



## NCAT Policy 4 (October 2019)

# Access to, and Publication of, Information Derived from Proceedings in the Tribunal

## Purpose

1. This policy sets out some of the legislative provisions and procedures that apply where persons wish to gain access to, record or publish, information derived from proceedings in the Tribunal.

## Legislative Provisions

2. The *Court Security Act 2005* (NSW) in general terms prohibits parties and members of the public, subject to a limited number of exceptions, from:
  - a) recording proceedings in the Tribunal using recording devices, see s 9; and
  - b) using a device to transmit, post on social media, broadcast on the internet or otherwise make accessible outside a hearing room sounds, images or information from the hearing room where Tribunal proceedings are being conducted, see s 9A.
3. In addition, a number of sections of the *Civil and Administrative Tribunal Act 2013* (NSW) (the NCAT Act) restrict disclosure of information derived from proceedings in the Tribunal. Most importantly:
  - a) While under s 49(1) of the NCAT Act, hearings in the Tribunal are open to the public, the Tribunal can, under s 49(2), make an order that a hearing is to be conducted wholly or partly in private if it is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason.
  - b) Under s 64 of the NCAT Act the Tribunal may, if satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, make orders:
    - i. prohibiting or restricting the disclosure of the name of any person (whether or not a party to proceedings in the Tribunal or a witness summoned by, or appearing before, the Tribunal),
    - ii. prohibiting or restricting the publication or broadcast of any report of proceedings in the Tribunal,
    - iii. prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal,



- iv. prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal, or of the contents of a document lodged with the Tribunal or received in evidence by the Tribunal, in relation to the proceedings.
    - c) Under ss 65, 66, 67, 69 and 70 of the NCAT Act, there are further restrictions on publication of information derived from Tribunal proceedings as follows:
      - i. Section 65 provides that a person must not, except with the consent of the Tribunal, publish the names or identifying information of those involved in Guardianship proceedings or community welfare legislation proceedings.
      - ii. Section 66 generally preserves from disclosure information held by the Tribunal if there is an “*overriding public interest against disclosure*” under the *Government Information (Public Access) Act 2009* (NSW).
      - iii. Section 67 prevents disclosure of information in a document that would be the subject of a legitimate claim for privilege under the *Evidence Act 1995* (NSW).
      - iv. Sections 69 and 70 of the Act (and s 101 of the *Guardianship Act 1987* (NSW)) limit the circumstances in which a person who has acquired information in exercising a function under these Acts or certain other legislation can disclose that information.
  4. There may be other legislative provisions that are relevant in a particular case.
  5. If a person is denied access to, or permission to record or publish, information derived from proceedings in the Tribunal, they should consider seeking independent legal advice before taking further action to obtain such access or permission.

## Information Derived from a Public Hearing

6. If a hearing is conducted in public, members of the public, including reporters and representatives of the media, may attend the hearing, subject to any orders of the Tribunal and subject to any restrictions arising out of limited availability of space, inappropriate conduct or similar matters.
7. Subject to any provisions in the Court Security Act, the NCAT Act or other legislation, and any order made by the Tribunal, prohibiting or restricting, disclosure or publication, members of the public, including reporters and representatives of the media, may disclose information revealed in the course of a hearing in public.
8. Any member of the public, including reporters and representatives of the media, can seek access to documents that have been admitted into evidence or relied upon as submissions in proceedings held in public. This can be done, where proceedings have been finally determined, under r 42(2) of the Civil and Administrative Tribunal Rules 2014 (the Rules). In that rule, “*public access documents*” include statements, affidavits and documents admitted into evidence in proceedings held in public. Otherwise, an enquiry should be made in person at a registry or in writing to the Principal Registrar or the relevant Divisional Registrar.

9. A procedure for obtaining access to documents under r 42(2) or otherwise is set out below.

## Protocol Applicable to Attending a Public Hearing

10. Members of the public, including reporters and representatives of the media, attending a public hearing may take notes of what occurs during the hearing, provided it does not involve using a recording device to record or transmit sound or images or both from Tribunal premises in contravention of the Court Security Act or other conduct prohibited under the NCAT Act or other legislation.
11. Reporters or representatives of the media attending hearings are requested to make their presence known to registry staff before entering a hearing room or to the presiding Member at the beginning of the hearing.

## Access to Published Reasons for Decision

12. Some NCAT reasons for decisions are published on the [NSW Caselaw website](#). They are also made available on other websites such as the [AustLII website](#) and the [BarNet Jade website](#). More detailed information is provided in *NCAT Policy 2 – Publishing Reasons for Decision* available on the [NCAT website](#).
13. Most decisions of the Appeal Panel, Administrative and Equal Opportunity Division and Occupational Division are published on NSW Caselaw. Only selected decisions of the Consumer and Commercial Division and the Guardianship Division are published in this way.
14. In making its reasons for decision publicly available through NSW Caselaw, it is the Tribunal's general practice not to include, or to remove, personal identifiers including: full residential addresses; dates of birth; anniversary dates; Medicare numbers; bank account or loan account numbers; tax file numbers; licence numbers; motor vehicle registration numbers; email addresses; some names of spouses, partners and children; and similar material, unless the information is essential to explain the decision.
15. In cases where an order has been made under s 64 of the NCAT Act, where s 65 of the NCAT Act applies or where there are other issues of confidentiality or privacy, the names of the parties and others involved in the proceedings may be anonymised using two or three letteronyms.
16. The relevant Divisional Head is responsible for selecting decisions for publication, where the Tribunal's reasons for decision are not published as a matter of course.

## Access to Unpublished Reasons for Decision

17. Any member of the public including, reporters and representatives of the media, can seek access to reasons for decisions which have not been published. This can be sought, where proceedings have been finally determined, under r 42(2) of the Civil and Administrative Tribunal Rules 2014 (the Rules). In that rule, "*public access documents*" include a record of the reasons for decision given in proceedings. Otherwise, an

enquiry should be made in person at a registry or in writing to the Principal Registrar or the relevant Divisional Registrar.

18. A procedure for obtaining access to documents under r 42(2) or otherwise is set out below.

## Procedure for Obtaining Access to Documents

19. Persons who were not parties to proceedings, that is, members of the public, including reporters and representatives of the media, may request access to “*public access documents*” held on a Tribunal file for particular proceedings. Any request should be directed to the registry under r 42(2) of the Rules, once the proceedings have been finally determined.
20. Public access documents are specified in r 42(8) to be:
- a) an originating document (such as an application or notice of appeal) or reply;
  - b) a statement, affidavit or document admitted into evidence in proceedings held in public;
  - c) a transcript (if available) of proceedings held in public;
  - d) a record, but not including sound recording, of any order made or other decision given in proceedings;
  - e) a record of the reasons given for a decision made in proceedings.
21. Requests to the Principal Registrar under r 42(2) or otherwise for access to documents should be in writing and sent:
- a) by email to [ncatenquiries@ncat.nsw.gov.au](mailto:ncatenquiries@ncat.nsw.gov.au) (with *Attention: Principal Registrar* in subject line), or
  - b) by letter posted to the following address:  
The Principal Registrar  
The Civil and Administrative Tribunal of New South Wales  
Level 9 John Maddison Tower  
86-90 Goulburn Street  
SYDNEY NSW 2000
22. A third party access request of this nature should include:
- a) details of the individual, organisation, media outlet or agency requesting the reasons for decision;
  - b) details of the main contact person and their contact information;
  - c) identification of the document requested and the relevant proceedings including where possible the names of the parties, the proceedings number and the date of the document;
  - d) background information relating to the request such as:
    - i. how the document is proposed to be used;



- ii. whether the reasons for decision are required for research, a journal article or for a media story and, if so, the nature of the research, article or story;
  - e) the requested time frame for provision of the document.
- 23. A Registrar has a discretion to grant access or make copies available, on payment of the applicable fee (if any), and subject to any conditions imposed by under r 42(4) or generally. Access cannot be granted in the circumstances set out in r 42(3). Those circumstances include where the document contains matter which is privileged. In addition, the considerations which underlie s 65 of the Act and principles such as those found in s 4 of the *Guardianship Act* may also have the consequence that it is not appropriate to grant access to documents referred to in a particular hearing or matter.
- 24. The Principal Registrar or another registrar will review the request and determine whether or not to provide access. The registrar will attempt to respond within 5 business days as to whether the documents sought are available, whether access will be provided and the timeframe and cost for providing access.
- 25. There is no entitlement under r 42 to obtain access to documents that fall within the types of documents described in r 42(5). Those types include, without being exhaustive, documents that are privileged, that are covered by a non-disclosure order made by the Tribunal or whose disclosure is prohibited by legislation. If a person who is not a party to the proceedings wishes to challenge whether the documents fall within r 42(5) or to argue that a non-disclosure order should be set aside, the Tribunal will be required to give the parties notice of such an application and conduct a hearing, as the Tribunal determines is appropriate.

**Armstrong J**

President

October 2019