



## NCAT Procedural Direction 1

### SERVICE AND GIVING NOTICE

<b>This Procedural Direction applies to:</b>	Proceedings in all Divisions
<b>Effective Date:</b>	8 January 2018
<b>Replaces Procedural Direction:</b>	NCAT Procedural Direction 1 (7 February 2014)
<b>Notes:</b>	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 <a href="http://www.ncat.nsw.gov.au">www.ncat.nsw.gov.au</a>

#### Introduction

1. When parties deliver or send documents to the Tribunal, this is called lodging the documents with the Tribunal.
2. When a person is required to deliver or send to another person a copy of any application, notice of appeal, reply, statement of evidence or other document that is to be relied on in the Tribunal, this process is called serving those documents.
3. In addition, parties may need to be told when and where a hearing is to take place.
4. This Procedural Direction sets out:
  - (a) how documents may be lodged or served;
  - (b) who is responsible for serving various types of documents and when that has to be done; and
  - (c) how notice of a hearing may be given.

#### Compliance and other matters

5. The Tribunal may excuse a person from complying with this Procedural Direction before or after the time for compliance.

6. Nothing in this Procedural Direction prevents the Tribunal from giving any directions concerning the lodgment or service of documents or the giving of notice of hearings that the Tribunal considers appropriate in any particular proceedings before the Tribunal.
7. This Procedural Direction is made by the President under s 26 of the *Civil and Administrative Tribunal Act 2013*.

## Definitions

Word	Definition
Act	<i>Civil and Administrative Tribunal Act 2013</i>
Rules	<i>Civil and Administrative Tribunal Rules 2014</i>
address for service of a party	An address of a place in New South Wales: <ol style="list-style-type: none"> <li>(a) which the party has stated is the address that can be used for service of documents on the party; and</li> <li>(b) at which documents can be left for the party during ordinary business hours or to which documents for the party can be posted.</li> </ol>
lodge a document with the Tribunal	Deliver or send a document to the Tribunal in a way which complies with the Act, the Rules and this Procedural Direction.
registrar	The principal registrar or any other person employed as a registrar of the Tribunal.
serve a document on a person	Deliver or send a document to the person in a way which complies with the Act, the Rules and this Procedural Direction.

8. Words used in this Procedural Direction have the same meaning as defined in the Act and the Rules.

## How may documents be lodged?

9. A document can be lodged with the Tribunal by:
  - (a) leaving it at a registry of the Tribunal;
  - (b) sending it by post to a registry of the Tribunal; and
  - (c) sending it by electronic means to the Tribunal if the Tribunal has made electronic lodgment available for that type of document and in the type of proceedings concerned.
10. If a person sends material by email or other electronic means when lodgment by these means is not available, the document will not be taken to have been lodged.

## Who must serve documents?

11. For all applications lodged with the Tribunal, except applications in the Guardianship Division, a registrar is either:
  - (a) to serve;or
  - (b) direct the person lodging the application to serve a copy of the application and any accompanying documents on every party other than the person lodging the application.
12. For applications in the Guardianship Division, the applicant must, as soon as practicable after the application has been made, serve a copy on each other party.
13. For a reply to any application or Notice of Appeal, the person lodging the reply is to serve a copy of the reply on all other parties at the same time or as soon as practicable after lodging the reply.
14. The Tribunal may refuse to allow a party to rely at a hearing on a document if the document has not been served on all the other parties to the proceedings prior to the hearing or in accordance with any directions of the Tribunal.

## When must documents be served?

15. If required under paragraph 11, a registrar is to serve an application and any accompanying documents as soon as reasonably practicable after lodgment and preferably within 3 working days.
16. A person who is directed by a registrar to serve an application and any accompanying documents under paragraph 11 is to serve the documents within 3 working days of lodgment or within such other time as the registrar directs.
17. A person lodging a reply is to serve a copy of the reply before, at the same time as, or as soon as practicable after lodgment and preferably within 3 working days.

## How may documents be served?

18. The ways in which a document can be served are set out in rules 13 to 15 of the Rules. A copy of the Rules can be found at the Tribunal's website at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au). For proceedings in the Guardianship Division, any of the means of service referred to in s 98 of the *Guardianship Act 1987* may also be used.
19. Under the Rules a document can generally be served:
  - (a) on a person (including an individual, a corporation or Government Department) by sending the document (addressed to the person) to the address for service of the person;

- (b) on a person (including an individual, a corporation or Government Department) by sending the document (addressed to the person) by fax, email or other electronic means to the person if the person has agreed to receiving documents by these means;
  - (c) on an individual by posting the document (addressed to the person) to, or leaving it at, the person's business or residential address last known to the person serving the document;
  - (d) on a corporation by:
    - (i) leaving the document at or posting it to the registered office of the corporation;
    - (ii) delivering the document personally to a director of the corporation who resides in Australia;
  - (e) on a Government Department by leaving the document at or posting it to an office of that Department addressed to the Head of the Department; and
  - (f) in any other way that the Tribunal or a registrar directs in a particular case.
20. If a document cannot practicably be served on a person by using any of those means, the Tribunal or a registrar can direct that steps be taken to bring the document to the person's attention and, if those steps are taken, the document is taken to have been served. This is called substituted service.
21. If steps are taken to bring a document to a person's attention, without a direction for substituted service, the Tribunal or a registrar can direct that the document be taken to have been served on the person on a date specified in the direction.
22. Documents do not need to be served in one of the ways set out above if the receiving party (or their representative) agrees to accept service of the documents by some other means.
23. If an agreement to accept service is reached, it is recommended that this be recorded in writing so that the agreement can easily be proved, should that be required.

#### Can documents be served outside New South Wales?

24. The Tribunal may require a document to be served in Australia but outside New South Wales.
25. If a document is to be served in Australia but outside New South Wales, special rules under the *Service and Execution of Process Act 1992* (Cth) must be followed.

26. A party who wants to serve a document in Australia but outside New South Wales should ask for assistance from a registrar or obtain legal advice as to the requirements for such service.

#### How may notice of a hearing be given?

27. If proceedings are listed for hearing when any of the parties is not present, the Tribunal or a registrar may either:
  - (a) give notice of the date, time and location of the hearing to all parties; or
  - (b) direct a party to give that notice to all other parties.
28. If proceedings are listed for hearing when the parties are present in the Tribunal, generally, no other notice of that hearing will be given.
29. Notice of a hearing may be given by any means which a registrar reasonably believes will be likely to bring the information concerning the hearing to the attention of the party to whom notice is to be given including all the means by which documents may be served.

**Wright J**  
President  
8 January 2018