



Administrative Appeals Tribunal

**Guide to the
Social Security
Jurisdiction**

April 2008

Foreword

This guide provides information about how the AAT will manage applications for review of decisions relating to family assistance and social security matters. It applies to all applications lodged throughout Australia. It will apply on and from 19 May 2008.

The AAT is required to provide a mechanism of review that is fair, just, economical, informal and quick. The AAT will assist the parties to attempt to reach an agreed outcome where possible while ensuring that appropriate steps are taken to prepare for hearing those matters that do not settle. The AAT aims to finalise less complex applications for review within 6 months of lodgement and more complex applications within 12 months of lodgement.

This guide sets out the procedures that the AAT will adopt in managing applications in this jurisdiction. It explains what is expected of parties and their representatives to assist the AAT during the review process. I note, in particular, that the decision-maker is required to use its best endeavours to assist the AAT in making its decision in relation to the proceeding.¹ What is expected of parties who are represented differs from what is expected of self-represented parties.

The AAT recognises that the particular steps to be taken in moving each application towards resolution will vary. The AAT will determine in consultation with the parties what should be done to achieve resolution in an effective and efficient manner.

The guide sets out certain procedural requirements that parties are expected to comply with. Directions will also be issued as necessary during the review process to ensure that applications progress in a timely manner and that parties and their representatives have clear guidance about what is required of them. Failure to comply with directions will be treated seriously.

A flow chart of the usual steps in the review process is set out at Attachment A to the guide at page 23. A glossary of terms commonly used in the AAT is provided at Attachment B at page 24. Further information about practice and procedure in this jurisdiction, including documents referred to in this guide, can be obtained from the AAT's website at www.aat.gov.au or by contacting the AAT Registry in your State or Territory. Contact details for each of the registries are set out on the back cover of this guide.

Garry Downes
President

3 April 2008

¹ Section 33(1AA) of the *Administrative Appeals Tribunal Act 1975*.

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1. Applying for review and interim applications

1.1 Applications for review

The AAT can review any decision that has been made by the Social Security Appeals Tribunal (SSAT) in relation to family assistance and social security matters.

An application for review must be in writing and set out brief reasons for the application. The AAT's Form "Application for review of decision" can be used but it is not mandatory. The application can be lodged:

- in person at the AAT;
- by mailing it to the AAT; or
- by faxing it to the AAT.

The application must be lodged with the AAT within 28 days after a person receives the SSAT's decision. However, a person can apply to the AAT for an extension of the 28-day time limit. No fee is payable to lodge an application.

Further information about applying for review, including an application form, is available on the AAT's website (www.aat.gov.au) and from the AAT's registries. Contact details for the registries are set out on the back cover of this guide. Information about applying for an extension of the 28-day time limit is outlined in section 1.4 of the guide at page 4.

1.2 Who can apply for review and parties to the review

An application for review of a decision of the SSAT can be lodged by any individual whose interests are affected by the decision. The Secretary of any of the following Australian Government departments can also apply for review of an SSAT decision that relates to that department's areas of responsibility:

- Department of Education, Employment and Workplace Relations; and
- Department of Families, Housing, Community Services and Indigenous Affairs.

The person who applies for review, whether an individual or a department, is referred to by the AAT as "the applicant". Where the applicant is an individual, the relevant department is a party to the review and is referred to as "the respondent". Where an application is lodged by a department, the person who applied for review in the SSAT is automatically a party to the review and is referred to as "the respondent".

In practice, the departments are represented by Centrelink or other legal service providers. However, the department's name will appear as the applicant or respondent in letters and other documents produced by the AAT.

In some cases, more than one individual may have been involved in the review before the SSAT. This can occur, for example, in applications relating to family tax benefit. Either of those individuals can apply to the AAT for review. The other person is automatically a party to the review before the AAT and is referred to as a "third party".

1.3 Acknowledging an application for review

When the AAT receives an application for review from an individual, it will send a letter to the applicant confirming that the application has been received. If the AAT has jurisdiction to deal with the application, it will notify Centrelink and any third party that the application has been lodged.

When a department applies for review, the AAT will send a letter acknowledging the application. It will also send a letter to any individual who will be a party to the review advising that an application has been lodged.

1.4 Interim applications

In some cases, issues can arise during the review process that require what is known as an “interim application”. Interim applications that are common in the social security jurisdiction include:

- application for an extension of time;
- application for a stay order;
- application to be joined as a party; and
- application for a confidentiality order.

This section of the guide provides information on these types of applications and how the AAT will deal with them.

1.4.1 Extension of time

If an application is not lodged with the AAT within the 28-day time limit, the applicant can apply for an extension of the time limit. An application for extension of time can be lodged at the same time as the application for review.

If the AAT receives an application that does not appear to have been lodged within the time limit, the AAT will write to the person and explain that an application for extension of time must be lodged.

An application to extend time must be in writing. The AAT’s Form “Application for extension of time for lodging application for review of decision” can be used.

In deciding whether to grant an order to extend time, the AAT may consider a range of relevant matters, including:

- the reason that the application was not lodged within time;
- any disadvantage that a party or other person might suffer if the application for extension of time were granted or refused; and
- the prospects of success of the application for review.

Other matters may also be regarded as relevant.

1.4.2 Stay orders

The decision of the SSAT continues to operate even though an application for review has been lodged with the AAT. In some circumstances, a party may want to apply to the AAT for an order which "stays" (suspends) the operation or implementation of the SSAT decision until the AAT finalises the review. For example:

- if the SSAT has decided that a person must repay a debt to Centrelink, the person can apply to the AAT to stop Centrelink from recovering the debt while the AAT is reviewing the decision;
- if the SSAT has decided that a person is entitled to a pension, a department can apply to the AAT to stop payment of the pension while the AAT is reviewing the decision.

A request for a stay order must be in writing. The AAT's Form "Request for order about the operation or implementation of a decision" can be used.

In considering whether to grant a stay order, the AAT may consider a range of relevant matters, including:

- the hardship that a party might suffer if the stay order were granted or refused;
- the prospects of success of the application for review; and
- public interest considerations.

Other matters may also be regarded as relevant.

A stay order can be made about the whole of a decision or part of a decision. For example:

- the AAT can order that, while the review is taking place, Centrelink must stop recovering a debt but may not require Centrelink to repay amounts already recovered;
- where the SSAT has decided that a person is entitled to a pension, the AAT can order that, until the review is finalised, the person can continue to receive the pension but no back payments should be made.

The AAT will decide whether a stay order should be made and, if so, what type of order is appropriate.

1.4.3 Joinder

Any person whose interests are affected by the SSAT decision can apply to become a party to an existing application. This is known as an application to be joined as a party or 'joinder'. In some circumstances, the AAT may notify a person who is likely to be affected by the decision that the application has been received and invite that person to apply to be joined as a party.

An application to be joined as a party must be in writing. The AAT's Form "Application to be made a party to a proceeding" can be used.

In considering whether to grant a joinder application, the AAT considers:

- whether the person's interests are affected by the decision;
- whether it is appropriate that the party be joined.

1.4.4 Confidentiality

Documents lodged with the AAT are usually made available to all of the parties involved in an application. If the AAT holds a hearing, it will normally be open to the public and the public will usually have access to documents lodged with the AAT and evidence given in the hearing. AAT decisions are usually made publicly available, including on the Internet.

Parties can apply to the AAT for a confidentiality order at any stage during the review process. An order can be made under section 35 of the *Administrative Appeals Tribunal Act 1975* that:

- a hearing or part of a hearing is to be held in private;
- the name of a party or witness is to be kept confidential;
- information in documents lodged with the AAT, or evidence given before the AAT, is not to be published or disclosed to some or all of the parties.

In considering whether to grant a confidentiality order, the AAT may consider a range of relevant matters, including:

- the person's reasons for seeking the confidentiality order;
- the general principle that the AAT should conduct its operations in public.

Other matters may also be regarded as relevant.

1.4.5 How the AAT processes interim applications

The way in which the AAT will process interim applications differs for self-represented and represented parties.

If a self-represented individual lodges an application, the AAT will provide a copy to the department's representative and ask the representative to notify the AAT within 14 days whether or not the department opposes the application. If the application is not opposed, the application will be referred to an AAT member who will generally make a decision without holding a hearing. If the department opposes the application, the AAT will usually hold a hearing before deciding the application. The hearing may be held in person or by telephone.

The same procedure will be followed where a department lodges an interim application and an individual is represented.

If the department lodges an application and an individual is self-represented, the AAT will send the person a copy of the application and then contact the person to explain the nature of the application. The AAT will determine whether to:

- ask the person to notify the AAT in writing whether or not he or she opposes the application; or
- list the matter directly for a hearing.

In relation to applications for stay orders lodged by a department, the AAT will usually list the matter directly for a hearing.

If a self-represented party is asked to notify the AAT of his or her view, a hearing will usually be held only if the person opposes the application. If the person does not oppose the application, it will be referred to a member who will generally make a decision on the papers.

2. Section 37 Documents, Outreach and legal advice schemes

2.1 Section 37 Documents

Within 28 days after receiving notice or confirmation that an application has been lodged, Centrelink must lodge with the AAT 2 copies of the documents required under section 37 of the *Administrative Appeals AAT Act 1975*. These documents are:

- the SSAT decision; and
- every other document that is in Centrelink’s possession or control and is relevant to the review of the decision by the AAT.

Centrelink must also send a copy of these documents to each other party (except for any document or part of a document that is subject to a confidentiality order made by the AAT). These documents are referred to as the “Section 37 Documents” or the “T Documents” – “T” standing for Tribunal.

Further information about the requirements relating to the Section 37 Documents, including their presentation, is contained in the Practice Direction relating to Section 37 of the *Administrative Appeals AAT Act 1975*. The practice direction also sets out the procedure that applies if Centrelink wants to request a confidentiality order in relation to any of the Section 37 Documents.

A person may request that the AAT shorten the 28-day time period for providing the Section 37 Documents on the basis that it would or might cause hardship.

Centrelink may apply to the AAT to extend the 28-day time period. Such an application must be made if Centrelink is not able to provide the Section 37 Documents within the time period. This application must be made before the 28-day time period expires.

If a person believes that relevant documents have not been included in the Section 37 Documents, this should be raised at the first conference.

Please note that the AAT may, by notice in writing under section 37(2) of the *Administrative Appeals AAT Act 1975*, require Centrelink to lodge copies of particular other documents, or other documents included in a particular class of documents.

2.2 Statement of Issues

When an application has been lodged by an individual who is legally represented or by a department, the applicant must prepare a Statement of Issues. The statement must be lodged with the AAT and given to the other party at least 7 days prior to the first conference.

The Statement of Issues should identify succinctly the issues that are considered to be in dispute. A sample Statement of Issues is set out at Attachment C to this guide on page 27.

2.3 Outreach

The AAT has an outreach program which is designed to provide self-represented parties with information about AAT practice and procedure. Outreach usually occurs shortly after the Section 37 Documents have been received. If there is an interim application, Outreach may be conducted at an earlier stage.

The primary purposes of Outreach are:

- to explain the AAT's review process and, in particular, what the Section 37 Documents are and what will happen at the first conference;
- to ascertain whether the person will require any particular assistance during the review process such as an interpreter or assistance in accessing the AAT; and
- to discuss with the person the legal advice scheme and/or provide contact details for organisations that may 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 to be available to assist before contacting the self-represented party. Further information on interpreters can be found on Section 8.2 of the guide at page 20.

2.4 Legal advice schemes, referrals and resources

The AAT has entered into arrangements with legal aid bodies in New South Wales, Queensland, South Australia, Victoria and Western Australia to provide a legal advice service at the AAT's premises. A legal aid solicitor attends the AAT's premises once per week or per fortnight. The AAT invites self-represented parties to make an appointment with the solicitor who provides initial advice and assistance. Further assistance and representation may be provided if the person is eligible for a grant of legal aid.

Community legal centres also provide advice and may provide representation, including in the Australian Capital Territory and Tasmania. The AAT refers self-represented parties to community legal centres for assistance where appropriate.

The AAT maintains on its website at www.aat.gov.au a list of organisations that may be able to provide advice and assistance in social security matters.

A range of resources relating to family assistance and social security law and policy are available online. These include:

- family assistance and social security legislation which is available on the ComLaw website at www.comlaw.gov.au;
- the *Guide to Social Security Law* and *Family Assistance Guide* which are available on the Department of Families, Housing, Community Services and Indigenous Affairs website at www.facs.gov.au/guides_acts/homeint.html;
- a range of materials on the National Welfare Rights Network website at www.welfarerights.org.au;
- court and tribunal decisions on family assistance and social security matters which are available on the AustLII website at www.austlii.edu.au.

3. Conferences

Conferences are the central component of the AAT's pre-hearing case management process. They are usually conducted by a Conference Registrar but may be conducted by an AAT member. The person who conducts a conference is referred to in this guide as the Conference Convenor.

Conferences provide an opportunity for the AAT and the parties 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 matter.

In relation to gathering further supporting material, the AAT expects that parties 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, the Conference Convenor may make comments in relation to the strengths and weaknesses of each party's case during a conference.

- **Number and timing of conferences**

In many cases, only one conference will be held. In some cases, two or more conferences may be held. The Conference Convenor will decide how many conferences are necessary.

The first conference will usually be held 6 to 10 weeks after an application for review has been lodged. The timing of further conferences will be set by the Conference Convenor in consultation with the parties. The nature of the matter will determine the timing.

- **Location**

Where an individual is not represented, conferences will generally be held in person at the AAT. If it is not convenient for a self-represented party to attend in person because the person lives outside a capital city or overseas or for other reasons, the conference may be conducted by telephone.

Where both parties are represented, conferences are generally held by telephone. However, if the Conference Convenor 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 the AAT's registries and on the AAT's website.

3.1 Before the first conference

- **Making appointments for expert reports**

Experience demonstrates that, where appointments for expert reports are made earlier in the review process, applications are finalised in a more timely manner.

Where parties are represented, representatives should consider whether or not an expert report is likely to be obtained. If it is clear that such a report will be sought, the representative should make an appointment for the purpose of obtaining the report before the first conference.

3.2 At the first conference

At the first conference, the Conference Convenor and the parties will identify the legal and factual issues in the application. These will be discussed in detail. Where necessary, the Conference Convenor may require one or both parties to prepare a Statement of Issues or a supplementary Statement of Issues to clarify the issues in dispute. A sample Statement of Issues is set out at Attachment C to this guide on page 27.

The Conference Convenor will discuss with the parties the enquiries and investigations they may undertake and the further supporting material that may be gathered. Discussion may relate to matters such as:

- obtaining medical reports or job capacity assessments; or
- obtaining other documents relating to a person's financial or personal circumstances.

The Conference Convenor will explore with the parties the prospects for reaching an agreed outcome. This will inform the further steps to be taken, including whether the application should be referred to another type of Alternative Dispute Resolution (ADR) such as conciliation, mediation, case appraisal or neutral evaluation, or whether the matter should be listed for hearing.

The Conference Convenor will determine in consultation with the parties what steps are to be taken before the next listing and a timetable for such steps. The Conference Convenor will be guided by the issues in the case and what will be effective and efficient in progressing the matter towards resolution.

The Conference Convenor may issue a direction at the end of the conference specifying what must be done and by when. The direction may require one or both parties to:

- advise the AAT and the other party of the details of any appointments for the purposes of obtaining reports;
- give to the AAT and the other party relevant documents such as witness statements, reports, a Statement of Issues or Statement of Facts, Issues and Contentions.

If a second conference is to be held, the date for that conference will be set based on the timetable determined by the Conference Convenor.

3.3 After the first conference

- **Appointments and expert reports**

Where an appointment is to be made with a medical practitioner or job capacity assessment provider, parties should endeavour to make the appointment for the earliest possible date. If an appointment is to be made for a job capacity assessment following a medical appointment, the department must attempt as far as practicable to schedule the appointments in a timely manner.

Parties must give the following to the person who will be preparing a report:

- any guidelines that have been published by the AAT in relation to opinion evidence; and
- in disability support pension cases, a copy of, or clear reference to, the relevant parts of the Impairment Tables set out in the *Social Security Act 1991* which apply to the claim.

The AAT may assist a self-represented party with the preparation of a letter for the purposes of obtaining a report from a medical practitioner on relevant issues in applications relating to disability support pension.

Any expert report on which a party intends to rely must be lodged with the AAT and given to the other party as soon as practicable and, in general, 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 the AAT and the other party.

The AAT is required to make the correct or preferable decision in relation to an application. It will be assisted in this task by having all relevant material available to it. Section 33(1AA) requires the decision-maker to use his or her best endeavours to assist the AAT to make its decision. Consistent with this requirement, the AAT expects that the department will lodge with the AAT all reports that it has obtained whether or not they are favourable to the other party.

- **Summonses**

The AAT has the power to order a person to produce documents to the AAT. If a party would like the AAT to issue a summons for documents that will be relevant to the review, a request should be made as early as possible in the review process.

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

3.4 Statements of Facts, Issues and Contentions

Where an individual is represented, the AAT will generally require both parties to prepare a Statement of Facts, Issues and Contentions. Usually, the applicant will be required to prepare the Statement of Facts, Issues and Contentions first. The respondent will usually be required to prepare a statement in reply.

Where an individual is not represented, the Conference Convenor will usually only require the department to prepare a Statement of Facts, Issues and Contentions. In appropriate cases, the Conference Convenor may ask a self-represented party to prepare a response to the statement, or a chronology of relevant events.

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

- the key facts upon which the party relies;
- the issues that the party believes are still in dispute; and
- the contentions that the party believes should be drawn from those facts.

Any statement in reply should respond specifically to the Statement of Facts, Issues and Contentions noting what aspects are agreed, which are disputed and the alternative facts and/or contentions on which the party relies.

A sample Statement of Facts, Issues and Contentions is set out at Attachment D to this guide on page 29.

3.5 Second and subsequent conferences

In cases in which a second conference is held, the AAT and the parties will review progress in the matter. Any further supporting material that has been lodged with the AAT and the merits of each party's case will be discussed with a view to reaching an agreed outcome where possible or narrowing the issues in dispute. The Conference Convenor and the parties will discuss any new issues that may have arisen and the further steps to be taken in the application.

The Conference Convenor in consultation with the parties will determine:

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

If the matter is to be listed for hearing, the Conference Convenor will discuss with the parties arrangements for the hearing, including its timing and location. The parties may raise for discussion whether the matter can be determined on the papers without holding a hearing.

The Conference Convenor will issue a direction as necessary and appropriate at the end of the second or any further conference specifying what the parties must do and by when. The direction may require one or both parties to:

- give to the AAT and the other party witness statements, reports or other documents;
- give to the AAT and the other party a Statement of Facts, Issues and Contentions.

4. Other forms of Alternative Dispute Resolution

In addition to conferences, other forms of ADR processes available to the AAT are conciliation, mediation, case appraisal and neutral evaluation. The definitions of these processes can be found in the “Glossary” section of this guide from page 24. The AAT has developed process models for each type of ADR process which are designed to assist parties to understand how such processes will be conducted.

The AAT has also developed referral guidelines which set out a range of considerations to be taken into account in deciding whether to refer a matter to another ADR process and which ADR process may be appropriate.

The referral guidelines and the process models can be found on the AAT’s website.

5. Finalising applications during the pre-hearing process

5.1 *Withdrawing the application*

The applicant can notify the AAT in writing at any time that he or she wants to discontinue or withdraw the application. A Notice of Withdrawal form is available on the AAT’s website.

When the AAT receives a notice of withdrawal, the application is taken to have been dismissed. The letter or other document notifying the AAT of the withdrawal must therefore clearly indicate that the party wishes to withdraw the application.

The AAT will send out a formal acknowledgment of receipt of the notice of withdrawal and will inform any other party that the application has been discontinued or withdrawn.

5.2 *Consent decisions*

Where the parties reach an agreement as to the terms of a decision in a matter, the AAT may give effect to the agreement if:

- it is satisfied that a decision in those terms or consistent with those terms would be within the powers of the AAT; and
- it appears to the AAT that it would be appropriate to give effect to the agreement: see sections 34D and 42C of the *Administrative Appeals Tribunal Act 1975*.

The terms of agreement must be in writing, signed by or on behalf of the parties and lodged with the AAT.

The AAT Act draws a distinction between:

- an agreement reached in the course of an ADR process including a conference or mediation (“Section 34D Agreement”); or
- an agreement reached by the parties at any other time (“Section 42C Agreement”).

Where the parties have reached a Section 34D Agreement, the AAT must wait 7 days after the terms of agreement are lodged before making any decision. The AAT cannot make such a decision if either party notifies the AAT within 7 days after the terms were lodged that he or she wishes to withdraw from the agreement.

Where the parties have lodged a Section 42C Agreement, the AAT may proceed to make a decision in accordance with the terms of agreement immediately.

When preparing terms of agreement for a consent decision, parties must specify clearly whether the agreement is a Section 34D or Section 42C Agreement. Terms of agreement should be lodged as soon as possible after the agreement has been reached.

5.3 Agreements in debt recovery matters

The parties may agree to settle an application concerning the recovery of a debt under section 182(1) of the *Social Security (Administration) Act 1999* or section 146 of the *A New Tax System (Family Assistance) (Administration) Act 1999*. If the agreement is in writing and lodged with the AAT by the department, the application is taken to have been dismissed by the AAT.

The dismissal of an application in these circumstances occurs automatically. The AAT is not required to make any order. However, the AAT will formally advise the parties in writing that the application has been dismissed.

5.4 Dismissal of an application

The AAT has the power to dismiss an application without proceeding to complete the review in a range of circumstances, including the following:

- if the applicant or the applicant's representative fails to attend an ADR process, directions hearing or hearing: section 42A(2) of the *Administrative Appeals Tribunal Act 1975*;
- if the applicant does not, within a reasonable time, proceed with the application or fails to comply with a direction by the AAT: section 42A(5) of the *Administrative Appeals Tribunal Act 1975*;
- if the AAT is satisfied that the application is frivolous or vexatious: section 42B(1) of the *Administrative Appeals Tribunal Act 1975*.

The respondent may apply to the AAT for a matter to be dismissed on one of these grounds but the AAT can also do so without any application. The applicant will generally be notified in advance that the application may be dismissed.

The AAT has developed a specific set of procedures for dealing with a failure by a party to comply with any legislative requirement or AAT direction. For further information, refer to Section 8.3 on page 21.

5.5 Reinstatement

If an application has been dismissed because the applicant failed to appear at an ADR process, directions hearing or hearing, the applicant can apply to the AAT to reinstate (recommence) the application: section 42A(9) of the *Administrative Appeals Tribunal Act 1975*. The application must be made within 28 days after the person receives notice of the dismissal.

The AAT can also reinstate an application if it has been dismissed in error: section 42A(10) of the *Administrative Appeals Tribunal Act 1975*. There is no time limit for applying for reinstatement on this basis.

When the AAT receives an application for reinstatement, it will be dealt with in the same manner as other interim applications. For information on how the AAT deals with interim applications, see Section 1.4.5 of this guide on page 6.

6. Hearing

Where a matter has not been finalised during the pre-hearing process, the AAT will usually hold a hearing to determine the application.

In most cases, the hearing will be held at the AAT with the parties attending in person. In some cases, the AAT will hold hearings in regional centres. The AAT may also conduct the hearing by telephone or by video link. Hearings with individuals who are overseas will generally be conducted by telephone.

In some cases, the parties may ask the AAT to determine the application without holding a hearing. This is discussed in more detail at Section 6.2 on page 17.

General information about hearings is available from the AAT's registries and on the AAT's website.

6.1 Fixing hearing dates

- **Hearing Certificate**

Where a hearing is to be listed, the AAT will usually ask parties who are represented to lodge a Hearing Certificate with the AAT and give a copy to the other party. The Hearing Certificate asks for information about:

- the witnesses who will give evidence at the hearing;
- the availability of parties, representatives and witnesses for the hearing; and
- the likely length of the hearing.

Hearing Certificates must be lodged within the time specified by the AAT. In accordance with the AAT's Listing and Adjournment Practice Direction, the AAT may list an application for hearing without further consultation if a party fails to do so.

In general, a party who is not represented will not be asked to lodge a Hearing Certificate. A Conference Convenor will usually request information relating to the person's availability for the hearing at the last conference.

The AAT will use its best efforts to:

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

Please note that the procedures for listing hearings to be held in regional centres may differ from the usual procedures.

- **Listing notice and Certificate of Readiness**

On receiving the listing notice for the hearing, parties must ensure that all persons who will be involved in the hearing, including any witnesses, are advised of the hearing date(s) as soon as possible. Parties should communicate with each other to ensure that witnesses have not been asked to appear at the same time.

Where the parties are represented, a Certificate of Readiness may be sent with the listing notice at the discretion of the District Registrar. The Certificate of Readiness requires the parties to confirm that arrangements have been made for the hearing to proceed on the listed date and to notify the AAT of any other relevant matters.

If a Certificate of Readiness is issued, it must be lodged with the AAT within 14 days of receiving the listing notice.

6.2 Determining an application without holding a hearing

The AAT can determine an application without holding a hearing if:

- both parties agree that the application should be determined without a hearing; and
- it appears to the AAT member(s) who will decide the case that the application can be adequately determined without holding a hearing: section 34J of the *Administrative Appeals Tribunal Act 1975*.

The AAT will usually ask parties to confirm in writing that they consent to the application being determined in this way.

The AAT will review the decision by considering the documents or other materials that are before it.

6.3 Before the hearing

• Disclosing and lodging evidence

The AAT expects that, in general, all evidence to be relied on at the hearing will have been identified during the pre-hearing process. Parties must comply with any directions issued or timetables set for giving documents or other material to the AAT and the other party prior to the hearing. If a party anticipates or experiences any difficulty in meeting these obligations, this should be brought to the attention of the AAT as soon as possible.

• Medical and other expert reports and witnesses

The AAT will generally receive into evidence a medical or other expert report that has been lodged with the AAT and given to the other party, whether or not the author of the report gives oral evidence. Parties should consider carefully whether it is necessary for medical practitioners or other experts to give oral evidence at a hearing. Oral evidence will usually be necessary where there are differences of opinion in the reports that are to be relied upon.

Where oral evidence is to be given, arrangements for the attendance of an expert at a hearing will generally be made by the party seeking to rely on the report. If a party was not intending to call the author of a report to give evidence but the other party requires that person for cross-examination, the parties should liaise as necessary in relation to who will arrange the person's attendance. Failure of the author to give evidence in these circumstances will not, in itself, render the report incapable of being taken into account but may be relevant in assessing the weight to be given to the report.

- **Telephone and video link evidence**

If the AAT agrees, part of any hearing may be conducted by telephone or video link. This may be appropriate, for example, where evidence is to be given by an expert witness who is unable to attend in person. A party who would like a person to give evidence by telephone or video link must seek permission before the hearing.

If a party is represented, any request for evidence to be taken by telephone or video link must be made in writing. The request must:

- set out the reasons for the request; and
- advise whether the other party opposes the evidence being taken by telephone or video link.

If a party is not represented, the person may contact the AAT by telephone or in writing and explain why the evidence should be taken by telephone or video link. The AAT will ask the department whether or not it opposes the request.

The AAT member(s) who will hear the case will decide whether or not the request will be granted. The AAT may wish to conduct a directions hearing in person or by telephone before making a decision.

Where evidence is to be given either by telephone or video link, the party must give the AAT all relevant details, including the location of the witness, the telephone numbers and the date, time and estimated duration. The party must also ensure that the witness will have access to all relevant documents when the witness gives evidence.

Unless the parties otherwise agree, the costs of taking the evidence by video link are to be paid by the party who requires the witness to give evidence. However, the AAT may waive the charges. If no specific direction as to waiver is given by the member(s) who will decide the case, application can be made to the District Registrar to waive the charges on the basis that, having regard to the income, day to day living expenses, liabilities and assets of the party concerned, payment of the charges would cause financial hardship to the person.

- **List of cases**

Parties who are represented must give to the AAT and to the other party a list of cases on which they intend to rely at the hearing at least 2 working days before the hearing. A party who is not represented will generally not be required to provide a list of cases.

- **Pre-hearing checks and directions hearings**

Before the hearing date, AAT staff may contact self-represented parties by telephone to confirm the arrangements for the hearing, including whether an interpreter is required.

At the request of a party or of its own motion, the AAT member(s) who will decide the case may hold a directions hearing in person or by telephone to discuss with the parties any issues in relation to the hearing. Directions will be issued as necessary to ensure that any outstanding matters are completed prior to the hearing.

6.4 At the hearing

- **Commencement of hearing**

The AAT expects that the parties will be ready for the hearing to commence promptly at the listed time. At the commencement of the hearing, parties who are represented should inform the AAT:

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

- **Use of hearing time**

The AAT allocates a certain amount of time for the hearing following an assessment of the information provided by the parties. The AAT and the parties must make every effort to ensure that the hearing is completed within the allocated time.

On rare occasions, it may be necessary for further material to be lodged and/or written submissions to be made after the hearing. The AAT will allow this only where it is strictly necessary.

Any further material and/or written submissions must be lodged in accordance with the timetable set by the AAT. If this does not occur, the AAT may proceed to make a decision without the material.

7. Decision

The AAT may give its decision and reasons for decision at the end of the hearing or at a later date. If the decision is not given at the end of the hearing, the AAT will endeavour to give its decision and reasons within 2 months of:

- the last day of hearing; or
- where the parties have been given permission to lodge further material or submissions – receipt of those documents.

If the AAT gives its decision at the end of the hearing, a copy of the formal decision will be sent to the parties. If a party would like the reasons for decision in writing, the party must make a request for written reasons within 28 days after receiving the formal decision. The request can be made in writing or by telephoning the AAT. The AAT will send a copy of its written reasons to both parties within 28 days after receiving the request.

8. Other matters

8.1 Requests for adjournments

- **Conferences and other ADR processes**

If a party is unable to attend a conference or other ADR process or believes that it should be postponed, the party must make a request for an adjournment. The request must be made as early as possible. The AAT will not grant an adjournment unless there are good reasons to do so.

If a party is represented, a request for an adjournment of a conference or other ADR process must be made in writing. The request must:

- explain the reasons for seeking the adjournment;
- advise whether the other party consents or objects to the adjournment; and
- if postponement is sought for a particular period, suggest when the conference or other ADR process should be re-listed and why.

A person who is not represented must contact the AAT by telephone or in writing to explain the reasons for requesting a postponement. The AAT may ask the person to put the reasons in writing. The AAT will ask the department whether it objects to the request and then decide whether or not to grant the request.

- **Hearings**

The AAT has a Listing and Adjournment Practice Direction that sets out the policy and procedures of the AAT in relation to requests for adjournments of a hearing. An adjournment will only be granted if there are good reasons to do so and a party should not assume that a request for an adjournment will be granted.

An application for an adjournment of a hearing must be made in writing and addressed to the District Registrar. The application must:

- set out the reasons for requesting an adjournment;
- be signed by the person or representative seeking the adjournment; and
- be accompanied by any documents that support the reasons for seeking an adjournment.

If the party seeking the adjournment is represented, the written request for an adjournment should also indicate whether or not the other party objects to the adjournment.

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

8.2 Interpreters

Interpreters for conferences, hearings and other events will be arranged and paid for by the AAT. If an interpreter is required, parties who are represented must advise the AAT in sufficient time to enable an interpreter to be engaged. Parties must advise the AAT which language and/or dialect is required.

Generally, interpreters will be accredited with the National Accreditation Authority for Translators and Interpreters at the first professional level, Interpreter. Only in languages where no professional level interpreter is accredited will a Paraprofessional Interpreter be used.

8.3 Non-compliance with legislative requirements and AAT directions

Failure to comply with legislative requirements and directions issued by the AAT can significantly delay the timely finalisation of applications for review. The AAT will treat non-compliance seriously.

Where a represented party becomes aware that it may not be able to comply with a legislative requirement or AAT direction, the party should write to the AAT in advance of the deadline to request further time within which to comply. The request must:

- explain the reasons for requesting further time; and
- whether or not the other party objects to the request.

A person who is not represented must contact the AAT by telephone or in writing to ask for further time. The AAT will seek the view of any other party in relation to the request and the AAT will then decide whether or not further time will be granted.

Where a party fails to comply with a legislative requirement or a direction issued by the AAT, the following procedures will generally apply:

- the AAT will list the matter for a non-compliance directions hearing;
- the AAT will send a letter to the offending party identifying the particulars of the failure to comply and requiring the offending party to attend the directions hearing unless the legislative requirement or direction has been complied with by 12 p.m. on the day before the directions hearing.

The AAT will also send a copy of the letter to the non-offending party. However, the non-offending party is not required to attend the directions hearing unless it wishes to do so or the AAT requests that the party attend.

Where there has been a history of failure to comply by a particular representative, the AAT may also send a copy of the notice directly to an individual party or department.

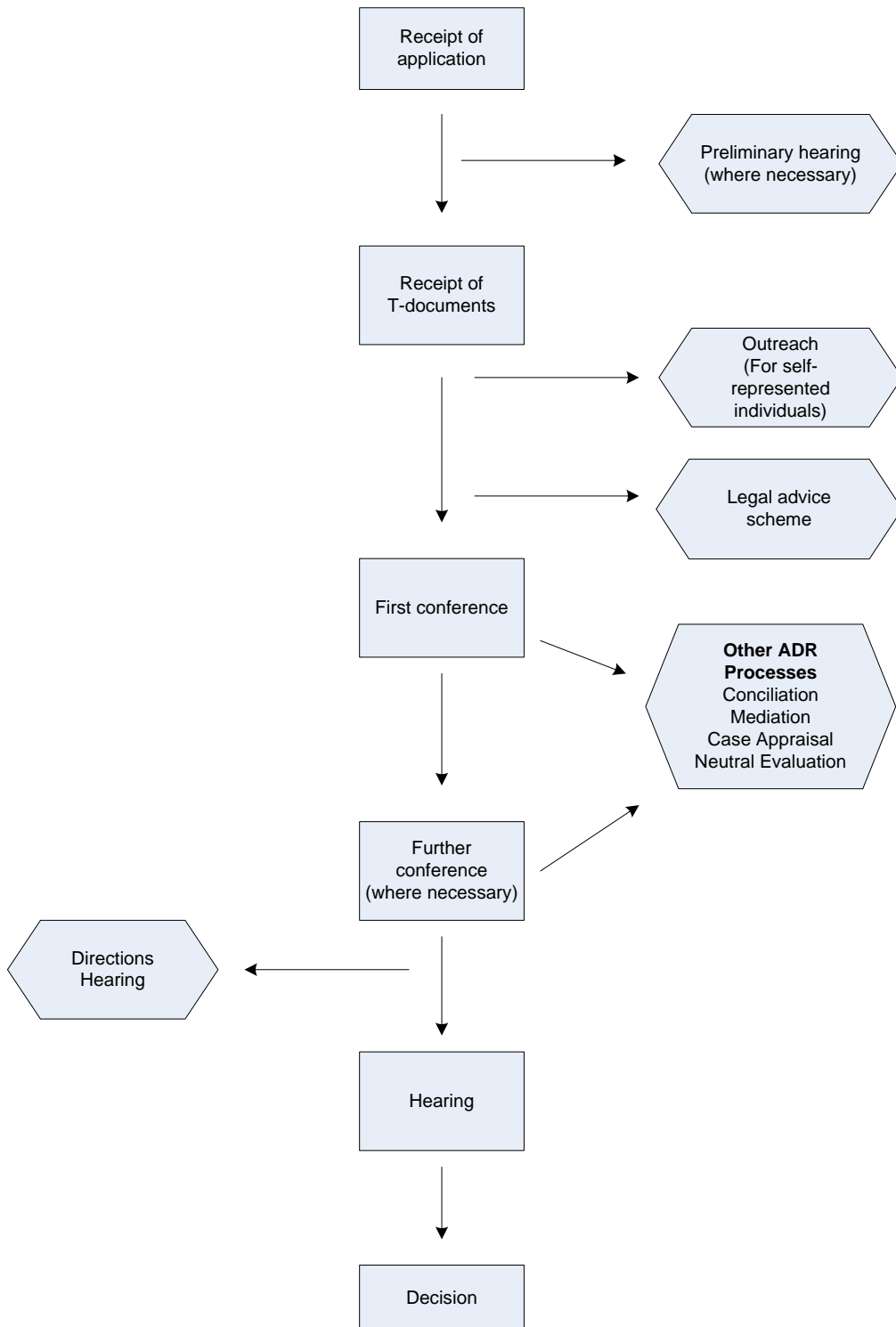
Failure to comply with legislative requirements and AAT directions may have a number of consequences. They include:

- where the applicant has failed within a reasonable time to comply with a AAT direction, the AAT may dismiss the application: subsection 42A(5) of the *Administrative Appeals AAT Act 1975*;
- where there is a history of non-compliance, the AAT may make a complaint to the head of an agency, law firm, legal profession regulatory authority or other relevant body.

ATTACHMENTS

ATTACHMENT A

The Review Process



Note: An application for review may be resolved at any stage during the review process.

ATTACHMENT B

Glossary

AAT

Administrative Appeals Tribunal

Adjournment

An adjournment means postponing an ADR process or hearing to a future date or suspending a hearing that has commenced to be completed on a future date.

ADR

ADR (or alternative dispute resolution) refers to processes in which a Conference Registrar, AAT member or other impartial person assists the parties to resolve the issues in dispute. The types of ADR used in the AAT are conferencing, conciliation, mediation, case appraisal and neutral evaluation.

Applicant

This is the person who has lodged an application with the AAT.

Application for extension of time

An application for review of a decision must be made to the AAT within a certain time limit. However, an application may be made to the AAT for an extension of time in which to lodge an application.

Case Appraisal

Case appraisal is an ADR process in which an AAT member or other person, chosen on the basis of their knowledge of the subject matter, assists the parties to resolve the dispute by providing a non-binding opinion on the facts in dispute and likely outcomes.

Conciliation

Conciliation is an ADR process in which an AAT member or Conference Registrar assists the parties to identify the issues in dispute and endeavour to reach an agreement. The conciliator has no determinative role but may advise on or determine the conciliation process, make suggestions on terms of settlement and actively encourage the parties to reach an agreement.

Conference

A conference is a meeting conducted by an AAT member or Conference Registrar with the parties and/or their representatives. Conferences provide an opportunity to discuss and define the issues in dispute, identify further evidence that may be gathered, explore whether the matter can be settled and discuss the future conduct of the matter.

Conference Convenor

This is the person who conducts conferences and can be a Conference Registrar or an AAT member.

Conference Registrar

This is an officer of the AAT who conducts conferences and other ADR processes.

Confidentiality order

The AAT may make an order directing that a hearing or part of a hearing be held in private. The AAT may also give directions prohibiting or restricting the publication of the names of a party or witnesses, evidence given before the AAT or matters contained in documents lodged with the AAT.

Directions

Directions are orders made by the AAT as to the procedures to be followed by the parties in preparing or presenting their cases. Directions can relate to matters such as the exchange of evidence before a hearing.

Directions hearings

Directions hearings are conducted by AAT members and may be held to deal with procedural matters such as the exchange of statements or documents or to clarify issues relating to the conduct of a hearing. They may also be held to progress a matter in which there has been delay by a party.

Dismissal of application

In certain circumstances, the AAT may dismiss an application without proceeding to review the decision. An application may be dismissed, for example:

- at the request of the parties;
- if the applicant fails to appear at an ADR process, directions hearing or hearing;
- if the AAT is satisfied that the application is frivolous or vexatious.

Hearing

A hearing is conducted by one, two or three members at the AAT's premises or occasionally by telephone. It is the opportunity for the parties to present to the AAT evidence and submissions in relation to the decision under review. Parties may call witnesses to give evidence.

Hearing Certificate

A Hearing Certificate is a written statement from the parties that they are ready to proceed to a hearing. The statement includes the names of witnesses to be called, how long the evidence will take to present and the availability of representatives.

Interim application

This is any application made by a party that relates to an application for review of a decision. It may be an application for an extension of time to lodge an application, an application to stay the operation of the decision under review or an application for a confidentiality order.

Mediation

Mediation is an ADR process in which an AAT member or Conference Registrar assists the parties to identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in relation to the content of the dispute but may advise on or determine the mediation process.

Member

The word "member" is used in two distinct senses. In the first sense, it is used to describe all persons who have been appointed as members of the AAT, whether as a presidential member, a senior member or otherwise. In the second sense, it is used to describe members of the AAT who are not presidential members or senior members of the AAT.

Neutral Evaluation

Neutral evaluation is an ADR process in which an AAT member or other person, chosen on the basis of their knowledge of the subject matter, assists the parties to resolve the dispute by evaluating the facts and law at issue in the dispute and providing a non-binding opinion on the likely outcomes.

Outreach

This is an AAT program that provides self-represented parties with information about AAT practice and procedure and other assistance available in relation to the review process.

Party

A party is a participant in the proceedings before the AAT. Parties include the person who makes the application to the AAT, the decision-maker, any third party and any other person joined to the proceedings.

Practice Directions

The AAT has issued a number of documents called practice directions which set out the AAT's policy and procedures in relation to aspects of the review process. Practice directions set out a range of requirements that parties must comply with.

Respondent

This is the party who responds to or answers an application. This is usually the department or agency that made the original decision. Where the department or agency that made the original decision lodges the application, the individual affected will be the respondent.

Section 37 Documents

These are the statement and documents that a decision-maker must prepare and provide to the AAT and the other party under section 37 of *Administrative Appeals Tribunal Act 1975*: known generally as the 'T documents'. They include the reasons for the decision under review and all other relevant documents.

Statement of Facts, Issues and Contentions

This is a written statement by the parties setting out the key facts of the case and their arguments in relation to the facts and the law relevant to the case.

Statement of Issues

This is a written statement setting out the issues that are in dispute.

Summons

This is a notice issued by the AAT calling a person to appear before it to give evidence and/or to produce documents to it. It is an offence not to comply with a summons.

Stay order

This is an order of the AAT to suspend the operation or implementation of the decision under review until the AAT determines or otherwise resolves the matter.

T-documents

See 'Section 37 documents'.

Please note that a comprehensive list of terms can be found on the AAT's website at www.aat.gov.au/Glossary.htm.

Issues

2. The statement should set out the specific issues which arise in relation to the decision(s) under review and that are considered to be in dispute.
 - The relevant issues which arise in relation to each element of the decision under review should be identified.
 - The issues should not be expressed in general terms.

Examples

- Disability support pension
 - *Whether the Respondent was qualified to receive disability support pension on the date of the claim or within 13 weeks after that date.*
 - *Whether the Respondent's conditions were fully diagnosed, treated and stabilised and unlikely to improve significantly within 2 years.*
 - *Whether the Respondent's conditions attracted a combined impairment rating of 20 points or more under the Impairment Tables set out in Schedule 1B to the Social Security Act 1991.*
 - *Whether the Respondent's impairments were sufficient to prevent the Respondent from working at least 15 hours per week within 2 years.*
 - *Whether the Respondent's impairments were sufficient to prevent the person from undertaking a training activity within 2 years or any such training activity was unlikely to enable the person to work at least 15 per hours per week within 2 years.*
- Overpayment and debt recovery
 - *Whether the Applicant was entitled to newstart allowance during the period ... to ...*
 - *Whether all or part of the debt was attributable solely to an administrative error made by the Commonwealth and, if so, whether the Applicant received the payments in good faith.*
 - *Whether the debt arose wholly or partly from the Applicant knowingly making a false statement.*
 - *Whether the Applicant's circumstances constitute special circumstances that make it desirable to waive the debt.*

The examples are provided to demonstrate the level of detail that the AAT expects in relation to the identification of the issues.

Key Facts

3. The statement should set out the essential facts that are relevant to the issues in dispute and the contentions to be made. They may include:
 - the factual circumstances;
 - factual information relating to the effects of an impairment and details of particular assessments, examinations or procedures undertaken in relation to the impairment.
4. The relevant facts should be set out in chronological order and as succinctly as possible. Where appropriate, references should be included to relevant documents lodged with the AAT identifying the particular document and the page(s) on which the information is located.
5. General points
 - A detailed chronology of events is not necessary. Only the essential facts need to be included in the statement.
 - Opinions expressed in medical or other reports will not usually be included in this section. These will generally be included in relation to the contentions to be made.
 - Information about particular medical assessments, examinations or procedures including test results should be included where they will be relied on to support the contentions made.
6. A Respondent replying to a statement lodged by an Applicant must specify whether it agrees or disagrees with the facts stated by the Applicant. For example:

The Respondent agrees with the facts stated in paragraphs 4 and 5 of the Applicant's Statement of Facts, Issues and Contentions.

The Respondent should include any further facts that it considers relevant to the issues in dispute.

Issues

7. The statement should set out the specific issues which remain in dispute at the time of preparing the statement.
8. See the Sample Statement of Issues for further detail in relation to specifying the issues.

Contentions

9. The statement should set out the conclusions which a party considers the AAT should draw in relation to the issues in dispute. Each contention should be stated separately and relate to each of the issues in dispute.

Examples

- Disability support pension
- *The [Applicant's/Respondent's] condition [was/was not] fully diagnosed, treated and stabilised at the relevant time.*

- *The [Applicant's/Respondent's] condition [did/did not] attract an impairment rating of 20 points or more under the Impairment Tables at the relevant time.*
 - *The [Applicant's/Respondent's] impairment [was/was not] sufficient to prevent the Respondent from working at least 15 hours per week within 2 years.*
 - Overpayment and debt recovery
 - *The [Applicant/Respondent] [was/was not] entitled to newstart allowance during the period ... to*
 - *The debt [was/was not] attributable solely to an administrative error made by the Commonwealth.*
 - *The debt [did/did not] arise wholly or partly from the [Applicant/Respondent] omitting to comply with a provision of the Act.*
 - *The [Applicant's/Respondent's] circumstances [do/do not] constitute special circumstances that make it appropriate to waive the debt.*
10. Below each contention, the facts and other relevant material relied on to support the contention should be identified. Other relevant material may be:
- opinion evidence from medical or other expert reports lodged with the AAT;
 - other documents lodged with the AAT;
 - legislative provisions and case law.
- Relevant facts should be identified by paragraph number and there should be references to reports, legislation and case law.
11. General points
- Contentions should be formulated in relation to each discrete aspect of the application.
 - There is no need to include extensive quotes from reports. It is sufficient to summarise the opinion of the expert and to include a reference to the particular report and the page(s) on which the opinion is located.
 - There is no need to include extensive quotes from case law. It is sufficient to summarise the effect of any case and include a reference to the relevant passage(s) from the case.
12. A Respondent replying to a statement lodged by an Applicant should identify explicitly if it accepts any contention in the Applicant's statement.

Decision sought

13. The statement should set out the decision that a party considers the AAT should make in relation to the decision(s) under review. It should be set out in the form of an order that the AAT can make under section 43(1) of the *Administrative Appeals Tribunal Act 1975*.

NOTE: The length of a Statement of Facts, Issues and Contentions will vary according to the nature of the application but should be as succinct as possible. The appropriate length of the document may be discussed with a Conference Convenor.

NOTES

ADMINISTRATIVE APPEALS TRIBUNAL

Registry Locations and Contact Details

Australian Capital Territory

4th Floor
Canberra House
40 Marcus Clarke Street
CANBERRA ACT 2600

Telephone: (02) 6243 4611
Facsimile: (02) 6243 4600

New South Wales

Level 7
City Centre Tower
55 Market Street
SYDNEY NSW 2000

Telephone: (02) 9391 2400
Facsimile: (02) 9283 4881

Northern Territory

Northern Territory residents should direct any enquiries to the Queensland Registry.

Queensland

Level 4, Harry Gibbs Commonwealth Law Courts Building
Cnr North Quay and Tank Street
BRISBANE QLD 4000

Telephone: (07) 3361 3000
Facsimile: (07) 3361 3001

South Australia

11th Floor
Chesser House
91 Grenfell Street
ADELAIDE SA 5000

Telephone: (08) 8201 0600
Facsimile: (08) 8201 0610

Tasmania

Ground Floor
Commonwealth Law Courts
39–41 Davey Street
HOBART TAS 7000

Telephone: (03) 6232 1712
Facsimile: (03) 6232 1701

Victoria

Level 16
HWT Tower, Southgate
40 City Road
SOUTHBANK VIC 3006

Telephone: (03) 9282 8444
Facsimile: (03) 9282 8480

Western Australia

Level 5
111 St Georges Terrace
PERTH WA 6000

Telephone: (08) 9327 7200
Facsimile: (08) 9327 7299

National telephone number

The AAT has a national telephone number – 1300 366 700.

Use this number to call the AAT's office, in the capital city of the State or Territory in which you live, for the cost of a local call. Those calling from the Northern Territory and the Northern Rivers area of New South Wales will be connected with Brisbane.

Contacting the AAT

The AAT can be contacted in person, by telephone or in writing (by letter or fax). Office hours are 8.30 a.m. to 5.00 p.m., Monday to Friday.

If you are writing to the AAT, the letter should be addressed to:

The District Registrar
AAT
GPO Box 9955
Your capital city

AAT website

www.aat.gov.au