



COVID-19 Special Measures Practice Direction – Small Business Taxation and Taxation and Commercial Divisions

This Direction is given under section 18B of the *Administrative Appeals Tribunal Act 1975* (AAT Act).

1. About this Direction

Application

- 1.1 This Direction applies to the Small Business Taxation, and Taxation and Commercial Divisions of the Administrative Appeals Tribunal (AAT) during the COVID-19 pandemic.
- 1.2 The purpose of this Direction is to modify the operations and procedures of the AAT, where appropriate and necessary, to enable us to continue to review decisions during the pandemic. In implementing these changes:
 - (a) the health and wellbeing of members, staff, parties, representatives and other persons involved in AAT processes is our priority; and
 - (b) we are mindful that the pandemic may affect the capacity of the AAT and other persons to take steps to progress applications; and
 - (c) the AAT will take into account local conditions and the application of COVID-safe requirements in AAT Registries in determining the extent to which we can provide services in person.
- 1.3 This Direction takes effect on 8 March 2021. It applies to all applications, whether lodged before, on or after this date, and remains in effect until it is superseded or revoked. It supersedes the *COVID-19 Special Measures Practice Direction – Small Business Taxation and Taxation and Commercial Divisions* dated 27 April 2020.
- 1.4 Other directions under section 18B of the AAT Act continue to apply to applications to which this Direction applies, including:
 - (a) the [General Practice Direction](#); and
 - (b) the [Lodgement of Documents under Sections 37 and 38AA of the AAT Act Practice Direction](#); and
 - (c) the [Review of Small Business Taxation Decisions Practice Direction](#); and

(d) the [Review of Taxation and Commercial Decisions Practice Direction](#).

However, where the terms of this Direction are inconsistent with the terms of another direction on the same matter, the terms of this Direction apply.

- 1.5 The AAT may alter the procedures set out in this Direction to suit individual applications for any reason.

Interpretation

- 1.6 In this Direction:

our, we or **us** means the AAT;

party means the applicant, the respondent or any other person who is a party to an application and includes any representative of a party;

Registry means any registry office of the AAT.

2. Registry operations, lodging documents and signatures

Registries

- 2.1 We will provide registry services by telephone and electronically, including:

- (a) through our [online services](#) accessible via the AAT website (<http://www.aat.gov.au>); and
- (b) by [email](#).

Note: Guidelines you should follow when sending an email to the AAT can be found on the AAT website.

- 2.2 Subject to paragraph 2.3, a party or other person may attend an AAT Registry if the party or other person is:

- (a) attending an alternative dispute resolution (ADR) process, directions hearing or hearing and the AAT has notified the party or person that they may attend in person; or
- (b) unable to access registry services by telephone or electronically.

- 2.3 A party or other person must not attend a Registry if:

- (a) the Registry is closed to visitors; or
- (b) the party or person is:
 - (i) required to quarantine or self-isolate;
 - (ii) experiencing any COVID-19 symptoms; or
 - (iii) in any other class of persons specified by the AAT who must not attend a Registry.

Note: Information about whether a Registry is closed due to the pandemic and about who may or must not attend a Registry can be found on the [AAT website](#).

Note: If you cannot attend an ADR process, directions hearing or hearing in person because you or a close contact are unwell, please contact the AAT about this as soon as possible.

- 2.4 A party or other person who attends a Registry must:
- (a) comply with physical distancing requirements and limits on the number of people who can be in any area or room at the Registry notified by the AAT; and
 - (b) comply with any directions given by the AAT in relation to COVID-safe requirements.

Lodging and giving documents or other things

- 2.5 To the extent possible:
- (a) an application for a review of a decision; or
 - (b) a document relating to an application that has already been lodged, including:
 - (i) documents that must be lodged by the person who made the decision under section 37 or 38AA of the AAT Act (T-documents); and
 - (ii) documents produced in response to a summons;
- should be lodged with, or given to, the AAT using [an AAT online system](#) accessible via the AAT website.
- 2.6 If a document, including an application, cannot be lodged with, or given to us, using an AAT online system, the document may be:
- (a) emailed to the AAT; or
 - (b) if it cannot be emailed – faxed to the AAT.
- 2.7 A document, CD, USB or other thing may also be:
- (a) sent to the AAT by post; or
 - (b) delivered to a Registry.
- 2.8 If a Registry is closed to visitors and a document or thing can only be lodged by delivering it to that Registry, the party or person must telephone us to discuss how it can be lodged.
- 2.9 To the extent possible, a party should send a document relating to a case to any other party or other person electronically.
- 2.10 A party or other person who experiences difficulty lodging or sending a document electronically should telephone us for assistance.
- 2.11 The AAT may at any time direct that a party give to us and any other party a hard copy version of any documents or other materials that have already been lodged or that are to be lodged.
- 2.12 To the extent possible, documents lodged with the AAT are to be in Microsoft Word or searchable PDF format.

Signatures

- 2.13 If a party or another person does not have access to technology to scan a document that requires a signature, including by taking a photograph of it, the document may be signed electronically instead of physically signing the document. This may be done by the person:

For further information about the AAT, please call us on **1800 228 333** or go to www.aat.gov.au.

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- (a) applying a digital signature; or
- (b) typing their name in the appropriate place in the document.

3. Pre-hearing processes (including summonses)

Pre-hearing processes

- 3.1 In consultation with the parties, we will determine how a case should progress. Relevant considerations may include, but are not limited to, any issues arising as a result of the COVID-19 pandemic that may affect the gathering of evidence or any other step required in the case.
- 3.2 Conferences and directions hearings will usually be held by telephone but may be held by video. Conciliations, other types of ADR processes and interlocutory hearings will usually be held by telephone or video. At the request of a party or on the AAT's initiative and in consultation with the parties, we may decide to hold, or allow a party or other person to attend, a pre-hearing listing event in person.
- 3.3 If a party believes the application needs to be dealt with urgently, the party can request an expedited review in accordance with the procedure set out in the General Practice Direction. We will actively facilitate the expedited review of a decision if we are satisfied it requires an urgent determination.

Summonses to produce documents

- 3.4 Before making a request to the AAT to issue a summons to produce documents, a party must carefully consider the necessity for, scope, appropriateness and timing of the summons taking into account:
 - (a) the burden and expense that a summons to produce documents can place on the person to whom it is directed; and
 - (b) the serious consequences that flow from a failure to comply.
- 3.5 A request to us to issue one or more summonses to produce documents must be in writing and must specify for each summons that accompanies the request the basis for the request, including:
 - (a) the apparent relevance of the documents to the issues in dispute in the case; and
 - (b) the importance of the documents to the case.
- 3.6 The AAT may:
 - (a) issue the summons if satisfied it has a legitimate forensic purpose;
 - (b) request further information in relation to the request, including by holding a directions hearing; or
 - (c) refuse to issue the summons.
- 3.7 When access orders are made by the AAT in relation to documents produced in response to a summons, we will send the documents to the parties by email to the extent possible. If documents or other things cannot be sent by email, we will discuss with the parties alternative arrangements for accessing the documents for inspection.

4. Hearings

4.1 The AAT will decide whether to hold any final hearing:

- (a) by telephone;
- (b) by video;
- (c) in person; or
- (d) by a combination of in person, telephone and/or video.

The AAT will have regard to:

- (a) our objective set out in section 2A of the AAT Act;
- (b) the capacity of a party or other person to participate in a hearing by telephone, by video or in person; and
- (c) any other matter the AAT considers relevant.

4.2 We will list the case for a hearing by telephone or, more commonly, by video unless we determine, on application by one or more of the parties as specified in paragraph 4.3 or otherwise in consultation with the parties, that the hearing cannot be conducted other than in person or by a combination of in person, telephone and/or video.

4.3 Unless we allow otherwise, an application by a party that a hearing cannot be conducted by telephone or video must:

- (a) be made in writing and set out the reasons for the application; and
- (b) be accompanied by any evidence on which a party intends to rely; and
- (c) state whether any other party consents to the application.

4.4 The AAT may hold a directions hearing to:

- (a) consider an application under paragraph 4.3; or
- (b) discuss with the parties and then make directions in relation to how the hearing will be conducted, including:
 - (i) the arrangements for conducting the hearing by telephone, by video and/or in person, including any electronic communications technology that will be used;
 - (ii) the provision of electronic documents for the hearing; and
 - (iii) the arrangements for witnesses to give evidence, including by telephone or video and ensuring they will have access to any documents to which they may be referred; and
 - (iv) any other matters to best achieve a fair, efficient and safe hearing.

4.5 We expect the parties to:

- (a) confer before the directions hearing; and
- (b) where possible, reach agreement as to the conduct of the hearing.

4.6 Subject to any other direction we have made or make, no later than seven (7) days before the first day of the hearing, the parties must lodge with the AAT and give to any other party:

- (a) written confirmation that they and their witnesses will be able to participate in the hearing, including using any chosen form of electronic communications technology; and

(b) any documents not included in the T-documents which they intend to tender into evidence at the hearing.

- 4.7 To the extent possible, the documents to be relied on by a party who is represented should be in searchable PDF format with:
- (a) each document given a separate number commencing A1 for the applicant, R1 for the respondent and O1 for any other party;
 - (b) each page numbered sequentially;
 - (c) an index with the pagination set out and links to each document.

Subject to any other direction we have made or make, these documents will not include any T-documents.

Note: The copy of the documents given to another party may need to be in another format for accessibility reasons.

- 4.8 No later than two (2) working days before the first day of the hearing, the parties must lodge with the AAT and give to any other party electronically a list of any legislation and case law on which they intend to rely at the hearing.
- 4.9 Unless the presiding member otherwise allows, at a hearing conducted in whole or in part by telephone and/or video:
- (a) subject to observing appropriate physical distancing and any necessary medical restrictions, parties may be in the same room with their representative except when they are giving evidence;
 - (b) any witnesses must be located in a separate room from any other person.
- 4.10 Any application for an adjournment of a hearing must be made in accordance with the requirements set out in the General Practice Direction.
- 4.11 A party may request a directions hearing, including to make any application to vary the procedures set out in this Direction. Unless we allow otherwise, the request must be in writing and explain why the party wants a directions hearing.

5. Use of technology

- 5.1 When conducting ADR processes, directions hearings, interlocutory hearings and final hearings by telephone and/or video, the AAT will usually use:
- (a) telephone conferencing facilities;
 - (b) fixed videoconferencing facilities; and/or
 - (c) Microsoft Teams.

We will make information available to the parties about using a particular electronic communications technology.

- 5.2 Parties must use their best endeavours to ensure that they and any other person, including any witnesses, are able to participate in a listing event using a chosen means of electronic communication. Parties and other persons are responsible for their own costs associated with using a particular technology, including data charges.

- 5.3 To the extent possible, the AAT will allow members of the public to attend, on request, a public hearing held by telephone or video.
- Note:** [More information](#), including how to request to attend a public hearing held by telephone or video, can be found on the AAT website.
- 5.4 The AAT will record any hearing and, where considered appropriate, a directions hearing, including through Microsoft Teams. By participating in a directions hearing or hearing by telephone or video, parties and other persons consent to being recorded.
- 5.5 A transcript prepared by the AAT's service provider will remain the official record of a directions hearing or hearing.
- 5.6 A party or other person must not use a communication or recording device for the purpose of recording or making a transcript of an ADR process, directions hearing or hearing held by telephone or video unless we give permission to do so.

Justice D G Thomas
President

2 March 2021