



Consumer and Commercial Division Guideline August 2017

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?

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 hearings on the Tribunal's website. The hearing lists give the names of the parties.
4. The Tribunal publishes some its decisions on the NSW Caselaw website. Published decisions give the name of the parties and witnesses. 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. The "Protocol Applicable to Attending a Public Hearing" is in [NCAT Policy No 4 - Access to, and Publication of, Information Derived from Proceedings in the Tribunal](#) at 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 or audio-visual 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, including the media, can and cannot publish about a case

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 decisions
10. However, they *must not* publish information if:
 - a) the Tribunal has made a confidentiality order prohibiting or restricting the disclosure of the information
 - b) the Act or another law says the information *must not* be published.

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.

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

13. A party or a witness who wants to have:
 - a) the evidence given in a private hearing kept confidential, or
 - b) 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 set out the reasons and attach evidence to support it. A copy should be provided to the other party or parties.

What do some of the words in this Guideline mean?

- **Act:** *Civil and Administrative Tribunal Act 2013 (NSW)*
- **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 2013*
- **Rules:** *Civil and Administrative Tribunal Rules 2014*.

This Guideline applies to:

Proceedings in the Consumer and Commercial Division of the Tribunal.

Effective Date

1 August 2017

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
- Rule 42 of the Rules of the *Civil and Administrative Tribunal Act 2013*.

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

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