



Administrative
Appeals Tribunal

Guide to the Workers' Compensation Jurisdiction

www.aat.gov.au

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Foreword

This Guide provides information on the procedures the Administrative Appeals Tribunal (AAT) will usually adopt in managing applications for review of decisions made under the *Safety, Rehabilitation and Compensation Act 1988* and the *Seafarers Rehabilitation and Compensation Act 1992*. It complements the AAT's [General Practice Direction](#).

Our statutory objective requires us to provide a mechanism of review that is accessible, fair, just, economical, informal and quick, and proportionate to the importance and complexity of a matter.¹ Parties and their representatives must use their best endeavours to assist us to fulfil this objective.² Decision-makers must also use their best endeavours to assist us to make our decision.³ This Guide explains what we expect of parties and their representatives during the review process.

The AAT will assist the parties to reach an agreement about how your case should be resolved, where possible, while ensuring that steps are taken to prepare the case for a hearing in the event it cannot be resolved by agreement. We recognise that the particular steps to be taken in moving each application towards resolution will vary. We expect you and the decision-maker to cooperate with us and with each other to identify the real issues in dispute early and to seek to achieve resolution in the most effective and efficient manner.

Timetables will be set and directions issued to ensure that applications progress in a timely manner and that parties and their representatives have clear guidance as to what is required of them. Failure to comply with AAT directions will be treated seriously.

We aim, wherever possible, to finalise applications for review within 12 months of lodgement. The AAT will identify at the outset of the review process the dates by which it will aim to hold any conciliation or hearing that may be required. This will provide a framework within which to manage the progress of applications. If circumstances arise which make it necessary to depart from these dates, we will determine revised timeframes in consultation with the parties.

When this Guide refers to 'we' or 'us', it means the AAT. When it refers to 'you' it means the person who applied for the review, any other party who is not a decision-maker and any representative. The organisation that was responsible under the legislation for making the decision under review is referred to as 'the decision-maker'.

Justice Duncan Kerr
President

14 July 2015

¹ Section 2A of the *Administrative Appeals Tribunal Act 1975* (AAT Act).

² Section 33(1AB) of the AAT Act.

³ Section 33(1AA) of the AAT Act.

1. Applications, Section 37 and 38AA Documents and Outreach

1.1 Making an application

If your interests are affected by a reviewable decision under the *Safety, Rehabilitation and Compensation Act 1988* or the *Seafarers Rehabilitation and Compensation Act 1992*, you can apply to us for a review of the decision. No fee is payable to lodge an application.

You must apply in writing and give brief reasons for the application. You can use the [Application for Review of Decision form](#) on our website or you can write us a letter or email. You can submit your application by:

- coming into one of our offices;
- posting it to us;
- faxing it to us; or
- emailing it to us.

Our contact details are on the [Contact us page](#) on our website.

Your application must be lodged with us within 60 days after you receive the decision. You can apply to us for an extension of the 60-day time limit.

More information about applying for a review or requesting an extension of time to apply for a review is available from our registries and on our [website](#).

In most cases, you and the decision-maker will be the parties to the review. However, under the *Safety, Rehabilitation and Compensation Act 1988*, an Australian Government department or agency, a Commonwealth authority or a licensed corporation can also apply for a review of a decision that affects it. If this occurs, the person who is the subject of the reviewable decision is also a party.

After you apply for a review, we will write to you to say we have received your application. If we can review the decision, we will tell the decision-maker and any other party that the application has been received. We will send you and the decision-maker a listing notice setting out the date, time and location of the first case event, which will usually be a conference.

1.2 Section 37 documents and Section 38AA documents

Section 37 documents

Within 28 days after receiving notice of an application, the decision-maker must lodge with us a copy of the documents required under section 37 of the *Administrative Appeals Tribunal Act 1975* (AAT Act). These documents are:

- a statement setting out the findings on material questions of fact, referring to the evidence for the findings and giving the reasons for the decision; and
- every other document that is in the decision-maker's possession or control and is relevant to the review of the decision by the AAT.

These documents are referred to as the 'Section 37 documents' or the 'T (for Tribunal) documents'.

The decision-maker must also send a copy of the documents to you and any other party (unless we make a confidentiality order about a document).⁴

You can request that we shorten the 28-day time period for providing the Section 37 documents if you think you would or might suffer hardship if the period is not shortened. A request must be made using the [Request for Order to Shorten Time for Lodging Documents form](#) on our website, unless we allow or direct you to make the request in another way.

The decision-maker may apply to us to extend the 28-day time period. The decision-maker must do so if they are not able to provide the Section 37 documents within the time period. The application must be made before the 28-day time period expires.

It is essential that all relevant documents are before us. If the decision-maker becomes aware that:

- documents relevant to the decision under review were in its possession or under its control at the time the Section 37 documents were prepared; and
- those documents were not included in the Section 37 documents;

the decision-maker must lodge these documents ("Supplementary Section 37 documents") as soon as is reasonably practicable after becoming aware of this or in accordance with any direction of the AAT.

If you think relevant documents have not been included in the Section 37 documents, you should inform us and the decision-maker of this at the earliest opportunity and no later than at the first conference.

We may also, by notice in writing under section 37(2) of the AAT Act, require the decision-maker to lodge copies of particular other documents, or other documents included in a particular class of documents.

Section 38AA documents

If any document that is relevant to the review comes into the decision-maker's possession after lodging the Section 37 documents, the decision-maker must lodge a copy of the document with us unless it is a document:

- previously lodged with us under section 37;
- already given to us by you or another party; or
- we have given to the decision-maker.

This obligation is created under section 38AA of the AAT Act.

The decision-maker must lodge the document as soon as practicable after obtaining possession of it and send a copy to you and any other party (unless we make a confidentiality order about the document).

⁴ The decision-maker can apply for an order under section 35(4) of the AAT Act that all or part of the contents of a document not be disclosed to you or another party.

More information about the Section 37 and Section 38AA documents, including their presentation, can be found in the [Lodgement of Documents under Sections 37 and 38AA of the AAT Act Practice Direction](#). The practice direction also sets out the procedure that applies if the decision-maker wants to request a confidentiality order in relation to any of these documents.

1.3 Outreach

We have an outreach program to give parties who are representing themselves information about our practice and procedure. We will telephone you before the first conference.

The primary purposes of Outreach are:

- to explain our review process and, in particular, what the Section 37 documents are and what will happen at the first conference;
- to find out whether you will need any particular assistance such as an interpreter or assistance in accessing the AAT; and
- to provide contact details for organisations that might be able to provide legal or other assistance.

Outreach is conducted by AAT staff. Where necessary, the person conducting Outreach will arrange for an interpreter before contacting you.

2. Conferences

Conferences are the central component of the AAT's pre-hearing case management process. They are usually conducted by an AAT Conference Registrar but may be conducted by an AAT Member.

Conferences provide an opportunity to:

- discuss and define the issues in dispute;
- identify and consider further supporting material that may be gathered;
- explore whether an agreed outcome can be reached; and
- discuss the future conduct of the case.

In relation to gathering further supporting material, we expect that you and the decision-maker will usually obtain this material at the same time. In some circumstances, however, it may be appropriate for one party to gather evidence first. This will be discussed at the first conference.

In relation to exploring whether an agreed outcome can be reached, we may make comments in relation to the strengths and weaknesses of each party's case during a conference.

Number and timing of conferences

In general, no more than two conferences will be held. We may decide that only one conference should be held or that more than two conferences are necessary.

A first conference will usually be held 6 to 10 weeks after an application for review is lodged. We will discuss the timing of further conferences with you and the decision-maker.

Location

If you are representing yourself, conferences are generally held in person at our offices. If it is not convenient for you to come to the conference because you live outside a capital city or for other reasons, we can hold the conference by telephone.

If you have a representative, conferences are generally held by telephone. However, if the AAT Conference Registrar or the parties prefer, the conference may be held in person.

Further information about conferences and how they are conducted, including a Conference Process Model, is available from our registries and on the AAT [website](#).

2.1 Preparing for the first conference

We expect the parties will take the following steps to prepare for the first conference to ensure it is as effective as possible.

If you have a representative, you and the decision-maker must make contact and confer about:

- what you are seeking;
- the issues that are in dispute; and
- whether the Section 37 documents contain all relevant documents.

We expect the decision-maker will assist us by ensuring contact has been made within a reasonable time prior to the first conference.

If relevant to the decision to be reviewed, you must provide the decision-maker with a list of all the relevant treating doctors or other health practitioners.

You and the decision-maker must consider:

- whether additional medical evidence is required;
- whether a joint medical report could be obtained; and
- whether other investigations are required and how they will be undertaken.

The decision-maker must consider whether additional documents relating to your employment have to be obtained and, if so, should make arrangements to obtain those documents.

Making medical appointments

Waiting lists to see medical specialists can be long and can cause delay in AAT reviews. If additional medical evidence will be required, appointments for the purpose of obtaining reports must be made before the first conference.⁵

⁵ When choosing an expert, parties should consider the likely availability of the expert to give evidence in the event the application proceeds to a hearing and note also that the expert will usually be required to give evidence using the concurrent evidence procedure. See Section 4.3 of this Guide for more information about the concurrent evidence procedure.

You and the decision-maker should try to make any appointment for the earliest possible date and, at the latest, within 8 to 10 weeks of the application being lodged. If it is not possible to obtain an appointment within that period, an appointment should be made with another expert unless there are compelling reasons for seeing that particular expert.

If you or the decision-maker ask anyone to provide an expert report, you must ensure the expert is given or already has a copy of:

- the AAT's [Persons Giving Expert and Opinion Evidence Guideline](#); and
- when an application relates to a claim for permanent impairment, a copy of, or clear reference to, the relevant parts of the relevant *Guide to the Assessment of the Degree of Permanent Impairment* which apply to the claim.

Summonses

If you or the decision-maker want to obtain the medical records of treating doctors or other health practitioners, you or they can request that we issue a summons to produce documents. You or the decision-maker can also request that we issue a summons for any other documents that will be relevant to the review of the decision.

Requests to issue summonses to produce documents must be made, as far as possible, before the first conference.

Information on the procedures relating to the issue of summonses and access to documents produced under summons is available from our registries.

2.2 At the first conference

At the first conference, we will talk with you and the decision-maker about:

- *the legal and factual issues in dispute in the application*

Where necessary, we may require you or the decision-maker to prepare a Statement of Issues if the issues in dispute are not clear.

- *any new evidence that has been lodged and any further evidence that will be gathered*

We will discuss the enquiries and investigations already underway and any others to be undertaken, including confirming the dates of any medical appointments, as well as the further supporting material that you and the decision-maker will lodge, including any outlines of evidence or witness statements that may be obtained from you or other persons.

- *whether you and the decision-maker might be able to agree on the outcome of the application.*

We will decide after talking to you and the decision-maker what steps will be taken next, and set a timetable for such steps. We will be guided by the issues in the case and what will be effective and efficient in progressing the case towards resolution. We will usually issue a direction at the end of the conference specifying what must be done by whom and by when.

The date for the next case event, usually a second conference, will be set based on the timetable we determine. Usually, we will aim to hold a second conference no later than 12 weeks after the first conference.

2.3 After the first conference

Medical reports

If you or the decision-maker want to rely on an expert report, it must be lodged with us and given to the other party as soon as practicable and, in any event, no later than 10 days after it has been received by the party. The letter requesting the report should be provided with the report together with any attachments that contain material not already available to us and the other party.

Consistent with the requirement in section 33(1AA) of the AAT Act that a decision-maker use their best endeavours to assist us to make the decision, we expect that a decision-maker will lodge with us all reports they have obtained whether or not they are favourable to the claimant.

2.4 Second and subsequent conferences

If we hold a second conference, we will discuss the progress of the application with you and the decision-maker. This includes going through any further evidence that has been lodged with us, and discussing the merits of each party's case. We will try to help you and the decision-maker reach an agreed outcome, or narrow the issues in dispute.

We will also discuss any new issues that might have arisen, and what further steps are to be taken in the application, including whether it may be appropriate for expert evidence to be given concurrently if the application proceeds to hearing.

We will decide after talking with you and the decision-maker:

- whether a further conference should be held;
- whether the case should be listed for a conciliation or another ADR process such as mediation, case appraisal or neutral evaluation; or
- whether the case should be listed for hearing.

We will issue a direction as appropriate at the end of the second or any further conference specifying what you and the decision-maker must do next and by when.

For information about finalising applications where the parties reach an agreement during the conference process, please see section 6.8 of this Guide.

2.5 Statements of Issues, Facts and Contentions

If you have a representative, we will usually require that you prepare a Statement of Issues, Facts and Contentions during the review process. The decision-maker will then usually be required to prepare a statement in reply.

A Statement of Issues, Facts and Contentions must clearly set out:

- the issues that remain in dispute;
- the essential facts that are relevant to those issues; and
- the arguments that you or the decision-maker want to make based on those facts.

Any statement in reply should note what aspects are agreed, which are disputed and any facts or arguments that are different.

A statement should not set out lengthy extracts from medical reports or other evidence but might refer to the report or evidence to support an asserted fact. Where possible, a statement should list the medical reports and other evidence intended to be relied on at the hearing.

If you are representing yourself, we will usually only require the decision-maker to prepare a Statement of Issues, Facts and Contentions. We might ask you to prepare a response to the statement prepared by the decision-maker, or a chronology of relevant events.

A sample Statement of Issues, Facts and Contentions is set out at Attachment A to this Guide.

3. Conciliation

If your case has not been finalised during the conference process and you have a representative, we will hold a conciliation unless we determine that another ADR process is to be used or that it would not be useful to attempt settlement and the application should proceed directly to a hearing.

If you are representing yourself, we will determine in consultation with you and the decision-maker whether to hold a conciliation.

We will aim to hold a conciliation no more than 32 weeks after the application for review was lodged.

Conciliations will be held in person and will be conducted by an AAT Member or Conference Registrar (“Conciliator”). We expect the following people will attend the conciliation:

- you;
- your representative(s);
- the decision-maker’s instructing officer; and
- the decision-maker’s legal representative(s).

A representative of your employer or other person may also attend the conciliation where appropriate. We will endeavour to schedule the conciliation at a time that will allow all of these persons to attend.

If any person is unable to attend the conciliation in person, due to geographic or other considerations, a request can be made to the Conciliator for the person to participate by telephone or video. If permission is given, we will pay the costs of a person participating by telephone. However the costs of a person participating by video must be paid by the party that made the request.

Further information about conciliations and how they are conducted is outlined below and in the Conciliation Process Model which is available from our registries and on the [AAT website](#).

3.1 Before the conciliation

Conciliation Checklist

If you have a representative, a Conciliation Checklist will be sent to your representative with the listing notice for the conciliation. A second copy of the Checklist will be enclosed to be forwarded to you. The Checklist asks for a range of information that may be relevant to reaching an agreement at the conciliation. The Checklist is to be completed and brought to the conciliation.

Your representative may need to seek certain information from the decision-maker to complete the Checklist. Decision-makers are encouraged to assist in the completion of the Checklist.

3.2 At the conciliation

At the commencement of the conciliation, you and the decision-maker must certify that you and they have authority to settle the application should an agreement be reached.

During the conciliation, the Conciliator will take an active role, setting out options and discussing the merits of your case and the decision-maker's case. The Conciliator will work with you and the decision-maker to explore whether an agreed outcome can be reached.

For information about finalising applications where the parties reach an agreement during or after the conciliation, please see section 6.8 of this Guide.

If the case is not resolved at the conciliation, the Conciliator will determine the next steps to be taken after talking to you and the decision-maker. In general, the case will proceed to hearing and the Conciliator will discuss what further steps must be taken before the hearing. A direction will be issued specifying what you and the decision-maker must do and by when, including giving us and the other party any further outlines of evidence or witness statements and any further reports or other documents on which you or the decision-maker want to rely.

4. Hearing

We will aim to hold any hearing no later than 44 weeks after an application for review is lodged. General information about hearings is available from our registries and on the [AAT website](#).

4.1 Fixing hearing dates

Hearing information

Before we set a hearing date, we will ask you and the decision-maker for information about:

- any witnesses who will give evidence at the hearing;
- the availability of the parties, representatives and any witnesses, including when expert witnesses may be able to give their evidence concurrently; and
- the likely length of the hearing.

If you have a representative, we will usually ask you and the decision-maker to lodge a Hearing Certificate with us and give a copy to the other party. If you are representing yourself, you may also be asked to lodge a Hearing Certificate. You and the decision-maker are expected to consult each other when preparing the Hearing Certificate.

Hearing Certificates must be lodged within the time specified by us. If you or the decision-maker do not give us the information within the time we specify, we may set the hearing date without further consultation.

We will use our best efforts to:

- tell the parties of the hearing date as soon as we can; and
- list the hearing at a time that is suitable for both parties.

Listing notice and Hearing Confirmation Schedule

If you have a representative, we may send you a Hearing Confirmation Schedule with the listing notice which requires you to confirm that arrangements have been made for the hearing to proceed on the listed date and to notify us of any other relevant matters. You and the decision-maker should communicate with each other to ensure that witnesses are not asked to appear at the same time at the hearing unless they are scheduled to give their evidence concurrently.

If a Hearing Confirmation Schedule is issued, it must be lodged with us within 14 days of receipt.

4.2 Before the hearing

Disclosing and lodging evidence, including video surveillance material

We expect that all evidence to be relied on at the hearing will have been identified during the pre-hearing process and lodged with us and given to each other before the hearing. You and the decision-maker must comply with any directions for giving documents or other evidence to us and the other party prior to the hearing. If you or the decision-maker have any difficulty in meeting these obligations, you or they must bring this to our attention as soon as possible.

In addition to any other evidence on which you intend to rely at the hearing, if you have a representative, you must give to us and the decision-maker an outline of evidence or a witness statement setting out the factual matters supporting your claim. Usually, we will require that this be done no later than 6 weeks prior to the hearing.

You must be aware that, if you want to present any matter in evidence, it must be disclosed to us at least 28 days before the hearing date. If this has not occurred, that matter cannot be admitted as evidence without the leave of the AAT: see section 66(1) of the *Safety, Rehabilitation and Compensation Act 1988* and section 90(1) of the *Seafarers Rehabilitation and Compensation Act 1992*.

Subject to any other direction or order we may make, the decision-maker also must lodge and exchange all documents or other evidence on which they intend to rely at the hearing, including any video surveillance material, at least 28 days before the hearing. For more information, see the [Lodgement of Documents under Sections 37 and 38AA of the AAT Act Practice Direction](#).

Medical and other expert reports and witnesses

Subject to compliance with statutory requirements, if you or the decision-maker want to rely on a medical or other expert report that has been lodged with us and given to the other party, we will usually take it into account, whether or not the expert gives oral evidence.

You and the decision-maker must consider carefully whether it is necessary for medical practitioners or other experts to give oral evidence at a hearing and, in particular, whether oral evidence will assist us to determine the issues in dispute. Oral evidence will usually be necessary only where there are differences of opinion in the reports to be relied upon.

If you and the decision-maker are both calling expert witnesses to give oral evidence, unless we direct otherwise, the experts are to give their evidence concurrently. We may hold a directions hearing to discuss the use of the procedure and will usually make a direction relating to the procedures to be followed. For more information, see the AAT's [Use of Concurrent Evidence in the AAT Guideline](#). You and the decision-maker must use your best endeavours to facilitate the concurrent evidence procedure, including ensuring that an expert is given a copy of the Guideline or already has a copy of that document.

Arrangements for the attendance of an expert at a hearing generally need to be made by the party seeking to rely on the expert's report. If you or the decision-maker were not intending to ask an expert to give evidence at the hearing but the other party requires the expert for cross-examination, you and the decision-maker must talk to each other about who will arrange the expert's attendance. If the expert does not give evidence in these circumstances, the report may be taken into account but the failure to give oral evidence may be relevant in assessing the weight to be given to the report.

Witness expenses paid by you may form part of the costs payable under any costs order made by the AAT if the case is determined in your favour. See section 6.9 for more detailed information in relation to costs.

Telephone or video evidence

We can allow part of the hearing to be conducted by telephone or videoconference. This may be necessary, for example, if evidence is to be given by an expert witness who is unable to attend in person. If you or the decision-maker want a witness to give evidence in this way, you must ask us for permission before the hearing.

Unless you are representing yourself, the request for evidence to be taken by telephone or videoconference must be made in writing. The request must:

- set out the reasons for the request; and
- state whether the other party agrees to the request.

If you are representing yourself, you can contact us by telephone or in writing and explain why the evidence should be taken by telephone or videoconference. We will ask the decision-maker whether they agree to the request.

The presiding member will decide whether or not to grant the request. We may conduct a directions hearing in person or by telephone before making a decision.

If evidence is to be given either by telephone or videoconference, the party whose witness it is must:

- make all necessary arrangements with the witness, including ensuring the witness will have access to all relevant documents; and
- give us, as early as possible, the details for contacting the witness.

Unless you and the decision-maker otherwise agree, the costs of taking the evidence by videoconference must be paid by the party who made the request. Application may be made to the District Registrar to waive the charges on the basis that payment of the charges would cause financial hardship to the party.

4.3 At the hearing

Commencement of the hearing

Unless you are representing yourself, you and the decision-maker should tell us at the start of the hearing:

- what issues are still in dispute and, in particular, whether any issues identified in the Statement of Issues, Facts and Contentions have been resolved; and
- whether any facts have been agreed.

Documents or other material not disclosed to the AAT

As noted in section 4.2, you must seek leave to present evidence in relation to any matter that was not disclosed to us at least 28 days before the hearing date. The decision-maker must also seek leave at the hearing to rely on any material that has not been disclosed to us and you prior to the hearing.

Concurrent expert evidence

If the concurrent evidence procedure is to be used for taking expert evidence, we will follow the procedures set out in the AAT's [Use of Concurrent Evidence in the AAT Guideline](#). Representatives should familiarise themselves and their witnesses with the procedures.

Use of hearing time

We allocate a certain amount of time for the hearing following an assessment of the information provided by you and the decision-maker. We, you and the decision-maker must make every effort to ensure the hearing is completed within the allocated time.

On rare occasions, it may be necessary for further evidence to be lodged and/or written submissions to be made after the hearing. We will allow this only where it is strictly necessary. Any further evidence or submissions must be lodged in accordance with the timetable set by us. If this does not occur, we may make a decision without the material.

5. Decision

We might give our decision and reasons for decision orally at the end of the hearing. Often, however, we will give our decision and reasons in writing at a later date, usually within two months of:

- the last day of hearing; or
- if you or the decision-maker have been given permission to lodge further evidence or submissions – receipt of those documents.

If we make a decision that is favourable to you, we have the power to order that the decision-maker pay the costs, or a part of the costs, incurred by you. We will usually include an order of the following kind in the decision:

Either party may make an application in relation to the costs of the proceedings within 14 days of the date of this decision. If no such application is made, the Tribunal orders that the respondent pay the applicant's costs of the proceedings.

You and the decision-maker will have the opportunity to make submissions to us in relation to costs before the order takes effect.

If we consider it appropriate to do so, we may ask you and the decision-maker to make submissions in relation to costs before making any order.

See section 6.9 below for more information in relation to costs.

6. Other matters

6.1 Further claims for compensation

During the review process, you may lodge a further claim for compensation that is relevant to the existing application before us. A request may then be made to us to defer dealing with the existing application until the further claim is processed.

Awaiting the determination of a further claim can cause significant delay in progressing and finalising an application that is before the AAT. For this reason, any further claim for compensation should be lodged at the earliest opportunity.

When we become aware that a further claim for compensation has been made or will be made, we will discuss with you and the decision-maker what effect this may have on the further progress of an existing application. We will decide whether or not it is appropriate to await the determination of any further claim(s) for compensation. If a decision is made to await the determination of a further claim, we will seek the cooperation of the parties to minimise delay. Where appropriate, we will encourage you and the decision-maker to commence gathering evidence in relation to the further claim.

6.2 Requests for adjournments

Conferences and other ADR processes

If you or the decision-maker are unable to attend a conference, conciliation or other ADR process or think it should be postponed, you or they must make a request for an adjournment as early as possible. We will not grant an adjournment unless there are good reasons to do so.

Unless you are representing yourself, the request for an adjournment must be made in writing. The request must:

- explain the reasons for seeking the adjournment;
- tell us whether the other party agrees to the adjournment; and
- if you or the decision-maker want a postponement, suggest when the conference or other ADR process should be re-listed and why.

If you are representing yourself, you can contact us by telephone to explain the reasons for requesting an adjournment. We might ask you to put the reasons in writing. We will ask the decision-maker whether they agree to the request and then decide whether or not to grant the request.

In relation to a request for an adjournment of a conciliation or another ADR process, the request should be made as early as possible and preferably at least 10 working days before the listing.

Hearings

Our policies and procedures about requests for adjournment of a hearing are set out in full in the AAT's [General Practice Direction](#). We will only grant an adjournment if there are good reasons to do so. Parties should not assume we will grant a request for an adjournment.

An application for an adjournment of a hearing must be made at the earliest opportunity. It must:

- be in writing addressed to the District Registrar;
- include the reasons for asking for an adjournment;
- be signed by you or the decision-maker; and
- be accompanied by any documents that support the application.

Unless you are representing yourself, any written request for an adjournment should also indicate whether the other party agrees to the adjournment.

Please note that we will usually hold a directions hearing in relation to the adjournment application, either in person or by telephone.

6.3 Non-compliance with legislative requirements and AAT directions

If you or the decision-maker fail to comply with legislative requirements and our directions, it can significantly delay the finalisation of an application. We treat non-compliance seriously.

As soon as you or the decision-maker think you or they may not be able to comply with a legislative requirement or AAT direction and before the deadline, you should write to us to request extra time. The request must:

- explain the reasons for requesting further time; and
- tell us whether the other party agrees to the request.

If you are representing yourself, you can contact us by telephone to ask for further time. We will ask the decision-maker whether they agree to the request and we will then decide whether or not to grant further time.

Parties should not assume we will grant an extension of time.

If you or the decision-maker fail to comply with a legislative requirement or one of our directions, we will list the matter for a non-compliance directions hearing. If you comply by the day before the directions hearing, we will decide whether or not the directions hearing should proceed.

Failure to comply with legislative requirements and AAT directions may have consequences, including:

- if the applicant has failed within a reasonable time to comply with an AAT direction, we may dismiss the application: section 42A(5) of the AAT Act;
- we may take the failure to comply into account in making a decision relating to costs; or
- where there is a history of non-compliance by a representative, we may take a range of actions depending on the history and seriousness of the non-compliance, including writing to the representative, writing to the representative's employer or referring the non-compliance to a regulatory authority or other relevant body.

More information about our policies and procedures in relation to non-compliance with legislative requirements and directions is set out in the AAT's [General Practice Direction](#).

6.4 Directions hearings

We can list a directions hearing at any time if the application requires it. You or the decision-maker can also request a directions hearing if the need arises. Unless you are representing yourself, the request must be in writing and explain why you want a directions hearing. If you are representing yourself, you can contact us by telephone or in writing to request a directions hearing.

6.5 Suspension of proceedings because of a refusal or failure to undergo a medical examination

If you have made a claim for compensation, you can be required to undergo a medical examination. If you refuse or fail, without reasonable excuse, to undergo a medical examination or in any way obstruct an examination, your rights to compensation under the Act, and to institute or continue any proceedings in relation to compensation, are suspended until the examination takes place: see section 57(2) of the *Safety, Rehabilitation and Compensation Act 1988* and section 66(2) of the *Seafarers Rehabilitation and Compensation Act 1992*.

If the decision-maker tells us that it thinks proceedings are suspended on this basis, we will adopt the following procedure.

- We will write to you and ask you whether you think the proceedings are suspended. If you do not agree, we will hold a hearing to determine whether or not the proceedings are suspended.
- If we determine the proceedings are suspended, we will direct that no further step may be taken in the application by you without our permission.
- If we are not advised within a period of 3 months that you have undergone the examination, we will consider whether or not to dismiss the application under section 42A(5) of the AAT Act.

6.6 Application of the implied undertaking

If you or the decision-maker have obtained a document provided under compulsion in an application before the AAT, you, the decision-maker and any person to whom the document is given must not use that document for any purpose other than the purpose for which it was given unless:

- the document was received in evidence by us in the application and the confidentiality of the document is not protected by an order under section 35 of the AAT Act or by another statutory provision; or
- we give you or the decision-maker permission to use the document for another purpose.

This restriction on the use of such documents is known as the implied undertaking or the *Harman* principle.⁶ It applies to a range of documents, including the Section 37 documents, Section 38AA documents, documents produced in response to a summons and documents lodged to comply with an AAT direction.

The AAT's [General Practice Direction](#) provides that, if:

- the implied undertaking applies to documents provided in an application that is currently before the AAT; and
- we are dealing with one or more other applications involving the same applicant at the same time;

documents provided to us in one application may be used in each of the other applications, subject to any other direction that we may make.

⁶ See *Harman v Secretary of State for the Home Department* [1983] 1 AC 280 and *Hearne v Street* (2008) 235 CLR 125; [2008] HCA 36.

In any other circumstance, including if you or the decision-maker want to use documents that were provided in an earlier application to the AAT, an application must be made to us in writing for leave to be released from the implied undertaking. The procedures to be followed are set out in the General Practice Direction.

6.7 Own motion reconsideration by a decision-maker

The decision-maker can reconsider a determination on its own motion even if an application has been made to the AAT for review of a decision relating to that determination: see section 62(1) of the *Safety, Rehabilitation and Compensation Act 1988* and section 78(1) of the *Seafarers Rehabilitation and Compensation Act 1992*.

If the decision-maker tells us that it has reconsidered a determination, we will examine the effect of the reconsideration on any application before us. We will seek your views in relation to what should occur in relation to that application either by sending you a letter or by holding a conference or directions hearing.

6.8 Finalising applications by consent decisions

If you and the decision-maker come to an agreement about the terms of a decision in your case, the terms of agreement must be put in writing, signed by or on behalf of the parties and lodged with us.

We can give effect to this agreement if:

- we are satisfied that a decision in those terms or consistent with those terms would be within our powers; and
- we think it would be appropriate to give effect to the agreement: see sections 34D and 42C of the AAT Act.⁷

There is a difference between:

- an agreement reached during an ADR process including a conference or conciliation ('Section 34D Agreement'); or
- an agreement reached by the parties at any other time ('Section 42C Agreement').

If you and the decision-maker reach a Section 34D Agreement, we must wait 7 days after the terms of agreement are lodged before making any decision. We cannot make such a decision if you or the decision-maker notify us within 7 days after the terms were lodged that you or they want to withdraw from the agreement.

If you and the decision-maker lodge a Section 42C Agreement, we can make a decision in accordance with the terms of agreement immediately.

Terms of agreement for a consent decision must specify clearly whether the agreement is a Section 34D or Section 42C Agreement. They should be lodged as soon as possible after the agreement has been reached. If the terms of agreement are to include a clause relating to costs but the parties are unable to agree the actual amount of costs to be paid, the terms of agreement should specify that costs will be awarded "as agreed or taxed".

⁷ Parties should note that an AAT decision made under section 34D or 42C of the AAT Act may be made available to the public unless publication is prohibited by an order under section 35 or another legislative provision.

6.9 Costs

The power of the AAT to award costs is set out in section 67 of the *Safety, Rehabilitation and Compensation Act 1988* and section 92 of the *Seafarers Rehabilitation and Compensation Act 1992*.

If the claimant has applied for a review and we make a decision:

- varying the reviewable decision in a manner favourable to you; or
- setting aside the reviewable decision and making a decision in substitution that is more favourable to you than the reviewable decision;

we may order that the decision-maker pay all of, or a part of, the costs incurred by you. In exercising this discretion, we can take into account a range of matters including:

- whether you have incurred unnecessary costs; or
- whether you have caused the decision-maker to incur unnecessary costs in the proceeding.

If we set aside a reviewable decision and remit the case to the decision-maker for re-determination, we must order the decision-maker to pay the costs you incurred.

The legislation stipulates that we cannot make a costs order in certain circumstances where you have withheld information or documents.

If an Australian Government department or agency, a Commonwealth authority or a licensed corporation has applied for review of a decision under the *Safety, Rehabilitation and Compensation Act 1988*, we may award costs to the claimant.

You and the decision-maker may agree on the amount of the costs. If no agreement is reached, you or the decision-maker can apply to us to tax the costs. For more information about what costs will be allowed and the procedures relating to a taxation of costs, see the AAT's [Taxation of Costs Practice Direction](#).

If an application for review to the AAT has been rendered abortive because the decision-maker has undertaken an own motion reconsideration of a determination, the decision-maker will usually be liable to reimburse the claimant for costs reasonably incurred in connection with the application. We have no power to tax costs that are payable in these circumstances.

ATTACHMENT A

EXAMPLE STATEMENT OF ISSUES, FACTS AND CONTENTIONS

File Number 20____/_____

[name of applicant]

Applicant

[name of respondent]

Respondent

STATEMENT OF ISSUES, FACTS AND CONTENTIONS

Issues

[Applicant/Respondent] considers that the issues for the Tribunal to determine are as follows:

1. *[What questions do you want the Tribunal to answer?*

For example: What is the appropriate diagnosis of the Applicant's condition? Was the disease contributed to, to a significant degree, by the employee's employment? Was the disease suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment? Was the administrative action reasonable? Was it taken in a reasonable manner?

- 2.

Facts

The following are the relevant facts as the [Applicant/Respondent] perceives them:

1. *[Briefly explain what happened. Do not include opinions. Do not include evidence, but footnote Section 37 documents, statements or other documents if relevant.*

For example: The Applicant is ... years of age. He has been employed as a ... since ... [note Applicant's statement dated ... para ...]. He attended a meeting with his supervisor on ... [note record of meeting T-documents p 5]. He was first treated for ... on [note clinical notes from treating doctor dated ...].]

2.

Contentions

[Applicant/Respondent] contends as follows:

1. *[Explain the conclusions you want the Tribunal to make and why these conclusions should be made.*

For example: The Applicant was/was not suffering from ... when he made his claim for compensation [note report of treating doctor dated ... para ...; report of Dr ... dated ... para ...]. The Applicant's ... was/was not contributed to, to a significant degree, by his employment because ... [note report of treating doctor dated ... para ...; report of Dr ... dated ... para ...]. The administrative action was/was not taken in a reasonable manner because ... [note statement of Applicant dated ... para ...; statement of Applicant's supervisor dated ... para ...].]

2.

Decision sought

3. [Applicant/Respondent] seeks an order [affirming] / [varying] / [setting aside] / [remitting] / [other] the decision.

Contact us

Email: generalreviews@aat.gov.au

Post: AAT, GPO Box 9955, Your capital city (*Northern Territory residents should write to Brisbane*)

Phone:

If you want more information or assistance, call us on **1800 228 333** (calls are free from landline phones, however calls from mobiles may be charged). Residents of northern NSW (postcodes 2460–2490) and the Northern Territory will be connected to the Brisbane registry.

From Norfolk Island and overseas, call us on **+61 2 9391 2400**

Non-English speakers

Non-English speakers can call the Translating and Interpreting Service on **131 450** and ask them to call the AAT.

If you are deaf or have a hearing or speech impairment

If you are deaf or have a hearing or speech impairment, contact us through the National Relay Service. For more information visit www.relayservice.gov.au.

In person or by fax:

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