



COVID-19 Special Measures Practice Direction – National Disability Insurance Scheme Division

This Direction is given under section 18B of the *Administrative Appeals Tribunal Act 1975* (AAT Act).

1. About this Direction

Application

- 1.1 This Direction applies to the National Disability Insurance Scheme Division of the Administrative Appeals Tribunal (AAT) during the COVID-19 pandemic.
- 1.2 The purpose of this Direction is to modify the operations and procedures of the AAT, where appropriate and necessary, to enable us to continue to review decisions during the pandemic. In implementing these changes:
 - (a) the health and wellbeing of members, staff, parties, representatives and other persons involved in AAT processes is our priority;
 - (b) we are mindful that the pandemic may affect the capacity of the AAT and other persons to take steps to progress applications; and
 - (c) the AAT will take into account local conditions and the application of COVID-safe requirements in AAT Registries in determining the extent to which we can provide services in person.
- 1.3 This Direction takes effect on 8 March 2021. It applies to all applications, whether lodged before, on or after this date, and remains in effect until it is superseded or revoked. It supersedes the *COVID-19 Special Measures Practice Direction – National Disability Insurance Scheme Division* dated 27 April 2020.
- 1.4 Other directions under section 18B of the AAT Act continue to apply to applications to which this Direction applies, including:
 - (a) the [General Practice Direction](#); and
 - (b) the [Lodgement of Documents under Sections 37 and 38AA of the AAT Act Practice Direction](#).

However, where the terms of this Direction are inconsistent with the terms of another direction on the same matter, the terms of this Direction apply.

- 1.5 The AAT may alter the procedures set out in this Direction to suit individual applications, including if a party is self-represented and experiences difficulty interacting with the AAT electronically for any reason.

Interpretation

- 1.6 In this Direction:

our, we or **us** means the AAT;

party means the applicant, the National Disability Insurance Agency or any other person who is a party to an application and includes any representative of a party;

Registry means any registry office of the AAT.

2. Registry operations, lodging documents and signatures

Registries

- 2.1 We will provide registry services by telephone and electronically, including:

- (a) through our [online services](#) accessible via the AAT website (<http://www.aat.gov.au>); and
- (b) by [email](#).

Note: Guidelines you should follow when sending an email to the AAT can be found on the AAT website.

- 2.2 Subject to paragraph 2.3, a party or other person may attend an AAT Registry if the party or other person is:

- (a) attending an alternative dispute resolution (ADR) process, directions hearing or hearing and the AAT has notified the party or person that they may attend in person; or
- (b) unable to access registry services by telephone or electronically.

- 2.3 A party or other person must not attend a Registry if:

- (a) the Registry is closed to visitors; or
- (b) the party or person is:
 - (i) required to quarantine or self-isolate;
 - (ii) experiencing any COVID-19 symptoms; or
 - (iii) in any other class of persons specified by the AAT who must not attend a Registry.

Note: Information about whether a Registry is closed due to the pandemic and about who may or must not attend a Registry can be found on the [AAT website](#).

Note: If you cannot attend an ADR process, directions hearing or hearing in person, please contact the AAT about this as soon as possible.

For further information about the AAT, please call us on **1800 228 333** or go to www.aat.gov.au.

Administrative Appeals Tribunal / COVID-19 Special Measures Practice Direction / National Disability Insurance Scheme Division

- 2.4 A party or other person who attends a Registry must:
- (a) comply with physical distancing requirements and limits on the number of people who can be in any area or room at the Registry notified by the AAT; and
 - (b) comply with any directions given by the AAT in relation to COVID-safe requirements.

Lodging and giving documents or other things

- 2.5 To the extent possible:
- (a) an application for a review of a decision; or
 - (b) a document relating to an application that has already been lodged, including:
 - (i) documents that must be lodged by the person who made the decision under section 37 or 38AA of the AAT Act (T-documents); and
 - (ii) documents produced in response to a summons;
- should be lodged with, or given to, the AAT using [an AAT online system](#) accessible via the AAT website.
- 2.6 If a document, including an application, cannot be lodged with, or given to us, using an AAT online system, the document may be:
- (a) emailed to the AAT; or
 - (b) if it cannot be emailed – faxed to the AAT.
- 2.7 A document, CD, USB or other thing may also be:
- (a) sent to the AAT by post; or
 - (b) delivered to a Registry.
- 2.8 If a Registry is closed to visitors and a document or thing can only be lodged with, or given to, the AAT by delivering it to that Registry, the party or person must telephone us to discuss how it can be lodged.
- 2.9 To the extent possible, a party should send a document relating to a case to any other party or other person electronically.
- 2.10 A party or other person who experiences difficulty lodging or sending a document electronically should telephone us for assistance.

Signatures

- 2.11 If a party or another person does not have access to technology to scan a document that requires a signature, including by taking a photograph of it, the document may be signed electronically instead of physically signing the document. This may be done by the person:
- (a) applying a digital signature; or
 - (b) typing their name in the appropriate place in the document.

For further information about the AAT, please call us on **1800 228 333** or go to www.aat.gov.au.

3. Pre-hearing processes (including summonses)

Pre-hearing processes

- 3.1 The AAT will continue to:
- (a) conduct outreach with parties by telephone; and/or
 - (b) hold a conference or directions hearing;
- as the first step(s) in the review process in most cases.
- 3.2 In consultation with the parties, we will determine how a case should progress. Relevant considerations may include, but are not limited to, any issues arising as a result of the COVID-19 pandemic that may affect the gathering of evidence or any other step required in the case.
- 3.3 For any case in which expert evidence may be required from a medical or allied health practitioner, the parties:
- (a) must make a genuine effort as early as possible in the review to discuss whether a report is required and, if so, the arrangements for obtaining a report which may include conferring about the selection of a suitable medical or allied health assessor, the material to be provided, the questions to be asked and the costs of the report; and
 - (b) must use their best endeavours to support the provision of medical or allied health assessments via telehealth or other remote services if the medical or allied health assessor identifies this as suitable.
- 3.4 The AAT will give priority to any case we consider must be dealt with on an expedited basis, including cases in which the applicant is suffering hardship.
- 3.5 Conferences and directions hearings will usually be held by telephone. Conciliations, other types of ADR processes and interlocutory hearings may be held by telephone or, if feasible, by video. At the request of a party or on the AAT's initiative and in consultation with the parties, we may decide to hold, or allow a party or other person to attend, a pre-hearing listing event in person.

Summonses to produce documents

- 3.6 Before making a request to the AAT to issue a summons to produce documents, a party must carefully consider the necessity for, scope, appropriateness and timing of the summons taking into account:
- (a) the burden and expense that a summons to produce documents can place on the person to whom it is directed; and
 - (b) the serious consequences that flow from a failure to comply.

This is particularly the case for a summons directed to a health practitioner or practice, hospital or emergency services agency during the COVID-19 pandemic.

- 3.7 A request to us to issue one or more summonses to produce documents must be in writing and must specify for each summons that accompanies the request the basis for the request, including:
- (a) the apparent relevance of the documents to the issues in dispute in the case; and
 - (b) the importance of the documents to the case.
- 3.8 The AAT may:
- (a) issue the summons if satisfied it has a legitimate forensic purpose;
 - (b) request further information in relation to the request, including by holding a directions hearing; or
 - (c) refuse to issue the summons.
- 3.9 When access orders are made by the AAT in relation to documents produced in response to a summons, we will send the documents to the parties by email to the extent possible. If documents or other things cannot be sent by email, we will discuss with the parties other arrangements for accessing the documents for inspection.

4. Hearings

- 4.1 The AAT will decide whether to hold any final hearing:
- (a) by telephone;
 - (b) by video;
 - (c) in person; or
 - (d) by a combination of in person, telephone and/or video.

Relevant considerations may include, but are not limited to:

- (a) the nature and complexity of the legal and factual issues in dispute;
 - (b) the number, nature and availability of any witnesses;
 - (c) the nature and volume of the documentary evidence;
 - (d) the capacity of a party or other person to participate in a hearing by telephone, by video or in person;
 - (e) COVID-19 conditions in the place(s) in which the participants are located; and
 - (f) COVID-safe requirements in the AAT Registry in which the hearing would take place.
- 4.2 We will hold a directions hearing to discuss with the parties and then make directions as required about:
- (a) whether the AAT and the parties can agree that the review, or any part of it, can be determined without a hearing;
 - (b) whether the hearing should be conducted by telephone, by video and/or in person and any electronic communication technology that will be used;
 - (c) the provision of electronic documents for the hearing;
 - (d) the arrangements for witnesses to give evidence, including by telephone or video; and
 - (e) any other matters to best achieve a fair, efficient and safe hearing.

For further information about the AAT, please call us on **1800 228 333** or go to www.aat.gov.au.

- 4.3 We expect the parties to:
- (a) confer about the matters set out in paragraph 4.2; and
 - (b) where possible, reach agreement about them.
- 4.4 Subject to any other direction we have made or make, no later than seven (7) days before the first day of the hearing, the parties must lodge with the AAT and give to any other party any documents not included in the T-documents which they intend to tender into evidence at the hearing.
- 4.5 To the extent possible, the documents to be relied on by a party who is represented should be in searchable PDF format with:
- (a) each document given a separate number commencing A1 for the applicant, R1 for the respondent and O1 for any other party;
 - (b) each page numbered sequentially;
 - (c) an index with the pagination set out and links to each document.
- Note:** The copy of the documents given to another party may need to be in another format for accessibility reasons.
- 4.6 No later than two (2) working days before the first day of the hearing, a party who is represented must lodge with the AAT and give to any other party electronically a list of any legislation and case law on which they intend to rely at the hearing.
- 4.7 Unless the presiding member otherwise allows, at a hearing conducted in whole or in part by telephone and/or video:
- (a) subject to observing appropriate physical distancing and any necessary medical restrictions, parties may be in the same room with their representative;
 - (b) any witnesses must be located in a separate room from any other person.
- 4.8 We will not adjourn (postpone) a scheduled hearing unless there are good reasons to justify the postponement. A request to postpone a scheduled hearing must be made as soon as a party becomes aware that they need a postponement.
- 4.9 A party may request a directions hearing, including to make any application to vary the procedures set out in this Direction. Unless we allow otherwise, the request must be in writing and explain why the party wants a directions hearing.

5. Use of technology

- 5.1 When conducting ADR processes, directions hearings, interlocutory hearings and final hearings by telephone and/or video, the AAT will usually use:
- (a) telephone conferencing facilities;
 - (b) fixed videoconferencing facilities; and/or
 - (c) Microsoft Teams.

We will make information available to the parties about using a particular electronic communications technology.

For further information about the AAT, please call us on **1800 228 333** or go to www.aat.gov.au.

Administrative Appeals Tribunal / COVID-19 Special Measures Practice Direction / National Disability Insurance Scheme Division

- 5.2 Parties must use their best endeavours to ensure that they and any other person, including any witnesses, are able to participate in a listing event using a chosen means of electronic communication. Parties and other persons are responsible for their own costs associated with using a particular technology, including data charges.
- 5.3 To the extent possible, the AAT will allow members of the public to attend, on request, a public hearing held by telephone or video.
- Note:** [More information](#), including how to request to attend a public hearing by telephone or video, can be found on the AAT website.
- 5.4 The AAT will record any hearing and, where considered appropriate, a directions hearing, including through Microsoft Teams. By participating in a directions hearing or hearing by telephone or video, parties and other persons consent to being recorded.
- 5.5 A transcript prepared by the AAT's service provider will remain the official record of a directions hearing or hearing.
- 5.6 A party or other person must not use a communication or recording device for the purpose of recording or making a transcript of an ADR process, directions hearing or hearing held by telephone or video unless we give you permission to do so.

Justice D G Thomas
President

2 March 2021