

AUSTRALIA / JUDGMENT

Hogan v Wood

[2026] NSWCATEN 11**COURT**

Civil and Administrative Tribunal

DECIDED

28 September 2026

BEFORE

I R Coleman SC ADCJ, Principal Member

CASE / FILE NUMBER

2026/00227293

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Civil and Administrative Tribunal New South Wales

Medium Neutral Citation: Hogan v Wood [2026] NSWCATEN 11**Hearing dates:** On the papers**Date of orders:** 28 September 2026**Decision date:** 28 September 2026**Jurisdiction:** Enforcement**Before:** I R Coleman SC ADCJ, Principal Member

Decision:

(1) The contempt referral application lodged on 4 June 2026 is dismissed.

(2) A party seeking an order for costs lodge and serve written submissions not exceeding 10 pages in length inclusive of attachments in support of such application within 28 days of the Tribunal's decision.

(3) A party opposing an order for costs lodge and serve written submissions not exceeding 10 pages in length inclusive of attachments within 56 days of the Tribunal's decision.

(4) A party seeking an order for costs lodge any written submissions not exceeding 3 pages in length in response to submissions lodged pursuant to order (3).

(5) A party opposing an order pursuant to s 50(2) of the Civil and Administrative Tribunal Act 2013 (NSW) dispensing with a hearing include in submissions lodged pursuant to these orders the grounds on which such order is opposed.

Catchwords: CONTEMPT — referral application — whether applicant adduces admissible evidence capable of establishing beyond reasonable doubt that respondent wilfully disobeyed summons for production of documents — whether applicant adduces evidence capable of establishing that respondent failed to produce documents in his possession or control — whether if contempt referral application made out applicant's failure to summons respondent to attend and produce documents disentitles applicant to exercise of discretion to grant contempt referral application

Legislation Cited:	Civil and Administrative Tribunal Act 2013 (NSW) Civil and Administrative Tribunal Rules 2014 (NSW)
Cases Cited:	Australasian Meat Industry Employees Union v Mudginberri Station Pty Ltd (1986) 161 CLR 98; [1986] HCA 48 Bott v New South Wales Land and Housing Corporation (No. 2) [2018] NSWCATCD 2 Burns v Corbett [2015] NSWCATAD 188 Commissioner for Fair Trading v Rixon (No. 5) [2002] NSWSC146 Construction Forestry Mining and Energy Union v Boral Resources (Vic) Pty Ltd (2016) 256 CLR 375; [2016] HCA 21 DBI v ZTT [2021] NSWCATEN 4 Home 789 Resources Pty Ltd v Zheng Shang [2022] NSWCATEN 2 Keddis v Pelders [2025] NSWCATEN 1 Leighton-Daly v Antoinette Campbell Pty Ltd CAN 684 438 909 [2025] NSWCATEN 3 Mohareb v Palmer [2017] NSWCA 281 Mohareb v Palmer (No. 4) [2017] NSWDC 127 O’Born v Commissioner for Government Transport (1959) 77 WN(NSW) 81 Trade Practices Commissioner v Arnotts Ltd (No. 2) (1989) 21 FLR 303; [1989] FCA 340 Turner v Department of Justice [2016] NSWCATAD 146 Witham v Holloway (1995) 183 CLR 525; [1995] HCA 3
Category:	Principal judgment
Parties:	Andrea Hogan (Applicant) Don Wood (Respondent)
Representation:	V Keddis (Business Consultant Inovyse) (Applicant) Bannermans Lawyers (Respondent)
File Number(s):	2026/00227293
Publication restriction:	Nil

REASONS FOR DECISION

By application lodged on 4 June 2026 Andrea Hogan (Applicant) sought orders that pursuant to s 73(2A) of the Civil and Administrative Tribunal Act 2013 (NSW) (CAT Act) Don Wood of O’Neill Strata Management (Respondent) be found to be in contempt of the Tribunal for failing to produce documents by 20 March 2026 per Summons granted 26 February 2026 in proceedings in the Consumer and Commercial Division of the Tribunal (contempt referral application).

The Applicant further sought that the Respondent be fined in an amount “as determined by the Tribunal pursuant to ss 199(3)(d), 199(7), and 200 of the District Court Act 1973 (NSW)”.

As the terms of s 73(1) of the CAT Act make clear, the power to fine the Respondent in accordance with the provisions of District Court Act is enlivened if a person is found guilty of contempt of the Tribunal “committed in the face of the Tribunal or in the hearing of the Tribunal”. Having regard to the basis of the contempt alleged against the Respondent, the jurisdiction of the Tribunal to impose a fine on the Respondent cannot be enlivened. The Tribunal has jurisdiction pursuant to s

73(5) of the CAT Act to refer the Respondent to the Supreme Court to be dealt with for contempt of the Tribunal by reason of the failure to comply with a summons.

The Respondent opposed the granting of the relief sought by the Applicant and sought the dismissal of her application, with costs.

The Applicant particularised the Respondent's alleged failures to comply with the Summons issued to him in her application. On 6 July 2026 the Applicant lodged an Affidavit in support of her claim.

On 4 August 2026 the Respondent lodged an Affidavit and submissions

On 18 August 2026, the Applicant lodged a further Affidavit. The Applicant's second Affidavit of 18 August 2026 included submissions in support of her contempt referral application.

Principles governing the contempt referral application

The principles governing the application are not in doubt, and do not require extensive reiteration. Section 73(2A) of the CAT Act provides that failing without reasonable excuse to comply with a Summons issued for the purposes of the Act may constitute contempt of the Tribunal. The enactment of s 73(2A) removed the uncertainty which earlier decisions had identified (see *Home 789 Resources Pty Limited v Zheng Shang* [2022] NSWCATEN 2). Although submitting that the contempt referral application lacks merit, the Respondent does not dispute that the Tribunal has jurisdiction to refer a person to the Supreme Court to be dealt with for contempt in reliance on the failure without reasonable excuse to comply with a Summons issued by the Tribunal.

In order for the discretion to refer the Respondent to the Supreme Court to be dealt with for contempt to be enlivened, the Applicant must adduce admissible evidence of conduct which is capable of amounting to contempt (*Mohareb v Palmer* [2017] NSWCA 281) (*Mohareb*). Unlike other proceedings in the Tribunal, pursuant to s 38(3)(a) of the CAT Act, the Tribunal must observe the rules of evidence in a contempt referral application. There would be little point in doing otherwise, given that, if the contempt referral application is granted, the Prothonotary of the Supreme Court would not proceed in reliance upon evidence which was inadmissible.

In *Bott v NSW Land and Housing Corporation (No 2)* [2018] NSWCATCD 2, the Tribunal said, at [24] that, in an application pursuant to s 73 of the CAT Act, there were two principal matters for consideration, they being:

the part that contempt plays in the enforcement proceedings of the Tribunal; and

the need to uphold and advance the integrity of the system of justice in New South Wales.

Granting a contempt referral application is discretionary (*Burns v Corbett* [2015] NSWCATAD 188; *Mohareb* at [22]). If the conduct complained of is held to be capable of amounting to contempt, the Tribunal nevertheless has a discretion as whether to grant the contempt referral application.

The power to punish for contempt is to be used sparingly, and only in serious cases (*Mohareb v Palmer* (No. 4) [2017] NSWDC 127; *DBI v ZTT* [2021] NSWCATEN 4). To constitute contempt, conduct must amount to wilful, as opposed to “a casual, accidental or unintentional” failure to comply with, in this case, a Summons (*Australasian Meat Industry Employees Union v Mudginberri Station Pty Limited* (1986) 161 CLR 98; [1986] HCCA 46 (*Mudginberri*); *Turner v Department of Justice* [2016] NSWCATAD 146).

The discretion to grant a contempt referral application is informed by whether there are other remedies available to secure compliance with the Summons, and the extent to which the party seeking referral has sought to enforce the summons for production of documents. If an applicant has not pursued either of those avenues of redress, the discretion to refer is unlikely to be exercised (*Leighton-Daly v Antoinette Campbell Pty Ltd ACN 684 388 909* [2025] NSWCATEN 3).

It is generally accepted that the criminal standard of proof, which is beyond reasonable doubt, applies to civil contempt proceedings (*Witham v Holloway* (1995) 183 CLR 525; [1995] HCA 3, *Construction Forestry Mining and Energy Union v Boral Resources (Vic) Pty Ltd* (2016) 256 CLR 375; [2015] HCA 21). In order to succeed with her contempt referral application, the Applicant needs to adduce evidence which is capable of establishing beyond reasonable doubt that the conduct complained of constitutes contempt of the Tribunal.

The Tribunal will only grant a contempt referral application which is sufficiently serious. That determination is objective and fact sensitive. If the Applicant makes out her case for referral, the Tribunal would not decline to grant the relief she seeks on seriousness grounds. If a person who the Tribunal directs by Summons to produce documents is found to have wilfully and without reasonable excuse failed to do so, that is a serious matter. The enactment of s 73A(2A) of the CAT Act reinforces that wilful and unexcused failure to comply with a summons is capable of being a serious matter.

Before a person can be dealt with for contempt for failing to produce a document on Summons, there must be evidence capable of establishing beyond reasonable doubt that the document exists, or did exist, and that the recipient of the summons had it in his/her possession or control, or, if he or she no longer does, has the capacity to produce the document (*O’Born v Commissioner for Government Transport* (1959) 77 WN(NSW) 81). The Applicant needs to adduce admissible evidence capable of establishing those matters beyond reasonable doubt if her contempt referral application is to be granted.

Section 48 of the CAT Act is concerned with the “Issue of Summons”. Section 48(3) of the CAT Act provides that a Summons issued by the Tribunal may require the person to whom it is addressed (a) “to attend and given evidence” or (b) “to attend and produce documents or other things” or both. The CAT Act does not expressly provide for the examination of a person who is required to attend the Tribunal in response to a Summons issued pursuant to s 48. Nor does Rule 34 of the Civil and Administrative Tribunal Rules 2014, which is concerned with the “Issue of Summons” expressly so provide. The Summons issued by the Tribunal on the application of the Applicant in this case was for the production of documents only. There is no rational or legal basis for

suggesting that a person summonsed to attend and give evidence could not be examined on oath or affirmation in relation to any asserted non-compliance with the Summons to produce documents (*Trade Practices Commission v Arnotts Ltd (No 2)* (1989) 21 FCR 306; [1989] FCA 340). The copy of the Summons attached to the Applicant's contempt referral application has Section A "Summons to attend to give evidence only" deleted and Section C "Summons both to attend to give evidence and to produce" deleted, leaving only Section B "Summons to produce only". Unless the recipient of a Summons to attend to give evidence and produce documents could be examined in relation to the alleged failure to produce documents, requiring attendance and production of documents could have no utility.

Applicant's evidence

As is apparent from the material lodged by the parties, the Applicant is the owner of a Lot in a residential Strata Plan. Since on or about 31 July 2025, the Respondent, through an entity referred to as "O'Neill Strata Management" (OSM) has been the managing agent for the Strata.

Under the heading "Origin of summons", the Applicant alleged that the Summons was issued in relation to proceedings in the Tribunal in which the Applicant is "contesting the conduct of the EGM of 24 July 2025 and the appointment of O'Neill Strata Management". The Applicant alleged that the meeting was "convened, conducted, and minuted by the Strata Secretary Ms Julie Stockdale". The Applicant alleged that "there is no doubt that each of the documents summonsed existed". Although that is the Applicant's opinion, belief or conclusion, that is not evidence capable of establishing beyond reasonable doubt that each of the documents alleged not to have been produced exists, or previously existed.

Attached to her Affidavit of 6 July 2026, the Applicant provided a number of tables showing the documents which she conceded had been produced, and those which she asserted had not been. The Applicant annexed to her Affidavit the letter from OSM to the Tribunal of 19 March 2026 producing the documents, and proffering an explanation for the non-production of documents in response to the Summons. The letter from OSM of 19 March 2026 asserted that documents which had not been produced were "not available" or, in relation to the EGM which the Applicant asserts was held on 31 July 2025 were not available because no EGM was held on that date, thereby precluding the existence of records of a meeting on that date. In relation to the AGM of 21 October 2025, OSM suggested that there were "no vote summary records used to determine or record the resolution of all motions", and that they were thus unable to be produced, that no meeting was held to approve the obtaining of legal advice in December 2025, and as a result no agenda or minutes were available. A similar explanation was proffered in relation to the approval of the transfer of funds from the trust account to an interest bearing account on or about 16 December 2026- intended to be 2025.

Annexure 5 to the Applicant's Affidavit was a communication from Ms Stockdale to the Tribunal of 13 May 2026. In the course of her communication, Ms Stockdale suggested that a Summons, which had apparently been directed to her personally, should have been addressed to the Owners Corporation and that documents were "nevertheless produced and lodged under the summons

on my behalf by O'Neill Strata Management on 20 March 2026". Ms Stockdale asserted that, on or before 20 March 2026 she had provided OSM with "all the relevant records pertaining to the EGM held on 24 July 2025" but that a number of documents did not appear to have been included in the material lodged on 20 March 2026, they being:

"• Pre-meeting voting form for Lot 8

- BCC recipient list for all relevant emails sent pre and post EGM
- Information pack
- EGM meeting minutes which included attendees, proxies, vote count etc."

Ms Stockdale added that "If those documents were not included in the material lodged on 20 March 2026, that should not be characterised as any obstruction by me. I had already provided the relevant EGM correspondence and related documents" to OSM. Ms Stockdale concluded by saying with respect to the Summons for production of documents relating to the EGM held on 24 July 2025 a number of documents were provided, they being:

"1. EGM invitation issued on 16 July 2025, with email record showing the owner recipients included in BCC;

2. pre-meeting voting form email issued on 18 July 2025, with email record showing the owner recipients included in BCC;
3. EGM Zoom meeting link and agenda issued on 22 July 2025, with email record showing the owner recipients included in BCC;
4. information pack compiled by the SP3380 Strata Committee, sent with Zoom meeting link on 22 July 2025;
5. EGM meeting minutes email issued on 31 July 2025, with email record showing the owner recipients included in BCC, the minutes record the meeting attendance, proxies and voting summary;
6. Pre-meeting voting forms;

Copies of pre-meeting voting forms for Lots 1, 2, 7 (previously submitted to NCAT), and also for Lot 8. As a side note, Lot 5 cast its votes in favour of appointing [OSM] during the EGM. The resulting vote in favour of appointing [OSM] was therefore recorded as 5 of 7 financial owners."

The Applicant appears to allege that Ms Stockdale provided the Respondent with documents which he failed to produce in response to her Summons. As she has not deposed to the matters identified above, Ms Stockdale's statement cannot advance the Applicant's application.

Respondent's evidence

In his Affidavit, the Respondent deposed to having produced, or caused to be produced, a number of documents to which the Applicant's Summons referred. The Respondent alleged that as managing agent on behalf of the Owners Corporation, OSM "holds both physical and electronic copies of the books and records of the Owners Corporation" and that, between 27 March 2026 and 19 March 2026 the Respondent "conducted multiple searches of the books and records of the Owners Corporation using SMATA and the records physically provided to [OSM] (by the previous managing agent) and began compiling my response to the Summons".

After identifying the documents which had been produced the Respondent referred to "matters related to notice to comply issued on Lot 3 17 December 2025 – post EGM governance and transparency relevance". The Respondent alleged that he had been "informed by the Owners Corporation that a Strata Committee was not held to approve the obtaining of legal advice and as a result no agenda or minutes are available". With respect to the "withdrawal of \$60,000 from the Owners Corporation's trust account on 15 December 2025 – post EGM governance and transparency relevant" the Respondent alleged that he had been "informed by the Owners Corporation that a Strata Committee meeting was not held to approve the transfer of funds from the trust account to an interest bearing account and as a result no agenda or minutes are available".

With respect to the EGM of 24 July 2025, the Respondent identified documents which had been produced and those documents which had not on the asserted basis that the documents sought by the Applicant's Summons did not exist. The Respondent explained, and apologised for, his failure to have initially produced documentation but alleged that the Applicant "is now in possession of all requested documents and has not suffered any detriment and/or prejudice as a result of my inadvertent omissions".

Applicant's further evidence

In her Affidavit of 18 August 2026, the Applicant disputed the veracity of a number of the Respondent's claims with respect to production of documents and alleged that the Respondent continued to fail to produce the documents identified in Annexure B to her Affidavit.

Parties' submissions

In her primary submissions of 6 July 2026, the Applicant submitted that the Respondent had a duty to produce any document identified in the Summons which was "in his possession, custody or control". The Applicant submitted that the Respondent could not "simply produce a disarray of documents" in the hope that she and the Tribunal would accept without review his production. The Applicant submitted that the Respondent was obliged to make proper enquiries and efforts to produce documents that are not in his possession. The Applicant relied on the Respondent's absence of objection to the Summons.

In his submissions, the Respondent relied on his assertion that he had never had the documents in his possession or control and that, to the best of his knowledge, information and belief, the documents did not exist and would not have come into existence because the events which they would record had themselves not occurred.

In her reply submissions of 18 August 2026 the Applicant reiterated her assertion that “beyond reasonable doubt [the Applicant] has proven that [the Respondent] has not complied with the Summons”. The Applicant submitted that the Respondent and his lawyers “agree with this conclusion”. Whilst it is not in issue that the Respondent has not produced some of the documents identified in the Summons, as his evidence and the submissions on his behalf make clear, the Respondent disputes that he is in breach of the Summons as he contends that he is not in possession of, and has never been in possession of the documents identified in the Summons which he has failed to produce.

The Tribunal is determining a contempt referral application, not the application itself. In those circumstances, and particularly as the evidence of neither the Applicant nor the Respondent has been tested by cross-examination, the Tribunal does not decide the contempt referral application on the basis that the evidence of the Applicant cannot be preferred to that of the Respondent. Having regard to the authorities, it is necessary that the Applicant adduce admissible evidence capable of establishing that the Respondent has had the documents identified in the Summons which have not been produced in his possession or control.

The Applicant further submitted that she does not have to adduce evidence capable of proving beyond reasonable doubt any specific or any intention to disobey the Summons in order to make out her claim. Whilst the intention of the Respondent would be relevant at a hearing of a contempt application or on the issue of penalty if contempt were proved, it does not assume significance for present purposes. If the Applicant adduces evidence capable of establishing beyond reasonable doubt that the Respondent has or has had in his possession or control the documents which have not been produced pursuant to the Summons, that would be evidence capable of establishing that the failure to comply with the Summons was intentional or wilful, and not inadvertent.

Consideration

In *Keddis v Pelders* [2025] NSWCATEN 1 (Pelders), Deputy President Hennessey ADCJ helpfully considered the underlying rationale of the contempt power in the context of the exercise of discretion to refer an application to the Supreme Court in reliance upon the alleged failure to comply with a Summons, which was found to be capable of amounting to contempt. Her Honour referred to the decision in *Commissioner for Fair Trading v Rixon (No 5)* [2022] NSWSC 146, in which it was held, at [25], that the “underlying rationale of every exercise of the contempt power is the necessity to ‘uphold and protect the effective administration of justice’”, a reference to the decision of the High Court in *Mudginberri*. Her Honour in *Pelders* observed, at [28], that the “administration of justice may not be effective if a person fails, without a reasonable excuse, to comply with a summons to produce documents”, for the reasons which her Honour explained. It

is insufficient to a contempt referral application to establish that documents sought in a summons have not been produced. Before the discretion to refer can be enlivened, there must be admissible evidence that the documents must exist or have existed and be, or have been in the possession or control of the recipient of the summons.

The Applicant has not adduced admissible evidence capable of establishing beyond reasonable doubt that the documents which the Respondent has not produced in response to the Summons must exist, and be within his capacity to produce. Simply asserting, and reasserting, that the documents must exist is not, without more, admissible evidence capable of establishing that they must. Self-evidently, unless the Applicant adduces admissible evidence capable of establishing beyond reasonable doubt that the Respondent must have had the capacity to comply with the Summons, no question of his being found guilty of contempt for failing to do so arises.

The Applicant has not adduced expert evidence from anyone qualified to give it, that the documents which have not been produced pursuant to the Summons must exist or have existed, and be able to have been produced by the Respondent. Nor has the Applicant adduced evidence from any of the other Lot owners in the Strata of having seen, or being aware of the documents which the Respondent has not produced. The contempt referral application could be dismissed on that basis.

If, contrary to the Tribunal's findings, the evidence adduced by the Applicant is capable of establishing the alleged contempt beyond reasonable doubt, the Tribunal would not exercise its discretion to grant the contempt referral application. As recorded earlier, the Summons expressly excluded the requirement that the Respondent attend and produce documents. The Applicant could have, and if the proceedings are still pending, could still apply to have a Summons issued to the Respondent requiring him to attend and produce documents and, on the return date of the Summons, examine the Respondent on oath or affirmation in relation to his alleged failures to produce documents. That may result in production of the documents or in the Tribunal not being satisfied that the documents exist, or are within the possession or control of the Respondent. As the authorities recognise, the availability of other remedies which have not been pursued provides a discretionary basis for declining to grant a contempt referral application.

For the foregoing reasons, the contempt referral application lodged on 4 June 2026 is dismissed.

Costs

The Respondent sought an order for costs in the event that the contempt referral application was refused. The Tribunal will make directions for the lodging of submissions by the Respondent in support of his costs claim and for submissions in reply by the Applicant.

Order

The contempt referral application lodged on 4 June 2026 is dismissed.

A party seeking an order for costs lodge and serve written submissions not exceeding 10 pages in length inclusive of attachments in support of such application within 28 days of the Tribunal's decision.

A party opposing an order for costs lodge and serve written submissions not exceeding 10 pages in length inclusive of attachments within 56 days of the Tribunal's decision.

A party seeking an order for costs lodge any written submissions not exceeding 3 pages in length in response to submissions lodged pursuant to order (3).

A party opposing an order pursuant to s 50(2) of the Civil and Administrative Tribunal Act 2013 (NSW) dispensing with a hearing include in submissions lodged pursuant to these orders the grounds on which such order is opposed.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

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Decision last updated:

28 September 2026

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