



## Administrative and Equal Opportunity Division Guideline Occupational Division Guideline

September 2022

# Confidentiality, privacy and publication

## What does this guideline explain?

1. This guideline explains:
  - a) What the Tribunal publishes about cases
  - b) Who can go to Tribunal hearings?
  - c) Who can have access to documents held by the Tribunal?
  - d) What other people, including media, can and cannot publish about Tribunal cases?
  - e) When may the Tribunal restrict disclosure about proceedings?
  - f) How does a person apply for a confidentiality order?
  - g) When does the Tribunal usually anonymise the name of a party?

**Detailed information about matters in this Guideline may be found in the Tribunal's Policy documents (Publishing Reasons for Decision NCAT Policy No 2 and Access to, and publication of, Information Derived from Proceedings in the Tribunal Policy No 4).**

The Policy documents may be found on the [NCAT website](#).

## Definitions

2. Definitions that explain words or concepts used in this guideline are at the back of the guideline.

## What does the Tribunal publish about cases?

3. The Tribunal publishes hearing lists for all directions, case conferences, mediations and public hearings on the Tribunal's website. The hearing lists give the names of the parties unless the name has been anonymised.
4. The Tribunal publishes most of its decisions on the NSW Caselaw website. Published decisions give the name of the parties and witnesses unless they are anonymised. Detailed information about published decisions is set out in [NCAT Policy No 2 Publishing Reasons for Decision](#) (paragraphs 8 -17 and 25-27)

## Who can go to Tribunal hearings?

5. Tribunal hearings are open to the public, including representatives of the media, unless the Tribunal makes an order restricting access to a hearing. Mediations and Case Conferences

are not open to the public. The “Protocol Applicable to Attending a Public Hearing” is in [Policy No 4 “Access to, and Publication of, Information Derived from Proceedings in the Tribunal”](#) paragraph 15.

## Who can have access to documents held by the Tribunal?

6. In general, parties to proceedings can have access to documents relating to the proceedings that the Tribunal has on its file.
7. Detailed information about access to documents by anyone who is not a party is in [NCAT Policy No 4 “Access to, and Publication of, Information Derived from Proceedings in the Tribunal”](#) at paragraphs 23 to 25. See also rule 42 of the Rules.
8. The Registrar may charge a person for the cost of providing all or part of a sound recording of the proceedings or for a written record of the proceedings. (For information about fees see clause 5 of the Regulation)

## What other people can and cannot publish about a case (including the media)

9. Subject to paragraph 11 below, anyone, including the media, can publish information about a Tribunal case from:
  - a) a public hearing
  - b) documents the Registrar gave them, or
  - c) the Tribunal’s published reasons for decision.
10. However, they *must not* publish information if:
  - a) it could identify anyone involved in a case under the community welfare legislation;
  - b) the Tribunal has made a confidentiality order prohibiting or restricting the disclosure of the information
  - c) the Act or another law says the information *must not* be published.

The Act contains other provisions restricting the publication of information including the following:

- a) in cases relating to public health - see clause 11 of Schedule 3 of the Act
- b) in cases relating to the legal profession - see clause 22 of Schedule 5 of the Act
- c) sections 67 to 70 of the Act.

For more information about this see [NCAT Policy No 4 “Access to, and Publication of, Information Derived from Proceedings in the Tribunal”](#) at paragraphs 5-9.

## When may the Tribunal restrict disclosures about proceedings?

11. The Tribunal can make a confidentiality order if it is satisfied that it is desirable:
  - a) because of the confidential nature of any evidence or matter *or*
  - b) for any other reason.

The Tribunal can also restrict disclosure under other provisions of the Act.

For more detailed information see [NCAT Policy No. 4 “Access to, and Publication of, Information Derived from Proceedings in the Tribunal”](#) at paragraphs 2 – 9.

12. The Tribunal may make a confidentiality order on the application of a party. The Tribunal itself can also make a confidentiality order although a party has not asked for one. The Tribunal may vary or revoke a confidentiality order. The requesting party should lodge an [Application for miscellaneous matters form](#) with the Tribunal and serve a copy on the other party.

### **How does a person apply for a confidentiality order or to have a hearing conducted in private?**

13. A party or a witness who wants to have:
  - a) all or part of a hearing happen in private under s 49 of the Act or under s165K of the Health Practitioner Regulation National Law in health matters
  - b) the evidence given in a private hearing kept confidential, or
  - c) anything else kept confidential should make a request to the Tribunal in writing.
14. Generally, if a party or a witness wants the Tribunal to prohibit or restrict the disclosure of some or all of the contents of a document lodged with the Tribunal, then the request should be made at the time the documents are lodged. This is explained in [NCAT Policy No 2 “Publishing Reasons for Decision”](#) paragraphs 36 to 38.
15. All other requests for a hearing to be held in private or for a confidentiality order should be made if possible, before the start of the hearing. The request should be completed on an [Application for miscellaneous matters form](#) setting out the reasons and attach evidence to support it. A copy should be provided to the other party or parties who may make submissions in response.
16. In matters in the Health Practitioner List in the Occupational Division a request to restrict publication of the name of party, a complainant, a registered health practitioner or a witness should be made in writing under CI 7 of Schedule 5D of the Health Practitioner Regulation National Law (NSW) before or during the hearing. Notice of the application must be given to the other party.

### **When does the Tribunal usually anonymise the name of a party?**

17. The Tribunal usually anonymises the applicant’s name in hearing lists and decisions in:
  - a) any case relating to community welfare legislation or the *Child Protection (Working with Children) Act 2012*. Section 578A of the *Crimes Act 1900* prohibits the publication of any matter which identifies or is likely to lead to the identification of the complainant victim in a prescribed sexual offence
  - b) any application under the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*; and
  - c) any application for review of recognition payment by a victim under the *Victims Rights and Support Act 2013*.

18. In matters before the Administrative and Equal Opportunity Division and the Occupational Division, if a party applies for a confidentiality order, their name is removed from the hearing list until the Tribunal makes its decision about the application. If the Tribunal decides to refuse the application for a confidentiality order, the name of the party will be published on hearings lists and decisions.
19. In matters in the Health List of the Occupational Division a non-publication order prohibiting publication of any patient named in a complaint is generally made at the first directions hearing.

### What do some of the words in this Guideline mean?

- **Act:** *Civil and Administrative Tribunal Act 2013 (NSW)*
- **Community welfare legislation:** Community welfare legislation includes the Community Services (Complaints, Review and Monitoring) Act 1993, the Adoption Act 2000, the Children and Young Persons (Care and Protection) Act 1998, the Children (Education and Care Services) Supplementary Provisions Act 2011, the Community Welfare Act 1987, the Disability Inclusion Act 2014, the Guardianship Act 1987 and the Home Care Service Act 1988.
- **Confidentiality:** An order made under section 64 of the *Civil and Administrative Tribunal Act 2013*, sometimes called a 'suppression' order or 'non-publication' order.
- **Registrar:** The Principal Registrar or any other person employed as a Registrar of the Tribunal
- **Regulation:** *Civil and Administrative Tribunal Regulation 2022*
- **Rules:** Civil and Administrative Tribunal Rules 2014.

### This Guideline applies to:

Proceedings in the Administrative and Equal Opportunity Division and the Occupational Division of the Tribunal.

### Effective Date

1 September 2022

### Notes

You must use the latest version of this Guideline. The latest version of this Guideline is on the [NCAT website](#).

The law about the information in this Guideline is mainly in:

- Sections 49, 62, 64, 65, 66, 67, 69 and 70 of the Act and
- Clause 11, Schedule 3 of the Act
- Clause 22, Schedule 5 of the Act
- Rule 42 of the Rules of the *Civil and Administrative Tribunal Act 2022*.

There is a copy of this Act on the [NSW Legislation website](#).

**Armstrong J**  
**President**  
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