



**NCAT**  
NSW Civil &  
Administrative  
Tribunal

# NCAT Member Terms and Conditions Handbook

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<b>Author</b>	NCAT
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# Table of Contents

<b>1. Introduction .....</b>	<b>4</b>
<b>2. General information .....</b>	<b>5</b>
2.1 Establishment.....	5
2.2 Structure.....	5
<b>3. Terms and conditions .....</b>	<b>6</b>
3.1 Selection .....	6
3.2 Appointment.....	6
3.3 Remuneration.....	6
3.4 Secondary employment.....	7
3.5 Resignation .....	8
3.6 Vacation or Removal from Office.....	8
<b>4. Allocation and Performance of Work.....</b>	<b>9</b>
4.1 Member availability.....	9
4.2 No guarantee of work .....	10
4.3 Cancellation of work .....	10
4.4 Member Working Hours.....	10
4.5 Written reasons and reserved decisions .....	10
<b>5. Leave .....</b>	<b>12</b>
5.1 Entitlements .....	12
5.2 Applying for leave.....	12
<b>6. Superannuation and Salary Packaging.....</b>	<b>13</b>
6.1 Superannuation .....	13
6.2 Salary Packaging.....	13
<b>7. Member Responsibilities and Protections.....</b>	<b>14</b>
7.1 Member Code of Conduct.....	14

7.2	Inappropriate Workplace Conduct .....	14
7.3	Professional development .....	16
7.4	Reasonable adjustment.....	16
7.5	Incident / injury reporting .....	16
7.6	Workers Compensation .....	16
7.7	Disclosure of Confidential Information .....	16
7.8	Indemnity.....	17
<b>8.</b>	<b>Travel for Tribunal Business .....</b>	<b>18</b>
8.1	Travel within the Sydney Metropolitan Area (SMA).....	18
8.2	Regional travel .....	19
8.3	Meals and accommodation allowances .....	19
8.4	Air travel, rental cars and taxis .....	20
<b>9.</b>	<b>Motor Vehicle Policy .....</b>	<b>22</b>
9.1	Departmental Pool Vehicles .....	22
9.2	Private motor vehicle usage .....	22
9.3	Parking and other fines.....	23
9.4	Private vehicles damaged on official business.....	23
9.5	Taxi fares .....	23
<b>10.</b>	<b>Laptops and wireless cards.....</b>	<b>25</b>
10.1	Information technology policies.....	25
10.2	Sound recording and transcripts*	
<b>11.</b>	<b>Social media policy and guidelines .....</b>	<b>26</b>
	<b>Appendix 1 - Code of Conduct.....</b>	<b>27</b>

\*This information has been withheld as it relates to the Tribunal's judicial functions.

# 1. Introduction

Since its creation on 1 January 2014, NCAT has played a significant part in the administration of justice in New South Wales. The Tribunal regularly sits in over 70 locations across the State and deals with many different types of matters both at first instance and on appeal.

The Tribunal could not successfully perform its functions without highly qualified and dedicated Members discharging their duties conscientiously in each matter that comes before them.

The NCAT Members Terms and Conditions Handbook is designed to provide information and guidance to Members concerning their service on the Tribunal. The Handbook applies to all Members (full-time and part-time) and its terms are reviewed regularly. In 2018, major changes have been made to Chapters 8 and 9 concerning Members' travel and motor vehicle arrangements.

The NCAT Members Terms and Conditions Handbook will continue to be reviewed in the light of Members' experiences and the requirements of the Tribunal.

## **The Hon Justice Lea Armstrong**

President

Civil and Administrative Tribunal of New South Wales

## 2. General information

### 2.1 Establishment

The NSW Civil and Administrative Tribunal (NCAT), established under the *Civil and Administrative Tribunal Act 2013* (the Act), commenced operating on 1 January 2014.

### 2.2 Structure

NCAT is headed by a President who is a Supreme Court Judge. Deputy Presidents may be appointed as Division Heads. The NCAT structure also includes Principal Members, Senior Members and General Members. NCAT comprises an internal Appeal Panel and four Divisions; the Administrative and Equal Opportunity Division, the Occupational Division, the Guardianship Division and the Consumer and Commercial Division. NCAT receives administrative support through a Principal Registry and several Divisional Registries, headed by the Executive Director/Principal Registrar.

Members may be assigned to one or more Divisions and are generally assigned based on their special knowledge, skill or expertise in relation to any class of matters over which that Division has jurisdiction. Each Division has the flexibility to meet the requirements of their particular user group/s and may retain specialist Members. While NCAT is an independent tribunal, for reporting, organisational and administrative purposes it comprises a business unit within the Department of Justice (the Department).

## 3. Terms and conditions

### 3.1 Selection

As a statutory appointment, NCAT Members are appointed by the NSW Governor or by the Attorney General (the Minister). Candidates are generally identified and recommended for appointment through a merit selection process.

### 3.2 Appointment

The President and Deputy Presidents are appointed by the Governor for a term of up to five years and are eligible for reappointment. The President is appointed on a full-time basis. Deputy Presidents may be appointed on a full-time or a part-time basis. Principal Members, Senior Members and General Members are appointed by the Minister on a full-time or a part-time basis for a period of up to five years.

The President may appoint an occasional Member in relation to particular proceedings before the Tribunal. Occasional members are generally appointed on a one-off basis and are not governed by the Terms and Conditions contained in this Handbook.

### 3.3 Remuneration

Under Clause 5 of Schedule 2 of the Act, the Minister shall determine the remuneration payable to a Member. Under Clause 5(1) of Schedule 2, the Minister shall determine the travel and subsistence allowance payable to the Member. The Minister cannot reduce the amount payable to a Member during their term of appointment.

A Member who is a judicial officer, and who is receiving remuneration as a judicial officer, is not entitled to additional remuneration for work performed as a member of NCAT.

A Member who holds a position as a full-time public sector employee is not entitled to be paid any additional remuneration for work performed as a member of NCAT, unless an exemption has been obtained in accordance with the [NSW Government Boards and Committees Guidelines \(M2013-06\)](#) published by the Department of Premier and Cabinet (July 2013).

A Member who is a part-time public sector employee is only entitled to be remunerated for work performed as a member of NCAT on days when they are not being paid as a public sector employee. Such members will be required to provide written confirmation from their employer of their part-time working arrangements.

#### Remuneration of full-time Members

Members who hold full-time or pro rata full-time appointments are paid an annual salary, determined by the Minister.

The entitlement of the full-time Members to annual and other leave is to be as stated in the instrument of appointment and is generally the same as applies to a Public Service employee within the meaning of [Government Sector Employment Act 2013](#).

Full-time Members can access details of their salary and payment summary (group certificate) through Justice SAP.

## Remuneration of part-time Members

Part-time Members are paid on the basis of work performed. No minimum level of work is guaranteed and there is no retainer payable.

Depending on the amount of **time spent in a hearing** on a particular day, Members are entitled to a maximum daily payment of:

- a half day (up to 3.5 hours), or
- a full day (any time more than 3.5 hours)

For part-time Members **attending committee meetings**, where they are not otherwise already entitled to be paid for the full day, they will be paid for attendance at an hourly rate of 1/7th of the professional services fee. No fee will be paid for reading any material prior to or after meetings or similar activities. Participation by Members who are not at or near the location where the meeting is to be held should usually be by telephone or video conference and no travelling allowance will be paid in respect of attendance at these meetings.

For part-time Members requested to do **written work for a committee** the Division Head chairing the committee is to submit a proposal to the President outlining the proposed work, its duration and cost. The President will then make a recommendation to the Executive Director/Principal Registrar as to the proposal.

For other Tribunal business or work, payment may be calculated on an hourly basis by reference to the applicable daily rate divided by seven.

The daily rate payable to different categories of part-time Members has been set in accordance with the relevant Ministerial determination.

Part-time Members are to submit a payment claim within one month of the attendance or completion of the decision, but an extension of time may be granted on the recommendation of the President or the relevant Division Head.

The Department will email payslips and payment summaries to part-time Members. However, payslips will only be emailed to part-time Members for pay periods where work has been undertaken.

## After Hours Duties

In some Divisions of NCAT, such as the Guardianship Division, Members are required to participate in an after-hours hearing roster to manage any urgent applications that may arise outside of normal business hours. There is no payment for participation on the after-hours hearing roster unless Members are required to deal with telephone calls in excess of 30 minutes (as aggregated over a calendar day) or to conduct proceedings.

After-hours duties will usually attract a payment of a quarter of the applicable daily rate, unless the duties extend for more than 2 hours. Any request for payment in excess of a quarter day can only be approved by the Executive Director/Principal Registrar or appropriate Division Registrar on the recommendation of the relevant Division Head or Principal Member.

## 3.4 Secondary employment

Full-time Members are not permitted to engage in any form of private employment or business ownership, whether paid or not, without prior approval of the President. Part-time Members are not permitted to engage in any form of private employment, business ownership or any other activity that

would conflict with their role at NCAT. Consistent with the approach taken, for example, in the Legal Profession Uniform Conduct (Barristers) Rules 2015 (Rule 101(n)) in relation to former judicial officers (including tribunal members), part-time members should not appear in proceedings before NCAT.

### **3.5 Resignation**

Members may resign their appointment by submitting a signed letter to the Minister, with a copy provided to the President.

### **3.6 Vacation or Removal from Office**

Under Clause 7, [Schedule 2 of the Act](#), a Member shall be deemed to have vacated office if the Member:

- a) dies, or
- b) in the case of a term member—completes a term of office and is not re-appointed, or
- c) in the case of an occasional member—when the proceedings in relation to which the member has been appointed as an occasional member have been finally determined for the purposes of section 11, or
- d) resigns the office by written instrument addressed to the Minister, or
- e) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
- f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- g) becomes a mentally incapacitated person, or
- h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- i) is removed from office under subclause (2).

The Governor may remove a Member from office for incompetence, misbehaviour or failure to comply with the conditions of the Member's appointment.



## 4. Allocation and Performance of Work

### 4.1 Member availability

The effective and efficient operation of the Tribunal depends on the active participation of all of its Members. Part-time members are required to be available to be sit on a minimum number of days across the year. This ensures that the Tribunal can meet its hearing commitments and that Tribunal Members retain the requisite level of skill and experience expected to conduct NCAT hearings.

Part-time Members should contribute to the work of the Tribunal by making themselves available to sit on Tribunal hearings in accordance with Tribunal expectations (sitting commitment expectations), and by advising the Tribunal of their availability for the work of the Tribunal in accordance with Tribunal processes (notification requirements), including the requirements set out below at 4.1.2.

#### 4.1.1 Sitting commitment expectations

The sitting commitment expectations for part-time Members are as follows:

- 4.1.1.1 Where their home Division is Consumer and Commercial (CCD) or Guardianship, Members must make themselves available to be allocated hearings on at least four days per month, on average over a year.
- 4.1.1.2 Where their home Division is Administrative and Equal Opportunity (AEOD), Members must volunteer to hear at least one substantive matter per month, on average over a year.
- 4.1.1.3 Where their home Division is Occupational (OD), Members must use their best endeavours to accept the allocation of hearings offered to them.
- 4.1.1.4 Where allocated to the NCAT Appeal Panel, Members are expected to be available to sit on appeals for at least one day per month. Time spent sitting on appeals in excess of one day per month will be taken into account in counting the days of a Member's Divisional sitting commitment.

All part-time Members are encouraged to make themselves available to sit over and above the minimum expectations outlined above.

#### 4.1.2 Notification requirements

The integrity and efficiency of Tribunal listing practices relies on the availability of part-time Members.

Part-time Members whose home Division is CCD or Guardianship must advise their Division Registrar (or a nominated staff member) of their availability to be allocated hearings at least three months in advance, or within the time and on the basis specified from time to time by the Division Head.

Part-time Members whose home Division is AEOD or Occupational must respond promptly to requests for volunteers to hear matters.

Members are expected to honour their time commitments to the Tribunal. If circumstances arise which prevent the honouring of a time commitment (e.g. ill health), Members must contact the Division Head (or, in the case of Appeal Panel work, the President communicated through the President's Associate) as soon as possible to seek exemption from these commitments for a period of time.

Once a Member has been allocated to a hearing session, or a specific matter, it is the responsibility of the Member to note the Member's own diary, as no reminder may issue. Should a Member become unavailable once he or she has been allocated to a sitting or a case, the Member must inform the Division Registrar of his or her unavailability as soon as that Member becomes aware that he or she will be unavailable. This allocation is a definite commitment from the Member that the Member will be available for that matter. These changes can be difficult to manage as there is a cascading effect and often more than one Member has to be moved to accommodate the change. The Tribunal will attempt to accommodate requests only in exceptional circumstances.

## **4.2 No guarantee of work**

The Tribunal does not guarantee any particular number of sitting days for Members appointed on a part-time basis. Allocation of hearing days is dependent on the availability and type of work in the Division and location to which the Member is assigned. Any issues concerning the allocation of sitting days are to be referred to the Executive Director/Principal Registrar or Division Head.

## **4.3 Cancellation of work**

Where possible, part-time Members will be given as much notice as possible in the event of cancellation of allocated work. In the event that other work cannot be allocated, part-time Members will receive a half-day payment should they attend the Tribunal and the matter does not proceed.

## **4.4 Member Working Hours**

Proceedings in NCAT may commence at any scheduled time during normal Registry hours (9.00am to 4.30pm). Tribunal Members are required to familiarise themselves with their upcoming work schedule and ensure they have adequate time prior to the commencement of proceedings to prepare for the day's work.

Depending on the Division, jurisdiction and role of the particular Member, a working day may encompass a range of duties, including preparing for hearings, completing any outstanding written reasons or reserved decisions, dealing with matters referred by the Registry, the President or Deputy Presidents, dealing with interlocutory matters, adjournment requests and where applicable urgent requests for interim orders. In other cases, a Member's functions may be limited to conducting or participating in hearings.

Members are required to manage caseloads in an orderly manner, through the adoption of efficient work practices. It is the responsibility of Members to go into proceedings adequately prepared and with sufficient knowledge of the issues being addressed.

## **4.5 Written reasons and reserved decisions**

Under section 62(2) of the Act, Members are required to finalise written reasons within 28 days from the receipt of a request from parties. In the case of reserved decisions, the written reasons will be given at the same time as the decision is issued. It is acknowledged that some statements of reasons will be required to be lengthier and more complex than others.

Variations in requirements and practices concerning decision-writing make a single policy relating to the preparation of written reasons and reserved decisions for all of NCAT impractical. Each Division of NCAT is responsible for setting standards for decision writing, including remuneration payable and guidelines for time allocated to decision writing, with the approval of the President.

Any requests for payment for additional time for decision writing, in excess of the standard time, can only be approved by the Executive Director/Principal Registrar or appropriate Division Registrar on the recommendation of the relevant Division Head or the President.

## 5. Leave

### 5.1 Entitlements

The entitlement to leave is set out in the Instrument of Appointment. Full-time judicial members are entitled to the leave arrangements stipulated for a judicial officer of the relevant court. Members who are appointed on a full-time basis are entitled to such leave which is applicable to an officer within the meaning of the [Government Sector Employment Act 2013](#). Those Members who are appointed on a full-time basis, but then enter a part-time arrangement for a specified period, are entitled to leave on a pro-rata basis.

Members, who are appointed on a part-time basis, or for particular proceedings, are not entitled to sick leave, extended leave, recreation leave or other leave.

### 5.2 Applying for leave

Full-time Members must apply for leave electronically through Justice SAP. SAP permits full-time Members to request leave, view leave balances and leave projections, change personal and bank details, display pay details and print payment summaries.

Approval of leave is at the discretion and convenience of the Tribunal. It is essential that full-time Members liaise with the President or their Division Head for all leave requests well in advance of leave being taken to allow sufficient time for alternative allocation of work and to ensure service levels are maintained. Where possible, a minimum of 12 weeks' notice of pending leave should be given.

Part-time Members should ensure that their Divisional Registry is kept informed of their availability to undertake work. Any conflicting commitments or changes in availability should be communicated as soon as possible to avoid reallocations or adjournments.

## **6. Superannuation and Salary Packaging**

### **6.1 Superannuation**

All Members are entitled to receive the compulsory employer Superannuation Guarantee Charge (SGC) at the prescribed rate if they are members of a compliant superannuation fund.

### **6.2 Salary Packaging**

Salary Packaging is available to full-time Members and allows them to take a portion of their pay as salary packaged payments.

Instead of receiving their whole salary as taxable income that is subject to Pay As You Go (PAYG) tax, they can choose to take their salary in some other form that suits their individual needs.

Independent, professional financial advice should be obtained before entering into any salary packaging arrangement.

For more information please view the Department's Intranet.

## 7. Member Responsibilities and Protections

For detailed information on Work, Health and Safety please view the Department's Intranet.

### 7.1 Member Code of Conduct

NCAT has developed a Code of Conduct that is applicable to all Members. A copy of the Code of Conduct is at Appendix 1.

### 7.2 Inappropriate Workplace Conduct

Members must not engage in any of the following kinds of behaviour:

- **Bullying:** Workplace bullying is repeated and unreasonable, belittling, insulting, aggressive or intimidating behaviour directed towards a person or group of persons in the workplace that creates a risk to health and safety. It may include abusive or offensive language or comments, victimisation, unjustified criticism or complaints, deliberate exclusion from workplace activities, and conduct that impedes effective work performance.

It should also be noted that justified and reasonable criticism, differences of opinion and disagreements are generally not workplace bullying.

- **Discrimination:** Discrimination, both direct and indirect, is unacceptable. Direct discrimination includes less favourable treatment of a person who is relevantly in the same circumstances, or in circumstances which are not relevantly materially different, on the basis of factors such as gender, sexual preference, disability, age, marital or domestic status, ethnicity or religious background, race, carer responsibilities and association. Indirect discrimination arises where there is a requirement or practice which, unreasonably in all the circumstances, disadvantages one group of persons more than another by reason of one or more of those prohibited grounds.
- **Harassment:** Harassment is unwelcome, uninvited or unsolicited behaviour which, offends, humiliates, intimidates or belittles someone. Unlawful harassment is conduct which offends, humiliates or intimidates someone on the basis of a protected attribute such as race, gender, sexual preference, disability, age, marital status or carer's responsibilities. Harassment can include telling insulting jokes, displaying offensive material, making derogatory comments or asking intrusive questions. It is important to note that a one-off incident can constitute harassment.
- **Sexual Harassment:** Sexual harassment includes any unwanted, uninvited or unsolicited behaviour of a sexual nature which makes a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour which creates a sexually hostile working environment.

Examples of sexual harassment include:

- Making promises or threats to procure sexual favours
- Displays of sexually graphic material
- Repeated invitations to go out after prior refusal
- Indecent exposure or sexual gestures
- Insults, taunts, teasing or name-calling of a sexual nature

- Staring or leering at a person or at parts of their body
  - Unwelcome physical contact such as kisses, embraces or touching
  - Requests for sex
  - Sexually explicit conversation
  - Persistent questions or insinuations about a person's private life
  - Offensive phone calls or letters
  - Offensive emails or computer screen savers.
  - Smutty jokes or comments
- **Conduct not amounting to sexual harassment:** Conduct does not amount to sexual harassment where it is based on mutual attraction, friendship and respect or where the interaction is consensual, welcome and reciprocated.
  - **Vilification:** Vilification is a public act that incites hatred, serious contempt, or severe ridicule against another person or group of people, because of their race, ethnicity, religion, sexuality or gender. It may include speech, writing and the display of symbols, material and gestures which convey a message of hatred, serious contempt or severe ridicule.  
  
Vilification includes behaviour towards a person by reference to that person's gender, sexuality, HIV status, ethnicity, racial or religious background or nationality, which is likely, in all of the circumstances, to offend, insult, humiliate or intimidate the person.
  - **Victimisation:** Victimisation is subjecting another person to a detriment or treating that person unfairly or unequally on the grounds that the person victimised has, intends to or is suspected of making a complaint, or because the person has made an enquiry into or is witness to a complaint including, for example, where the person victimised has brought (or is suspected of intending to do so) proceedings or made allegations against the other person under legislation such as the *Anti-Discrimination Act 1977 (NSW)* or the *Public Interest Disclosures Act 1994 (NSW)*.

### 7.2.1 Procedures for raising concerns about inappropriate workplace conduct

If a Member has a complaint or concern about the conduct of another Member or of a registry staff member, the Member should raise the concern with the relevant Division Head or the President. Where the complaint or concern is about the conduct of a Division Head or Judge, that complaint or concern should be raised with the President.

Where any judicial staff member has a complaint or concern, it should be referred to the President or if not appropriate, the Principal Registrar. This does not prevent a judicial staff member from accessing the pathway for such complaint of the court to which the judicial officer is attached.

If a Member witnesses unacceptable behaviour, that Member has a responsibility to report that behavior to a Division Head or the President.

Members and staff retain their rights to complain directly to other authorities.

Members should be aware that Registry staff members have been directed to raise with their supervisor, Divisional Registrar or the Principal Registrar any complaint or concern they may have about a possible breach of 7.2 by a Member.

In the event that a Member is the subject of any complaint then the Member is expected to co-operate with any investigation, including any external investigation, which follows that complaint.

### **7.3 Professional development**

As professionals receiving an executive level of remuneration, Members must take responsibility for their own professional development and learning including keeping up to date with technological changes. The Tribunal will provide Members with some training, assistance and information. Members, however, must ensure they are up to date with developments in law, practice and procedure. Members are required to participate in mandatory professional development activities, for which they will be paid at the specified rate. Members who participate in non-mandatory professional activities are expected to do so without payment.

NCAT is developing a professional development framework that applies to all Members. Compliance with the requirements of professional development is an element of the NCAT Member Code of Conduct.

### **7.4 Reasonable adjustment**

The Department is committed to providing reasonable adjustment for employees and statutory office holders with disabilities, including Members of NCAT, when they are performing duties for the agency. NCAT Members, including part-time Members, are subject to the Reasonable Adjustment Policy and Reasonable Adjustment Guidelines (available on the Department's Intranet) or on request from the Registry.

Members who are seeking reasonable adjustment to assist them in performing their duties should initially complete a Request for Reasonable Adjustment form (included in the Reasonable Adjustment Guidelines) and provide a copy to the relevant Division Registrar. Where relevant, the form should be accompanied by medical evidence or product information to assist in the evaluation of the request.

Following consideration by the Division Registrar, all requests for reasonable adjustment must be forwarded to the Executive Director/Principal Registrar.

### **7.5 Incident / injury reporting**

Work, health and safety legislation requires that Members report all hazards, incidents, accidents, and injuries in the workplace. It is essential that the report be completed and forwarded to the Division Registrar within 24 hours of the incident to ensure the statutory reporting requirements of notifying the Department's insurer are met.

### **7.6 Workers Compensation**

For detailed information on Workers Compensation please view the Department's Intranet.

### **7.7 Disclosure of Confidential Information**

Tribunal Members shall not disclose any information obtained in connection with the administration or execution of their duties, unless the disclosure is made:

- with the consent of the person from whom the information was obtained
- in connection with the administration or execution of the Act or any other Act conferring jurisdiction on the Tribunal
- for the purposes of any legal proceedings arising from the Act or any other Act conferring jurisdiction on the Tribunal or of any report of such proceedings or,



- with any other lawful excuse.

**Note:** Refer to section 70 of the [Civil and Administrative Tribunal Act 2013](#).

## **7.8 Indemnity**

Clause 4, [Schedule 2](#) of the Act states that Members have the same protection and immunity as a Judge of the Supreme Court in the performance of their functions.

## 8. Travel for Tribunal Business

From time to time Members may be required to travel to regional locations and/or away from their usual place of work to conduct Tribunal business. Where appropriate, the Tribunal may use alternative methods to conduct proceedings (e.g. teleconferencing or Audio Visual Link (AVL) to reduce demand on Member travel.

Members, when entitled, will be reimbursed for expenses that are reasonably incurred for travel, meal and motor vehicle use providing they do not exceed the rates outlined in the applicable Treasury Circular. Some further information is set out below.

The following principles apply to Member travel:

1. The most economical to the Tribunal and reasonable travel itinerary is to be used.
2. To ensure that travel itineraries are reasonable, Director/Registrars will review listing practices where appropriate to commence and end sittings at times that allow greater flexibility for Member travel.
3. Member workplace health and safety will continue to be a consideration when approving travel requests.
4. Members undertaking non-standard travel must complete the Non-Standard Travel Request Form seeking approval to claim travel expenses before travelling and follow the NCAT Member Travel Procedure (travel procedure). Where a Member travels to the same location which involves non-standard travel and requires travel cost reimbursements more than once a month, the Non-Standard Travel Request Form is to be completed for that journey once every six months, or if any of the regular travel reimbursements change.

### 8.1 Travel within the Sydney Metropolitan Area (SMA)

No travel allowances will be paid to Members based in the SMA for travel between the Principal Place of Residence (PPR) and hearing locations within that area.

No travel allowances will be paid to Members based in regional areas who elect to work in the SMA.

Travel allowances will be paid to regionally-based Members for travel to or from locations within the SMA where they have been directed or requested to work or attend training within that area and the distance travelled from the Member's (PPR) to the work/training location exceeds 100km.

The SMA is defined in the [Regional Development Regulation 2018](#) to include the following local government areas:

Bayside, City of Blacktown, City of Blue Mountains, Burwood, Camden, City of Campbelltown, Canada Bay, Canterbury-Bankstown, Cumberland, City of Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunter's Hill, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby, Wollondilly, Woollahra.

#### Conclaves

Travel allowances will only be paid for travel within the SMA to conduct a conclave where there are no reasonable public transport options available to site visits. Members are to seek pre-approval from the Divisional Director/Registrar if they intend to claim for travel to a conclave.

## 8.2 Regional travel

### Single Day Journeys

For single day journeys, Members can claim reimbursement for travel costs including mileage and meals when travelling outside the SMA where the minimum travel distance from the Member's (PPR) to the hearing location exceeds 100kms. Once the 100 km threshold has been met, all travel undertaken from the PPR until the Member returns to their PPR will be reimbursed.

### Multiple Day Journeys

For multiple day journeys the Member can claim reimbursement for travel costs including mileage and meals when travelling outside the SMA where the minimum travel distance from the Member's PPR until they return to their PPR exceeds 200 kms.

- **NCAT uses Google Maps as its official travel calculator**

The travel distance will be measured and approved for payment based on the shortest distance provided by Google Maps, at the expected time of travel. If the actual travel distance travelled exceeds that provided by Google Maps, Members can provide reasons for the additional travel and seek approval from the Divisional Director/Registrar when making a claim for payment. Reasons for additional distance travelled may include, 'the actual distance travelled was longer as there were road works with a detour on my route' or 'I took an alternative route due to poor weather conditions.'

- **Principal Place of Residence (PPR)**

It is expected that a Member has one PPR. Where a Member has more than one place of residence (i.e. holiday home) and they seek approval to travel to or from that residence and a hearing location, approval may be given if it:

- a) will result in less expense for the Tribunal, and
- b) does not cause a change to a listing schedule.

## 8.3 Meals and accommodation allowances

### Meals

Members may be entitled to reimbursement for the actual costs of meal expenses reasonably incurred up to the meal allowance limits set out in the applicable Treasury Circular. Where a Member is travelling within the SMA meals are not reimbursed.

Members are reimbursed for:

- Breakfast where their journey commences at or before 6.00 am
- Lunch where they travel more than 100 km from their PPR to the hearing/training location
- Dinner where their journey from the hearing/training location to their PPR ends on or after 6.30pm
- All meals where required to stay overnight. The first and last meals of the trip are reimbursed where they comply with the breakfast and dinner time requirements.

Only actual expenses will be paid subject to the production of itemised receipts and subject to a cap of the upper limit for each meal type in the applicable Treasury Circular.

Where multiple items appear on a receipt, the item(s) relevant to the claim must be clearly identified. The Department of Justice, Finance Division will not process payments where a credit card docket alone is submitted.

Where a Member dines with another person, the Member should get a separate receipt for their share of the meal and where this is not possible clearly note on the receipt which items the Member is claiming reimbursement for.

All claims for payment of expenses by Members for meals must be made on the Tribunal's Travel Expenses Claim Form. Member and Registry Services (MaRS) in the Principal Registry must receive travel claim forms within one month of the expense being incurred by the Member.

**Note:** The cost of alcohol is not claimable, this includes when purchased with a meal. Gratuities or tips, personal incidental items (such as confectionery, newspapers or magazines, soft drinks or bottles of water, cash out advances, personal telephone calls, toiletries etc.) will not be paid for by the Tribunal, except where water, soft drink or confectionery is purchased as part of a meal.

## **Accommodation**

Approval for overnight accommodation may be given where Members are undertaking:

- Two or more consecutive days work or training for the Tribunal
- Single day travel and the length of the workday is considered unreasonable due to either the distance to be travelled or available flight times.

Where accommodation is required it will be booked by MaRS or Registry in accordance with the Department's travel booking policy. The most economical (to the Tribunal) and reasonable travel itinerary will be approved and booked.

Members are required to complete the Non-Standard Travel Request Form when seeking accommodation for:

- The night before the first sitting day or the night of the last sitting day
- A single sitting day.

Members who choose to upgrade their rooms at the time of check-in do so at their own cost. The accommodation provider must bill the Member separately for the cost of the upgrade. The Tribunal cannot pay the additional cost of an upgrade and accept reimbursement directly from the Member. Where the accommodation provider cannot bill a Member separately for an upgrade, no upgrade can be taken.

All travel claim forms must be received by MaRS or Registry within one month of the expense being incurred by the Member.

## **8.4 Air travel, rental cars and taxis**

Where a Member needs to travel to Sydney or a regional location by air, MaRS or Registry will organise the air travel booking and provide a travel itinerary. Bookings will be made at the lowest suitable fare of the day. Bookings can be made by MaRS or Registry up to 4 weeks before the travel. Once the air travel booking is confirmed, any changes may incur an additional charge. Economy travel is to be used in all cases.

Generally travel arrangements will not be altered for personal reasons after travel bookings have been made. However, when a sitting/hearing finishes early and an earlier flight, at no additional cost is available, that change may be requested.

Rental cars will not automatically be booked where it is more cost effective to arrange a taxi for travel to and from the airport/venue. The travel itinerary will specify whether a rental car or taxi is to be used.

Where a rental car has been arranged, the car must be refuelled before its return to the car rental firm. Members must keep receipts and can claim the cost of petrol.

**Note:** Taxis are covered in further detail in Section 9.5.

## 9. Motor Vehicle Policy

### 9.1 Departmental Pool Vehicles

On occasion Members may be directed to use a Departmental Pool Vehicle rather than their own vehicle or a rental car. MaRS or Registry will include the use of a pool vehicle in a Member's travel itinerary if a pool vehicle is available at an appropriate location and time. The travel itinerary will also include detailed information about the Department's Motor Vehicle Policy and the use of pool vehicles.

### 9.2 Private motor vehicle usage

The Tribunal does not provide vehicles for Members to travel within the SMA for hearings or reimburse travel costs within the SMA. The Tribunal does not provide parking for Members although some venues may have on-site parking available at no cost because of existing lease arrangements. The Tribunal does not pay for toll charges or parking station fees within the SMA.

Members may be approved to use their own vehicle for travel and to be paid for travel cost reimbursement where a Member is regionally based and they have been directed to or the Tribunal has requested that they work or attend training within the SMA. To be eligible for this travel costs reimbursement, the Member must seek the Division Director/Registrar's approval to use their motor vehicle prior to travelling using the Non-Standard Travel Request Form. Where possible this should be submitted at least 14-21 days prior to travel.

Members may be approved to be paid for using their own vehicle for travel to venues outside the SMA. The Member must seek the Division Director/Registrar's approval to use their motor vehicle prior to travelling using the Non-Standard Travel Request Form. Where possible this should be submitted at least 14-21 days prior to travel.

Circumstances in which payment for use of a private vehicle may be approved include where:

- a) it will result in greater efficiency to or will involve less expense for the Tribunal, than undertaking travel by other means; or
- b) where the Member is unable to use another means of transport due to a disability and a reasonable adjustment has been sought and approved.

Where such approval is given in relation to travel outside the SMA, or for regionally based Members to travel inside the SMA, parking station fees may be reimbursed. Members seeking approval to claim parking station fees must complete the Non-Standard Travel Request Form. Where approval is given for reimbursement of parking stations fees, Members will only be reimbursed up to the amount payable for the parking station and rate provided by MaRS or Registry in their itinerary.

Members approved to or eligible to use their own motor vehicle can choose to use public transport instead and will be reimbursed for the cost of the public transport.

Members approved to use their own motor vehicle must ensure they have a comprehensive motor vehicle insurance policy and any policy required to be maintained under the *Motor Vehicle (Third Party Insurance) Act 1942*. Should a Member be involved in an accident, they must inform the relevant Division Director/Registrar within 24 hours.

Members approved to use private motor vehicles can submit claims for payment to MaRS or Registry. Members will be paid at the current Treasury Official Business Rate. All claims for payment for private motor vehicle allowance must be received by MaRS or Registry within one month of the expense being incurred by the Member.

### **9.3 Parking and other fines**

The Tribunal is not liable for the payment of any fine(s) that a Member might incur whilst driving or parking either a pool vehicle or their own vehicle even if the Member is on official business.

### **9.4 Private vehicles damaged on official business**

Any damage resulting from an accident occurring to a private vehicle while on official business should be managed through the relevant comprehensive motor vehicle insurance policy. In appropriate circumstances, there may be an entitlement to reimbursement of the insurance policy excess. Further information is contained in Clause 7-11.7 of the Public Service Commission Personnel Handbook [www.psc.nsw.gov.au](http://www.psc.nsw.gov.au). Should a Member be involved in an accident, they must inform the relevant Division Director/Registrar within 24 hours

### **9.5 Taxi fares**

Any reference to taxis in this document includes the use of taxis and/or other ride sharing providers such as Uber.

The use of Taxis for Tribunal related business is restricted to where public transport or other means of transport are not reasonably available. Trains or buses are to be used wherever possible to travel to and from Sydney suburbs or around the Sydney CBD.

#### **Travel to and from Sydney Airport**

The Airport Express buses or trains are to be used between a city and its airport. Members will be reimbursed for the cost of travelling by Airport Express buses or public transport to and from their PPR or hearing location and the Airport.

Members are not automatically entitled to use taxis for travel to and from the airport where alternative transport is available. Exceptions will include:

- travel to the airport where a Member is booked on a flight departing at 9:00am or earlier and/or
- travel home from the airport when a Members returning flight arrives at the airport at 5:30pm or after
- where taxi travel to and from the Airport is part of an approved reasonable adjustment. The Department of Justice Reasonable Adjustment Guidelines and application form are located on the Member Centre.

Members who are entitled to use taxis to and from the airport are encouraged to use their own car for travel to and from the airport where it is more cost effective to the Tribunal to do so. Members will not be reimbursed for the mileage on these occasions but will be entitled to claim airport parking up to the P3 drive-up rate.

Where Members are not entitled to a taxi to and from the airport, but choose to drive to the airport the cost of travelling to the airport will be paid up to the cost of public transport from their PPR to the airport.

When taxi travel is approved and Members are travelling as part of a panel, Members are to share the same taxi where practicable.

## **Parking at Sydney Airport**

Where a Member has permission to drive to Sydney Airport or are entitled to use a taxi and choose to use their own vehicle instead, parking fees may be reimbursed up to the P3 drive-up rate. The Tribunal will not pay for toll charges or motor vehicle usage to or from the airport. (See 8.2 regarding approval for private motor vehicle use).

## **Paying for Taxis**

Where applicable, Cabcharge vouchers may be requested in advance from MaRS or Registry as part of the pre-travel approval process. Alternatively, itemised receipts or account statements detailing the date and time of travel and the start and finish locations of the trip, should be obtained for cash or credit card payments and the travel costs claimed using the Tribunal's Travel Expenses Claim Form. Costs cannot be redeemed through petty cash.



## 10. Laptops and wireless cards

Where required, Members will be provided with laptop computers and wireless air cards which will give access to the Department's computer based services and the Tribunal's case management system.

Members who are provided with laptops must ensure that they are used appropriately and are properly secured. Laptops are a prime target for thieves. Do not leave these items in cars or indoors where they can be easily seen through doorways or windows.

Members should not use the equipment for personal activities contrary to Departmental policies. Downloading of music, video files and other high data material should not occur. Only authorised software should be run on Departmental laptops.

Members should regularly make arrangements to log in their laptop to the Department's network to ensure that all computer settings and upgrades are up to date.

### 10.1 Information technology policies

All computer based services used by the Tribunal are based on systems provided by the Department. These include desktop computers, laptops, computer networks, Internet, email services and document printing.

Members must familiarise themselves with these policies which are available on the Department's Intranet.

Members are required to keep up to date and embrace any new technology introduced by the Tribunal.

## **11. Social media policy and guidelines**

The Department's policy on social media assists Members in understanding their obligations and responsibilities regarding social media. The policy is available on the Department's Intranet.

# Appendix 1 - Code of Conduct

## Member Code of Conduct

1. This Code of Conduct is issued by the President of the NSW Civil and Administrative Tribunal pursuant to section 20 of the *Civil and Administrative Tribunal Act 2013* (the NCAT Act). It applies to all Members of the Tribunal, including occasional Members. The Code may be reviewed from time to time to ensure its relevance.

## Purpose

2. This Code seeks to provide guidance to Members in the performance of their statutory functions as Members of the Tribunal and to assist Members in identifying and resolving ethical issues as they may arise.
3. A further purpose of this Code is to provide Tribunal users with information by reference to which to assess Members' conduct.

## Upholding the Objects of the NCAT Act

4. The objects of the NCAT Act include:
  - ensuring that the Tribunal is accessible and responsive to the needs of all of its users;
  - enabling the Tribunal to resolve the real issues in proceedings justly, quickly, cheaply and with as little formality as possible;
  - ensuring that the decisions of the Tribunal are timely, fair, consistent and of a high quality;
  - ensuring that the Tribunal is accountable and its processes are transparent and open;
  - promoting public confidence in Tribunal decision-making and the conduct of Tribunal Members.
5. Members are to perform their duties and conduct themselves consistently with these objects.

## General Responsibilities

6. Tribunal Members have the following general responsibilities both in their activities as a Member and in their personal activities:
  - to uphold the law, including being aware of and complying with legislation dealing with privacy, discrimination and corruption;
  - to uphold the highest standards of integrity, truthfulness, and honesty.

## Tribunal Values

7. In performing their duties, Members should at all times strive to give effect to the following values (derived from "A Guide to Standards of Conduct for Tribunal Members" issued by the Administrative Review Council).

### Respect for the Law

8. Members should, while acting as a Tribunal Member and while performing functions associated with membership, demonstrate respect for all aspects of the law.

9. In particular, Members should:
- at all times while performing Tribunal duties comply with the law in relation to the conduct of hearings, the determination of matters and interactions with other Members, Tribunal staff and Tribunal users;
  - ensure that all decisions and determinations are legally well founded.

### **Fairness**

10. Fairness requires a Tribunal Member to make unbiased, impartial decisions and to give all parties the opportunity to put forward their positions.
11. More specifically, Members are to:
- apply the law equally, and act in an impartial manner in the performance of their decision making functions, so that their actions do not give rise to a legitimate apprehension of bias or amount to actual bias;
  - advise the parties of any matter or circumstance which might give rise to bias or conflict of interest or a perception of bias or conflict of interest and determine whether in the circumstances it is appropriate to continue to conduct or determine the proceedings;
  - refrain, other than during a hearing or in exceptional circumstances, from any communication (either oral or in writing) or association during the course of proceedings with a party, legal representative or witness in the absence of the other party or parties or their representatives;
  - abide by the principles of procedural fairness, in particular, by ensuring that parties have a reasonable opportunity to present their case and to answer the case against them;
  - be aware of and address appropriately barriers such as language, cultural background, lack of literacy or disability which are likely to impede parties in presenting their case.
12. In addition, Members should:
- if engaged in another profession, occupation or business, take care to ensure that those activities do not conflict with or undermine the discharge of their responsibilities as Members;
  - refrain from partisan political activity which is directly related to the work of the Tribunal or which may impinge upon the perception of impartiality of the Member or the Tribunal (including, for example, being a member of a registered political party).

### **Independence**

13. Tribunal Members are to perform their duties independently, free from external influence and free from the fear of adverse consequences.
14. Members should not allow themselves to be put in a position where their independence may be compromised or be perceived to be compromised.
15. Where part-time Members have a professional practice in addition to being Members of the Tribunal, they:
- cannot appear before the Tribunal as a representative of a party or other person;
  - cannot advise individuals or bodies concerning Tribunal proceedings or potential proceedings involving those individuals or bodies; and
  - cannot act for or against or provide services to individuals or bodies who are litigants before them in the Tribunal.

## **Respect for Persons**

16. Members are to conduct proceedings in a manner that is patient, courteous and respectful of all parties, witnesses, representatives, staff and others with whom Members have to deal.
17. In particular, Members are to:
  - demonstrate patience, courtesy and respect in their own conduct and demeanour;
  - communicate in a clear, plain manner so as to be understood by the parties;
  - control the proceedings in such a way as to create an environment in which participants can and are encouraged to treat other participants courteously and respectfully;
  - be aware of and responsive to cultural and other sensitivities in relation to forms of address, conduct and dress.
18. The Tribunal recognises the importance of fairness, dignity and respect for others in the workplace. Each person in the workplace, including staff and Members, should have a safe and secure place in which to work. The Tribunal does not tolerate inappropriate workplace behaviour, which includes bullying, harassment, sexual harassment, other forms of unlawful discrimination, vilification and violence.

## **Diligence and Efficiency**

19. Members are to be diligent and timely in the performance of their duties. They should take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary to the performance of their duties.
20. In particular, Members should:
  - conduct proceedings and make decisions with due rigour, diligence and intellectual honesty;
  - perform their duties in the Tribunal so as to resolve matters in a timely and appropriate manner with a view to ensuring that the Tribunal's proceedings are efficient, effective and inexpensive;
  - provide oral reasons for decision where appropriate and deliver reserved decisions within the NCAT Divisional standards, except where the complexity or difficulty of the matter requires otherwise;
  - undertake and participate in professional development and training programs to enhance relevant knowledge and skills;
  - keep informed of developments in substantive and procedural matters within the jurisdiction of the Tribunal relevant to their duties;
  - support and encourage, where possible, the professional development of colleagues;
  - become proficient in the use of technology including the Tribunal's computerised case management system, digital provision of documents, the Tribunal's intranet, digital sound recording facilities, and other technological developments implemented by the Tribunal.
21. In order to promote the efficient conduct of proceedings, Members should:
  - clearly identify the issues and orders in dispute;
  - facilitate the resolution or narrowing of issues in dispute, where appropriate;
  - adjourn proceedings only when necessary in the interests of justice and fairness;
  - ensure that any interlocutory orders and applications do not unnecessarily delay the final determination of proceedings;
  - ensure that evidence is confined by reference to the issues in dispute, and that it is given as concisely as is reasonably possible.

## **Integrity**

22. Members, in carrying out their duties as Members, are to act honestly and truthfully.
23. In particular, Members must:
  - not knowingly take advantage of or benefit from information, not publicly available, obtained in the course of performing their Tribunal functions;
  - not use their position as a Member improperly to gain or seek to gain any advantage or benefit for themselves or any other person;
  - be scrupulous in the use of Tribunal resources;
  - not disclose any confidential information otherwise than as permitted by law;
  - refrain from conduct which would bring the Tribunal into disrepute.

## **Accountability and Transparency**

24. Members are accountable for their decisions and actions taken as Members and have a responsibility to be open and frank about their decisions, actions and inaction in relation to their duties.
25. In particular, Members are to:
  - participate in performance evaluations conducted by the Tribunal;
  - co-operate fully in complaint investigations carried out by the Tribunal.

## **Responsibility of the Tribunal Head and Heads of Divisions**

26. It is the responsibility of the President together with the Heads of each of the Divisions to assist Members to comply with the Code of Conduct and to perform their responsibilities as Tribunal Members through the provision of appropriate training, leadership and support.

## **Particular Issues**

### **Gifts, Benefits and Hospitality**

27. Where gifts or benefits are offered, or social invitations extended, by parties or representatives in Tribunal proceedings, to Members in their capacity as such, these should, as a general rule, be declined.
28. If a gift is proffered to a Member, in his or her capacity as a Member, in circumstances where it cannot be or it is inappropriate for it to be declined, it should be handed to the Principal Registrar for inclusion in the Tribunal's gift register and appropriate disposition. Donating the gift to a charity, using the gift for the benefit of Members or staff generally or publicly displaying the gift in the Tribunal's premises may be appropriate, depending on the circumstances.

### **Corrupt Conduct**

29. If a Member becomes aware of an instance of behaviour that could be corrupt conduct, maladministration, or criminal conduct, relating to the Tribunal, the Member should report it promptly to the Principal Registrar or the President, and also, if appropriate, to the Independent Commission Against Corruption.

## Post Service Conduct

30. After ceasing to be a Member of the Tribunal it is expected that a former Member:
- would continue to behave in a way that upholds the integrity and good reputation of the Tribunal;
  - would not appear before the Tribunal as a representative where to do so would contravene the Barristers' Rules, the Solicitors' Rules or any other similar applicable professional rules;
  - would not use or take advantage of confidential information obtained in the course of his or her duties as a Member.

## Complaints

31. Complaints in relation to Members will be dealt with as outlined in NCAT Policy 1 - Complaints.

## Compliance with the Code

32. If a Member does not comply with the Code, the President may direct the Member to take specified action to rectify his or her conduct or determine that further work not be allocated to the Member until the breach is rectified. In cases of serious breach the President may refer a matter to the Attorney General or recommend that the Member not be reappointed at the expiration of their term. Whether such action will be taken will depend on factors such as the seriousness of the conduct in question, whether there is a pattern of such conduct, the intent of the Member concerned and the effect of the conduct upon the Tribunal or others.
33. The Code of Conduct does not stand alone but forms part of the accountability framework within which both the Tribunal and the Members operate. It is complementary to the Tribunal's procedures and policies, including the Member professional development framework and the Tribunal's complaints process.

The Hon Justice Lea Armstrong  
**President**

9 July 2020