

QCAT Practice Direction No 1 of 2013

Notices to Produce

Effective: 4 March, 2013

The tribunal may make orders and issue notices requiring persons to produce stated documents or things under sections 63 and 97 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

A document or thing must be produced unless there is a valid claim to privilege from disclosure under section 63(3) or at common law.

Rule 80(3) of the QCAT Rules provides that a party to the proceeding may inspect and copy the documents/s or thing produced, unless the tribunal otherwise orders. The produced documents may not be viewed under section 230 of the QCAT Act by a non-party.

Steps to be taken after production of documents pursuant to a notice

A person or entity producing documents, although complying with the notice to produce, may indicate that he/she/it believes they are entitled to claim privilege or some other basis on which the documents should not be disclosed to the parties, or on which the notice to produce should be set aside. When this occurs, the principal registrar shall immediately refer the documents and notification to the tribunal member in charge of the list, for consideration to be given to making directions until further order that no party may have access to the documents, and establishing a process to determine the claim of privilege or other claimed basis for non-disclosure.

Standard directions are as follows:

- 1. Until further order, the documents produced by (name of person or entity producing them) may not be inspected by any party;*
- 2. That (name of entity or party claiming right to non-disclosure) shall give to the tribunal 2 copies and to each party 1 copy of submissions in support of their claim for (privilege/ other basis) from disclosure of the documents produced by 4pm on (insert date);*
- 3. That each party give to the tribunal 2 copies and to each other party and (person or entity subject to the notice) 1 copy of their submissions in reply by 4pm on (insert date);*

4. *Unless the tribunal otherwise orders, that the claim for (privilege/other basis) be determined on the papers without an oral hearing not before (insert time) on (insert date).*

If there is no claim to privilege or other basis advanced by the person or entity producing documents in compliance with a notice to produce for non-disclosure of the documents produced to the parties, the following steps shall be taken: When documents are received, the principal registrar shall write to the parties notifying them that documents have been produced and are available for inspection in the registry. The parties should be advised to contact the case manager to arrange an appointment if they intend to inspect the documents.

Parties shall also be advised that a party may seek to introduce some or all of the produced documents into evidence at hearing. Further, if a party chooses not to inspect the documents produced prior to the hearing, it may be difficult for them to later successfully apply for an adjournment to address issues raised by documents tendered at hearing from produced documents. The tribunal may consider the party failed to take responsibility for properly preparing for hearing.

Steps after settlement or withdrawal finalising the proceeding before hearing

In the event that a proceeding resolves before hearing, whether by negotiated outcome or withdrawal of the application, and notices to produce have been issued, the file should be referred to the Member in charge of the list.

It is expected that notices to produce will be set aside in these circumstances, as they are no longer required for the proceeding. If documents have been produced in response to the notices, it is anticipated that directions will also be made for the return of the documents to the person/s producing them.

In a rare case, a party may seek to inspect and copy produced documents for purposes unrelated to the proceeding after the proceeding has been finalised. Arguably, this is an abuse of process. Given that Rule 80(3) enables inspection even in these circumstances, a direction should also be considered that the documents are not available for inspection by the parties pending return to the person/entity producing them.

Standard directions are as follows:

1. *The notice to produce issued to (name of person/entity to whom the notice was issued) on (insert date) is set aside;*

OR

2. *I direct the principal registrar to return the documents produced in compliance with the notice to produce to (name of person or entity who produced them);*
3. *I direct that pending return of the documents to (Name of person or entity that produced them) the documents may not be inspected by any party.*

Post-hearing steps

After a hearing has concluded, the documents provided pursuant to notices to produce are no longer required, once the appeal period, or any extension granted, has expired and an appeal has not been instituted.

Once the appeal period has expired a copy of any documents tendered which have become exhibits in the proceedings shall replace the original on the tribunal file. The produced documents shall be returned by the principal registrar to the person/entity who/which produced them in accordance with this practice direction.

*Justice Alan Wilson
President*

4 March 2013