



Occupational Division Guideline August 2017

Health Professionals Registration Appeals

What does this Guideline explain?

1. This Guideline provides information about appeals by health professionals against decisions of a National Board about registration in Australia on the National Register maintained by the Australian Health Practitioner Regulation Agency under the Health Practitioner Regulation National Law.
2. This Guideline explains:
 - a) What decisions can be appealed under s 175 of the National Law
 - b) Which professionals can appeal
 - c) When is the Tribunal the appropriate Tribunal to hear the appeal
 - d) Who are the parties to the appeal
 - e) What type of appeal is an appeal under s 175?
 - f) Can a party be represented
 - g) What are the steps that occur before an appeal is heard
 - h) What happens at a directions hearing
 - i) What documents need to be given to the Tribunal
 - j) How can a party ensure documents or a person are available at the hearing (Summons)
 - k) What happens if a party fails to appear before the Tribunal
 - l) How does the hearing proceed
 - m) What does the Tribunal do when it has heard the appeal
 - n) If costs can be awarded
 - o) How is the decision published
 - p) If the decision can be appealed.

What registration decisions can be appealed under the National Law?

3. All States and Territories of Australia are part of the National Registration and Accreditation Scheme for a number of health professions.
4. In NSW a person can appeal against a decision of a National Board to:
 - a) Refuse to register the person;
 - b) Refuse to endorse the person's registration;

- c) Refuse to renew a person's registration;
- d) Refuse to renew the endorsement on a person's registration;
- e) Impose or change a condition on a person's registration or the endorsement on a person's registration;
- f) Refuse to change or revoke an undertaking given by the person to the Board.

Which professionals can appeal?

5. The Health Professions in respect of which an appeal may be commenced in the Tribunal are:
- a) Aboriginal and Torres Strait Islander Health Practice
 - b) Chinese Medicine
 - c) Chiropractic
 - d) Dental (including the professions of dentist, dental therapist, dental hygienist, dental prosthesis and oral health therapist)
 - e) Medical
 - f) Medical Radiation Practice
 - g) Nursing and Midwifery
 - h) Occupational Therapy
 - i) Optometry
 - j) Osteopathy
 - k) Pharmacy
 - l) Physiotherapy
 - m) Podiatry
 - n) Psychology.

When the Tribunal is the appropriate Tribunal to hear the appeal?

6. In NSW appeals against decisions by the National Board in the above professions can be lodged with the Tribunal if:
- a) The location of a health practitioner's principal place of residence is NSW, or
 - b) The location of a student's approved program of study or clinical training is NSW;
 - c) A person lives in NSW, or
 - d) If a person does not live in NSW but the Tribunal is nominated by the National Board and specified in the decision given to the person.

Who are the parties to the appeal?

7. The parties in the proceedings are the person who lodges the appeal (the appellant) and the relevant National Board (the respondent). The respondent is represented by the Australian Health Practitioner Regulation Agency.

What type of appeal is an appeal under s 175?

8. The appeal is by way of new hearing. Fresh evidence in addition to that given to the National Board may be given.

Can a party be represented?

9. An appellant may appear before the Tribunal themselves or may be represented by an Australian legal practitioner (NCAT Act Schedule 5 clause 27). With the Tribunal's leave (permission) an appellant may be represented by a person who is not an Australian legal practitioner. The respondent is represented by the Australian Health Practitioner Regulation Agency (AHPRA).
10. A party who is represented must complete the Tribunal's Notice of Representation form and give a copy of the form to the Tribunal and the other party.

What are the steps that occur before the appeal is heard?

11. To commence an appeal, the appellant must complete an External Appeal Form. This form is available on the [Tribunal's website](#). The appellant must give seven copies of the completed form as well as any attachments to the Tribunal. Electronic filing is not presently available. Five copies of the appeal will be kept by the Tribunal.
12. On receipt of the form (and attachments if any) the Tribunal will give the appeal a file number. This file number must be quoted on all documents given to the Tribunal by both parties.
13. The appellant must give one copy of the form with attachments if any given to the Tribunal (see paragraph 9) to AHPRA as soon as possible.
14. As required under the National Law, the Registry will write to both parties and give notice of the time and date of a directions listing, and later the date when the appeal will be heard.

What happens at a directions listing?

15. At the directions listing the List Manager will give case management directions to ensure the matter is prepared for the hearing. The appeal **will not** be heard at the directions list.
16. The directions given will usually include:
 - a) The appellant giving to the Tribunal seven copies of any documents, including additional evidence and submissions relied on in support of the appeal by specific date (generally within about four weeks of the directions listing). The appellant must as soon as possible give one copy of the documents and submissions to AHPRA.
 - b) The respondent giving to the Tribunal seven copies of any documents in reply, usually by a specific date (generally within about four weeks after the appellant has given material to the Tribunal). The respondent must as soon as possible give one copy of the documents and submissions to the appellant.
 - c) Fixing a time, date and place for the hearing of the appeal. This will usually be about four weeks after all the material has been given to the Tribunal.

17. The person attending the directions listing must know what the appeal is about, and be able to provide relevant information including matters such as what evidence is relied on, and the availability of witnesses and legal practitioners for the hearing.

What documents need to be given to the Tribunal?

18. Because the appeal will be heard by a panel of four members, the parties must give the Tribunal seven copies of all forms and/or documents. Two copies of the forms or documents which will be stamped by the Tribunal will be given back by the Tribunal because a copy of everything given to the Tribunal must be given to the other party.

How can a party ensure documents or a person are available at the hearing (Summons)?

19. A party can request the Registrar to issue a Summons to ensure documents are produced to the Tribunal or that a witness comes to the hearing. See the Tribunal's Procedural Direction – Summonses for more information.

What happens if a party fails to appear before the Tribunal?

20. If a party does not appear before the Tribunal without reasonable excuse at a directions listing or a hearing the Tribunal may make orders in that party's absence, including an order that the non-attending party pay the other party's costs.

How does the hearing proceed?

21. The order in which the parties present their cases will be determined by the Presiding member. Generally the appeal will commence with the appellant presenting his or her case. This includes evidence by witnesses or the appellant. The respondent can then ask questions of the appellant (cross-examination) and his or her witnesses.
22. After cross-examination the appellant or his/her witnesses can give evidence about an answer given in cross-examination to avoid any ambiguity as a result of that answer. This is called 're-examination'.
23. If the respondent calls witness/es the appellant can question the witness/es, and the respondent may re-examine its witness.
24. The Tribunal panel that hears the appeal is made up of four people – a legally qualified member, two practitioners from the same profession as the appellant and a lay person. During the course of the hearing the Tribunal panel may question either party.
25. The Tribunal may limit the time each party may use to present their case.
26. After the Tribunal has heard all the evidence, each party will be allowed to tell the Tribunal what factual findings that party says the Tribunal should make based on the evidence before it, what law is relevant and how it applies to the facts of the case (Submissions).

27. Submissions are usually made orally although in some circumstances the Tribunal may permit the parties to give it written submissions. As this delays a final decision it is not the usual practice.

What does the Tribunal do when it has heard the appeal?

28. The Tribunal may give an oral decision at the end of the hearing. Generally it will 'reserve' its decision and deliver a written decision at a later time. Usually the written decision and orders will be made within three months of the hearing. The parties will be notified by the Registry staff when the decision will be published on NSW Caselaw.

29. The Tribunal may:

- a) confirm the decision made by the National Board, or
- b) amend the National Board's decision, or
- c) substitute another decision for the National Board's decision.

Can costs be awarded?

30. The Tribunal may make any order about costs it considers appropriate (s 175B of the National Law). This means that the appellant might be required to pay the respondent's legal costs if the appeal is unsuccessful.

Can the decision be appealed?

31. There is no appeal to the Tribunal's internal appeal panel from the decision. Parties should seek legal advice about their right to appeal to the Supreme Court of NSW.

What do some of the words in this Guideline mean?

- **Act:** *Civil and Administrative Tribunal Act 2013*
- **Rules:** Civil and Administrative Tribunal Rules 2014
- **National Law:** Health Practitioner Regulation National Law
- **AHPRA:** Australian Health Practitioner Regulation Agency

This Guideline applies to:

Proceedings in the Occupational 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:

- Section 79 of the *Civil and Administrative Tribunal Act 2013*

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

The Hon A/Judge Jennifer Boland AM

Deputy President

August 2017