Which are located on Level 9 MLC Court, 15 Adelaide Street, Brisbane.

15 See s 68 QBT Act.

What is the jurisdiction of the QBT?

The Tribunal has jurisdiction to hear reviews of decisions of the QBSA, which is akin to a statutory review, disciplinary proceedings commenced by the QBSA (which includes applications to discipline persons carrying out unlicensed building work, or failing to comply with the direction by the QBSA to rectify defective building work). The QBSA can also bring an application seeking injunctions to prevent a person carrying out building work in certain situations. The QBSA may also conduct debt recovery proceedings and public examinations in the QBT.

The Tribunal has an 'as of right' jurisdiction for all domestic building disputes, and for commercial building disputes where the amount in dispute is less than \$50,000. This means that if proceedings are commenced in a court, and the Tribunal has an as of right jurisdiction in relation to the dispute, the other party may apply to the court to have the matter removed to the Tribunal. The court has no option but to transfer the proceeding.

The Tribunal has an as of right jurisdiction for all domestic building disputes, and for commercial building disputes where the amount in dispute is less than \$50,000. This means that if proceedings are commenced in a court, and the Tribunal has an as of right jurisdiction in relation to the dispute, the other party may apply to the court to have the matter removed to the Tribunal. The court has no option but to transfer the proceeding.

The Tribunal also has jurisdiction to deal with commercial building disputes where the amount in dispute is more than \$50,000, but only if all parties consent to the Tribunal having jurisdiction.

Other matters

Appeals from Tribunal decisions are to the District Court by leave, and must be brought within 28 days of the Tribunal's decision.

A decision of the Tribunal may be registered in the Magistrates Court or District Court (depending on the amount) and once registered may be enforced as if it was an order of the relevant court. ☼

