



CIVIL CLAIMS WORKBOOK

PURPOSE

This Workbook may be helpful if you are a consumer who is:

- in a dispute with a trader about the quality or performance of goods or services; and
- considering making a claim through the Civil Claims List of the Victorian Civil and Administrative Tribunal ('VCAT').

For the purposes of this Workbook:

A 'consumer' is a person who has purchased goods or services ordinarily used for personal, domestic or household use.

The Australian Consumer Law (ACL), see below, has broadened the definition of 'consumer' to include corporations in some cases.

The Workbook includes:

- Information about ways to settle the dispute before a decision is made by VCAT;
- A step-by-step guide to completing and lodging the VCAT Application to Civil Claims List form ("VCAT Application"); and
- Information to assist consumers who wish to represent themselves at VCAT.

USING THE WORKBOOK

The Workbook should be used with the VCAT Civil Claims Guide ("VCAT Guide") and the VCAT Application. Copies of these may also be obtained from VCAT or Consumer Affairs Victoria.

The Workbook includes definitions of legal terms used. If you come across a word you do not understand, refer to the glossary at the end of the Workbook.

RELEVANT LEGISLATION

The Victorian Fair Trading Act 1999 ('Act') and the Australian Consumer Law 2010 (ACL) provide protection for consumers when dealing with suppliers of goods and services.

The ACL sets out a number of consumer guarantees, (which replace existing laws on conditions and warranties), relating to the supply of goods and services.

The law gives consumers the right to seek redress where goods or services have failed to meet consumer guarantees such as:

- goods must be of acceptable quality
- goods should match any description given
- where goods are sold by sample, the goods must match any sample or demonstration given

- goods must come with clear title
- consumers must have undisturbed possession
- goods and services must be fit for any disclosed purpose
- sellers, manufacturers and importers must honour express warranties
- manufacturers/importers must make spare parts and repairs facilities reasonably available for a reasonable time
- services must be provided with due care and skill and provided in a reasonable time.

The law also protects consumers against unfair trading practices including:

- misleading and deceptive conduct
- unconscionable conduct
- misrepresentations
- unfair terms in consumer contracts.

Consumers may seek remedies such as replacement, repair, refund, compensation for drop in value or consequential loss.

Familiarising yourself with the relevant laws will assist you in preparing your application and participating in VCAT proceedings. A claim under the Fair Trading Act or ACL must be lodged within six years of the dispute. Note: The ACL does not apply to goods and services purchased prior to 1 January 2011.

You can purchase a copy of the Act, and other Victorian legislation from Information Victoria, Level 20, 80 Collins Street Melbourne (bookshopvic.gov.au).

You can also access Victorian legislation online at legislation.vic.gov.au. Alternatively, the VCAT (vcat.vic.gov.au) and Consumer Affairs Victoria (consumer.vic.gov.au) websites are easy to navigate and have links to relevant legislation.

Australian legislation can be accessed on austlii.edu.au

THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (VCAT)

Tribunals are established to offer specialised, accessible, speedy, and inexpensive dispute resolution services.

VCAT is divided into three divisions and specialist lists operate within each division.

Consumer disputes are dealt with through the Civil Claims List of the Civil Division.

VCAT members with wide ranging powers to hear and determine disputes. Examples of the types of matters that the Civil Claims List deals with are included in the VCAT Guide. Further information about VCAT can be obtained from the website vcat.vic.gov.au

2 **BEFORE MAKING AN APPLICATION TO VCAT**

Read and complete the following sections of the Workbook:

DO YOU HAVE A DISPUTE?

Before starting any course of action it is important to clarify:

1. WHAT IS THE DISPUTE?

A legal dispute is more than a disagreement between two parties.

Whenever goods or services are purchased the consumer and the trader enter into a contract. The consumer agrees to pay the trader in exchange for the trader providing certain goods or services. A dispute arises where a party to the contract decides that the other party has not met the terms of the contract.

Example of non-legal disputes

If the consumer changes their mind about the goods purchased, for example, finds the same product somewhere else at a cheaper price, or decides that the product does not suit them, the trader is not in breach of the terms of the contract. The consumer may be unhappy and want to return or exchange the goods, but legally there is no dispute.

Examples of what may constitute a legal dispute

If the goods or services do not do what the supplier implied, the works have not been completed or not completed satisfactorily, or if the consumer believes that they were pressured into signing a contract or purchasing an item, a legal dispute may exist.

Is there a legal dispute? Use the space below to outline your understanding of the dispute that exists between you (the consumer) and the trader who sold you the goods or services.

.....
.....
.....
.....
.....

2. DO YOU HAVE EVIDENCE TO SUPPORT YOUR CLAIM?

You will need to provide evidence that a contract/agreement existed and that there is a breach. Proof may include:

- receipts;
- invoices;
- bank statements;
- credit card statements;
- other written records such as diary notes;
- calendar entries;
- letters; and
- witnesses.

What evidence do you have or could you obtain? List below.

.....
.....
.....
.....

3. HOW DO YOU WANT THE MATTER TO BE RESOLVED?

Before you start negotiating with other party, think about what outcomes you hope to achieve.

Prepare a list of options before you try to negotiate a settlement. It is also helpful to think about what the other party may want to achieve through negotiation.

What is your preferred outcome?

Can you think of any other options which may achieve a satisfactory settlement or part settlement?

4. HAVE YOU TRIED TO SETTLE THE DISPUTE?

Often disputes arise because of misunderstanding. Poor communication and failure to act early can make them escalate unnecessarily. VCAT encourages parties to try and resolve the dispute, and consider alternatives before taking legal action. An application to VCAT may be delayed, if the following steps have not been taken before the VCAT Application is lodged:

Speak to the trader/service provider

- Be clear about what the problem is and what outcome you are seeking.
- Speak to someone who has the authority to make decisions and take action, for example, the owner or manager rather than the receptionist.
- Record details of your discussions.
- Confirm in writing any agreement reached.

Put it in writing

- Writing a letter means you have a record of your complaint.
- Handwritten letters should be clear and legible.
- Keep a copy for your records.
- Decide who the letter should be sent to and whether a copy should be sent to any other interested party, such as the customer service department, or the manufacturer.
- The following sample letter includes key points which should be made.

*The Manager/Proprietor
Business/Company Name (Place of Purchase)
Address
Date*

*Your address
Your phone number*

Dear

- 1. Quote receipt/tax invoice number, briefly describe goods/services and note when purchased.*
- 2. State what is wrong with the goods and/or services.*
- 3. State what you want the seller/service provider to do about it.*
- 4. State that you want a satisfactory, preferably written, response within a certain period (for example 7 or 14 days).*
- 5. State that, if no satisfactory response is received by that date, further advice will be sought and that an application may be made to the Civil Claims List of the Victorian Civil and Administrative Tribunal for a resolution of dispute, appropriate orders and reimbursements.*
- 6. For further queries contact the writer on phone number....*

*Your Signature
Your Name*

Cc Does a copy need to go to another part of the organisation, for example, the head office, customer service or accounts department? Does a copy need to go to another company, for example, the manufacturer of the product?

Where you have written to the other party without success, you may consider seeking external assistance.

Assisted negotiation

A number of organisations offer mediation and conciliation services to help disputing parties reach agreement. These include Consumer Affairs Victoria, ombudsman schemes and the Dispute Settlement Centre of Victoria.

What measures have you taken to resolve the dispute?

Is there anything else that you could do?

5. OTHER CONSIDERATIONS

An application to VCAT may be appropriate if you have been unable to resolve the dispute. Before making application you should consider the financial and other costs you may incur if you pursue the matter.

Financial costs may include the application fee, business and company search fees, independent technical reports, travel, time off work, photocopying, postage, photographs, and costs associated with enforcing a VCAT order.

Personal considerations may include the time and stress involved, and the impact of the dispute on your relationship with the other party.

List the financial costs you may incur if you take the matter to VCAT.

List the personal costs you may incur if you take the matter to VCAT.

Do you still think it is worth proceeding? Why?

COMPLETING THE VCAT APPLICATION

This section provides step-by-step information about how to complete each question in the VCAT Application to Civil Claims List. To complete this section you will need the:

- VCAT Civil Claims Guide; and
- VCAT Application to Civil Claims List.

You can obtain these from the VCAT website: vcat.vic.gov.au (fees-forms-brochures). You can call VCAT or Consumer Affairs Victoria and ask for copies to be posted to you, if you do not have access to the internet.

It may be helpful to complete the details in this Workbook as you read through it, and then transfer those details to the VCAT Application. You can complete and submit the VCAT Application online, or you can download it, print it, and complete a hard copy. Make sure you check your completed application, and keep a copy for your records.

This section will use John Smith's dispute over a faulty refrigerator as an example of how to complete the VCAT Application.

Please note: The questions that appear on the electronic application form will depend on how you answered the previous question.

Case Study: JOHN SMITH

John purchased an Acme refrigerator from AAA Fridges for \$3,000, with a six month warranty. The salesperson also included an extended one-year warranty. The refrigerator stopped working after seven months. The manufacturer refused to repair the refrigerator under the warranty.

DO YOU NEED TO COMPLETE THIS FORM?

Are you making this application in response to any court action (other than VCAT) that has been served on you? * Yes No

Please note: If you are making this application in relation to your court action you cannot submit this form online. You will need to download and submit the form in hard copy.

It is important to include accurate information about the parties, as VCAT may need to write to them. If incorrect information is provided, or the parties are not clearly identified, it may be difficult to enforce orders made by VCAT.

APPLICANT DETAILS

Usually, the applicant is the person who purchased the goods or services

If you purchased the goods or services for your own use (as opposed to purchasing them for your business), then tick the 'individual purposes' box.

In completing the name and address details:

- remember to use proper names, as they would appear on a passport or drivers licence, not nicknames or shortened names;
- include details for all the applicants, if more than one;
- make sure you include correct addresses and telephone numbers; and
- include your daytime contact number and an email address, as VCAT may need to contact you during business hours.

Type of applicant * Individual Company Registered business Sole trader

Applicant 1

Individual (if claim is by an individual)

Name

Title Surname * Given name 1 * Given name 2

Address (PO Box address is not sufficient)

Street address *

Suburb / Town * State * Postcode *

Contact details

Please provide at least one phone number *

Business phone After hours phone Mobile Fax number

Area code Number Area code Number Number Area code Number

Email *

- Enter company name or number – Go
- If the company is listed it will show the business status. A company will have the ACN noted. If the search shows a 'Registered State/no' refer to the 'Registered Businesses' section below.
- Once you have identified the company/business, double clicking on the name will take you to a screen with further details. This screen will also allow you to purchase a company extract. You can also purchase a company extract at ASIC's office.

Because companies and businesses can often have similar names, you should match the name against the ABN.

When entering the information in the VCAT Application you should:

- complete the boxes with exactly the same information which is in the company's documents or company extract;
- tick the appropriate 'Type of Respondent' box; and
- attach the extract or a copy of the company's documents to the VCAT Application.

Registered businesses

Registered business in Victoria are registered with the Australian Securities Investment Commission (ASIC) and are recorded on the National Business Names Register (prior to May 28, 2012 registered businesses were registered with Consumer Affairs Victoria).

If your search of the ASIC website has not been found on ACN then it may be a registered business. You can search the National Names Register on the ASIC website for the business details.

To search the ASIC Register online:

- Go to Connect Search ASIC Registers – Search Business Names Register
- Search within Business Names Index
- Enter Business Name Press Go
- Once you have identified the business tick the appropriate box
- Click on view details
- Print the Business Names summary and attach to the VCAT application.

Please note: If the Business Name Summary does not contain the principal place of business address you must purchase a current business name extract.

To purchase a business name extract

- Go to information purchase
- Business name extract
- Click on Current business name information
- Proceed to checkout and provide credit card and email details
- An email will be forwarded with a payment receipt and retrieval links to the extract
- Print the extract and attach to the VCAT application

Please note: If the Business Name Summary identifies the owner/holder of the business as a company you need to name the respondent as AAA Brown Pty Ltd/as AAA Fridges. Please refer to the previous section on companies.

Sole Traders are not a registered business or a company. If the business does not appear on the ASIC website, a sole trader may run it. If no information is available, you will have to obtain it from the trader/supplier, or try other avenues. If, for example, the tradesperson was hired from an advertisement in the local newspaper, and you only have their name or phone number, checking the telephone directory or contacting the local paper may assist. Remember to tick the appropriate 'Type of Respondent' box on the form.

An Individual is someone who generally does not operate a business, for example, a person who occasionally sells goods through a newspaper or online classifieds. Remember to tick the appropriate 'Type of Respondent' box.

The VCAT Application cannot proceed without all the details.

Case Study

John had a receipt from AAA Fridges. As the receipt did not have an ACN, he checked the ASIC website. John was able to locate the business and purchase a business extract. John completed The Respondent Question of the VCAT Application, attached a photocopy of the business extract, and kept the original for his records.

ADDITIONAL RESPONDENTS

If there is more than one respondent, click on 'Additional respondent.'

For example, it may include the credit provider or the manufacturer, as well as the trader.

You must provide details for all respondents. And you may need to complete company or business searches as outlined above.

If you are successful, orders may be made against all or some of the named respondents. Witnesses must not be named in this section, as you do not want an order made against them.

Who are you making this claim against? * (Please refer to the Guide for information on the different types of respondents)

Individual
 Company
 Registered business
 Sole trader

Company (if claim is against a company)

If the application is against a company, please attach a copy of an ASIC search or a copy of an invoice to confirm ACN. Please refer to the Guide for further information.

ACN *	Company name *
0 0 0 1 1 1 2 2 2	ACME & DAUGHTER PTY LTD
ABN (if applicable)	Business name (if the company trades under a business name)

Contact name

Title	Surname	Given name 1	Given name 2
Mr	ACME	GEORGE	

Address (This must be the registered office of the company. Please refer to the Guide for further information. PO Box address is not sufficient)

Street address *	11 RIDGE ROAD		
Suburb / Town *	State *	Postcode *	
RICHVILLE	VIC	3003	

Contact details

Please provide at least one phone number *

Business phone	After hours phone	Mobile	Fax number
(03) 7777 7777	()		(03) 7777 7771
<small>Area code Number</small>	<small>Area code Number</small>	<small>Number</small>	<small>Area code Number</small>
Email			
acme@richville.com.au			

Case Study

John checked the warranty card to confirm the manufacturer's details. The warranty card included the name ACME & Daughter Pty Ltd but no ACN, so a company extract is required. John searched the ASIC website. He found the company details and purchased an extract. He completed the VCAT Application, attached a copy of the extract and kept the original for his records.

The following questions require details about the dispute and the outcome you seek.

CLAIM DETAILS - WHAT DO YOU WANT VCAT TO DO?**What is the value of your claim?**

You must include the total amount requested in the VCAT Application. In deciding how much to claim, consider the following questions:

- What was the original cost of the goods or services?
- How long have you had the goods?
- Are you seeking full replacement value?
- Have you taken depreciation into account?
- Can the problem be repaired?
- Have you obtained a quote for the repairs or replacement?
- Does the cost of the repairs or replacement exceed the original price? Are you seeking more than the original cost?
- Are you seeking compensation for damages or losses?

Case Study

In John's case, the total cost of the claim includes the replacement cost of the refrigerator (\$3000), if it cannot be repaired, and the cost of the food spoiled when the refrigerator broke down (\$150).

What do you want VCAT to decide and order?

Because you can tick more than one box, it is important, where possible, to give VCAT the broadest range of options. A combination of orders may offer the most appropriate remedy, as VCAT may reject one option but accept another. Refer to the 'Orders made by VCAT' and 'Enforcement' sections of this Workbook, before completing this question.

Case Study

John wants his refrigerator fixed, confirmation that the refrigerator is covered by a further twelve month warranty, and compensation for the food that was spoiled. He seeks orders for:

- 'payment of money' - to replace the refrigerator if it cannot be repaired; and
- 'payment of money' - for the food spoilage
- 'other' repair the refrigerator and provide a further 12 month warranty.

Describe the goods or services purchased or provided

Provide a brief description of the goods or services purchased, not the reason for your complaint.

The date of contract is the date you made an agreement with the trader to purchase goods or services.

The date of dispute is the date on which the problem became known.

Claim details - What do you want VCAT to do?

Claims under the Fair Trading Act 1999, the Australia Consumer Law or (where relevant) Domestic Building Contracts Act 1995 or Motor Car Traders Act 1986

What is the value of your claim? * \$ 3,150.00

What do you want VCAT to decide and order? * (you must tick one or more applicable boxes)

- Payment of money (including damages) (If you are claiming for an unpaid invoice, attach a copy of the invoice)
- Order that a debt is owed or not owed
- Review, vary or cancel a contract
- Order to comply with a contract
- Damages or other orders for failure to comply with a consumer guarantee for goods or services supplied after 01/01/2011
- Damages or other orders for misleading and deceptive conduct, false representation or unconscionable conduct
- To declare unfair terms in a consumer contract
- Rescission (cancellation) of a sale of a motor car you purchased for \$40,000 or less

Important: This only applies to very specific cases - see the guide and explain whether you are applying because of a false odometer reading or an incomplete sale agreement or because the car is substantially different from the description on the notice attached to the car - include also the price paid for the car.

Other

Please specify *

1. The respondent repair the refrigerator and provide a further twelve month warranty or if the refrigerator cannot be replaced the full cost of replacement refrigerator, (quote attached)
2. The respondent compensate the applicant for the food spoilage of \$150.00 (details attached)

Describe the goods or services purchased or provided *

Purchase of a two door stainless steel fridge/freezer (receipt attached)

Date of contract 19/08/2011

Date of dispute * 15/01/2012

Describe the dispute

The dispute history is your opportunity to outline the basis of the complaint (or counter claim, see below), how the dispute developed, and the steps that have been taken to try to resolve the matter. VCAT and the respondent(s) will have the opportunity to read the VCAT Application before the hearing, so this history will assist them in understanding the matter from your perspective.

Use the space provided, attach additional pages if necessary, to write a summary of events. Present the information in chronological order, starting from the date of contract and working through to the present time. Be concise and avoid using emotional or abusive language. The use of dot points and headings will make it easier to follow.

Refer to the evidence and attach copies of documents where appropriate. Keep the originals with your records. Evidence may include, for example, copies of correspondence with the trader and any replies, diary notes about conversations and actions, names of witnesses, invoices and receipts.

Describe the dispute (attach extra sheets if you need more space) *

You must give complete details about your claim so that the respondent is able to understand why you have made the application. If compensation is sought you must set out each amount that is claimed. If you do not provide enough information, your case may be dismissed or adjourned. If you need more space, print clearly on a separate piece of paper and attach to this application.

The applicant purchased the refrigerator 19/08/2011 after seeing it advertised in the Melbourne News, 17/08/2011. The salesperson recommended this specific model and confirmed that the refrigerator was \$3,000 and came with a twelve month extended warranty. It was delivered the next day. In early January 2012, I noticed that the refrigerator was leaking, and that it did not appear to be cooling properly. On 15/01/2012 I contacted AAA Fridges and reported the problem, I was told to contact the manufacturer ACME. ACME told me to turn up the temperature control and check the level of the refrigerator. I contacted ACME the next day to report that the refrigerator was not working properly, food was not getting cold and the ice-cream was melting. ACME said a technician would visit in a few days. The day before the technician was scheduled to visit the refrigerator stopped working all together. When the ACME technician visited he claimed the refrigerator was no longer covered by a warranty

Are you making this application in response to another VCAT application that has been served on you? *

Yes No

If this application is in response to a court action (other than VCAT) that has been served on you, please provide the following details.

What is the amount the court action is seeking from you?

Court reference number

\$ (excluding costs)

Please note:

1. If you are the purchaser (not the supplier) and the amount the court is seeking from you is \$10,000 or less and that court has not commenced hearing your case, you must pay the amount to the VCAT trust account at the time of lodgement and the court will transfer your case to VCAT.

OR

2. If your case is not covered by (1) above, you can still ask the court to transfer the matter to VCAT, but the court might not agree.

Do you want to pay the amount to the VCAT Trust Account? *

Yes No

Are you making this application in response to another VCAT application that has been served on you?

This question considers whether any other legal action has been initiated either at VCAT or in a court. VCAT and a court cannot deal with a matter at the same time. If an application is a counter claim made in response to a claim made by the other party, this may affect how, when and where the matters are dealt with.

If an application is made in response to another application to VCAT (the claim), then it is considered to be a counter claim. VCAT can arrange for the claim and the counter claim to be dealt with together. You will need to provide the VCAT file number.

If this application is in response to a court action (other than VCAT that has been served on you)

If a matter has been lodged in the Magistrates' Court, it may be transferred to VCAT. VCAT's application fees are lower. Costs are not generally awarded against the parties at VCAT and self-representation is encouraged where the matter is for less than \$10,000.

For matters involving more than \$10,000, a transfer to VCAT is at the court's discretion.

If the matter is transferred from a court to VCAT, the amount in dispute must be lodged into VCAT's Trust Account.

Case Study

The question is not relevant in John's case.

A common scenario is where a trader has not, in the consumer's view, satisfactorily completed the agreed work, so the consumer decides not to pay the bill. The trader may lodge an application with VCAT seeking an order for payment. If the trader has done the work, the consumer cannot legally withhold the payment. The consumer may however, lodge a counter claim about the quality of the work, and seek an order that the work be fixed or that the consumer does not have to pay.

Failing to lodge a counter claim may result in VCAT ordering the consumer to pay the outstanding money. The consumer would then have to lodge a separate claim for the work to be fixed and another hearing would be required.

HEARING ARRANGEMENTS

All parties are entitled to an interpreter, include the details of the person requiring the interpreter and the language and/or dialect required.

Hearing arrangements

If you believe that security may be needed at the hearing, please contact the Tribunal immediately after you have lodged your application in order to have satisfactory arrangements made.

Does the Applicant or Respondent require an interpreter at the hearing? * Yes No

Name of person requiring an interpreter

Title *	Surname *	Given name 1	Given name 2
Mr	SMITH	JOHN	WILLIAM

Language/dialect *
AUSLAN

Does any person at the hearing require any other special assistance? * Yes No

Please specify what special assistance is required *

WHEELCHAIR ACCESS

Supporting Documents

You should attach supporting information to your application. The Tribunal may require proof of purchase documents such as any invoices, receipts and/or the contract. The original quote and/or advertising material may be relevant along with any quotes for the rectification of the works. Evidence such as diary notes, correspondence, photos, technical reports and witness statements should also be attached to your claim. At the hearing your matter may be delayed or adjourned if the parties have not exchanged all the supporting documents.

Supporting documents

You must provide documents that support your application. For further information, please refer to the Application Guide.

- **Proof of ACN**
Copy of the ASIC search, CAV search or a receipt or invoice which includes the ACN number.
- **Business Name Extract**
Copy of the Business Name Extract naming the proprietors and the status of the business.
- **Other supporting documents**
Other supporting documents including further details of your claim, invoice(s) or receipt(s) for goods or services purchased, copy of contract for goods or services purchased, copy of consumer contract specifying unfair terms etc.

If providing attachment electronically, please supply as: doc;xls;doc;pdf

PAYMENT DETAILS

There is an application fee. This is payable at the time of lodgement. Because fees change annually, you should check before you lodge your application. For it to proceed, the VCAT Application must be accompanied by the appropriate fee. Payment methods are outlined in the form.

Fee Waiver

You may apply to VCAT to waive the fee if payment would cause you financial hardship. Information about waiver of fees and the form for applying for a waiver of fees, are available on the VCAT website vcat.vic.gov.au. Click on the 'Fees-Forms-Brochures' section, go to the 'Miscellaneous Forms'. Alternatively, you can contact VCAT and ask for a copy.

For concession card holders the fee waiver form requires personal information and a copy of the government benefit card. For those on a **low income** who do not hold a concession card another form should be used. Financial details such as income, expenses and bank balance are required.

Payment details

You must pay the relevant application fee at the same time you lodge this form. Fees may change each year. To find out about the current fee or whether you are entitled to a fee waiver, visit the VCAT website. Alternatively, call VCAT on 9628 9800 (1800 133 055 for callers from rural Victoria).

Fee Waiver

Are you applying for a fee waiver? * Yes No

Which Act/s are you making this claim under? *

(Please note if you are applying under more than one Act, the higher application fee will apply).

<input type="checkbox"/> Domestic Building Contracts Act 1995; where amount sought is under \$10,000	\$37.90
<input checked="" type="checkbox"/> Fair Trading Act 1999; where amount sought is under \$10,000	\$37.90
<input type="checkbox"/> Fair Trading Act 1999; where amount sought is \$10,000 or more but not exceeding \$100,000	\$314.10
<input type="checkbox"/> Fair Trading Act 1999; where amount sought is \$100,000 or more	\$629.30
<input type="checkbox"/> Motor Car Traders Act 1986 section 45 (rescission of agreement of sale of motor car);	\$37.90
<input type="checkbox"/> Owners Drivers and Forestry Contractors Act 2005;	\$314.10
<input type="checkbox"/> Owners Corporations Act 2006 Part 6 and Part 11, Divisions 1, 2, 3 and 4;	\$37.90
<input type="checkbox"/> Retirement Villages Act 1986.	\$314.10

Payment can only be made via the following methods:

- Online by Credit Card.
- By mail, cheque or money order made out to the Victorian Civil and Administrative Tribunal or using a credit card, please complete a Payment by Credit Card form available at the VCAT website or by calling VCAT.
- In person at the Ground Floor, 55 King Street Melbourne, you can pay over the counter by credit card, cash, eftpos, cheque or money order made out to the Victorian Civil and Administrative Tribunal.
- By fax, (you can only pay by credit card using this method), you will also need to complete a Payment by Credit Card form available at the VCAT website or by calling VCAT.

ACKNOWLEDGEMENT

Remember to sign and date the VCAT Application and tick the box to confirm that the information provided in the application is true and correct.

Acknowledgement

I understand and acknowledge that:

- To the best of my knowledge, all information provided in this application is true and correct and that no details relevant to the application have been left out.
- I approve the information that has been provided.
- It is an offence under section 136 of the *Victorian Civil and Administrative Tribunal Act 1998* to knowingly give false or misleading information to VCAT.

By ticking this checkbox I confirm that I have read and understood all the statements above *

Full name of person completing this application *

JOHN WILLIAM SMITH

Date *

01/06/2012

Availability

Check with VCAT about the current waiting time for hearings. If you cannot attend a hearing on specific dates/days, you should attach a covering letter to VCAT requesting that the matter not be scheduled for hearing at this time. This does not guarantee that matter will not be listed on one of the dates. VCAT may require evidence of your inability to attend on certain date(s). The date and time of hearings is at the discretion of the Tribunal.

LOGGING THE VCAT APPLICATION

Lodgement

You can lodge this completed form and any attachments online or by:

Mailing it to:

Victorian Civil and Administrative Tribunal
Civil Claims List
Melbourne VIC 3001

Delivering it in person to:

Victorian Civil and Administrative Tribunal
Civil Claims List
Ground Floor, 55 King Street
Melbourne VIC 3000
Office hours: 9am - 4.30pm Monday to Friday
(closed public holidays)

Faxing it to:

03 9628 9967

Telephone: 03 9628 9830

Email: vcacivil@justice.vic.gov.au

Website: <http://www.vcat.vic.gov.au>

Checklist – VCAT Application

- All relevant questions have been answered.
- Details and spelling checked (It is a good idea to get someone else to check the completed VCAT Application)
- Company documents or company extract obtained, if required.
- Business extracts obtained, if required.
- Where the application is in response to a claim made by another party, relevant information and court documents are attached and payment made to VCAT's Trust Account
- Summary of events has been prepared and copies of associated documents and evidence are attached (send copies, not originals)
- The VCAT Application is signed and dated
- Request for interpreter or special assistance completed, if required
- You have made a copy of the completed VCAT Application and attachments for your records
- Application fee/fee waiver application is enclosed.

WHAT HAPPENS NEXT?

Once the VCAT Application is lodged, VCAT will confirm receipt in writing and allocate it a reference number. VCAT may ask you for further information.

VCAT will then send a Notice of Hearing, with the date, time and location of the hearing. While VCAT usually hears civil claim matters in Melbourne, some matters are heard in suburban or regional areas.

For matters listed in Melbourne, where special circumstances limit a person's ability to travel, such as a medical condition or age, a party may request the matter be transferred to a local venue where VCAT sits. The party seeking the transfer must write to VCAT and provide medical evidence to support this.

VCAT will send a copy of the completed VCAT Application, any attachments and the Notice of Hearing to the respondent.

The parties may continue to negotiate, and settle all or part of the dispute, before the hearing. It is a good idea to prepare for the hearing by working out what you will say, and by getting the evidence in order.

AMENDING YOUR VCAT APPLICATION

Before you change your application or provide further information, you should wait to receive the VCAT reference number.

All further communications or documents lodged with VCAT must be in writing and include the reference number. You must also include the parties' names and reason for the amendment. If the monetary amount has changed, include supporting evidence such as an invoice or quote.

PREPARING FOR THE HEARING

There are a number of things you can do to prepare for the hearing. There generally is only one opportunity to present the case. Although success is not guaranteed, thorough preparation will assist you in presenting your case.

Witnesses

Witnesses are those who can confirm or support the claim made by the parties, for example, someone who was present when the goods were purchased. It is your responsibility to arrange your witnesses. You should check that your witness is willing to attend to give evidence. Confirm this in writing, and enclose a copy of the Notice of Hearing.

If a witness cannot attend the hearing in person, they should be asked to confirm their evidence by swearing an affidavit or making a statutory declaration. These forms are available on the VCAT website.

A party can compel a witness to appear in person, or to produce documentary evidence. This may be necessary where the person has refused to attend. This can be done by completing a Summons to Appear form and asking VCAT to issue it. A fee is involved (see VCAT website). Because VCAT has the discretion to refuse to issue a summons, calling the witness must be necessary to your case. You must serve a copy of the summons on the witness and pay the witness conduct money (see glossary). You may also be liable for other costs associated with the witness attending, if the witness makes a submission for those costs.

Prepare a list of questions for your witnesses, or the respondent and his/her witnesses.

Folder of Evidence

It is a good idea to arrange all the documents and materials in a folder with an index and numbering system. This will assist you to find them easily during the hearing. Remember to include the notes for your verbal submission. If appropriate, you could give VCAT and the other party a copy of the folder. You should also have pen and paper ready for you to take notes during the hearing.

Special Requirements

If you have any special requirements, such as presenting video evidence, you must arrange this with VCAT before the hearing date. Your request should be in writing and include the reference number. You should also follow up your request with a phone call before the hearing date. If you intend to use a laptop computer at the hearing, you should make sure the battery is fully charged. Access to a power point may be difficult.

ADJOURNMENTS

If you need to adjourn the matter, you must write to VCAT and request an adjournment. You must provide reasons and evidence to support your request, such as a doctor's appointment card. You should also seek the written consent of the other party and attach this to your request.

A request to adjourn must be made to VCAT at least two clear business days before the hearing date. You may submit the request via fax and you should phone VCAT to confirm an adjournment has been granted.

If the other party will not agree to requesting an adjournment, submit the request to VCAT anyway and note that you did attempt to obtain consent from the other party.

*Principal Registrar
Civil Claims List
Victorian Civil and Administrative Tribunal
GPO Box 5408CC
MELBOURNE VIC 3001*

*Mr J.W. Smith
123 Main Street
MELBOURNE VIC 3000
Ph: 8888 8888*

26 August 2011

Dear Sir/Madam,

*Re: Mr J.W. Smith v AAA Fridges
Mr J.W. Smith v Acme and Daughter Pty Ltd
VCAT Reference No: C2011/0000*

I write seeking an adjournment of the matter currently listed for 10 November 2011, as I have prearranged interstate travel. I enclose a copy of my flight details, outlining my four week stay.

I have obtained the consent of the other parties and enclose written confirmation.

*Yours faithfully,
J.W. Smith*

The parties may settle the matter right up to the start of the hearing. If a last minute offer to settle is received from the other party, you may ask VCAT to adjourn the matter.

At the hearing, the VCAT member may suggest the parties attempt to resolve the matter. The member will leave the hearing room while discussions take place. If agreement is reached, VCAT may make consent orders to that effect.

If a settlement is reached before the hearing date, it is important to confirm the agreement in writing. It is suggested that you ask VCAT to adjourn the matter until you are satisfied that the terms of the settlement agreement have been met. Once the matter is settled, you should write to VCAT and ask for the VCAT Application to be withdrawn.

*The Proprietor
AAA Fridges
20 Green Street
SMITHVILLE VIC 3002*

*Mr J.W. Smith
123 Main Street
MELBOURNE VIC 3000
Ph: 8888 8888*

30 September 2011

Dear Sir/Madam,

*Re: Invoice No - 999
VCAT Reference No: C2011/0000*

I refer to the above matter, further to our telephone discussion yesterday, I confirm our agreement that you will repair the refrigerator within fourteen days of the date of this letter. It is also agreed that you will provide a twelve month written warranty and pay me the sum of \$120.

Upon completion of the repairs and clearance of the funds, I confirm that I will withdraw the VCAT application.

I look forward to the full settlement of this matter.

*Yours faithfully,
J.W. Smith*

Cc ACME and Daughter Pty Ltd

APPROPRIATE DISPUTE RESOLUTION

VCAT may direct the parties to attend mediation or a compulsory conference. The purpose of this is to try to resolve the matter without the need for a hearing. For more information visit the VCAT website and click on 'Mediation – Civil Disputes'.

PREPARING FOR THE HEARING

Checklist – Preparing for the hearing

Folder of evidence/information prepared and put in order:

- *Copy of VCAT Application*
- *Notice of Hearing*
- *Evidence collected and organised, including:*
 - *invoices, quotes, contracts, diary notes*
 - *photographs, video*
 - *correspondence*
 - *technical reports*
 - *damaged product*
 - *statutory declaration or affidavit by witness(es)*
- *Written outline of the verbal submission, including:*
 - *history/summary of events*
 - *statement of what is being claimed/orders sought*
 - *list of questions to ask witnesses*
- *Pen and paper to take notes.*

Use the space below to list any further matters that you need to attend to or think about prior to the hearing.

WHAT WILL HAPPEN ON THE DAY OF THE VCAT HEARING?

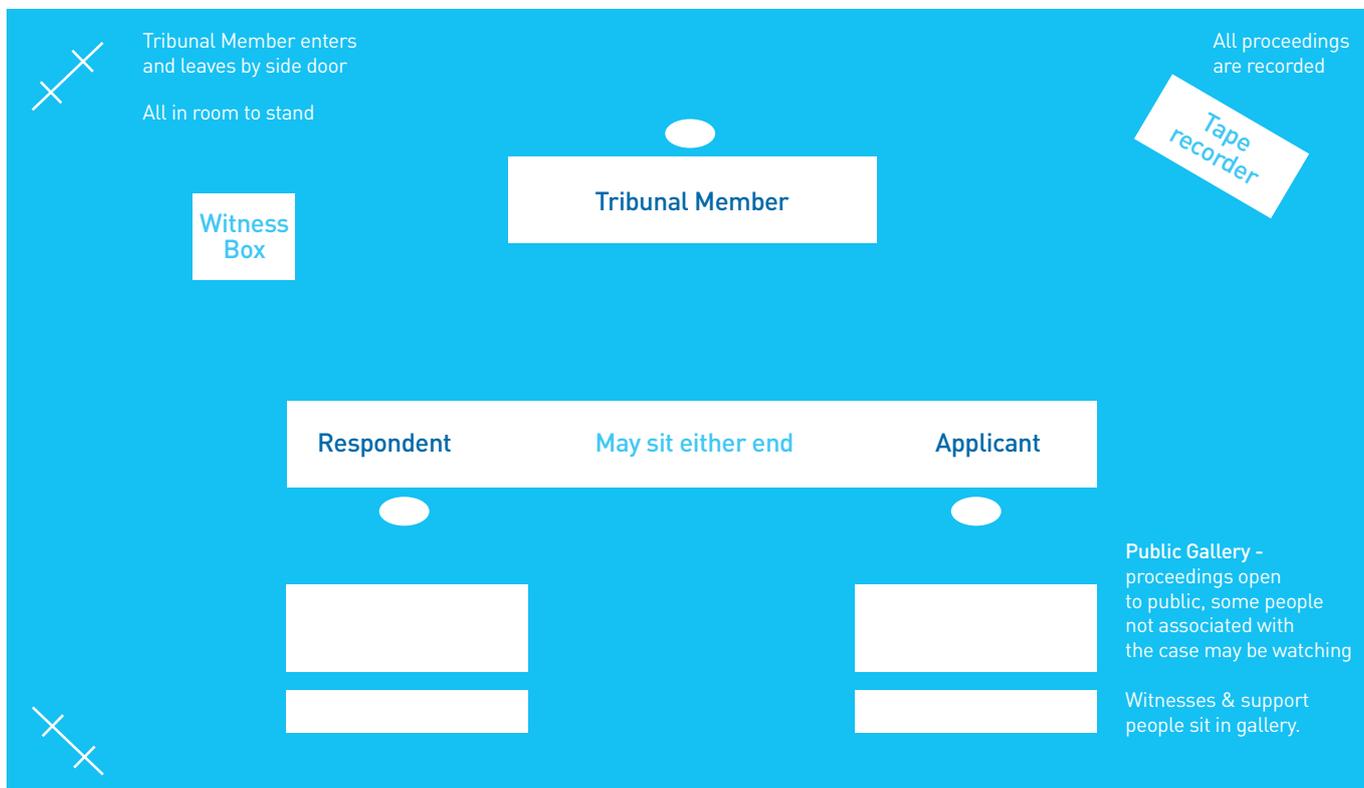
Attending VCAT

Neat, casual dress is suitable for VCAT hearings.

You should arrive at least fifteen minutes before the scheduled hearing time. You must not be late as VCAT can proceed to hear or dismiss the matter in your absence.

Check in at the counter to let VCAT staff know you have arrived. You will be advised where to wait and in which room the matter will be heard.

You should turn off mobile phones and remove sunglasses before entering the hearing room.



When presenting at VCAT

- Be courteous and polite, err on the side of formality;
- Speak slowly and clearly;
- Be assertive where necessary to get your point across;
- Don't be afraid to ask the VCAT member to explain points or statements;
- Present information in a clear and logical form;
- Address the VCAT member as 'Sir' or 'Madam';
- Address the other party by name eg 'Ms Jones', or as 'the respondent/applicant'; and
- Address witnesses by name, for example, 'Mr Lee'.

STEP 1 VCAT MEMBER

- enters room, all stand
- will set the tone and give a brief outline of the hearing process
- may suggest or direct, at any time throughout the hearing, that the matter be 'stood down' to allow settlement discussions to take place between the parties.

STEP 2 EACH PARTY

will be required to make an oath or an affirmation to tell the truth.

STEP 3 PARTIES

advise the VCAT member of witnesses who are present. The VCAT member may request witnesses leave the room and wait outside until they are called. Witnesses will be required to be sworn in either at this time, or when they are called to give evidence.

STEP 4 APPLICANT

- speaks first
- it is the responsibility of the applicant to prove the case
- if written reasons for the decision are required, the VCAT member should be advised
- outlines the basis of the VCAT Application including a full history of the dispute and what orders they want the VCAT member to make
- tables evidence, for example, displays damaged item, questions the witnesses as appropriate.

STEP 5 RESPONDENT

- is entitled to ask the applicant or witness about the evidence, this may occur during the applicant's presentation or as part of their own presentation
- outlines her/his perspective on the dispute and the preferred outcome
- tables evidence and calls witnesses as appropriate.

STEP 6 APPLICANT

- has opportunity to respond, ask questions and challenge evidence
- summarises key points of their claim.

STEP 7 VCAT MEMBER

- may ask the respondent if there is anything else they wish to add
- generally will advise of their decision immediately. However, if the matter is complex or written reasons are required, the VCAT member may decide to provide a decision at a later date
- will leave the hearing room (or ask you to leave), parties are expected to stand when the VCAT member does so, and to leave the room straightaway.

ORDERS MADE BY VCAT

VCAT can make a range of orders.

If an order for money is made, the respondent is ordered to pay an amount to the applicant. It is advisable to request a certified copy of a monetary order. This will be needed if enforcement proceedings are required. A request for a certified copy can be made at the hearing or in writing to VCAT.

An order may be made for work to be done, or for the trader to return goods, or to supply the goods or service. In these cases it is advisable to request the order include a clause allowing the applicant to renew the VCAT Application and seek a monetary order, if the respondent fails to comply within a specified time. In 'work to be done' orders the VCAT Member should also be asked to specify in detail the works required.

You should have a pen and paper ready to take down the details of the order. A copy of the order is sent to all parties by mail within a few weeks.

WHAT IF ONE OF THE PARTIES DOES NOT ATTEND THE HEARING?

If you are the applicant and you fail to attend, the matter will be dismissed. You can apply for a review hearing, forms are available from VCAT. You must provide a satisfactory reason for not attending. VCAT will require evidence to support this.

If the respondent fails to attend, the matter will proceed in their absence and a decision will be made. VCAT will send a copy of the order to the respondent. The respondent has fourteen days from the date they become aware of the order, to apply for a review hearing. All parties to the dispute will be advised of the review hearing date. At this hearing the respondent must provide the Tribunal with a satisfactory reason for not attending the original hearing. If a review is granted, the previous orders are suspended pending a further hearing. The matter is then usually relisted for another date.

The purpose of a review hearing is to decide whether there were reasonable grounds for non-attendance and whether the matter will be reheard. All parties should attend a review hearing. This is different to an appeal of a VCAT decision (refer to the Appealing VCAT Decisions section).

If the Tribunal is not satisfied that the respondent had a satisfactory reason for not attending, the review application will be dismissed and the orders will stand.

Checklist – On the day of the hearing

- *Neat dress*
- *Arrive at least fifteen minutes before the scheduled hearing time. Check in at the counter and check which room the hearing will be held in*
- *Mobile phone off, sunglasses removed*
- *Check that folder of materials is in order*
- *Check that witnesses have arrived*
- *If not done previously, give the other party copies of relevant documents and photographs*
- *If appropriate, speak to the other party and try to settle before the hearing commences.*

APPEALING VCAT DECISIONS

There are very limited grounds for appealing VCAT decisions. The appeal is to the Supreme Court of Victoria, and only on a question of law, or a denial of natural justice. The appeal must be made within a specified time. An appeal to the Supreme Court can be expensive and difficult, and you should seek legal advice before taking this step.

ENFORCEMENT

VCAT may make an order, but this does not guarantee that the other party will comply with it. It is up to you, not VCAT, to take action to enforce an order if the respondent does not comply. This can be difficult and costly, and you may find it helpful to seek legal advice if you find yourself in this situation.

If an order is made for work to be done and it includes a clause that allows you to seek a monetary order if the respondent fails to do the work, you should write to VCAT and ask for the matter to be renewed. Your letter should include the VCAT reference number, and the amount you are seeking. If appropriate, include a copy of a quote for the work to be done by another suitably qualified person. There is no fee for a renewal of proceedings.

If a monetary order is made, and you have not received payment by the due date, you should write to the respondent and enclose a copy of the order. The letter should ask for payment by a certain date, and state that if payment is not received further legal action will be taken. It should also state that this may result in further costs to the respondent.

VCAT does not enforce monetary orders. Generally the applicant is required to take action in the Magistrates' Court. A certified copy of the VCAT order is required to do so. If this was not requested and obtained at the original hearing, it can be requested later by writing to VCAT (including the VCAT reference number).

If your claim is against a motor car trader or travel agent, you may wish to advise the relevant licensing authority before taking action in the Magistrates' Court. Contact Consumer Affairs Victoria for further information.

WHERE TO OBTAIN FURTHER INFORMATION AND ASSISTANCE

- **Consumer Affairs Victoria**
Victorian Consumer and Business Centre
113 Exhibition St, Melbourne 3000
Hours of operation: Monday – Friday, 8.30am-5.00pm, except public holidays
Helpline: 1300 55 81 81
Website: consumer.vic.gov.au
- **Victoria Legal Aid (VLA)**
VLA offers a telephone Legal Information Service (03) 9269 0120 or 1800 677 402 for country callers. VLA also provides a Duty Lawyer Service at VCAT in Melbourne on weekdays. The duty lawyer may be able to provide free legal advice and limited assistance to applicants and respondents in civil claims matters, but is not able to provide ongoing assistance. If you would like to speak to the VLA duty lawyer, enquire at the ground floor counter at VCAT.
Website: legallaid.vic.gov.au
- **Victorian Civil and Administrative Tribunal**
55 King St, Melbourne 3000
Ph: (03) 9628 9830 Country Callers 1800 133 055
Website: vcat.vic.gov.au
- **Community Legal Centres**
For details of your nearest community legal centre contact the Federation of Community Legal Centres (03) 9652 1500 or go to the website communitylaw.org.au
- There may also be an ombudsman or other dispute resolution scheme relevant to your matter.

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- Written by:** Gillian Wilks and Jackie Galloway, Peninsula Community Legal Centre Inc.
- Designed by:** Consumer Affairs Victoria (2006)
Kontrast Design (2012)
- Produced by:** Peninsula Community Legal Centre Inc.
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About Peninsula Community Legal Centre Inc (PCLC)

PCLC has been providing free community legal services to people who live, work and study in the South, East and Westernport regions of Melbourne for over thirty years. Along with providing general legal advice and casework services, the Centre offers specialist family law, family violence, child support, tenancy and consumer advocacy services. PCLC runs community legal education programs and is active in law reform and legal policy development work.

About Consumer Affairs Victoria (CAV)

Consumer Affairs Victoria is Victoria's consumer affairs regulator. Its purpose is to help Victorians be responsible and informed traders and consumers. Consumer Affairs Victoria advises and educates consumers, tenants, traders and landlords on their rights, responsibilities and changes to the law. It also conciliates disputes between consumers and traders. Consumer Affairs Victoria enforces and ensures compliance with consumer laws.

FEEDBACK

We welcome feedback about the usefulness of the Civil Claims Workbook and suggestions for how it may be improved. Please email your comments to Peninsula Community Legal Centre pclc@pclc.org.au.

DISCLAIMER

Every effort has been made to ensure that the information contained in the Civil Claims Workbook is accurate at the time of publication. However, laws and procedures change and the details and circumstances surrounding particular consumer issues will vary. The Civil Claims Workbook is not a substitute for professional legal, consumer or financial advice about your specific matter.

Consumer Affairs Victoria (CAV) and Peninsula Community Legal Centre Inc. (PCLC) disclaim any liability or responsibility for any errors or omissions in the Workbook, or for any loss or other consequence that may arise from a person or persons relying on anything in the Workbook.

The examples discussed in the Civil Claims Workbook are fictitious. Any reference to the names of people or companies is purely coincidental and accidental.



GLOSSARY

DEFINED TERM	DEFINITION
Adjournment	where a hearing is deferred to a later time or date upon request of one or more of the parties
Affidavit	written statement sworn on oath before an authorised person
Applicant	the party who lodges the application
Clear title	full ownership, without debts or other charges over the property
Conciliation	a method of dispute resolution in which a third party tries to assist the parties in dispute in reaching an agreement.
Conduct Money	a reasonable amount of money (usually equivalent to public transport fare or petrol cost) paid to a witness at the time of service to enable them to attend the tribunal hearing
Consumer	a purchaser of goods or services ordinarily used for personal, domestic or household use The Australian Consumer Law has broadened the definition of 'consumer' to include corporations in some cases.
Consumer Guarantee	a right under Australian Consumer Law regarding purchase of goods or services
Contract	an agreement, whether or not in writing, entered into by the consumer and trader/service provider for the supply of specified goods and/or services
Costs	expenses that are incurred in taking a matter to a tribunal or a court, for example, application fees, time off work, travel and legal representation
Counter Claim	a claim made to offset another claim.
Damages	an order made by a court or tribunal to compensate a party for loss suffered as a result of an action or inaction of the other party
Disputes	arise where a party to the consumer contract is of the view that the other party has not satisfactorily met the terms of the contract
Enforcement	legal action taken to ensure that an order made by a court or tribunal is obeyed
Express Warranty	statement made by the trader about the qualities of the goods or services
Fit for disclosed purpose	the product does what it was described it would do by the seller
Implied warranty	the principle that the goods and/or services purchased will be fit for the intended purpose, regardless of whether expressed in the terms of the agreement
Mediation	parties to a dispute attempt to discuss and settle their dispute with the assistance of an independent third party.
Misleading and Deceptive Conduct	an action or failure to act that misleads and/or deceives
Misrepresentation	unintentionally or deliberately making false statements aimed at enticing a customer to enter into an agreement
Monetary Order	an order to make a payment of money.
Rectification	to repair or make good
Rescission	cancellation
Respondent	the party against who a legal action has been taken
Statutory Declaration	written statement signed and declared to be true and correct before an authorised person
Trader	a supplier of goods and/or services in trade or commerce (whether or not it is conducted for profit)
Unconscionable conduct	conduct by a trader or service provider that takes unfair advantage of another party
Undisturbed Possession	a guarantee that the trader will not reclaim the goods or prevent a consumer from using them, except where the consumer fails to meet their obligations or was on previous notice
Unfair Terms	a term(s) in a contract that creates a significant imbalance in the rights and responsibilities of the parties to the contract
VCAT	the Victorian Civil and Administrative Tribunal
VCAT Application	the Application to the Civil Claims List form
Warranty	a term in a contract where a promise is made to repair or replace a defect that appears/ becomes apparent within a specific timeframe
Witness	a person who can confirm or support aspects of the claims the applicant/respondent is making.
Workbook	the Civil Claims Workbook
Written reasons	comprehensive written explanation of Tribunal decision(s)