



NCAT Occupational Division Procedural Direction 3

HEALTH PROFESSIONALS REGISTRATION APPEALS

This Procedural Direction applies to:	Proceedings in the Occupational Division
Effective Date:	9 April 2014
Replaces Procedural Direction:	Not applicable
Notes:	You should ensure that you are using the current version of this Procedural Direction. A complete set of Procedural Directions and Guidelines is available on the Tribunal website at www.ncat.nsw.gov.au

Purpose

- 1.1 This procedural direction provides information about the Tribunal's procedures for Section 175 of the Health Practitioner Regulation National Law (NSW), (the "National Law"), appeals against National Board decisions about registration of health professionals.

Decisions

- 2.1 All States and Territories of Australia are part of the National Registration and Accreditation Scheme involving a growing number of health professions. In NSW under section 175 of the National Law, a person can appeal to the Tribunal against a decision of the National Board to:
- (a) Refuse to register the person,
 - (b) Refuse to endorse the person's registration,
 - (c) Refuse to renew the person's registration,
 - (d) Refuse to renew the endorsement of the person's registration,
 - (e) Impose or change a condition on a person's registration or the endorsement of the person's registration,
 - (f) Refuse to change or revoke an undertaking given by the person to the Board.

Relevant Professions

- 3.1 The health professions this procedural direction applies to are:
- (a) Aboriginal and Torres Strait Islander Health Practice,
 - (b) Chinese Medicine,
 - (c) Chiropractic,
 - (d) Dental (including the professions of a dentist, dental therapist, dental hygienist, dental prosthetist, 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.

Appeals in NSW

- 4.1 In NSW appeals against the above decisions can be lodged with the Tribunal if:
- (a) The location of the health practitioner's principal place of practice is in NSW, or
 - (b) The location of the student's approved program of study or clinical training is in NSW.
- 4.2 The Tribunal may also be the appropriate forum to deal with the appeal where:
- (a) The person making the appeal lives in NSW, or
 - (b) NSW is the jurisdiction nominated by the relevant National Board that made the appellable decision.

Outcomes

- 5.1 The Tribunal may:
- (a) Confirm the decision made by the National Board, or
 - (b) Amend the decision made by the National Board, or
 - (c) Substitute another decision for that made by the National Board.

Parties

- 6.1 The parties in the proceedings are the appellant, the person who lodged the appeal against the decision and the respondent, the relevant National Board who made the decision appealed against.

Representation

- 7.1 A party may appear before the Tribunal in person or may be represented by an Australian legal practitioner (NCAT Act Schedule 5 clause 27). A party may also be represented by an agent who is not an Australian legal practitioner with the Tribunal's leave (permission). This permission can be requested at the directions listing.
- 7.2 If a party is to be represented they must complete the Tribunal's Notice of Representation form and give a copy to the Tribunal and the other party.

Steps in the process

- 8.1 To commence an appeal the appellant must complete and file an External Appeal Form available on the Tribunal's website at www.ncat.nsw.gov.au. Seven copies of the completed form and any attachments must be sent or brought to the registry. Electronic filing of the appeal is not presently available.
- 8.2 The registry gives the appeal a file number, which parties must quote on all documents filed.
- 8.3 The Tribunal will serve the appeal on the respondent National Board by sending it to the Australian Health Practitioner Regulation Agency (AHPRA) and any other organisation it is required to advise under the National Law.
- 8.4 The registry's letter will advise the parties of the time, date and place for the directions listing.

Directions Listing

- 9.1 At the directions listing the Principal Member will give case management directions to prepare the matter for hearing. The appeal itself will not be heard at the directions listing.
- 9.2 The directions given will typically include the:
 - (a) Appellant filing (lodging with the Tribunal) and serving (giving to the other party or parties) any documentation, including additional evidence and submissions relied on in support of the appeal, by a specified date, usually within four weeks of the directions listing,
 - (b) Respondent filing and serving documentation in reply by a specified date, usually four weeks after the appellant's material is filed,
 - (c) Fixing of a time, date and place for the hearing of the appeal, usually two weeks after all the material is filed,
 - (d) Approval of the issue of a summons for evidence,
 - (e) Fixing a return date for any summons issued for documentary evidence, listed before a registrar to make orders about access to the material.
- 9.3 The person attending the directions listing must have full knowledge of the matter including but not limited to:
 - (a) What the matter is about,
 - (b) Whether there are any preliminary issues that need to be resolved

- prior to the hearing,
- (c) What evidence is likely to be relied on,
 - (d) Whether summonses are required, and
 - (e) The availability of witnesses and legal practitioners for hearing.

Number of copies of documents required

- 10.1 As these matters are heard by a panel, five copies of any written evidence and material relied on by the parties must be filed. A copy of anything filed in the Tribunal must also be given to the other party.

Summons

- 11.1 A party can apply to the Tribunal to issue a summons for evidence either documentary or in person. See the Tribunal's Procedural Direction on Summonses for more information.

Failure to Appear before the Tribunal

- 12.1 If a party does not appear before the Tribunal at either a directions listing or a hearing the Tribunal may make orders in the absence of that party including adverse costs orders.

Hearing

- 13.1 The Tribunal panel, that hears the appeal, is made up of four people, a legally qualified principal member, two practitioners from the same profession as the appellant and a lay person. During the course of the hearing the Tribunal members may ask questions of the witnesses and or the parties.
- 13.2 The order in which the proceedings are conducted is determined by the Principal Member. Generally proceedings will start with a short opening statement or introduction to their case by the parties.
- 13.3 The appellant presents their case first. This includes evidence given by witnesses or the appellant. The respondent can then ask questions of (cross-examine) the appellant and their witnesses. Next the respondent presents its case and the appellant can cross examine the witnesses for the respondent.
- 13.4 After cross-examination, the witness can be 're-examined' by the party who asked the witness to give evidence. Re-examination involves asking the witness further questions which arise from the answers given in cross-examination.
- 13.5 The Tribunal may limit the time that a person can spend presenting their case.
- 13.6 After all the evidence has been given, each party will be given a chance to tell the Tribunal what factual findings it should make on the basis of the evidence, what the relevant law is and how that law applies to the facts of the case. Submissions of this kind are usually given orally at the end of the hearing.

Sometimes the Tribunal may allow parties to give submissions in writing but because this delays the case and is more expensive, it is not encouraged.

Costs

- 14.1 The Tribunal may make any order about costs it considers appropriate for the proceedings (s175B National Law). This means that the appellant might be required to pay the legal costs of the respondent's representation at the appeal hearing, if the appeal is unsuccessful.

Decision

- 15.1 The Tribunal may give a verbal decision at the end of the hearing or it may reserve and deliver a written decision at a later stage. If the decision is reserved the Tribunal aims to have it delivered within 3 months of the hearing. The parties will be notified when the decision is ready to be handed down.
- 15.2 The decision will be sent to the parties and published on the Caselaw website.

Appeals

- 16.1 There is no appeal to the Tribunal's internal appeal panel against a decision by the Tribunal under these provisions. Parties should seek legal advice about their right to appeal to the Supreme Court of NSW.

(Sgd)

9 April 2014

HON. WAYNE HAYLEN QC

Deputy President