



Administrative Appeals Tribunal

Practice Direction relating to Section 37 of the *Administrative Appeals Tribunal Act 1975*

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

This practice direction sets out the Tribunal's policy and procedures in relation to the documents that a decision-maker must provide to the Tribunal under section 37 of the *Administrative Appeals Tribunal Act 1975*. These documents are referred to in this practice direction as the 'Section 37 Documents'.

This practice direction applies to all applications for review lodged in the Tribunal on or after 30 April 2007, other than applications for review of a security assessment under section 54 of the *Australian Security Intelligence Organisation Act 1979*. It replaces the practice direction issued on 21 August 1996.

In this practice direction, a reference to a decision-maker means:

- the person who made the decision that is under review; or
- where section 37 of the *Administrative Appeals Tribunal Act 1975* has been modified by another Act - the person who is required to comply with the requirements of section 37 in relation to the decision under review.

1. Time limit for lodging Section 37 Documents

1.1 Within 28 days after receiving notice that an application for review has been made, the decision-maker must lodge with the Tribunal 2 copies of the Section 37 Documents: subsection 37(1). The decision-maker is also required to send a copy of the documents to each other party within that period: subsection 37(1AE).

1.2 The 28-day time period may be shortened in appropriate cases if application is made to the Tribunal pursuant to subsection 37(1A). The time period may be extended by the Tribunal under subsection 37(1).

- 1.3 If a decision-maker would like to have the 28-day time period extended, an application must be made to the Tribunal. An application for an extension of time must be made if the decision-maker will not be able to provide all or some of the Section 37 Documents within the 28-day time period. The application for extension is to be lodged with the Tribunal before the 28-day time period expires.
- 1.4 An application to extend the 28-day time period must be in writing. It must:
- explain the reasons for requesting further time;
 - advise whether or not the applicant opposes the request; and
 - be lodged with the Tribunal and given to the other party.
- 1.5 The Tribunal will usually decide the application for an extension of time on the papers. The Tribunal may hold a hearing in person or by telephone if:
- either party advises the Tribunal that it wishes to make submissions in relation to whether or not the application should be granted; or
 - the Tribunal considers that a hearing should be held in relation to the application.

2. Content and Presentation of the Section 37 Documents

- 2.1 Subject to any legislative provisions or directions that modify the operation of subsection 37(1), the decision-maker must lodge with the Tribunal:
- a statement that:
 - identifies the decision and the person supplying the reasons if that person is not the decision-maker;
 - sets out the findings on material questions of fact;
 - refers to the evidence or other material on which those findings were based;
 - gives reasons for the decision; and
 - a legible copy of every other document or part of a document that:
 - is in the decision-maker's possession or under the decision-maker's control; and
 - is relevant to the review of the decision.¹

¹ The Tribunal notes that section 37 of the *Administrative Appeals Tribunal Act 1975* does not apply to a document that is claimed to be an exempt document under the *Freedom of Information Act 1982* or to a document that is claimed to be an exempt record under the *Archives Act 1983*.

- 2.2 The Section 37 Documents must be arranged in the following order:
- (i) the application for review;
 - (ii) the statement required under section 37;
 - (iii) all other documents in chronological order from the earliest to the latest date.

The Section 37 Documents must include a copy of the decision under review, if made or recorded in writing, and a copy of any document notifying the decision.

- 2.3 Each document must be identified with a number commencing with the application for review as "T1". Succeeding documents will bear "T" numbers in sequence. Each page must be numbered.
- 2.4 The Section 37 Documents must be accompanied by an index which sets out the date and a brief description of each document. The pagination must be set out in the index.

3. Confidential documents

- 3.1 The decision-maker may apply to the Tribunal for an order under section 35 of the *Administrative Appeals Tribunal Act 1975* that all or part of the contents of one or more of the Section 37 Documents not be disclosed to the applicant or another party. Where a decision-maker seeks such an order from the Tribunal, the decision-maker must:

- lodge with the Tribunal an application in writing together with 2 copies of each of the documents in respect of which an order is sought; and
- give a copy of the application to each other party to the application.

The application must be made within the time period for complying with subsection 37(1). This includes any further period of time granted by the Tribunal under subsection 37(1).

- 3.2 If the application is made within that time period, the decision-maker is not required to provide a copy of any document or the part of any document in respect of which an order is sought to any other party unless the Tribunal, after deciding on the application for the order, directs the person to do so: subsection 37(1AF).
- 3.3 The decision-maker must otherwise comply with the requirements of section 37 in relation to all other documents.

- 3.4 The Tribunal will usually decide the application for an order under section 35 of the *Administrative Appeals Tribunal Act 1975* on the papers. The Tribunal may hold a hearing in person or by telephone if:
- either party advises the Tribunal that it wishes to make submissions in relation to whether or not the order should be made; or
 - the Tribunal considers that a hearing should be held in relation to the request.
- 3.5 The Tribunal notes that sections 36 and 36B of the *Administrative Appeals Tribunal Act 1975* also provide for restrictions on the disclosure of documents where a Commonwealth, State or Territory Attorney-General certifies that disclosure of matter contained in a document would be contrary to the public interest.

4. Supplementary Section 37 Documents

- 4.1 If the decision-maker becomes aware that:
- documents relevant to the decision under review were in its possession or under its control at the time the Section 37 Documents were prepared; and
 - those documents were not included in the Section 37 Documents;
- the decision-maker must lodge these documents with the Tribunal and provide a copy to each other party to the proceeding as soon as is reasonably practicable after becoming aware of this or in accordance with a direction of the Tribunal. These documents are referred to in this practice direction as Supplementary Section 37 Documents.
- 4.2 The Supplementary Section 37 Documents must be arranged in chronological order and identified with a number commencing with the first document marked as “ST1” and succeeding documents bearing “ST” numbers in sequence. Each page must be numbered. The page numbering is to be continued from the Section 37 Documents.
- 4.3 The Supplementary Section 37 Documents must be accompanied by an index which sets out the date and page number of each document and a brief description of each document.

5. Provision of Further Copies of Section 37 Documents

- 5.1 The Tribunal may direct that additional copies of the Section 37 Documents be lodged at a later date: subsection 37(1AA).

6. Tribunal may require other documents to be lodged

- 6.1 The Tribunal may give a notice to the decision-maker stating that it considers that particular other documents, or other documents included in a particular class of documents, may be relevant to the proceeding, and requiring the decision-maker to lodge the documents concerned within the time specified in the notice: subsection 37(2).
- 6.2 Unless the Tribunal directs otherwise, documents produced under a notice issued pursuant to subsection 37(2) must be presented in the same manner as Supplementary Section 37 Documents.

Garry Downes
President

26 March 2007