NCAT
NSW Civil &
Administrative Tribunal

NCAT Guideline 1
January 2018

Internal Appeals

Introduction

1. This Guideline provides information and explains the steps to be followed if a party wishes to appeal from a decision of a Division to the Internal Appeal Panel of NCAT. Attachment A is a diagram giving a general overview of the appeal process.

2. The Guideline also identifies some of the alternatives to an appeal that might be applicable in various circumstances.

What can be done on an internal appeal?

3. On an internal appeal from a final decision, the Appeal Panel can consider whether the Tribunal which originally heard the proceedings made an error of law. The Appeal Panel may also consider, if it gives permission or 'leave', whether any other error was made in reaching the original decision. If there has been an error of law or the Appeal Panel gives leave and finds that there has been any other error, orders are made to correct the position.

4. Generally, an appeal is not an opportunity to have a second go at a hearing.

5. Parties to an appeal are not usually allowed to rely on evidence that was not given to the Tribunal at the original hearing.

What decisions are appealable?

6. In general terms, s 32 of the *Civil and Administrative Tribunal Act 2013* (the Act) has the effect of allowing parties to appeal, or to seek permission or 'leave' to appeal, to an NCAT Appeal Panel from:

   (a) most decisions made in the Administrative and Equal Opportunity Division;

   (b) decisions made in the Guardianship Division;

   (c) decisions made in the Occupational Division relating to occupations licensed by State law and regulated by State authorities. (For example decisions in relation to home building, motor trade, real estate agent and other licenses administered by NSW Fair Trading; decisions in relation to security industry licenses and commercial and private inquiry agents licenses administered by the Commissioner of Police; decisions in relation to passenger transport licenses administered by Roads and Maritime Services; decisions in relation to tow truck driving and operator authorities);

   (d) decisions made in the Consumer and Commercial Division (but cl 12 of Schedule 4 to the Act restricts appeals from this division in a number of ways);

   (e) decisions of a registrar that are declared to be appealable decisions.

What decisions are not appealable?

7. The following decisions are not internally appealable:

   (a) decisions made in the **Administrative and Equal Opportunity Division** under certain legislation listed in cl 15 of Sch 3 to the Act;

   (b) decisions made in the **Occupational Division** relating to the following professions: medical practitioners, health professionals (nurses, psychologists, physiotherapists and similar professions), legal practitioners, veterinary practitioners, architects, registered surveyors, accredited certifiers and decisions made under certain other legislation listed in cl 29 of Sch 5 of the Act;

   (c) decisions in proceedings for the exercise of the Tribunal's enforcement jurisdiction;

   (d) decisions of the Tribunal in proceedings for the imposition of a civil penalty in exercise of its general jurisdiction;

   (e) decisions of a Division in an external appeal (for example, an appeal from a decision of an adjudicator under the *Strata Schemes Management Act 1996*); and

   (f) decisions of the internal Appeal Panel.

8. There are also exclusions and variations under some of the divisional schedules to the Act and in some of the specific laws giving jurisdiction to NCAT.

9. Some Tribunal decisions that are not subject to an internal appeal may be appealed to the Supreme Court, the Land and Environment Court or the Court of Appeal. A decision of the Guardianship Division may be appealed either to the Appeal Panel or the Supreme Court but not to both.

10. Parties should always check whether a decision is appealable to the Appeal Panel before deciding whether to appeal.

11. Some relevant extracts from the Act relating to internal appeals from NCAT decisions can be found at Attachment B to this Guideline.

Alternatives to an appeal

12. An appeal may not always be the most appropriate course when there is a difficulty or problem with a decision of the Tribunal.

13. As an alternative to appealing, a party can:

   (a) ask the Tribunal to set aside the decision (under reg 9 of the Civil and Administrative Tribunal Regulation 2013) where:

      (i) all the parties consent to this course; or

      (ii) the decision was made in the absence of a party and the Tribunal is satisfied that the party's absence has resulted in the party's case not being adequately put to the Tribunal;

   (b) ask the Tribunal to set aside proceedings or a decision (under s 53(4) of the Act) where there has been a failure to comply with provisions of the Act or the procedural rules in relation to commencement or conduct of the proceedings;

(c) ask the Tribunal to correct an obvious error in a decision or the reasons for decision (under s 63 of the Act). Examples of obvious errors are:

(i) an obvious clerical or typographical error in the decision or reasons;

(ii) an error arising from an accidental slip or omission;

(iii) a defect in form; and

(iv) an inconsistency between the orders and the reasons for decision.

Appeal rights vary with types of decision

14. Whether a party has a right to appeal against a decision or must request leave to appeal varies depending on whether the decision is a final decision, an ancillary decision or an interlocutory decision. Classifying a decision as final, ancillary or interlocutory is not always easy. In the end, it is a matter to be decided by the Appeal Panel.

15. Generally, a final decision is one that determines the outcome of proceedings. It can also be thought of as any decision that is not an ancillary or interlocutory decision.

16. An ancillary decision (as defined in s 4(1) of the Act) is a decision, other than an interlocutory decision, that is preliminary to, or consequential on, a decision determining proceedings. This includes:

(a) a decision whether the Tribunal has jurisdiction to deal with a matter, and

(b) a decision concerning the awarding of costs in proceedings.

17. An interlocutory decision (as defined in s 4(1) of the Act) is a decision concerning any of the following:

(a) the granting of a stay or adjournment,

(b) the prohibition or restriction of the disclosure, broadcast or publication of matters,

(c) the issue of a summons,

(d) the extension of time for any matter (including for the lodgment of an application or appeal),

(e) an evidential matter,

(f) the disqualification of any member,

(g) the joinder or misjoinder of a party to proceedings,

(h) the summary dismissal of proceedings,

(i) any other interlocutory issue before the Tribunal.

Appeals against final decisions

18. Generally, a party has the right to appeal on a question of law against a final decision of the Tribunal. The party does not require leave before such an appeal will be heard.

19. If, however, a party wishes to appeal on any ground other than a question of law against a final decision, the party must obtain leave from the Appeal Panel to do so.

20. The Appeal Panel decides whether an appeal is on a question of law or not. There is no simple test to determine whether an appeal is or is not 'on a question of law'. Parties are encouraged to seek legal advice about this.

Appeals against ancillary decisions

21. A party generally has the right to appeal against an ancillary decision of the Tribunal on a question of law. The Appeal Panel's leave is required to appeal on any ground other than a question of law.

Appeals against interlocutory decisions

22. For interlocutory decisions it does not matter whether the appeal is on a question of law or other grounds, the Appeal Panel's leave is required in all cases.

Considerations relevant to being given leave to appeal

23. In deciding whether or not to grant leave to appeal, the Appeal Panel will often consider whether the matter involves issues of principle, questions of public importance or a clear injustice. In addition, the Appeal Panel may take into account the cost to the parties and to the Tribunal and whether it is proportionate to the importance and complexity of the subject matter of the proceedings. General principles in relation to granting leave to appeal were considered in *Collins v Urban* [2014] NSWCATAP 17 at [80] to [84].

Additional considerations on leave to appeal from decisions of the Consumer and Commercial Division

24. In the case of appeals from the Consumer and Commercial Division where leave is required, cl 12 of Schedule 4 to the Act says that leave can only be granted if the Appeal Panel is satisfied that the appellant may have suffered a substantial miscarriage of justice because:

    (a) the decision was not fair and equitable;

    (b) the decision was against the weight of the evidence; or

    (c) significant new evidence has arisen (that was not reasonably available at the time of the original hearing).

25. The operation of these provisions was considered in *Collins v Urban* [2014] NSWCATAP 17 at [65] to [79].

26. In addition, there is no ability to appeal, except on a question of law, against a decision of the Consumer and Commercial Division where:

    (a) the appellant is a corporation and the appeal relates to a dispute in respect of which the Tribunal had jurisdiction because of the operation of the *Credit (Commonwealth Powers) Act 2010*; or

    (b) the appeal is against an order for the termination of a tenancy under the *Residential Tenancies Act 2010* and a warrant of possession has been executed in relation to that order.

Representation

27. A party is not automatically entitled to be represented by another person on the hearing of an internal appeal. Leave will be required except where the party was entitled to be represented without leave at the original hearing.

28. A party to an appeal can ask the Appeal Panel to grant leave for a person to represent the party on the appeal at the first directions hearing or at any later time.

Notice of Appeal and asking for leave to appeal

29. If a party wishes to appeal, or ask for leave to appeal, against a decision, the party must complete a Notice of Appeal form. The form is available on the NCAT website or at a Registry. Multiple copies of the form and any attachments must be lodged with the Tribunal. An original and two copies for the Tribunal and one copy for each respondent. There should be sufficient copies so that the Tribunal can serve on each respondent a copy of the form and any attachments.

30. The lodging party is called the 'appellant'. The other parties to the appeal are called 'respondents'. The respondents are all the other parties to the proceeding in which the decision appealed against was made and also, in certain limited cases, the individuals or bodies referred to in rule 29(c), (d) and (e) of the Civil and Administrative Tribunal Rules 2014.

31. The orders which the appellant is seeking in place of the orders appealed from should be set out in the Notice of Appeal.

32. If leave to appeal is required, there is a section in the Notice of Appeal where appellants should indicate they are applying for leave and explain the reasons why leave to appeal should be given.

33. An application for leave to appeal can be determined at the final oral hearing of the appeal, at an oral hearing before the final hearing or on the papers, that is, on the basis of written submissions without an oral hearing, under s 50 of the Act. In most cases, there will be an oral hearing but, in case the application is determined on the papers, an appellant asking for leave to appeal should give a full statement in the Notice of Appeal of the reasons that the Appeal Panel should give leave to appeal.

34. The question of whether leave to appeal will be given is most often left until the final hearing of the appeal. As a result, at the final hearing the Appeal Panel will usually consider not only whether there have been any errors of law but also whether leave should be given to appeal on grounds that do not involve a question of law.

Time for filing

35. *General Rule:* The general rule is that the appeal must be lodged within 28 days from the day on which the appellant was notified of the decision appealed against or was given reasons for the decision (whichever is later).

36. *Residential Proceedings:* For residential proceedings, the appeal must be lodged within 14 days from the day on which the appellant was notified of the decision appealed against or was given reasons for the decision (whichever is later).

37. The relevant enabling legislation may also specify a different time frame for filing a Notice of Appeal. An appellant should refer to the relevant enabling legislation to check whether there is a different time frame.

Extension of time

38. If a Notice of Appeal is lodged outside the relevant time period, the appellant must request an extension of time otherwise the appeal may be dismissed. An application for an extension of time should be made in the Notice of Appeal form. The principles relevant to granting an extension of time were considered in *Jackson v NSW Land and Housing Corporation* [2014] NSWCATAP 22 at [18] to [22].

39. The Notice of Appeal asks whether the appellant objects to an application for an extension of time being dealt with on the papers. The Tribunal may determine an application for an extension of time on the papers, without an oral hearing.

40. If an extension of time is requested but is not granted the appeal will be dismissed because it is out of time. This may be decided before the appeal is heard or it may be left to be decided at the final hearing of the appeal.

Payment of fee

41. A Notice of Appeal will not be treated as properly lodged until the prescribed fee is paid. In certain limited circumstances a registrar may waive the payment of the fee or apply a concessional rate to the fee payable.

42. A party seeking a fee waiver should complete the Fee waiver request form available on the NCAT website or from the Registry. Where the fee is eventually waived, it may be open to the Tribunal to treat a Notice of Appeal as if it had been properly lodged from the date it was first received by the Tribunal even if at that time the fee had not been waived. A party seeking a fee waiver should ask for the Notice of Appeal to be stamped as received on the date it was first given to the Tribunal so that there is a record of that date.

Service of Notice of Appeal

43. When a Notice of Appeal is lodged, the Tribunal will serve on each respondent a copy of the Notice of Appeal and attachments.

44. For further information on service, see NCAT Procedural Direction 1 - Service and Giving Notice available on the NCAT website.

Reply to Appeal

45. A respondent to an appeal may complete and lodge an original and two copies of the Reply to Appeal within 14 days following service of the Notice of Appeal or within the time frame directed by the Tribunal. The Reply to Appeal form is available on the NCAT website or from the Registry.

46. A respondent must serve a copy of the Reply on each appellant before, at the same time or as soon as practicable after lodging the Reply.

47. Where a respondent wants to argue that the orders appealed against were correct but for reasons different from those given by the Tribunal, the respondent should complete the section in the Reply to Appeal which requires the respondent to state whether there are any other reasons why the Tribunal's orders were correctly made.

Cross appeal

48. There is no provision for cross appeals. Where a respondent to an appeal also seeks to have the original orders varied the respondent must lodge a separate Notice of Appeal and pay the prescribed fee. If the respondent has not lodged a Notice of Appeal prior to the expiration of the time for filing of the notice, the respondent must ask the Tribunal for an extension of time. If the Notice of Appeal has been lodged within a short time after the first appeal, that fact may be taken into account when the Tribunal decides whether to give an extension of time.

Application for stay of the decision subject of the appeal

49. Even if an appeal is lodged against a decision, that original decision still operates and can be enforced unless the Tribunal makes an order stopping it being enforced. This type of order is called a 'stay' and can be made under s 43(3) of the Act. The mere lodgement of the Notice of Appeal is insufficient, of itself, to demonstrate that it is an appropriate case to warrant the granting of a stay.

50. If a stay has not been granted the successful party may enforce the original orders made by the Tribunal, for example by seeking the issue of a warrant for possession or the certification of a money order.

51. The Tribunal will not make a stay order stopping enforcement just because an appeal has been lodged.

52. In deciding whether or not to make a stay order stopping a decision being enforced, the Tribunal will usually take into account considerations such as the following:

    (a) The party who obtained the original order should generally be allowed to enforce it unless the person asking for the stay can show that there is a good reason why the order should not be enforced.

    (b) A factor which supports staying enforcement of an order is if the appeal would be useless or ineffective if the order is enforced before the appeal is determined.

    (c) Another factor which supports giving a stay is if the appellant's case is strong. When it is plain that an appeal is very weak and there are no real prospects of success and the appeal has been lodged simply in the hope of gaining a respite against immediate execution of the decision, a stay is likely to be refused.

    (d) If the order appealed against is to pay money, a factor which supports stopping enforcement is if the person asking for the stay can show by evidence, such as detailed financial records, that:

        (i) if the money is paid to the other party, the other party probably could not repay the money if the appeal is successful;

        OR

(ii) the person asking for the stay does not have enough money or other assets to pay the amount ordered to be paid and, if that amount is not paid, the other party is likely to bring bankruptcy (or winding up) proceedings against the person (or company) asking for the stay.

(e) Another example of a factor which may support a stay order being made is if the person asking for the stay does not have enough money or other assets to pay the amount ordered to be paid and, if they do not pay, their contractor licence may be suspended under s 42A of the *Home Building Act 1989* (NSW).

(f) The Tribunal will look at the circumstances of both sides, not just the situation of the person asking for the stay, and may order a stay to stop enforcement if justice for both parties required it.

(g) In doing justice for both parties, the Tribunal can require the person asking for the stay to pay money or do other things as a condition for ordering that enforcement be stayed. The Tribunal may also refuse or grant the stay but list the appeal for an early hearing.

53. An application for a stay order stopping enforcement can be made by filling in and lodging with the Tribunal the form Application for stay of original decision pending appeal which is available on the NCAT website.

54. In urgent cases, an interim stay can be ordered without hearing from the other party, but this will be only for a short time and the other party will be given an opportunity at a hearing to argue that the stay should not continue.

55. Usually, a person asking for a stay will have to attend a hearing, provide evidence and make submissions to show why a stay order stopping enforcement should be made. In practice, the person asking for a stay has to show to the Tribunal why it is appropriate for the Tribunal to stop enforcement of the decision appealed against. The other party will also have the opportunity to provide evidence and make submissions on why a stay order should not be made.

56. Even if a stay order has been made, the party which opposed the stay can apply to the Tribunal for the stay order to be discharged or set aside if circumstances have changed so that the stay is no longer appropriate or if the party that obtained the stay order has not complied with any conditions imposed when the stay was ordered.

57. If a party has not decided whether or not to appeal, the party may ask the original decision maker to suspend the operation of an order for a short period of time, so that the party can consider whether or not to appeal. The original decision maker may or may not suspend the operation of the order.

Directions for the conduct of the appeal

58. Except when the appeal is suitable to be dealt with on the papers, in general, within 28 days after acceptance by the Registry of the Notice of Appeal, the Appeal Panel will give notice of a directions hearing, also known as a “call over”.

59. The parties at a directions hearing will generally be required to address:

(a) the appropriate directions for the filing of submissions and other material to be relied upon in order to prepare the appeal for hearing;

(b) any preliminary matters (for example an application for an extension of time for filing of the appeal, an application for a stay of the orders appealed against or any other application for interim orders);

(c) whether the appeal is suitable for referral to mediation or another form of resolution process;

(d) a suitable date for the hearing of the appeal or application for leave to appeal.

60. Where appropriate, an appeal directions hearing may be conducted by telephone.

Timetable and location

61. The parties are required to comply with any directions made for the filing and service of submissions and other material to be relied upon in order to prepare the matter for hearing.

62. If an oral hearing is to take place, a date for hearing will normally be fixed as part of the directions. Appeal Panel hearings will usually be listed for no more than half a day. If the Appeal Panel is considering whether to deal with the appeal on the papers, the directions may also include a timetable for submissions by the parties on whether the appeal should be determined on the basis of written submissions without an oral hearing.

63. The venue for the Appeal Panel hearing will generally be Sydney, unless circumstances (including the convenience of all the parties) require a hearing in a different location.

Constitution of Appeal Panel

64. The Appeal Panel which hears any internal appeal will in most cases be made up of, or 'constituted by', one, two or three members. At least one of the members will be a lawyer. In any particular proceedings, the constitution of the Appeal Panel will depend on:

(a) the degree of public importance or complexity of the subject-matter of the proceedings,

(b) the need for any of the members to have special knowledge or experience in the subject-matter of the proceedings,

(c) any applicable requirements in relation to the constitution of the Tribunal that are specified in the Act or in other legislation,

(d) other relevant considerations.

Form of hearing

65. Often the appeal will be heard with both parties present and making oral submissions. However, the Appeal Panel may deal with an appeal on the papers, that is, on the basis of the written material filed without holding an oral hearing. An appeal will only be decided on the papers where the parties agree to that course or have had the opportunity to make submissions on whether there should be an oral hearing and the Appeal Panel has decided that it is appropriate to do so.

Procedure at oral hearing

66. Where an oral hearing is held, the Appeal Panel will usually begin by checking that it has all the documents the parties were required to file. The Appeal Panel will generally have access to the file from the Division.

67. However, fairness requires that each party must tell the other parties what material that party is going to rely upon in the appeal. This will include:

    (a) any material from the Tribunal file at first instance;

    (b) any part of the sound recording or transcript of the proceedings at first instance; or

    (c) any other submissions or material to be relied upon.

    This is usually done by the party seeking to rely on that material providing it to the Tribunal and the other parties with the Notice of Appeal, with the Reply to Appeal or in accordance with a direction of the Tribunal for the filing and service of other material to be relied upon. If it is not provided to the Tribunal and the other parties in this way, the party may not be permitted to rely on that material at a hearing.

68. The material upon which the Appeal Panel will decide the appeal or application for leave to appeal will generally be the material in or attached to the Notice of Appeal or Reply to Appeal and any material filed and served in compliance with a direction given by the Appeal Panel.

69. The appellant will normally be invited first to explain their case. It is not necessary to repeat what has been covered in written submissions. The respondents will then be asked to reply. Again, it is not necessary to repeat the content of written submissions. The appellant will usually be given a brief opportunity to make any points in reply to the respondents' submissions.

70. If a party wishes to bring forward new evidence or the Appeal Panel decides to conduct a new hearing under s 80(3) of the Act, the Appeal Panel will make special directions and decide what procedure will be followed after hearing from the parties.

71. The Appeal Panel may give its decision orally at the end of the hearing or reserve its decision. If the decision is reserved, the presiding member should give a general indication of when the written decision is likely to be provided to the parties.

Costs

72. For appeals lodged before 1 January 2016, the general position is that the Appeal Panel applies s 60 of the Act when determining costs. Under s 60(1) each party is to pay its own legal costs except that, under s 60(2), if there are special circumstances warranting an award of costs, the Appeal Panel can order a party's costs to be paid by another party.

73. For appeals lodged on or after 1 January 2016, the Appeal Panel applies whatever provisions relating to costs applied in the proceedings at first instance, as a result of the operation of r 38A of the Civil and Administrative Tribunal Rules 2014.

74. If a party wishes to apply for an order that another pay its legal costs under s 60(2) of the Act or some other provision which permits costs to be awarded the party should indicate that in the Notice of Appeal (in the section dealing with orders sought) or in the Reply. Alternatively, a

party should indicate to the Appeal Panel and the other parties before the hearing that they intend to apply for a costs order and the basis for the application.

75. An application for costs should where possible be accompanied by a precise statement of the amount of costs actually sought and its components. This may assist to avoid further costs being incurred in assessing any costs awarded.

76. The Appeal Panel will usually hear submissions on costs during the hearing. Where it is not practical or appropriate to deal with a costs application during the hearing, a party should foreshadow that they wish to apply for costs and the Appeal Panel will make directions as to the filing of submissions. This is done so that the costs application can be decided without a further oral hearing.

77. Where matters are to be decided on the papers the Appeal Panel will normally deal with any costs application as part of the decision.

This Guideline applies to:

Proceedings in all Divisions of the Tribunal.

Effective Date:

8 January 2018

Replaces:

NCAT Guideline 1: Internal Appeals (March 2016)

Notes:

You must us the latest version of this Guideline. The latest version of this Guideline is on the NCAT website.

Civil and Administrative Tribunal of New South Wales

December 2017

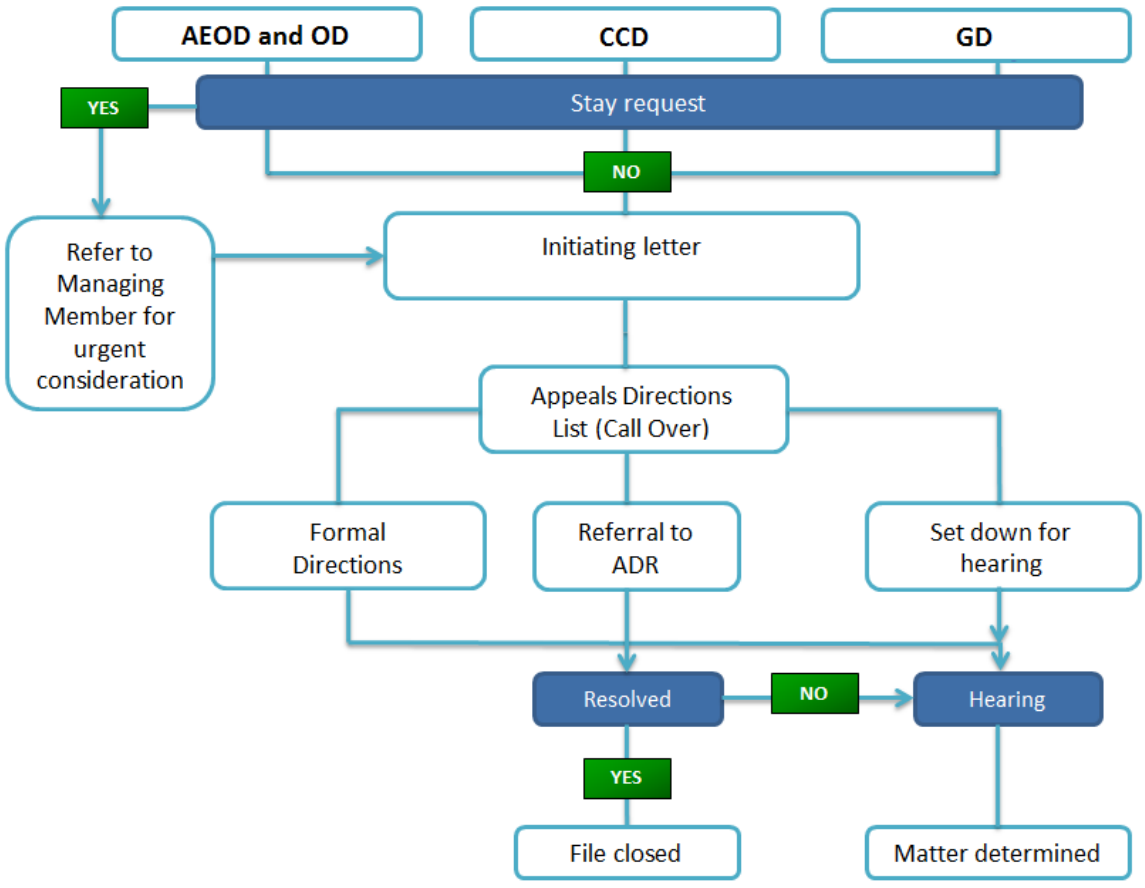
Internal Appeals – NCAT Guideline No 1 Attachment A
General overview of the appeal process

Appeal Received by NCAT

Appeal from Administrative and Equal Opportunity Division, Occupational Division, Consumer and Commercial Division or Guardianship Division Decision.

1. If stay request received referred to Managing member for consideration
2. Initiating letter to parties
3. Appeals directions list (Call Over)
4. Referred for formal directions, alternative dispute resolution or set down for a hearing
5. If matter resolves prior to or at directions or other hearing or ADR the file is closed
6. If matter not resolved is set for hearing
7. Matter determined.

Appeal process diagram



Internal Appeals – NCAT Guideline No 1 Attachment B
Extracts from the Civil and Administrative Tribunal Act 2013

The following table contains extracts from the *Civil and Administrative Tribunal Act 2013* dealing with appeal rights from NCAT decisions and exceptions to those rights.

Internal appeal jurisdiction of NCAT

Section	Details
Section 32 Internal appeal jurisdiction of Tribunal	(1) The Tribunal has ***internal appeal jurisdiction*** over: (a) any decision made by the Tribunal in proceedings for a general decision or administrative review decision, and (b) any decision made by a registrar of a kind that is declared by this Act or the procedural rules to be internally appealable for the purposes of this section. (2) The Tribunal also has the following jurisdiction in proceedings for the exercise of its internal appeal jurisdiction: (a) the jurisdiction to make ancillary and interlocutory decisions of the Tribunal in the proceedings, (b) the jurisdiction to exercise such other functions as are conferred or imposed on the Tribunal by or under this Act or enabling legislation in connection with the conduct or resolution of such proceedings. (3) However, the internal appeal jurisdiction of the Tribunal does not extend to: (a) any decision of an Appeal Panel, or (b) any decision of the Tribunal in an external appeal, or (c) any decision of the Tribunal in proceedings for the exercise of its enforcement jurisdiction, or (d) any decision of the Tribunal in proceedings for the imposition of a civil penalty in exercise of its general jurisdiction. (4) An ***internally appealable decision*** is a decision of the Tribunal or a registrar over which the Tribunal has internal appeal jurisdiction. (5) An ***internal appeal*** is an appeal to the Tribunal against an internally appealable decision. (6) Subject to the procedural rules, if a decision of a registrar is an internally appealable decision, the provisions of this Act relating to the making and determination of an internal appeal are taken to apply as if: (a) any reference to the Tribunal at first instance (however expressed) included a reference to a registrar, and (b) any requirement concerning the granting of leave to appeal against particular kinds of decisions of the Tribunal or on particular grounds extended to decisions of the same kind made by a registrar or grounds of the same kind.
Section 80 Making of appeals	(1) An appeal against an internally appealable decision may be made to an Appeal Panel by a party to the proceedings in which the decision is made. (2) Any internal appeal may be made: (a) in the case of an interlocutory decision of the Tribunal at first instance—with the leave of the Appeal Panel, and (b) in the case of any other kind of decision (including an ancillary decision) of the Tribunal at first instance—as of right on any question of law, or with the leave of the Appeal Panel, on any other grounds.

Section	Details
	(3) The Appeal Panel may: (a) decide to deal with the internal appeal by way of a new hearing if it considers that the grounds for the appeal warrant a new hearing, and (b) permit such fresh evidence, or evidence in addition to or in substitution for the evidence received by the Tribunal at first instance, to be given in the new hearing as it considers appropriate in the circumstances.

Exceptions to NCAT appeal rights

Section	Details
Section 32 (3) Internal appeal jurisdiction of Tribunal	(1) The internal appeal jurisdiction of the Tribunal does not extend to: (a) any decision of an Appeal Panel, or (b) any decision of the Tribunal in an external appeal, or (c) any decision of the Tribunal in proceedings for the exercise of its enforcement jurisdiction, or (d) any decision of the Tribunal in proceedings for the imposition of a civil penalty in exercise of its general jurisdiction. **Note.** The decisions above may be appealable to the Supreme Court and, in some cases in relation to civil penalty decisions made by the Tribunal (whether under this Act or enabling legislation), the District Court. See section 73 and Part 6.

Administrative and Equal Opportunity Division – Schedule 3

Clause	Details
Clause 15 Administrative and Equal Opportunity Division decisions that are not internally appealable	Each of the following Administrative and Equal Opportunity Division decisions is not an internally appealable decision for the purposes of an internal appeal: (a) a decision of the Tribunal for the purposes of section 96 of the *Anti-Discrimination Act 1977* with respect to the granting of leave for the purposes of that section, (b) a Division decision for the purposes of the *Child Protection (Working with Children) Act 2012*, (c) (Repealed) (d) a Division decision for the purposes of the lands legislation, (e) a determination of the Tribunal for the purposes of Part 7 of the *Native Title (New South Wales) Act 1994,* (f) an administrative review decision for the purposes of section 21 of the *Plant Diseases Act 1924*, (g) an administrative review decision for the purposes of section 51 of the *Victims Rights and Support Act 2013*. NB: In relation to clause 15(d) above, clause 1 of Schedule 3 of the NCAT Act prescribes the legislation defined as “lands legislation” for the purposes of the Schedule. Lands legislation includes: *Agricultural Industry Services Act 1998* *Australian Oil Refining Agreements Act 1954* *Commons Management Act 1989*

Clause	Details
	Crown Lands Act 1989 *Crown Lands (Continued Tenures) Act 1989* *Hay Irrigation Act 1902* *Local Land Services Act 2013* *Port Kembla Inner Harbour Construction and Agreement Ratification Act 1995* *Water Act 1912* *Wentworth Irrigation Act 1890* *Western Lands Act 1901*
Clause 16 Appeals against interim orders under *Anti-Discrimination Act 1977* with leave only	Despite section 80 (2) of this Act, an internal appeal against an interim order of the Tribunal under the *Anti-Discrimination Act 1977* may only be made with the leave of the Appeal Panel even if it is on a question of law.
Clause 17 Certain decisions to be appealed directly to Supreme Court	(1) A party to proceedings in which any of the following decisions is made may appeal to the Supreme Court on a question of law against the decision: (a) a Division decision for the purposes of the *Child Protection (Working with Children) Act 2012*, (b) (Repealed) **Note.** Internal appeals against such decisions are not available because of clause 15. See also section 84 (Practice and procedure for appeals to courts under this Act).
Clause 18 Decisions under lands legislation to be appealed direction to Land and Environment Court	(1) A party to proceedings in which a Division decision is made for the purposes of the lands legislation may appeal to the Land and Environment Court against the decision. Lands legislation includes: *Agricultural Industry Services Act 1998* *Australian Oil Refining Agreements Act 1954* *Commons Management Act 1989* *Crown Lands Act 1989* *Crown Lands (Continued Tenures) Act 1989* *Hay Irrigation Act 1902* *Local Land Services Act 2013* *Port Kembla Inner Harbour Construction and Agreement Ratification Act 1995* *Water Act 1912* *Wentworth Irrigation Act 1890* *Western Lands Act 1901* (2) Subject to any interlocutory order made by the Land and Environment Court, an appeal to the Land and Environment Court does not affect the operation of the decision under appeal or prevent the taking of action to implement the decision.

Consumer and Commercial Division – Schedule 4

Clause	Details
Clause 12 Consumer and Commercial Division limitations on internal appeals against Division decisions	(1) An Appeal Panel may grant leave under section 80 (2) (b) of this Act for an internal appeal against a Division decision only if the Appeal Panel is satisfied the appellant may have suffered a substantial miscarriage of justice because: (a) the decision of the Tribunal under appeal was not fair and equitable, or (b) the decision of the Tribunal under appeal was against the weight of evidence, or (c) significant new evidence has arisen (being evidence that was not reasonably available at the time the proceedings under appeal were being dealt with). (2) Despite section 80 (2) (b) of this Act, an internal appeal against a Division decision may only be made on a question of law (as of right) and not on any other grounds (even with leave) if: (a) the appellant is a corporation and the appeal relates to a dispute in respect of which the Tribunal at first instance had jurisdiction because of the operation of Schedule 3 to the *Credit (Commonwealth Powers) Act 2010*, or (b) the appeal is an appeal against an order of the Tribunal for the termination of a tenancy under the *Residential Tenancies Act 2010* and a warrant of possession has been executed in relation to that order.

Occupational Division – Schedule 5

Clause	Details
Clause 29 Certain profession decisions to be appealed directly to Supreme Court or Land and Environment Court	(1) **Profession decisions not internally appealable** Despite section 32 of this Act, each of the following Division decisions (a ***profession decision***) is not an internally appealable decision for the purposes of an internal appeal: (a) a decision for the purposes of the *Aboriginal Land Rights Act 1983* other than: (i) a decision for the purposes of section 198 of that Act not to conduct proceedings into a complaint, or (ii) a decision for the purposes of section 199 of that Act to determine proceedings into a complaint without a hearing, (b) a decision for the purposes of the *Architects Act 2003*, (c) a decision for the purposes of the *Building Professionals Act 2005*, (d) a decision for the purposes of the *Health Practitioner Regulation National Law* (NSW) (other than a decision for the purposes of clause 13 of Schedule 5F to that Law), (e) a decision for the purposes of the *Legal Profession Uniform Law (NSW)*, (f) a decision for the purposes of the *Local Government Act 1993* other than: (i) a decision for the purposes of section 469 of that Act not to conduct proceedings into a complaint, or (ii) a decision for the purposes of section 470 of that Act to determine proceedings into a complaint without a hearing, (g) a decision for the purposes of the *Surveying and Spatial Information Act 2002*, (h) a decision for the purposes of the *Veterinary Practice Act 2003*. **Note.** A Division decision other than a profession decision that is a general decision or administrative review decision may be subject to an internal appeal. See section 32 and Division 2 of Part 6 of the Act.

Clause	Details
	(2) **Right to appeal to Supreme Court or Land and Environment Court** However, a party to proceedings in which a profession decision is made may appeal against the decision in accordance with this clause to: (a) in the case of an order for the purposes of Division 3 of Part 5 or Division 4 of Part 7 of the *Aboriginal Land Rights Act 1983* declaring a vacancy in an office—the Land and Environment Court, and (b) in the case of any other decision—the Supreme Court. (3) Despite subclause (2), an appeal does not lie with respect to any of the following Division decisions: (a) a decision made for the purposes of section 89 (2) of the *Legal Profession Uniform Law Application Act 2014*, (b) any other decision of a kind prescribed by the regulations made for the purposes of that Act. **Note: There are currently no decisions prescribed by the regulations.**

Guardianship Division – Schedule 6

Clause	Details
Clause 12 Guardianship Division decisions may be appealed to either Appeal Panel or Supreme Court	(1) A party to proceedings in which a Division decision that is an internally appealable decision is made (an ***appealable Division decision***) may appeal against the decision by either: (a) an internal appeal to an Appeal Panel in accordance with Division 2 of Part 6 of this Act, or (b) an appeal to the Supreme Court in accordance with this Part. (2) However, a decision of a registrar made under clause 8 (1) may only be appealed as an internal appeal to an Appeal Panel in accordance with Division 2 of Part 6 of this Act. (3) An internal appeal precludes an appeal to the Supreme Court against the same decision unless the internal appeal is withdrawn with the approval of an Appeal Panel for the purpose of enabling an appeal to the Supreme Court against the decision. (4) An appeal to the Supreme Court precludes an internal appeal against the same decision unless the appeal to the Supreme Court is withdrawn with the approval of the Court for the purpose of enabling an internal appeal against the decision.