



**Administrative Appeals Tribunal**

**Guide to the  
Workers'  
Compensation  
Jurisdiction**

March 2007



## Foreword

This guide provides information about how the Tribunal will review decisions made under the *Safety, Rehabilitation and Compensation Act 1988* and the *Seafarers Rehabilitation and Compensation Act 1992*. It applies to all applications lodged throughout Australia. It will apply on and from 30 April 2007.

The Tribunal is required to provide a mechanism of review that is fair, just, economical, informal and quick. The Tribunal 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 Tribunal aims, wherever possible, to finalise applications for review within 12 months of lodgement.

This guide sets out the procedures that the Tribunal will adopt in managing applications for review in this jurisdiction. It explains what is expected of parties and their representatives to assist the Tribunal during the review process. I note, in particular, that the decision-maker is required to use its best endeavours to assist the Tribunal in making its decision in relation to the proceeding.<sup>1</sup>

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

Directions will be issued as necessary 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 Tribunal directions will be treated seriously.

I note that the Tribunal can make an order for costs in favour of an applicant who is wholly or partly successful in the workers' compensation jurisdiction. Information relating to costs is set out in this guide.

Further information about practice and procedure in this jurisdiction, including documents referred to in this guide, can be obtained from the Tribunal's website at [www.aat.gov.au](http://www.aat.gov.au) or by contacting the Tribunal 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**

26 March 2007

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<sup>1</sup> Subsection 33(1AA) of the *Administrative Appeals Tribunal Act 1975*.

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# 1. Applications and Section 37 Documents

## 1.1 Applications for review

An application for review of a decision under the *Safety, Rehabilitation and Compensation Act 1988* or the *Seafarers Rehabilitation and Compensation Act 1992* must be lodged with the Tribunal within 60 days after a person receives the decision. A person may apply to the Tribunal for an extension of the 60-day time limit. No fee is payable to lodge an application.

General information about [applying for review or requesting an extension of time to apply for review](#) is available from the Tribunal's registries and on the Tribunal's website.

In most cases, the applicant will be the person in respect of whom the reviewable decision was made. However, under the *Safety, Rehabilitation and Compensation Act 1988*, a Commonwealth department or agency, a Commonwealth authority or a licensed corporation may apply for review of a decision that affects it. Where this occurs, the person in respect of whom the decision was made is also a party.

The body that is responsible under the legislation for making the decision under review is a party and is referred to as the respondent in this guide.

## 1.2 Notice of application and Section 37 Documents

When the Tribunal receives an application for review that it has jurisdiction to deal with, the Tribunal notifies the respondent and any other party that the application has been received.

Within 28 days after receiving this notice, the respondent must lodge with the Tribunal 2 copies of the documents required under section 37 of the *Administrative Appeals Tribunal Act 1975*. 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 respondent's possession or control and is relevant to the review of the decision by the Tribunal.

The respondent must also send a copy of the documents to the applicant and any other party. These papers are referred to as the "Section 37 Documents" or the "T (for Tribunal) Documents".

A party may request that the Tribunal shorten the 28-day time period on the basis that it would or might cause hardship.

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

If the applicant believes relevant documents have not been included in the Section 37 Documents, the applicant should inform the Tribunal and the respondent of this at the first conference.

It is essential that all relevant documents are before the Tribunal. Whenever the respondent 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 respondent 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 Tribunal.

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

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 Tribunal Act 1975](#).

## 2. Conferences

Conferences are the central component of the Tribunal's pre-hearing case management process. They are usually conducted by a Conference Registrar but may also be conducted by a Tribunal member ("Conference Convenor").

Conferences provide an opportunity for the Tribunal 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 Tribunal 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 general, two conferences will be held. The Conference Convenor may decide that only one conference should be held or that more than two 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 the applicant is not represented, conferences will generally be held in person at the Tribunal. If it is not convenient for an applicant to attend in person for geographic or 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 Tribunal's registries and on the Tribunal's website.

## **2.1 Before the first conference**

- **Making medical appointments**

Experience demonstrates that, where appointments for expert medical reports are made earlier in the review process, applications are finalised in a more timely manner. Waiting lists to see medical specialists can be long and can cause considerable delay in Tribunal proceedings.

Where parties are represented, representatives should consider whether or not an expert medical 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.

Where appropriate, representatives for both parties should discuss before the first conference the option of obtaining a joint medical report and make any appointment.

## **2.2 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 to clarify the issues in dispute. A sample Statement of Issues is set out at [Attachment A](#) to this guide on page 22.

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

- obtaining witness statements from the applicant and other persons; and
- making medical appointments.

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 ADR process such as mediation, case appraisal or neutral evaluation.

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 Tribunal and the other party of the details of any medical appointments;
- give to the Tribunal and the other party relevant documents such as a Statement of Issues, witness statements or medical reports.

The date for the next case event, usually a second conference, will be set based on the timetable determined by the Conference Convenor. In general, a second conference will be held no more than 12 to 16 weeks after the first conference.

### **2.3 After the first conference**

- **Medical appointments and reports**

Where medical appointments are to be made, parties should endeavour to make an appointment for the earliest possible date and, at the latest, within 8 weeks after the first conference. If it is not possible to obtain an appointment with a particular expert within a period of 12 weeks after the first conference, the party should seek an appointment with another expert unless there are compelling reasons for seeing that particular expert.

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

- any guidelines that have been published by the Tribunal in relation to opinion evidence; and
- when an application relates to a claim for permanent impairment, a copy of, or clear reference to, the relevant parts of the Guide to the Assessment of the Degree of Permanent Impairment which apply to the claim.

Any expert report on which a party intends to rely must be lodged with the Tribunal 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 the Tribunal and the other party.

The Tribunal 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. Consistently with subsection 33(1AA) of the *Administrative Appeals Tribunal Act 1975*, the respondent must lodge with the Tribunal all reports that it has obtained whether or not they are favourable to the applicant.

- **Summonses**

If a party wishes to obtain the medical records of treating doctors or other health service providers, the party may request the Tribunal to issue a summons to produce documents. A party may also request the Tribunal to issue a summons for any other documents that will be relevant to the review of the decision.

Any request to issue a summons to produce documents must be made to the Tribunal as early as possible in the proceedings.

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

## **2.4 Second and subsequent conferences**

The second conference provides an opportunity for the Tribunal and the parties to review progress in the matter. Any further supporting material that has been lodged with the Tribunal and the merits of each case will be discussed with a view to reaching an agreed outcome 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 it is necessary to hold a further conference;
- whether the matter should be listed for a conciliation or another ADR process such as mediation, case appraisal or neutral evaluation; or
- whether the matter should be listed for hearing because of the particular nature of the issues in dispute.

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

For information about finalising applications where the parties reach an agreement during the conference process, please see [Section 6.7](#) of the guide on page 19.

## **2.5 Statements of Facts, Issues and Contentions**

Where the applicant is represented, the Tribunal may 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 the applicant is not represented, the Conference Convenor will usually require the respondent to lodge with the Tribunal and give to the applicant a Statement of Facts, Issues and Contentions. The Conference Convenor may also require the applicant to prepare a statement in reply, 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 B](#) to this guide on page 24.

### 3. Conciliation

If a matter has not been finalised during the conference process and both parties are represented, the Tribunal will hold a conciliation. A conciliation will be held unless the Tribunal determines that it would not be useful to hold it (e.g. the application involves only a legal issue) or another ADR process is to be used.

If the Tribunal considers it appropriate to do so and the applicant consents, a conciliation may be held where an applicant is not represented.

The conciliation will usually be listed when the Tribunal is satisfied that there will be sufficient material to make the conciliation effective. In most cases, the conciliation will take place as soon as is practicable and no more than 10 weeks after the last conference.

Conciliations will be held in person and will be conducted by a Tribunal member or Conference Registrar ("Conciliator"). The Tribunal expects the following people will attend the conciliation:

- the applicant;
- the applicant's legal representative(s);
- the respondent's instructing officer; and
- the respondent's legal representative(s).

A representative of the applicant's employer or other person may also attend the conciliation where appropriate. The Tribunal 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, the relevant party may make a request to the Conciliator for the person to participate by telephone or video. If permission is given, the costs of the person participating by telephone or video will be paid by that party.

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

#### 3.1 Before the conciliation

- **Conciliation Checklist**

Where an applicant is represented, a [Conciliation Checklist](#) is sent to the applicant's representative with the listing notice for the conciliation. A second copy of the Checklist is enclosed to be forwarded to the applicant. The Checklist asks for a range of information that may be relevant to reaching an agreement between the parties at the conciliation. The Checklist is to be completed and brought to the conciliation.

The applicant's representative may need to seek certain information from the respondent to complete the Checklist. Respondents are encouraged to assist in the completion of the Checklist.

### **3.2 At the conciliation**

At the commencement of the conciliation, each party must certify that they have authority to settle the application.

During the conciliation, the Conciliator will take an active role, setting out options and discussing with the parties the merits of their respective cases. The Conciliator will work with the parties 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 6.7](#) of the guide on page 19.

If the matter is not resolved at the conciliation, the Conciliator will determine the next steps to be taken in consultation with the parties. In general, the matter will be listed for hearing and the Conciliator will discuss with the parties what further steps must be taken before the hearing. The Conciliator will issue a direction as necessary and appropriate specifying what the parties must do and by when. The direction may require one or both parties to:

- give to the Tribunal and the other party any further witness statements, reports or other documents on which a party intends to rely;
- give to the Tribunal and the other party a Hearing Certificate.

If the applicant is not represented and will not be calling any other witnesses, the Conciliator will generally ask the applicant for any dates on which he or she would be unavailable to attend a hearing.

## 4. Hearing

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

General information about [hearings](#) is available from the Tribunal's registries and on the Tribunal's website.

### 4.1 Fixing hearing dates

- **Hearing Certificate**

The Tribunal will usually ask parties who are represented to lodge a [Hearing Certificate](#) with the Tribunal and give a copy to the other party. Applicants representing themselves may also be asked to lodge a Hearing Certificate. 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.

Parties are expected to consult each other in preparing the Hearing Certificate.

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

The Tribunal 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.

- **Listing notice and Certificate of Readiness**

On receipt of the listing notice for the hearing, parties must ensure that counsel and 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 Tribunal of any other relevant matters.

If a Certificate of Readiness is issued, it must be lodged with the Tribunal within 14 days of receipt.

## 4.2 Before the hearing

- **Disclosing and lodging evidence**

The Tribunal 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 Tribunal and the other party prior to the hearing. If a party anticipates or experiences any difficulty in meeting these obligations, this must be brought to the attention of the Tribunal as soon as possible.

Applicants should be aware that, if they wish to present any matter in evidence and that matter was not disclosed to the Tribunal at least 28 days before the hearing date, that matter is not admissible as evidence without the leave of the Tribunal: see subsection 66(1) of the *Safety, Rehabilitation and Compensation Act 1988* and subsection 90(1) of the *Seafarers Rehabilitation and Compensation Act 1992*.

In some cases, the respondent will have material such as video surveillance evidence which it may seek to use to cross-examine a witness at the hearing and which is not identified or lodged prior to the hearing. Please see [Section 4.3](#) on page 14 in relation to material of this kind.

- **Medical and other expert reports and witnesses**

Subject to compliance with statutory requirements, the Tribunal will generally receive into evidence a medical or other expert report that has been lodged with the Tribunal 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. In particular, parties should consider whether oral evidence will assist the Tribunal to determine the issues in dispute. 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.

Witness expenses paid by or on behalf of an applicant may form part of the costs payable under any costs order made by the Tribunal if the matter is determined in a manner favourable to the applicant. See [Section 6.8](#) on page 20 for more detailed information in relation to costs.

- **Telephone and video evidence**

At the discretion of the presiding member of the Tribunal, part of any hearing may be conducted by telephone or video. 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 seeking to have evidence taken in this manner must seek permission from the presiding member.

If a party is represented, any request for evidence to be taken by telephone or video 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.

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

The presiding member will decide whether or not the request will be granted. The presiding member may wish to conduct a directions hearing in person or by telephone before exercising this discretion.

Where evidence is to be given either by telephone or video, the party who is calling the witness must make all necessary arrangements and give the Tribunal 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.

Unless the parties otherwise agree or the presiding member otherwise directs, the costs of taking the evidence by telephone or video are to be paid by the party who requires the witness to give evidence. The presiding member may waive the charges. If no specific direction as to waiver is given, 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 will usually be required to give to the Tribunal 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 listed hearing date, Tribunal staff will contact the 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 presiding member may hold a directions hearing in person or by telephone to discuss with the parties any issues in relation to the hearing. The presiding member will issue directions as necessary to ensure that any outstanding matters are completed prior to the hearing.

### **4.3 At the hearing**

- **Commencement of hearing**

At the commencement of the hearing, parties who are represented should inform the Tribunal:

- 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.

- **Matter not disclosed to the Tribunal**

As noted in [Section 4.2](#) on page 12, an applicant must seek leave of the Tribunal to present evidence in relation to any matter that was not disclosed to the Tribunal at least 28 days before the hearing date.

Respondents must also seek leave of the Tribunal at the hearing to rely on any material that has not been disclosed to the Tribunal and the other party prior to the hearing. This includes video surveillance evidence or other material to be used in the cross-examination of a witness.

- **Use of hearing time**

The Tribunal allocates a certain amount of time for the hearing following an assessment of the information provided by the parties. The Tribunal 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 Tribunal 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 Tribunal. If this does not occur, the Tribunal may proceed to make a decision without the material.

## 5. Decision

The Tribunal may give its decision and reasons for decision at the end of the hearing. More often, however, the Tribunal will give its decision and reasons in writing at a later date.

The Tribunal 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.

Where the Tribunal makes a decision that is favourable to the applicant, the Tribunal has the power to order that the respondent pay the costs, or a part of the costs, incurred by the applicant. The Tribunal will usually include an order of the following kind in its 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.*

Both parties will have the opportunity to make submissions to the Tribunal in relation to costs before the order takes effect.

Where it considers it appropriate to do so, the Tribunal may ask the parties to make submissions in relation to costs before making any order in relation to costs.

See [Section 6.8](#) on page 20 for more detailed information in relation to costs.

## 6. Other matters

### 6.1 *Further claims for compensation*

During the review process, an applicant may lodge a further claim for compensation that is relevant to the application before the Tribunal. A request may then be made to the Tribunal 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 Tribunal. For this reason, any further claim for compensation should be lodged at the earliest opportunity.

Where the Tribunal becomes aware that a further claim for compensation has been made or will be made, the Tribunal will discuss with the parties what effect this may have on the further progress of the application. The Tribunal will decide whether or not it is appropriate to await the determination of any further claims for compensation. An important consideration will be whether or not further claims have in fact been lodged.

Where a decision is made to await the determination of a further claim, the Tribunal will seek the cooperation of the parties to minimise delay. Where appropriate, the Tribunal will encourage the parties to commence gathering evidence in relation to the further claim.

### 6.2 *Requests for adjournments*

- **Conferences and other ADR processes**

If a party is unable to attend a conference, conciliation 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 Tribunal 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, conciliation or other ADR process must be made in writing. The request must:

- explain the reasons for seeking the adjournment;
- advise whether or not the other party objects to the adjournment; and
- if postponement is sought for a particular period, suggest when the conference should be re-listed and why.

A person who is not represented must contact the Tribunal by telephone or in writing to explain why the conference or other event should be postponed. The Tribunal may ask the person to put the reasons in writing. The Tribunal will ask the respondent whether it objects 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**

The Tribunal has a [Listing and Adjournment Practice Direction](#) that sets out the policy and procedures of the Tribunal in relation to requests for adjournments of a hearing. If either party wants an adjournment of the hearing, the request must be made in accordance with the requirements of the practice direction.

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 why an adjournment is necessary;
- 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 Tribunal will generally hold a hearing in relation to the adjournment application.

### ***6.3 Non-compliance with legislative requirements and Tribunal directions***

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

Where a represented party becomes aware that it may not be able to comply with a legislative requirement or Tribunal direction, the party should write to the Tribunal 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 Tribunal by telephone or in writing to ask for further time. The Tribunal will seek the view of the respondent on the request and the Tribunal 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 Tribunal, the following procedures will generally apply:

- the Tribunal will list the matter for a non-compliance directions hearing;
- the Tribunal 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 Tribunal is satisfied that the legislative requirement or direction has been complied with by 12 p.m. on the day before the directions hearing.

The Tribunal 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 Tribunal requests that the party attend.

Where there has been a history of failure to comply by a particular representative, the Tribunal may also send a copy of the notice directly to the applicant or to the respondent agency or corporation.

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

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

## **6.4 Directions hearings**

A directions hearing may be listed at any time if the matter requires it.

Either party can make a request for a directions hearing if the need arises. Where the party is represented, the request should be in writing and set out the reasons for which the directions hearing is sought. A person who is not represented may contact the Tribunal by telephone or in writing to request a directions hearing.

The Tribunal may of its own motion list a directions hearing at any time if it considers it necessary.

## **6.5 Interpreters**

Interpreters will be arranged and paid for by the Tribunal. If an interpreter is required, parties must advise the Tribunal of this in sufficient time to enable an interpreter to be engaged. Parties must advise the Tribunal precisely 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.

## **6.6 Own motion reconsideration by a respondent**

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

Where the respondent informs the Tribunal that it has reconsidered a determination, the Tribunal will examine the effect of the reconsideration on any application before the Tribunal. The Tribunal will seek the views of the applicant in relation to what should occur in relation to that application either by sending a letter or by holding a conference or directions hearing.

## **6.7 Finalising applications by consent decisions**

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

- it is satisfied that a decision in, or consistent with, the terms of the agreement would be within the powers of the Tribunal; and
- it appears to the Tribunal 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 Tribunal.

The *Administrative Appeals Tribunal Act 1975* draws a distinction between:

- an agreement reached in the course of 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").

Where the parties have reached agreement in the course of an ADR process, the Tribunal must wait 7 days after the terms of agreement are lodged before making any decision. The Tribunal cannot make a decision if either party notifies the Tribunal within 7 days after the terms were lodged that he or she wishes to withdraw from the agreement.

Where the parties have reached an agreement otherwise than in the course of an ADR process, the Tribunal 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 Agreement or Section 42C Agreement. Terms of agreement 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 within a reasonable time as to the actual amount of costs to be paid, the terms of agreement should specify that costs will be awarded "as agreed or taxed".

## 6.8 Costs

The power of the Tribunal 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*.

Where the applicant is the person in respect of whom the reviewable decision was made and the Tribunal makes a decision:

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

the Tribunal may order that the respondent pay all of, or a part of, the costs incurred by the applicant. In exercising this discretion, the Tribunal may take into account a range of matters including whether the applicant has incurred unnecessary costs or the applicant has caused the respondent to incur unnecessary costs in the proceeding.

Where the Tribunal sets aside a reviewable decision and remits the case to the respondent for re-determination, the Tribunal must order the respondent to pay the costs incurred by the applicant.

The legislation stipulates that the Tribunal cannot make a costs order in certain circumstances where information or documents have been withheld by an applicant.

Where a Commonwealth department, agency or authority, or a licensed corporation, has applied for review of a decision under the *Safety, Rehabilitation and Compensation Act 1988*, the Tribunal may award costs in accordance with the Act to the person in respect of whom the reviewable decision was made.

Unless the order states otherwise, the costs payable may include:

- witness expenses at the prescribed rate;
- all reasonable and proper disbursements; and
- professional costs allowable in accordance with any scale of costs determined by the Tribunal, or, if there is no such scale, 75 per cent of all professional costs, including counsel's fees, which would be allowable under the Federal Court scale.

In the absence of any order to the contrary, costs will be assessed on a party and party basis.

Costs may be agreed between the parties. Where there is no agreement, a party may apply to the Tribunal for the costs to be taxed. Information on the procedures relating to the taxation of costs is available from the Tribunal's registries.

Where an application for review to the Tribunal has been rendered abortive because the respondent has undertaken an own motion reconsideration of a determination, the respondent will usually be liable to reimburse the person in respect of whom the reviewable decision was made for costs reasonably incurred in connection with the application. The Tribunal has no power to tax costs that are payable in these circumstances.

## **ATTACHMENTS**

## ATTACHMENT A

### Sample Statement of Issues

ADMINISTRATIVE APPEALS TRIBUNAL )  
 ) [File Number]  
[Insert Relevant Division] DIVISION )

Re [Name of Applicant]  
Applicant

And [Name of Respondent]  
Respondent

#### [APPLICANT'S/RESPONDENT'S] STATEMENT OF ISSUES

[A Statement of Issues should identify the particular issues that arise in relation to the decision(s) under review. This sample statement sets out what the Tribunal expects will generally be included in a Statement of Issues.]

#### Decision(s) under review

1. The statement should identify the decision(s) under review, including:
  - the primary decision(s) made; and
  - the reconsideration decision(s) made.

#### Examples

*The decision under review is the reviewable decision dated ... that affirmed a determination dated ... that the Respondent is not liable to pay compensation under section 14 or 16 of the Safety, Rehabilitation and Compensation Act 1988 in relation to a depressive condition.*

*The decision under review is the reviewable decision dated ... that affirmed a determination dated ... that the Respondent is not liable to pay incapacity payments under section 19 of the Safety, Rehabilitation and Compensation Act 1988 from ... in relation to a lower back injury suffered on ....*

## 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 claim(s) should be identified.
  - The issues should not be expressed in general terms such as whether or not the Applicant is entitled to compensation.

## Examples

- Denial of liability
  1. *The appropriate diagnosis of the Applicant's condition*
  2. *Whether the Applicant's injury arose out of, or in the course of, the Applicant's employment/Whether the Applicant's employment contributed to the condition*
  3. *Whether the meeting between the Applicant and her supervisor on ... constitutes disciplinary action within the meaning of the Safety, Rehabilitation and Compensation Act 1988*
  4. *If so, whether that disciplinary action was reasonable*
- Liability for incapacity payments
  1. *Whether the Applicant is fully or partially incapacitated for work as a result of the lower back injury suffered on ...*
  2. *Whether the Applicant failed to continue to engage in suitable employment within the meaning of s 19(4)(c) of the Safety, Rehabilitation and Compensation Act 1988*
  3. *Whether any failure continue to engage in suitable employment was reasonable*
- Permanent impairment
  1. *Whether and, if so, the extent to which, the Applicant's right knee was impaired prior to the workplace injury suffered on ....*
  2. *Whether the impairment to the Applicant's right knee is permanent*
  3. *The extent to which the Applicant has difficulty with walking*
  4. *Whether the Applicant's questionnaire dated ... provides an accurate assessment of the degree of non-economic loss arising for the injury to the right knee*

The examples are provided to demonstrate the level of specificity that the Tribunal 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 in which an injury was sustained;
  - details of previous injuries and decisions made under the Act in relation to previous injuries;
  - factual information relating to the effects of an injury or an impairment;
  - details of particular assessments, examinations or procedures undertaken in relation to an injury or an 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 Tribunal 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 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 Tribunal should draw in relation to the issues in dispute. Each contention should be stated separately and relate to each of the issues in dispute. For example:

*The Applicant's injury arose out of, or in the course of, his or her employment*

*The Applicant's employment did not contribute to the condition.*

*The injury was suffered by the Applicant as a result of reasonable disciplinary action taken by the employer*

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 reports lodged with the Tribunal;
  - legislative provisions and case law.

Relevant facts should be identified by paragraph number and there should be references to medical 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 medical 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 Tribunal should make in relation to the decision(s) under review. It should be set out in the form of an order that the Tribunal can make under subsection 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 Registrar.

## NOTES

## 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  
Commonwealth Law Courts  
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 Tribunal has a national telephone number – 1300 366 700.

Use this number to call the Tribunal'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 Tribunal**

The Tribunal 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 Tribunal, the letter should be addressed to:

The District Registrar  
AAT  
GPO Box 9955  
Your capital city

### **Tribunal website**

[www.aat.gov.au](http://www.aat.gov.au)