



Administrative  
Appeals Tribunal

# General Practice Direction

Direction given under section 18B of the  
*Administrative Appeals Tribunal Act 1975*

# Contents

<b>General Practice Direction.....</b>	<b>3</b>
<b>Part 1 – About this Direction .....</b>	<b>3</b>
Application.....	3
Interpretation .....	3
<b>Part 2 – Matters applying to all applications .....</b>	<b>4</b>
Divisions and allocation of business.....	4
Our statutory objective .....	4
Applying for a review .....	5
Accessibility .....	5
Expert and opinion evidence.....	5
Oaths and affirmations.....	6
How to address members.....	6
Prohibition on use of cameras and recording and transmitting devices .....	6
<b>Part 3 – Directions and guides applying to classes of applications .....</b>	<b>7</b>
<b>Part 4 – General procedures for certain Divisions .....</b>	<b>8</b>
Application.....	8
General principles.....	8
Section 37 documents .....	8
Request to stay the decision under review.....	8
Request for expedited review.....	9
Conferences .....	10
Directions hearings.....	12
Hearings.....	13
Other matters.....	15
<b>Part 5 – Implied undertaking not to use documents for another purpose .....</b>	<b>17</b>
Application.....	17
Procedures.....	17

# General Practice Direction

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

## Part 1 – About this Direction

### Application

- 1.1 This Direction contains directions in relation to the operations of the Administrative Appeals Tribunal (AAT), the procedures of the AAT and the conduct of reviews by the AAT.
- 1.2 This Direction has effect from 1 March 2019.
- 1.3 This Direction is arranged in Parts. Where relevant, the applications to which a Part applies and the extent to which the Part applies to those applications is stated at the commencement of the Part.
- 1.4 The AAT may alter the procedures set out in this Direction to suit individual applications.
- 1.5 This Direction does not apply to the extent it is inconsistent with a provision of the AAT Act or another enactment, another direction under section 18B or a specific direction made in a particular application.

### Interpretation

- 1.6 In this Direction:

**decision-maker** means:

- (a) the person who made the decision that is the subject of the application for a review of a decision; or
- (b) where the AAT Act provides otherwise or has been modified by another enactment, the person who has the obligations of a decision-maker;

and any representative;

**first review** means a review that an enactment designates as an **AAT first review**;

**party** means you, the decision-maker or any other person who is a party to an application;

**presiding member** means the member who will preside at the hearing whether or not the AAT is constituted by one or more members;

**Registry** means any registry office of the AAT;

**second review** means a review that an enactment designates as an **AAT second review**;

**we** or **us** refers to the AAT;

**you** refers to an applicant or other party who is not a decision-maker and any representative.

## **Part 2 – Matters applying to all applications**

2.1 This Part applies to all applications made to the AAT.

### **Divisions and allocation of business**

2.2 We must exercise powers conferred on us in the following nine Divisions:

- General Division;
- Freedom of Information Division;
- Migration and Refugee Division;
- National Disability Insurance Scheme Division;
- Security Division;
- Small Business Taxation Division;
- Social Services and Child Support Division;
- Taxation and Commercial Division; and
- Veterans' Appeals Division.

2.3 The allocation of applications to Divisions is determined by:

- (a) subsection 17B(2) of the AAT Act in relation to certain applications in the Security Division;
- (b) subsections 336N(2) and 409(2) of the *Migration Act 1958* for the Migration and Refugee Division; and
- (c) the Allocation of Business to Divisions of the AAT President's Direction.

### **Our statutory objective**

2.4 Section 2A of the AAT Act requires that, in carrying out our functions, we must pursue the objective of providing a mechanism of review that:

- (a) is accessible;
- (b) is fair, just, economical, informal and quick;
- (c) is proportionate to the importance and complexity of the matter; and
- (d) promotes public trust and confidence in the decision-making of the AAT.

2.5 You and the decision-maker must use your best endeavours to assist us to fulfil this objective. This is a legislative requirement in all Divisions other than the Migration and Refugee Division: subsection 33(1AB) of the AAT Act. It is our expectation of you in the Migration and Refugee Division.

2.6 In all Divisions other than the Migration and Refugee Division, the decision-maker must use their best endeavours to assist us to make our decision in relation to the application: subsection 33(1AA) of the AAT Act.

## Applying for a review

- 2.7 The rules relating to applying for a review of a decision vary depending on the type of decision you want reviewed and the Division in which it will be reviewed.
- 2.8 Information can be found on the AAT website about:
- how you can apply for review;
  - time limits that may apply to making your application; and
  - when an application fee is payable and, if it is, the amount.

## Accessibility

### *Interpreters*

- 2.9 If we think you or another person requires the assistance of an interpreter, we will arrange and pay for the interpreter. You must tell us as early as possible if you or another person require one and specify the language or dialect, including Auslan.
- 2.10 In general, we use interpreters accredited by the National Accreditation Authority for Translators and Interpreters (NAATI) at the 'Professional Interpreter' level or above. If an interpreter is not available in a language at that level, we may use an interpreter:
- (a) accredited by NAATI as a 'Paraprofessional Interpreter'; or
  - (b) recognised by NAATI for a language for which NAATI does not offer accreditation testing.
- 2.11 In general, we will not allow family members, friends or representatives to interpret.

### *Assistance for people with disability*

- 2.12 If you have a disability and require assistance to participate in the review process, you must tell us as early as possible.
- 2.13 If you are deaf, or have a hearing or speech impairment, we can use the National Relay Service ([www.relayservice.gov.au](http://www.relayservice.gov.au)) to communicate with you. We will arrange a hearing loop if required when you come to the AAT.
- 2.14 We will talk to you about other types of assistance the AAT may be able to arrange.

## Expert and opinion evidence

- 2.15 We review decisions in a wide variety of subject areas. Evidence from an expert in a subject area can assist us in some reviews. This includes written reports and oral evidence given at a hearing.
- 2.16 We have a guideline which informs parties and experts about our expectations in relation to this type of evidence: see the AAT's Persons Giving Expert and Opinion Evidence Guideline. Compliance with the matters set out in the guideline may be relevant to determining the weight we will give to the evidence.

- 2.17 If you or the decision-maker ask an expert to prepare a report or give evidence at the AAT, you must ensure the person:
- (a) is given a copy of the AAT's guideline; or
  - (b) already has a copy of that document.

### **Oaths and affirmations**

- 2.18 We will usually require any person who appears before us at a hearing to give evidence, including you and any other witnesses, to take an oath or make an affirmation that the answers given will be true. It is an offence for a witness to fail to comply with a requirement to take an oath or make an affirmation.
- 2.19 We will usually require an interpreter to take an oath or make an affirmation that they will interpret the evidence to the best of their ability.
- 2.20 Before the hearing, we will ask the person if they want to take an oath or make an affirmation. If a person wants to take an oath, we will ask what religion they adhere to, and will offer the appropriate religious book (if available).
- 2.21 When the person is required to take the oath or make the affirmation during the hearing, we will show or read the person the relevant form of words and ask the person to respond.

### **How to address members**

- 2.22 In general, you and the decision-maker may address an AAT member by:
- their title (e.g. Deputy President, Senior Member, or Member);
  - name (e.g. Ms. Smith); or
  - a combination of both (e.g. Senior Member Smith).
- 2.23 Some members of the AAT are judges, including the President. They may be addressed as 'Your Honour'. The President may also be addressed as 'President'.
- 2.24 A member's title and name will usually be displayed in the hearing room, directly in front of the member.

### **Prohibition on use of cameras and recording and transmitting devices**

- 2.25 The use of cameras of any kind, including mobile phone cameras, and audio or video recording or transmission devices is strictly prohibited on AAT premises without the express permission of the presiding member, the Registrar or a District Registrar.
- 2.26 Failure to abide by this policy may result in action being taken under the *Court Security Act 2013*, including the seizure of a device.
- 2.27 Mobile phones are not to be used in AAT hearing rooms. They must be switched off or switched to silent before entering a hearing room where a matter is to be, or is being, heard.

## Part 3 – Directions and guides applying to classes of applications

- 3.1 In addition to this Direction, directions have been given under section 18B of the AAT Act in relation to particular classes of applications and for particular purposes. They include the directions in the following table.

Name	Application
Child Support Review Directions	Applications for first review of child support decisions in the Social Services and Child Support Division
Freedom of Information Practice Direction	Applications under the <i>Freedom of Information Act 1982</i>
Giving Documents or Things to the AAT Practice Direction	All applications
Lodgement of Documents under Sections 37 and 38AA of the AAT Act Practice Direction	Applications in all Divisions other than the Migration and Refugee Division
Migration and Refugee Matters Practice Direction	Applications in the Migration and Refugee Division
Review of National Disability Insurance Scheme Decisions Practice Direction	Applications in the National Disability Insurance Scheme Division
Review of Taxation and Commercial Decisions Practice Direction	Applications in the Taxation and Commercial Division and other applications specified in the Direction
Review of Small Business Taxation Decisions Practice Direction	Applications in the Small Business Taxation Division

- 3.2 Guides have been developed for particular classes of applications. They outline in detail the procedures the AAT will adopt in managing applications in the class but are not directions given under section 18B of the AAT Act.

Name	Application
Guide to Social Services and Related Jurisdiction	Applications for first and second review of Centrelink decisions in the Social Services and Child Support Division and General Division
Guide to the Workers' Compensation Jurisdiction	Applications for review of decisions under the <i>Safety, Rehabilitation and Compensation Act 1988</i> and the <i>Seafarers Rehabilitation and Compensation Act 1992</i> in the General Division

Guide to the Small Business Taxation Division	Applications for review of decisions under the taxation law in relation to a small business entity within the meaning of the <i>Income Tax Assessment Act 1997</i> (Cth)
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## **Part 4 – General procedures for certain Divisions**

### **Application**

- 4.1 These general procedures apply to applications in any Division other than the:
- (a) Migration and Refugee Division; and
  - (b) Social Services and Child Support Division.

### **General principles**

- 4.2 Our procedures are designed to assist you and the decision-maker to reach an agreement about how your case should be resolved, where possible, while ensuring that steps are taken to prepare the case for a hearing in the event it cannot be resolved by agreement. We will determine in consultation with you and the decision-maker what steps should be taken to achieve resolution in a way that fulfils our statutory objective.
- 4.3 In general, all evidence relevant to the review that you or the decision-maker want us to consider must be:
- (a) identified as early as possible in the review process; and
  - (b) lodged with us and given to each other in accordance with directions we make in the particular case.

### **Section 37 documents**

- 4.4 Within 28 days after receiving notice of an application for a review of a decision, the decision-maker must lodge with the AAT and give to you and any other party the documents required under section 37 of the AAT Act (Section 37 documents). The AAT can shorten or extend the 28-day time period.
- 4.5 If you want to request an order shortening the time to lodge the Section 37 documents, the request must be made:
- (a) in writing in accordance with the approved form (Request for Order to Shorten Time for Lodging Documents); or
  - (b) in another way we allow or direct.
- 4.6 For more information about the requirements relating to Section 37 documents and the ongoing requirement on the decision-maker to lodge relevant documents under section 38AA, see the Lodgement of Documents under Sections 37 and 38AA of the AAT Act Practice Direction.

### **Request to stay the decision under review**

- 4.7 Making an application to the AAT does not usually stop the operation of the decision under review. In some cases, we can make an order under section 41 of the AAT Act stopping the decision from coming into effect or continuing in its effect.

- 4.8 If you or the decision-maker want to request an order staying or otherwise affecting the operation or implementation of the decision under review, the request must be made:
- (a) in writing in accordance with the approved form (Request for Stay Order); or
  - (b) in another way we allow or direct.

### **Request for expedited review**

- 4.9 We can expedite (fast-track) a review process if we are satisfied that the application requires an urgent determination. The types of cases that might be suitable for expedited review include but are not limited to:
- (a) cases with significant commercial ramifications;
  - (b) cases relating to your accreditation, licensing or registration to undertake regulated activities; or
  - (c) cases where you are suffering financial hardship.

### *Requesting expedition*

- 4.10 You or the decision-maker can request an expedited review of a decision at any stage of the review process, including:
- (a) when lodging the application for review of the decision or any request for an order under section 41 of the Act; or
  - (b) when lodging the Section 37 documents.
- 4.11 Unless we allow otherwise, the request must be in writing. You or the decision-maker must:
- (a) attach a copy of the decision, together with any statement of reasons for the decision, unless they have already been lodged with the AAT;
  - (b) if you make the request, explain succinctly why you disagree with the decision;
  - (c) summarise the evidence you think is relevant to the decision and on which you propose to rely at any hearing; and
  - (d) explain why the review should be expedited in priority to other cases before us.
- 4.12 You must give a copy of the request to the other party.

### *Directions hearing*

- 4.13 We will hold a directions hearing with you and the decision-maker. The directions hearing may be held in person or by telephone. You and the decision-maker are required to participate in good faith.
- 4.14 You and the decision-maker must give us and each other any evidence on which you want to rely at the directions hearing at least one business day before the directions hearing.

- 4.15 At the directions hearing, we will discuss the request with the parties and then determine whether the application should be dealt with on an expedited basis. To expedite the review, we must be satisfied that:
- (a) the decision has significant implications for a party;
  - (b) the application requires an urgent determination;
  - (c) the outcome of the review:
    - (i) turns on one or more discrete questions of law; or
    - (ii) requires factual findings that can be conveniently made having regard to evidence that is already available, or which can readily be obtained and considered within an expedited time frame; and
  - (d) our statutory objective cannot be adequately met by making an order under section 41 of the AAT Act or by adopting any other procedure set out in this Direction or another direction under section 18B of the AAT Act.

#### *Directions to expedite tailored to application*

- 4.16 If we decide that a review should be expedited, the AAT member will make such directions as he or she sees fit to expedite the hearing and determination of the application.
- 4.17 If it appears to us that you would or might suffer hardship if the period for lodging the Section 37 documents were not shortened, we may, upon a request being made, order that the period be shortened in relation to:
- (a) all of the documents; or
  - (b) specified documents or classes of documents which would ordinarily include the documents on which the decision-maker intends to rely and documents that have a significant probative value adverse to the decision-maker's case.
- 4.18 We will also usually direct that:
- (a) you and the decision-maker lodge and exchange by email any additional material on which you propose to rely;
  - (b) in appropriate cases, you and the decision-maker participate in an alternative dispute resolution process; and
  - (c) the application be listed for a hearing.
- 4.19 You and the decision-maker must cooperate with us and with each other to achieve a process that results in the hearing and determination at the earliest opportunity.

#### **Conferences**

- 4.20 Unless we manage an application by way of directions hearings, we will refer it to the conference process. A conference is the first step in the review in most cases.
- 4.21 In general, there will only be two conferences. They are usually conducted by an AAT Conference Registrar but may be conducted by an AAT member.

- 4.22 We will decide whether to hold a conference in person, by telephone or by videoconference.

#### *First conference*

- 4.23 We will usually hold the first conference 6 to 10 weeks after you have lodged your application. If there are special circumstances, you or the decision-maker can ask us to hold the conference at an earlier or later date.

#### *Preparing for the first conference*

- 4.24 Unless you are representing yourself, you and the decision-maker must lodge with the AAT and give to each other a Statement of Issues at least one working day before the first conference. This is a brief statement setting out the specific issues that you think are in dispute in the application.
- 4.25 You and the decision-maker must think about what other evidence might be relevant to resolving the case and, where possible:
- (a) send it to us and the other party before the first conference; or
  - (b) make arrangements to obtain that evidence.
- This includes making any appointments to obtain expert medical evidence.
- 4.26 If you or the decision-maker ask an expert to prepare a report, you or the decision-maker must ensure the person:
- (a) is given a copy of the AAT's Persons Giving Expert and Opinion Evidence Guideline; or
  - (b) already has a copy of that document.

#### *At the first conference*

- 4.27 The first conference is an opportunity for you, the decision-maker and us to:
- (a) discuss and define the issues in dispute;
  - (b) consider any new evidence that has been lodged and identify any further evidence that will be gathered;
  - (c) explore whether an agreed outcome can be reached; and
  - (d) discuss the future conduct of the case.

You and the decision-maker must act in good faith in relation to the conduct of the conference.

- 4.28 We will usually make a direction setting a timetable for the next steps to be taken by you and the decision-maker. These may include lodging witness statements, expert reports and a Statement of Issues, Facts and Contentions.

### *Second conference*

- 4.29 If a second conference is to be held, the timing will be based on the timetable determined at the first conference. It will usually be no later than 12 to 16 weeks after the first conference.

### *Preparing for the second conference*

- 4.30 You and the decision-maker must lodge with us and give to each other any evidence or other information in accordance with the direction we made at the first conference.
- 4.31 If you or the decision-maker have been directed to prepare a Statement of Issues, Facts and Contentions, it must set out clearly:
- (a) the issues that remain in dispute;
  - (b) the essential facts that are relevant to those issues; and
  - (c) the contentions to be drawn from those facts, including any references to relevant legislation and case law.

Any statement in reply should note what aspects are agreed, which are disputed and any alternative facts and/or contentions.

### *At the second conference*

- 4.32 At the second conference, we will discuss with you and the decision-maker the evidence that has been lodged and the strengths and weaknesses of each of your cases. We will discuss options for reaching agreement or narrowing the issues in dispute.
- 4.33 If agreement is not reached, we will discuss with you and the decision-maker what will happen next, including whether another type of ADR process such as conciliation, mediation, case appraisal or neutral evaluation should be held or if the case should be listed for hearing. We will usually make a direction setting a timetable for the next steps to be taken.

### **Directions hearings**

- 4.34 We can list a directions hearing at any time if the application requires it, including if you or the decision-maker have not complied with a legislative requirement, this Direction or any specific directions. See below for further information about our procedures in relation to non-compliance.
- 4.35 Either you or the decision-maker can request a directions hearing. Unless we allow otherwise, the request must be in writing and you should explain why you want a directions hearing.

## Hearings

### *Setting a hearing date*

- 4.36 Before we set a hearing date, we will ask you and the decision-maker for information about:
- (a) the witnesses who will give evidence at the hearing;
  - (b) your availability and the availability of the witnesses; and
  - (c) the likely length of the hearing.
- We will usually ask you and the decision-maker to give us a Hearing Certificate.
- 4.37 If you or the decision-maker do not give us the information within the time we specify, we may set the hearing date without further consultation.

### *Adjournments*

- 4.38 We will not adjourn a hearing date unless there are good reasons to justify the adjournment. In general, the following matters are not, of themselves, sufficient reasons for an adjournment to be granted:
- (a) the unavailability of counsel; or
  - (b) the consent of the other party.
- 4.39 Any application for an adjournment must be made at the earliest possible opportunity. It must:
- (a) be in writing addressed to the District Registrar;
  - (b) include the reasons for seeking an adjournment;
  - (c) be signed by you or the decision-maker; and
  - (d) be accompanied by any documents that support the application.
- 4.40 An application for adjournment will usually be considered by the presiding member. The member will usually hold a directions hearing to consider the application either in person or by telephone and you and the decision-maker must attend.
- 4.41 We will not grant an application for an adjournment made less than ten working days before the hearing unless there are particular and compelling reasons for the hearing to be adjourned. An application made on the day of a hearing, even when advance notice has been given, will not be granted unless there are exceptional reasons.
- 4.42 If we grant an adjournment, we will re-list the case as soon as possible. Unless we direct otherwise, you and the decision-maker must give us the information about your availability and the availability of any witness within two working days of the adjournment being granted. A new hearing date will be given by the Registry within two days after we receive the information from you and the decision-maker.

- 4.43 If we can make a costs order in the case, we may take into account any relevant matters relating to adjournments in any decision on costs.

*Lodging evidence, including video surveillance material*

- 4.44 You and the decision-maker must lodge with us and give to each other any evidence on which you or the decision-maker propose to rely at the hearing in accordance with any direction we have made.
- 4.45 Subject to any other direction or order we may make, if you or the decision-maker intend to rely on video surveillance material at the hearing and that material has not already been lodged with us and given to any other party, it must be lodged with us and given to any other party at least 28 days before the day on which the hearing is listed to commence.
- 4.46 If video surveillance material has not been lodged with us and any other party prior to the hearing in accordance with this Direction, or such other direction or order that we may make, you or the decision-maker may not rely on the material as evidence in the application without the leave of the AAT.
- 4.47 We will not make a direction under section 35 in respect of video surveillance material unless there is a persuasive reason, in the particular circumstances of an individual case, which requires us to make such a direction. The fact that the credibility of another party may be in issue will not, of itself, be a sufficient reason to make such a direction.
- 4.48 Video surveillance material includes footage recorded in any format, any report relating to the footage and any log sheets produced in connection with the footage.

*Medical and other expert reports and witnesses*

- 4.49 If you or the decision-maker want to rely on a medical or other expert report that has been lodged with us and given to the other party, we will usually take it into account, whether or not the expert gives oral evidence. You and the decision-maker must consider carefully whether it is necessary for experts to give oral evidence.
- 4.50 If you or the decision-maker were not intending to ask an expert to give evidence at the hearing but the other party requires the expert for cross-examination, you and the decision-maker must talk to each other about who will arrange the expert's attendance. If the expert does not give evidence in these circumstances, the report may be taken into account but the failure to give oral evidence may be relevant in assessing the weight to be given to the report.
- 4.51 If you and the decision-maker both want to call experts to give oral evidence at a hearing, unless we direct otherwise, the experts are to give their evidence concurrently. We will usually make a direction relating to the procedures to be followed. For more information, see the AAT's Use of Concurrent Evidence in the AAT Guideline.
- 4.52 You and the decision-maker must use your best endeavours to facilitate the concurrent evidence procedure, including ensuring that an expert:

- (a) is given a copy of the guideline; or
- (b) already has a copy of that document.

### *List of cases*

- 4.53 If you or the decision-maker want to rely at the hearing on any case law, you or the decision-maker must lodge a list with us and give a copy to the other party at least two working days before the hearing date.

### *Telephone or video evidence*

- 4.54 If you or the decision-maker would like a witness to give evidence at a hearing by telephone or video, a request must be made to the presiding member. Unless we allow otherwise, the request must be made in writing and must:

- (a) set out the reasons for the request; and
- (b) state whether the other party agrees to the request.

The member may decide to hold a directions hearing before deciding whether the request will be granted.

- 4.55 If evidence is to be given either by telephone or videoconference, the party whose witness it is must:

- (a) make all necessary arrangements with the witness, including ensuring the witness will have access to all relevant documents; and
- (b) give us as early as possible the details for contacting the witness.

- 4.56 Unless you and the decision-maker otherwise agree, the costs of taking evidence by videoconference must be paid by the party who made the request. Application may be made to the District Registrar to waive the charges on the basis that payment of the charges would cause financial hardship to the party.

## **Other matters**

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

- 4.57 The requirement that you and the decision-maker use your best endeavours to assist us to fulfil our statutory objective includes complying with any legislative requirements, any relevant direction made under section 18B of the AAT Act and any specific direction made in a particular application.

### *What must be done if you or the decision-maker may not be able to comply*

- 4.58 As soon as you or the decision-maker become aware that you or they may not be able to comply with a legislative requirement or direction and before the deadline, you or they must contact us to request extra time. Unless we allow otherwise, the request must:

- (a) be in writing;



- (b) explain the reasons for requesting further time; and
  - (c) tell us whether the other party agrees to the request.
- 4.59 We will decide whether or not to grant an extension of time and its length. You or the decision-maker should not assume that a requested extension will be granted. In considering a request for an extension, we take into account factors such as:
- (a) the reason provided for not complying with the requirement or direction;
  - (b) the notice given in requesting the extension;
  - (c) any significant delays in progressing the application;
  - (d) whether any listed event will need to be moved;
  - (e) the length of additional time requested; and
  - (f) whether any other party opposes or supports the extension.
- 4.60 We will take into account similar factors when considering a request to vary what must be done under a direction.

#### *Consequences for failing to comply*

- 4.61 If you or the decision-maker fail to comply with a legislative requirement or direction, we will list the application for a non-compliance directions hearing. If you or the decision-maker comply before the day of the directions hearing, we will decide whether or not the directions hearing should proceed.
- 4.62 If an applicant has not complied with a direction by the time of the directions hearing, we may consider dismissing the application under subsection 42A(5) of the AAT Act.
- 4.63 In cases where we have a discretion to order the payment of costs, non-compliance may be taken into account when making the decision on costs.
- 4.64 If a representative has a history of non-compliance, actions we may take include:
- (a) contacting the representative, writing to the representative or holding a directions hearing in relation to the non-compliance;
  - (b) where relevant, writing to the representative's client about the non-compliance;
  - (c) where relevant, writing to the representative's employer about the non-compliance; or
  - (d) referring the non-compliance to a regulatory authority or relevant professional body.

Any particular action to be taken will be determined taking into account the history and seriousness of the non-compliance and any earlier action taken in relation to the representative.

## Part 5 – Implied undertaking not to use documents for another purpose

### Application

- 5.1 The procedures in this Part apply to applications in any Division other than the Migration and Refugee Division.

### Procedures

#### *Implied undertaking*

- 5.2 If you or the decision-maker have obtained a document provided under compulsion in an application before the AAT, you, the decision-maker and any person to whom the document is given, by implication, undertake to the AAT that the document will not be used for any purpose other than the purpose for which it was given to us unless:
- (a) the document was received in evidence by us in the application and the confidentiality of the document is not protected by an order under section 35 of the AAT Act or by another statutory provision; or
  - (b) we give you or the decision-maker permission to use the document for another purpose.
- 5.3 Documents to which the implied undertaking applies include:
- (a) documents lodged under section 37 or 38AA of the AAT Act;
  - (b) documents lodged pursuant to a direction given by us (for example, expert reports or witness statements); and
  - (c) documents produced in response to a summons issued by us.
- 5.4 The implied undertaking continues even after an application has been finalised. Breach of the implied undertaking by using the documents for another purpose may constitute a criminal offence under section 63 of the AAT Act on the basis that it could, if the AAT were a court of record, constitute a contempt of court.

#### *Use of documents obtained in an application currently before the AAT in other current applications involving the same applicant*

- 5.5 Subject to any other direction we may make, either at the request of a party or of our own motion, documents that have been given to us in one application can be used in another application if:
- (a) the applications have been lodged by the same applicant and are currently before the AAT; and
  - (b) we have decided that these applications should be dealt with together.

Except to the extent identified here, you and the decision-maker are not released from the implied undertaking in relation to the documents.

*Use of documents in any other circumstance*

- 5.6 If you or the decision-maker want to use a document for another purpose, including a document that was given to us in an application that has been finalised, you or they must apply to us for leave to be released from the implied undertaking. The request must:
- (a) be in writing;
  - (b) specify with particularity the documents in relation to which release is sought;
  - (c) tell us clearly why you want the release and who will use the documents; and
  - (d) if possible, specify whether or not the person to whom the documents relate consents to the release from the implied undertaking.
- 5.7 Unless you or the decision-maker believes it is not necessary or appropriate, a copy of the request must be sent to the other party or parties to the application in which the documents were originally provided. We might require you or the decision-maker to give a copy of the request to another party or other person if we think it is appropriate.
- 5.8 We will determine whether to decide the request on the papers or by holding a hearing before making a decision.

**Justice D G Thomas**

**President**

28 February 2019