



# Administrative Appeals Tribunal

## General Practice Direction

[Subsection 20(2) of the *Administrative Appeals Tribunal Act 1975*]

This practice direction has effect on and from 30 April 2007.

This practice direction sets out the procedure to be adopted for all applications lodged in the Tribunal throughout Australia where the applicant is represented other than:

- applications for review of decisions made by the Social Security Appeals Tribunal under section 113 of the *A New Tax System (Family Assistance) Act 1999* or section 149 or 150 of the *Social Security (Administration) Act 1999*;
- applications for review of decisions made under the *Safety, Rehabilitation and Compensation Act 1988* or the *Seafarers Rehabilitation and Compensation Act 1992*; and
- applications for review of a security assessment under section 54 of the *Australian Security Intelligence Organisation Act 1979*.

This procedure can be varied by specific direction of the Tribunal. The practice direction is designed to assist the Tribunal achieve the dual purpose of attempting to obtain an agreed resolution where possible and ensuring that appropriate steps are taken to prepare for the hearing of those matters which do not settle.

There will always be some cases where it is obvious from the outset that settlement is either inappropriate or unlikely to be achieved. In those cases, the Tribunal will concentrate on preparing the application for hearing.

### 1. Section 37 Documents

Within 28 days of receipt of the Section 29 notice, the respondent is required to file a copy of the Section 37 Documents with the Tribunal and send a copy of these documents to each party. The 28-day time period may be shortened in appropriate cases if application is made pursuant to subsection 37(1A) of the *Administrative Appeals Tribunal Act 1975*. The time period may also be lengthened by the Tribunal under subsection 37(1).

A full explanation of the requirements in relation to Section 37 Documents, including their presentation, is set out in the Practice Direction relating to Section 37 of the *Administrative Appeals Tribunal Act 1975*.

## **2. Conferences**

Conferences in the Tribunal are conducted by a Tribunal member or Conference Registrar. Generally, there will be only two conferences held. If a matter has not settled during the conference process, the future conduct of the matter, including the possibility of mediation or another form of alternative dispute resolution and the requirements for a hearing, will be discussed at the final conference. If the matter is to be listed for hearing, both parties will give details of the witnesses they will call, state whether the evidence of particular witnesses can be tendered by consent with no cross-examination, and give an estimate of the hearing time. The parties should also be prepared to discuss venue and other matters relating to the listing of the hearing.

Specific directions relating to the lodging of documents and other procedural matters may be given at any time.

### **2.1 First Conference**

The first conference will usually be held 6 to 10 weeks after an application for review has been lodged. The conference can either be in person or by telephone. If there are any special circumstances, a party may request that a conference be held at an earlier or later date.

- **Statement of Issues**

A brief statement setting out the issue(s) that the applicant and the respondent consider to be in dispute must be exchanged and lodged with the Tribunal at least one working day prior to the first conference. The statement of issues must address the specific issue(s) in question and must not be expressed in general terms. All appointments for the purpose of obtaining medical reports must be made prior to the conference by both parties and details provided at the conference.

- **At the first conference**

At this conference, the issue(s) in dispute and the need to gather any further evidence will be discussed and the prospect of settlement will be explored.

### **2.2 Second Conference**

The second conference will usually be held 12 to 16 weeks after the first conference. It may be in person or by telephone. The evidence that has been placed before the Tribunal and the merits of each case will be discussed with a view to settlement.

- **Statements of Facts and Contentions and Expert Reports and Witness Statements**

At least 14 days prior to the second conference, the applicant is to lodge and serve a statement of facts and contentions. This statement must clearly and concisely set out the facts upon which the party relies and any contentions to be drawn from those facts, should include references to relevant legislation and case law and should not be just a repetition of the statement of issues. All expert reports and the statement of all witnesses, including the applicant, must also be exchanged and lodged at this time.

At least 7 days prior to the second conference, the respondent is to lodge and serve a statement in reply, together with all expert reports and witness statements.

If the facts are not in dispute, an agreed statement of facts should be lodged 14 days before the second conference. The applicant and respondent will then have 7 days to lodge a statement of the contentions which they say should be drawn from those facts.

Any departure from these procedures must be with the consent of the Tribunal.

### **3. Hearing**

- **Hearing Certificate**

Within 7 days after the final conference, or as otherwise directed, if a matter has not settled, both parties are to lodge and serve a hearing certificate. Hearing certificates can be obtained from the appropriate registry. In accordance with the Tribunal's Listing and Adjournment Practice Direction, if a hearing certificate is not provided then the application may be listed without further consultation.

- **Medical Witnesses**

Subject to compliance with any statutory time limits, the lodgement and service of a medical report ensures that it will be taken into account at the hearing, whether or not the author of the report gives oral evidence. The Tribunal will not generally require a doctor to give oral evidence where a report has been appropriately lodged and exchanged. Parties should consider carefully the need for oral medical evidence at any hearing.

A party may require the attendance for cross-examination of a medical practitioner making such a report. Whether that party procures that attendance by the issue and service of a summons or otherwise, the medical practitioner will not become the party's witness, but that party could be liable to pay conduct money or witness' expenses.

A party who procures the attendance of a medical practitioner as mentioned above must, as soon as practicable, inform all other parties to the proceedings and the Tribunal that he or she has done so.

Failure of the medical practitioner to attend in these circumstances will not, in itself, render the report incapable of being taken into account. Such failure may however be relevant in assessing the weight to be given to such a report.

Where a medical practitioner making a report is cross-examined, the party tendering the report may re-examine the witness.

- **List of cases**

Both parties are to lodge and exchange a list of cases on which they intend to rely at the hearing at least two working days before the hearing date.

- **Telephone or Video Proceedings**

At the discretion of the presiding member, part of any hearing may be conducted either by telephone or video link. A party seeking to have evidence taken in this manner should seek the other party's written consent before applying to the presiding member for an appropriate direction. The presiding member may wish to conduct a directions hearing before exercising this discretion.

Where evidence is to be given either by telephone or video link, the party whose witness it is will make all necessary arrangements and provide the relevant registry with details of the proceedings, the witness, location, telephone numbers and the date, time and estimated duration.

The costs shall be borne by the party who calls the witness subject to the discretion of the presiding member to waive charges. If no specific direction as to waiver is obtained, application can be made to the Registrar or District Registrar to waive the charges where the party concerned meets the criteria set out in subregulation 19(6) of the *Administrative Appeals Tribunal Regulations 1976*.

Details of costs can be obtained from the appropriate registry.

#### **4. Other Matters**

- **Adjournments**

Once a matter has been listed for hearing before the Tribunal, an adjournment will not be granted unless there are good reasons to justify the adjournment. The Tribunal's policy and procedures relating to the adjournment of hearings are set out in the Listing and Adjournment Practice Direction.

- **Directions Hearings**

A directions hearing may be listed at any time if the matter requires it, or the parties have not complied with this practice direction or with specific directions made by the Tribunal. Either party can make a request for a directions hearing if the need arises. The request should be in writing and set out the reasons for which the directions hearing is sought.

- **Interpreters**

Interpreters will be provided by the Tribunal. Parties must ensure that the appropriate registry is advised in sufficient time for arrangements to be made. Interpreters will be accredited at the first professional level, Interpreter, with the National Authority for Accreditation of Translators and Interpreters (NAATI). Only in languages where no professional level interpreter is accredited will a Paraprofessional Interpreter be utilised.

## **5. Refund of Application Fees**

Application fees can only be refunded if the Tribunal has certified that the application has been determined in a way that is favourable to the applicant. The member signing a decision will determine whether the decision is favourable to the applicant.

## **6. Costs**

In general, the parties in Tribunal proceedings must bear their own costs. Under the *Mutual Recognition Act 1992* and the *Trans-Tasman Mutual Recognition Act 1997*, the Tribunal may order a party to pay costs if the party has acted unreasonably. The Tribunal has the power under the *Freedom of Information Act 1982* and the *Lands Acquisition Act 1989* to recommend in certain circumstances that costs be paid by the Commonwealth.

**Garry Downes**  
**President**

26 March 2007