



Administrative
Appeals Tribunal

Guide to Social Services and Related Jurisdiction

**For the assistance of parties to first and
second review of Centrelink decisions**

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FOREWORD

This Guide applies from 1 July 2015 and tells you how we deal with applications for review of decisions made under the following Acts:

- *Social Security Act 1991*;
- *Social Security (Administration) Act 1999*;
- *A New Tax System (Family Assistance) Act 1999*;
- *A New Tax System (Family Assistance) (Administration) Act 1999*;
- *Paid Parental Leave Act 2010*;
- *Student Assistance Act 1973*;
- *Farm Household Support Act 2014*.

This Guide also applies to decisions about entitlement to concession and health care cards, and decisions regarding the amount of arrears of service pension payable under the *Veterans' Entitlements Act 1986* where the veteran's partner was receiving a social security payment.

Decisions are made under the Acts listed above by staff of the Department of Human Services (referred to in this Guide as the DHS). Centrelink is part of the DHS.

To be reviewable by us, the decision must have been reviewed within the DHS. The review will usually have been done by a person called an 'authorised review officer' if you asked for the review. Sometimes, a review has been done by someone else in the DHS even if you didn't ask for internal review. To make it easy to understand, we refer to decisions on internal review as 'DHS decisions' in this Guide.

A review of a DHS decision is done in our Social Services & Child Support Division. It is called a 'first review' because there is a right of further review by our General Division (called a 'second review') of most decisions covered by this Guide.

When this Guide refers to 'we' or 'us' it means the Administrative Appeals Tribunal (AAT). When it refers to 'you' it means an individual who has asked for the review or his or her representative. In the context of a second review, it also includes any other individual who is a party to a review or his or her representative.

This Guide explains what we will do, what we require the DHS to do, and what we require you to do.

Our statutory objective requires us to provide a review process that is accessible, fair, just, economical, informal, quick and proportionate. You and the DHS are required to assist us to do this.

Justice Duncan Kerr
President

FIRST REVIEW

1. Making an application

What you can do

If you are a person whose interests are affected by a DHS decision, you can apply for first review or ask a person to apply on your behalf.

There is no cost for making an application for first review.

You can apply for review of a decision in writing, by coming into one of our offices or by telephoning us. Our contact details are on the [Contact us page](#) on the AAT website.

You can also [apply online](#) on our website. Alternatively, you can download an application form from the [Forms page](#) on our website.

What you must do if you are an employer

If you are an employer and want us to review what is called 'an AAT reviewable employer decision' under the paid parental leave scheme, you must make your application in writing. Your application must include the information specified in paragraph 224(3)(c) of the *Paid Parental Leave Act 2010*, as well as a statutory declaration verifying your application.

You can download an application form from the [Forms page](#) on our website.

2. Extension of time for making an application for review

There are time limits for making *some* applications for first review. We tell you in this section whether or not there is a time limit for a particular kind of decision.

What you must do if you need an extension of time

Where there is a time limit for asking for first review and we have power to give you an extension of time, you must ask us for an extension of time. In the paragraphs below, we tell you when we can give you an extension of time and what you must tell us and give to us.

Make sure that your request includes the reasons for your delay and the reasons why you think the decision which you want us to review is wrong, because we will generally make our decision on whether or not to extend time without speaking to you.

What we will do

If there is a time limit and you apply for an extension of time, we will make a decision as soon as possible on your application for an extension of time.

If we refuse to extend time, we will tell you why in writing. You cannot ask us for a second review of our decision to refuse an extension of time.

2.1 Social security

There is no time limit for applying for first review of a decision made under the social security law.

However, if you apply more than 13 weeks after written notice was given to you of the DHS decision and we change the decision in your favour, our decision will take effect on the date of your application to us.

2.2 Family assistance

Family tax benefit by instalment and family assistance debts

There is no time limit for applying for first review if the decision is about payment of family tax benefit by instalment or about the raising of a debt.

However, if the decision is about payment by instalment and we change the decision in your favour, our decision will take effect on the date of your application to us if you did not apply within 13 weeks after written notice was given to you of the DHS decision.

All other family assistance decisions

For all other family assistance decisions, there is a time limit. You must apply for first review within 13 weeks of being notified of the DHS decision.

Can this time limit be extended?

Yes, but only if we find that there are special circumstances that prevented you from making your application within 13 weeks.

If the 13 weeks has passed and you think that your circumstances are special, you should tell us why in writing and give us copies of any documents in support of what you say to us. For example, if you say that you were too ill to apply in time, you should give us evidence from the doctor who treated you as to how your illness prevented you from making your application on time.

If you need help to ask us for an extension of time, the organisations listed on the [Help with your review page](#) on our website may be able to assist you.

2.3 Student assistance

You must make an application for first review within 3 months of the date of the DHS decision.

Can this time limit be extended?

Yes, but only if we find that there are special circumstances in your case.

If you think that your circumstances are special, you should tell us why in writing and give us copies of any documents in support of what you say to us. For example, if you were ill, you should give us evidence from the doctor who treated you as to how your illness prevented you from making your application on time. You should also tell us why you think the decision that you want us to review is wrong.

If you need help to ask for an extension of time, the organisations listed on the [Help with your review page](#) on our website may be able to assist you.

2.4 Paid parental leave

Claimant decision reviews

If you are a claimant, you have 28 days from the date of being given notice of the DHS decision to apply for first review.

Can this time limit be extended for a claimant?

Yes, but only if you ask us in writing and we are satisfied that it is reasonable in all the circumstances to do so.

If you think that it would be reasonable for us to do so because of your circumstances, you should tell us why in writing and give us copies of any documents in support of what you say to us. For example, if you were ill, you should give us evidence from the doctor who treated you as to how your illness prevented you from making your application on time. You should also tell us why you think the decision that you want us to review is wrong.

If you need help to ask for an extension of time, the organisations listed on the [Help with your review page](#) on our website may be able to assist you.

Employer decision reviews

If you are an employer, you have 14 days from the date on which the DHS decision was made in which to apply for first review.

Can this time limit be extended for an employer?

No. We cannot extend the time.

3. When we receive your application for first review

What we will do

We will write to you to say that we have received your application.

We will also tell the DHS that we have received your application. We will ask the DHS to confirm that there was an internal review if you have not given us a copy of the DHS decision which you want us to review.

If someone else has made the application on your behalf we will check that he or she is allowed to do so (for example, by a power of attorney which permits commencement of proceedings) or has your permission to make the application.

If we think that the decision you want reviewed is not reviewable by us, we will write to you to explain why and give you the chance to tell us if you think we are wrong.

If a time limit applies and you did not make your application within that time, we will give you the opportunity to apply for an extension of time if we have the power to extend time. See section 2 above about time limits.

We will consider whether the interests of any other person are affected by the decision which you want us to review. If so, we will invite that person to be a party to the proceeding. In some cases, the person might be a party because the law which permits you to ask us to review a decision makes that person a party to the review. Being a party means that the person would have the same rights as you to information about the decision and to tell us what is right or wrong with the decision. We will tell you if we decide that another person is to be a party or if the law makes another person a party.

We will assign an AAT Officer to your case and he or she will be your contact person throughout the review to answer questions about the review process and arrange any assistance you may need in the review process, such as an interpreter or disability related assistance for the hearing. This AAT Officer will not be at the hearing and does not make the decision on your application for review. When we write to you, the letter will always include the name of your contact person.

What you must do

If you want someone to talk to us about your application for review, you will need to complete a form to permit us to speak to that person about your application. You can ring us to ask for the form.

You must tell us if you will need an interpreter for the hearing. See section 7.2 below for more information on interpreters.

If we tell you that another person is a party, you must tell us if there is any history of domestic violence between you and that person.

You do not have to do anything else at this stage.

What the DHS must do

Within 28 days of receiving our notice of your application, or any shorter time stated by us, the DHS must give us, you and any other party a statement setting out the reasons for its decision and a copy of all of the documents in its possession that are relevant to your application. We call this statement and the related documents the 'T-documents' and refer to it in that way in this Guide.

The DHS must tell us if the interests of any other person are affected by the decision which you have asked us to review and give us that person's contact details.

4. Preparing for the hearing

What we will do

We will fix a time for the hearing unless you tell us that you want us to make a decision based on the T-documents (and any other documents which you have given us) and we agree that a hearing is unnecessary. We call making a decision this way a 'decision on the papers'.

If any other individual is a party, he or she must also agree to us making our decision on the papers or we must hold a hearing.

If Centrelink is continuing to pay you pending our review, we are required to expedite the review. This means that we must hear your application for review as soon as possible. If you are suffering hardship, you can also ask us to expedite the hearing.

Even if your hearing is not an expedited hearing, we will try to hear the review no later than 6 weeks after the date on which you made your application to us.

We will decide the time of the hearing, and whether you must come to our premises (or the premises of another tribunal) for the hearing, or can appear at the hearing by telephone or videoconference.

Sometimes, even if you are in a hearing room, our member or members hearing your application will be in a hearing room in another location and the hearing rooms will be linked by videoconference or by telephone.

We will write to you to tell you when and how the hearing will take place. We will also tell the DHS even though it is unlikely that anyone from the DHS will be at the hearing.

What you must do

If there is a date on which you cannot attend your hearing (for example, you are having a surgical procedure on that date or have to attend court), you must tell us when you apply for review. Once the hearing time is set, we will change it only if we are satisfied that you are unable to appear (even by telephone) at that time.

If you have a preference as to how you appear at the hearing (by coming to the hearing or talking to us by telephone or by videoconference), you should tell your AAT Officer. Your preference will be considered but we will make the decision about how you are to appear. We will have regard to our statutory objective in making that decision.

If another individual is a party and there is a history of domestic violence between you and that person, we will require at least one of you to appear at the hearing by telephone or videoconference.

To prepare for the hearing, you should read the T-documents and make a note of anything you think is wrong. Unless we have told you that there is information in the T-documents about another person which you can't show to or tell anyone else, you can ask a relative, friend or anyone else to assist you to prepare for the hearing.

If you want someone to speak on your behalf at the hearing or simply come along to silently support you, you need to ask us for permission. You should make your request as soon as possible. In deciding whether to give permission, we are required to have regard to our statutory objective, the wishes of any other party as well as the need to protect that person's privacy.

If we ask you to give us information or a document to assist us in the review, you must give it to us by the date stated by us. If you don't comply with our directions, your application for review could be dismissed.

If we don't ask you to give us anything but you have documents you want us to read, you must give them (or copies of them) to your AAT Officer as soon as you can so that we (and any other party) can read them before the hearing.

Disability support pension

If the decision you want us to review is about *rejection* of disability support pension because you don't have a 20 point impairment rating or you don't have a continuing inability to work, you should go through the T-documents as soon as you get them to see if there is a report from every doctor who treated you, and/or every hospital which treated you, for the conditions which you named on your claim form.

Similarly, if the decision you want us to review is about *cancellation* of disability support pension because you don't have a 20 point impairment rating or you don't have a continuing inability to work, you should go through the T-documents as soon as you get them to see if there is a report from every doctor who treated you, and/or every hospital which treated you, since you were granted disability support pension.

If you can't find anything about your treatment by a particular doctor or a hospital, you must tell your AAT Officer as soon as possible so that we can check with the DHS in case it has more documents that we need for the review. If the DHS does not have a document from the particular doctor or hospital, we will give you sufficient time before the hearing to ask the doctor or hospital for records of your treatment. In a special case, we might ask the DHS to get documents for us from the doctor or hospital.

What the DHS must do

The DHS must send us, you and any other party a copy of any more documents which it obtains if they are relevant to your application for review.

If the DHS wants to make any oral submissions (which means to speak to us about its decision), it must ask for our permission to do so. The DHS's request must be made in writing and explain how its submissions would assist us.

If permission is given, the DHS will make the oral submissions at the hearing usually by telephone or videoconference.

If we ask the DHS for information or a document, the DHS must send it to us within 14 days if it has that information or document. If we ask the DHS to get information or a document for us from somebody else, it must send a notice to the person who has that information or document within 7 days.

5. The hearing

What we will do

Usually one member will hear the review, but sometimes it may be two or three. We will hold the hearing of the first review in private. Apart from the member(s) and any of our staff who are assisting with the hearing, we won't allow anybody else to be present without our permission.

We will conduct the hearing in an informal manner. We will ask you to sit at a table opposite the member who is hearing your application for review. The member will not be dressed in what judges wear in court. If we have given permission for anyone to represent you or come along to support you, he or she will sit beside you at the table. If any other person is a party, that person will also sit at the table opposite the member.

We will ask you to take an oath or affirmation that what you tell us is true. We will ask you to tell us why you think the DHS decision is wrong, and will ask you questions about anything which will assist us to make the decision on your application for review.

If there is another party, we will also ask him or her to take an oath or affirmation. He or she will also have the opportunity to tell us why the DHS decision is right or wrong, and to answer our questions.

If a witness is to give evidence on your behalf, we will require the witness to take an oath or affirmation. Usually, we allow a witness to be in the hearing room only when giving his or her evidence.

We are not required to apply the rules of evidence and, as long as it is relevant, we will usually allow you or a witness to tell us about something you or they have heard from someone else. We will decide how much weight to give to this type of evidence when making our decision.

Most hearings take up to an hour. Some cases take longer because there is more than one party, an interpreter, one or more witnesses, or the relevant issues and events span a long period of time.

We will record the hearing. We will not allow you to record the hearing.

If you fail to appear at the hearing of your application for review, we may dismiss your application or make the decision based on the T-documents and any documents which you have given us.

What we will not do

We will not pay for, or make any order for the payment of, the costs of legal representation should you get a lawyer to represent you.

We will not pay for, or make any order for payment of, the costs of any person who gives evidence on your behalf (such as an accountant).

We will not give you a copy of the recording of the hearing. If you want a transcript of what was said in the hearing for the purposes of an application for second review or of an application to a court in relation to our decision, our service provider will prepare a transcript but you will have to pay for it.

What you must do

You must be ready to proceed on the day of the hearing. We will not adjourn the hearing if you turn up unprepared. We will only grant an adjournment if it would be unjust not to do so (for example, you are unable to appear for reasons beyond your control). See section 7.1 below about asking for an adjournment.

You need to have your copy of the T- documents, and of any other documents which you gave to us or we gave to you for the review, with you in the hearing. It makes the hearing easier if we can refer each other to a document by its page number.

If there is any other relevant document which you did not give us before the hearing, you must bring it to the hearing. If you are appearing at the hearing by telephone or videoconference, you must ask for our permission to send it to us at the conclusion of the hearing. You must not send us documents after the hearing without our permission.

What the DHS must do

If we order the DHS to obtain information or documents, or to make written and/or oral submissions, the DHS must do so by the specified date. DHS must also provide us with any new documents it receives that are relevant to your appeal up until we make our decision.

6. The decision

What we will do

If we decide that we agree with DHS's decision, we will affirm the decision. If we make that decision at the end of the hearing, we may tell you our decision and reasons for that decision then. If you want our reasons for that decision in writing, you must ask us within 14 days.

Otherwise, within 14 days of making our decision, we will give you and every other party (including the DHS) a written notice which states our decision and reasons for the decision. We will also tell you about your right to apply for second review.

What you must do

If you think that there is an *obvious* error in the text of our decision or in our reasons for decision (for example, we have made a mistake in typing an amount of money or a date), you can ask us to correct it.

We can't change our decision just because you think it is wrong. You have to apply in writing for a second review. Information about applying for a second review is in section 8 of this Guide.

7. Other matters

7.1 Adjournments

We will only grant an adjournment of a hearing if there are very good reasons to do so.

You should make any request for an adjournment in writing explaining why you are unable to appear at the hearing. You must give us a copy of any document which shows why you are unable to attend the hearing. You should not assume that a request for an adjournment will be granted.

It is unlikely that we will accept a medical certificate which simply states that a person is suffering from an unspecified medical condition and is unfit for work as sufficient evidence that you are unable to appear at the hearing even by telephone.

7.2 Interpreters

You cannot ask a relative or friend of a party to interpret at a hearing.

You must tell us when you make your application or are told by us that you are a party if you need an interpreter at the hearing and in what language and dialect (including sign language). We will engage an interpreter accredited or recognised by the National Accreditation Authority for Translators and Interpreters in the relevant language and pay the cost.

7.3 Alteration of the decision under review

What we will do

If a decision is varied or substituted by the DHS after you applied for first review of the decision, we will review the varied or substituted decision.

What you can do

If you do not want us to review the decision as varied or substituted, you can tell us that you are withdrawing or discontinuing your application for review.

7.4 Withdrawal or discontinuance of an application

There is no cost to withdraw or discontinue your application and you can do so at any time.

If you decide to withdraw or discontinue your application for first review, you must tell us in writing or orally. Once you do so, your application for review is automatically dismissed.

7.5 Dismissal of your application

Where all of the parties consent, we can dismiss your application for first review without proceeding to review the decision, or without completing the review.

If you fail to appear at a hearing, we may dismiss your application if you are the applicant.

We can also dismiss your application if:

- we don't have the power to review the decision which you asked us to review;
- you fail to proceed with the application;
- you fail to comply with a direction made by us;
- your application is frivolous, vexatious, misconceived or lacking in substance;
- your application has no reasonable prospect of success;
- your application is otherwise an abuse of our process.

If we dismiss your application for review, we will give you our reasons for doing so.

You cannot ask us for a second review of our decision to dismiss your application.

7.6 Reinstatement of your application

If your application is dismissed because you failed to appear at the hearing, you can ask us to reinstate your application.

However, you have to ask us within 28 days from the day on which we told you that your application for review was dismissed. We can only extend this time if there are special circumstances.

If you think that we made a mistake in dismissing your application for review, you can also ask us to reinstate your application.

What you must do

You must ask us in writing and tell us why you did not appear at the hearing if we dismissed your application for review because of your failure to appear at the hearing. If you think your application for review was dismissed because of a mistake on our part or someone else's part, you must tell us what mistake was made.

If you ask us to reinstate your application, you should also give us a copy of any document which supports what you tell us.

If you ask us to reinstate your application more than 28 days after we told you that your application for review was dismissed, you must ask us for an extension of time.

You must tell us why you think your circumstances are special so that you should be given extra time.

You must take care to do everything that we have told you about asking us to reinstate your application for review because generally we will not speak to you before making a decision on your request to reinstate your application for review.

What we will do

We will make our decision on your request for reinstatement of your application for review as soon as possible.

If we decide not to reinstate your application, we will tell you why in writing. You cannot ask us for a second review of our decision to refuse reinstatement.

If we decide to reinstate your application, we will tell you in writing what happens next.

SECOND REVIEW

8. Making an application

What you can do

If you are a person whose interests are affected by a first review decision, you can apply for a second review.

You do not have to pay a fee when you apply to us for a second review of a decision made by the Social Services & Child Support Division unless you are applying for a review of a decision:

- about paid parental leave
- to refuse an extension of time to apply for a child support review
- about a percentage of care for a child in a child support review.

You do not have to pay a fee if you are applying for a review of a decision about social security, family assistance or student assistance payments.

You must apply in writing and give brief reasons for the application. You can use the [Application for Second Review of Decision form](#) on our website or you can write us a letter or email. You can submit your application by:

- coming into one of our offices;
- posting it to us;
- faxing it to us; or
- emailing it to us.

Our contact details are on the [Contact us page](#) on our website.

Your application must be lodged with us within 28 days after you receive the first review decision unless we grant you an extension of time. See section 9.1 below for more information about this.

What the DHS and any other party to the first review can do

The DHS can also apply for a review of a first review decision on behalf of another government department, as can any other person who was a party to a first review.

What we will do

If you apply for a second review, we will write to you to say that we have received your application. If we think the decision you want reviewed is not reviewable by us, we will write to you to explain why and give you the chance to tell us if you think we are wrong. As for first review, we can dismiss your application if we don't have the power to review the decision.

If we can review the decision, we will tell the DHS that we have received your application. If another person was a party to the first review, the law makes that person a party to the second review. We will write to the other party to tell him or her that we have received your application.

If the DHS or another person applies for a second review, we will write to you to tell you we have received the application.

9. Interim applications

In some cases, issues can come up during the second review process that require an 'interim application'. Common interim applications include an:

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

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

9.1 Extension of time

What you must do

If you do not lodge your application for a review within 28 days after you receive the first review decision, you must apply for an extension of time. You can make it at the same time as your application for a second review.

Your application for an extension of time must be in writing. You can use the [Application for Extension of Time for Making an Application for Review of Decision form](#) on our website. Alternatively, you can send us a letter or an email.

What we will do

If we think you didn't make your application within the time limit, we will write to you to explain that you must apply for an extension of time.

When we receive an application for an extension of time, we follow the process set out at section 9.5 below.

Before we make a decision on your application, we may consider a range of relevant matters, including:

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

We may also consider that other matters are relevant.

9.2 Stay orders

When you make an application for a second review, the first review decision continues to operate. In some circumstances, you or the DHS might want to apply to us for an order which 'stays' (suspends) the operation or implementation of the decision until the second review is finalised.

For example:

- if, on first review, we decided that you must repay a debt to the DHS, you can apply to us to stop the DHS from recovering the debt while we are reviewing the decision;
- if, on first review, we decided that you are entitled to a pension, the DHS can apply to us to stop payment of the pension while we are reviewing the decision.

A request for a stay order must be made using the [Request for Stay Order form](#) on our website, unless we decide otherwise.

What we will do

When we receive a request for a stay order, we follow the process set out at section 9.5 below.

Before we make a decision on a request, we may consider a range of relevant matters, including:

- the hardship that a party might suffer if the stay order is or is not made;
- the prospects of success of the application for review; and
- public interest considerations.

We may also consider that other matters are relevant.

We can make a stay order about the whole of a decision, or part of a decision. For example:

- we can order that, while the second review is taking place, the DHS must stop recovering a debt but we may not require the DHS to repay amounts already recovered; or
- if we decided on first review that a person is entitled to a pension, we can order that, until the second review is finalised, the person can continue to receive the pension but no back payments should be made.

9.3 Joinder

Any person whose interests are affected by the first review decision can apply to be made a party to an existing application for a second review. This is known as an application to be joined as a party, or 'joinder'. In some circumstances, we may tell a person whose interests may be affected by the decision that the application for a second review has been received, and invite that person to apply to be joined as a party.

An application to be joined as a party must be in writing. You can use our [Application to Be Made a Party to a Proceeding form](#), on our website.

What we will do

When we receive an application for joinder, we follow the process set out at section 9.5 below.

Before we make a decision on the application, we consider:

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

9.4 Confidentiality orders

Documents given to the AAT for a second review are usually made available to all of the parties to the application. If we hold a hearing, it will normally be open to the public and the public will usually have access to documents given to us and evidence given in the hearing. Our decisions on second reviews are generally made publicly available, including on the internet.

You or the DHS can apply to us for a confidentiality order at any stage during the review process. Under section 35 of the *Administrative Appeals Tribunal Act 1975*, we can order that:

- a hearing or part of a hearing be held in private;
- the name of a party or witness be kept confidential;
- evidence or other information given to us not be published or disclosed to some or all of the parties.

What we will do

When we receive an application for a confidentiality order, we follow the process set out at section 9.5 below.

Before we decide whether or not to make a confidentiality order, we may consider a range of relevant matters, including:

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

We may also consider other relevant matters.

9.5 How we deal with interim applications

When we receive an interim application, we will send a copy to each other party. We will ask you or the DHS to tell us within 14 days whether or not you oppose the application. If nobody opposes the application, we will generally make a decision without holding a hearing. However, if any party opposes the application, we will usually hold a hearing before deciding the application. The hearing may be held in person or by telephone.

If the DHS lodges an application for a stay order, we will usually list the matter directly for a hearing.

10. T-Documents, Outreach and Legal Advice Schemes

10.1 Section 37 documents (T-documents)

What the DHS must do

Within 28 days after receiving notice or confirmation that an application for a second review has been lodged, the DHS must lodge with us a new set of T-documents under section 37 of the *Administrative Appeals Tribunal Act 1975*. These documents will be:

- the AAT first review decision; and
- every other document DHS has at the time that is relevant to the review of the decision.

The DHS must also send a copy of these documents to you (unless we make a confidentiality order about a document).

The DHS may apply to us to extend the 28-day time period. The DHS must do so if it is not able to provide the new set of T-documents within the time period. This application must be made before the 28-day time period expires.

If any relevant documents come into the DHS's possession after lodging the T-documents, the DHS must lodge these documents with us and send you a copy. This obligation is created under section 38AA of the *Administrative Appeals Tribunal Act 1975*.

More information about the Section 37 and 38AA Documents, including their presentation, can be found in the [Lodgement of Documents under Sections 37 and 38AA of the AAT Act Practice Direction](#). The practice direction also sets out the procedure that applies if the DHS wants to request a confidentiality order in relation to any of these documents.

What you can do

You can request that we shorten the 28-day time period for providing the new set of T-documents if you think that not shortening the period would or might cause you hardship. A request must be made using the [Request for Order to Shorten Time for Lodging Documents form](#) on our website, unless we allow or direct you to make the request in another way.

If you think that relevant documents have not been included in the T-documents, you should tell us at the first conference.

10.2 Outreach

We have an outreach program to give parties who are representing themselves information about our practice and procedure. Pursuant to our outreach program, we will telephone you before the first conference.

The primary purposes of Outreach are:

- to explain our review process and, in particular, what the T-documents are and what will happen at the first conference;
- to find out whether you will need any particular assistance such as an interpreter or assistance in accessing the AAT; and
- to discuss the legal advice scheme with you and/or provide contact details for organisations that might be able to provide legal or other assistance.

Outreach is conducted by AAT staff. Where necessary, the person conducting Outreach will arrange for an interpreter before contacting you.

10.3 Legal advice schemes and referrals

We have arrangements with legal aid bodies in most States to provide a legal advice service at our offices. A legal aid solicitor attends our offices once per week or per fortnight. If you are representing yourself, we will generally invite you to make an appointment with the solicitor who can give you initial advice and assistance. You might be given further assistance and representation if you are eligible for a grant of legal aid.

Community legal centres also provide advice and may provide representation, including in the Australian Capital Territory and Tasmania. We can refer you to a community legal centre where appropriate.

11. Conferences

A conference is the first step in the review process in most cases. Conferences are usually conducted by an AAT Conference Registrar, but may be conducted by an AAT member.

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

The first conference will usually be held 6 to 10 weeks after an application for review is lodged. If a second conference is needed, we will discuss the timing with you and the DHS.

If you are representing yourself, the conference will generally be held in person at our offices. If it is not convenient for you to come to the conference because you live outside a capital city or overseas or for other reasons, we can hold the conference by telephone.

If you have a representative, conferences are generally held by telephone. However, if the AAT Conference Registrar or the parties prefer, the conference may be held in person at our offices.

11.1 Preparing for the first conference

Unless you are representing yourself, you and the DHS must prepare a Statement of Issues. The statement must be lodged with us and given to each other at least 7 days prior to the first conference.

The Statement of Issues should say succinctly what issues you think are in dispute in the application.

You and the DHS must think about what other evidence might be relevant to resolving the case and, where possible:

- send it to us and the other party before the first conference; or
- make arrangements to obtain that evidence.

If you have a representative, you and the DHS must consider whether an expert report is likely to be obtained and, if it is, make an appointment with the expert before the first conference.

If you or the DHS ask an expert to prepare a report at any stage of the review process, you must ensure the expert is given or already has a copy of:

- the AAT's [Persons Giving Expert and Opinion Evidence Guideline](#); and
- in disability support pension cases – a copy of, or clear reference to, the relevant parts of the Impairment Tables which apply to the claim.

11.2 At the first conference

At the first conference, we will talk with you and the DHS about:

- the legal and factual issues in dispute in the application

We might require you or the DHS to prepare a further Statement of Issues if the issues in dispute are not clear.

- any new evidence that has been lodged and any further evidence that will be gathered

We might discuss matters such as obtaining medical reports or job capacity assessments or other documents relating to your financial or personal circumstances. If you are representing yourself in an application relating to disability support pension, we might talk to you about preparing a letter to a medical practitioner to get a report.

- whether you and the DHS might be able to agree on the outcome of the application.
- what will happen next, including whether the application should be referred to another type of alternative dispute resolution (ADR), or whether the application should be listed for hearing.

We will decide after talking to you and the DHS what steps will be taken next, and set a timetable for such steps. We might make a direction telling you and the DHS what must be done and by when. You or the DHS might be required to:

- tell us and the other party of the details of any appointments to obtain reports;
- give to us and the other party relevant documents such as witness statements, reports, a Statement of Issues or Statement of Issues, Facts and Contentions.

If a second conference is to be held, the date for that conference will be set based on the timetable we have set.

11.3 After the first conference

Appointments and expert reports

If you or the DHS need to make an appointment with a medical practitioner or job capacity assessment provider, you must try to make the appointment for the earliest possible date. If an appointment is to be made for a job capacity assessment following a medical appointment, the DHS must attempt as far as practicable to schedule the appointment in a timely manner.

If you or the DHS want to rely on an expert report, it must be lodged with us and given to the other party as soon as possible. In general, this should be no later than 10 days after you receive the report. You or the DHS should also provide the letter requesting the report and any attachments containing information that we or the other party do not already have.

Section 33(1AA) of the *Administrative Appeals Tribunal Act 1975* requires the decision-maker to use his or her best endeavours to assist us to make the decision. Consistent with this requirement, we expect that the DHS will lodge with us all reports that it has obtained whether or not they are favourable to you.

Summonses

We have the power to order a person to produce documents to us. This is called issuing a 'summons'. If you or the DHS want us to issue a summons for documents that are relevant to the review, a request should be made as early as possible in the review process.

Call us if you want more information about the procedures relating to summons and access to documents produced under summons.

Statements of Issues, Facts and Contentions

If you have a representative, we will usually require that you and then the DHS prepare a Statement of Issues, Facts and Contentions during the review process. A statement must clearly set out:

- the issues that are still in dispute;
- the essential facts that are relevant to those issues; and
- the arguments that you or the DHS want to make based on those facts.

Any statement in reply should note what aspects are agreed, which are disputed and any facts or arguments that are different.

If you are representing yourself, we will usually only require the DHS to prepare a Statement of Issues, Facts and Contentions. We might ask you to prepare a response to the statement prepared by the DHS, or a chronology of relevant events.

A sample Statement of Issues, Facts and Contentions is set out at Attachment A to this Guide.

11.4 Second and subsequent conferences

If we hold a second conference, we will discuss the progress of the application with you and the DHS. This includes going through any further evidence that has been lodged with us, and discussing the merits of each party's case. We will try to help you and the DHS reach an agreed outcome, or narrow the issues in dispute. We will also discuss with you and the DHS any new issues that might have come up, and what further steps are to be taken in the application.

We will decide after talking with you and the DHS:

- whether a further conference should be held or the application should be listed for another type of ADR process; or
- whether the application should be listed for hearing.

If we decide to list the application for a hearing, we will discuss with you and the DHS arrangements for the hearing, including its timing and location. We might talk about whether the application could be decided on the papers, without holding a hearing.

We will make a direction as required telling you and the DHS what must be done and by when.

11.5 Other forms of alternative dispute resolution (ADR)

We have other ADR processes in addition to conferences: conciliation, mediation, case appraisal and neutral evaluation.

We have process models for each type of ADR process, which explain what happens. We also have referral guidelines. These list what we may take into account when deciding to refer an application to ADR, and deciding which type of ADR process to use.

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

12. Finalising applications during the pre-hearing process

12.1 Withdrawing an application

What you can do

You can tell us at any time that you want to withdraw or discontinue your second review. You must notify us in writing. You can find a Notice of Withdrawal form on the AAT's website. Alternatively, you can send us a letter or email.

What we will do

When you tell us in writing that you want to withdraw your application for review, the application is automatically dismissed. If the application is dismissed this way, we cannot reinstate it. You should therefore be very clear in your letter or document telling us that you want to withdraw your application.

We will write to you to tell you that we have received your notice of withdrawal. We will also tell any other party to the application that it has been withdrawn.

12.2 Consent decisions

If you and the DHS come to an agreement, the terms of the agreement must be put in writing, signed by the parties and lodged with us.

We can give effect to this agreement if:

- we are satisfied that a decision in those terms or consistent with those terms would be within our powers; and
- we think that it would be appropriate to give effect to the agreement

There is a difference between:

- an agreement reached during an ADR process, including a conference ('Section 34D Agreement'); and
- an agreement reached by the parties at any other time ('Section 42C Agreement').

If you and the DHS reach a Section 34D Agreement, we must wait 7 days after the terms of agreement are lodged before making any decision. We cannot make such a decision if you or the DHS notify us within 7 days after the terms were lodged that you want to withdraw from the agreement.

If you and the DHS lodge a Section 42C Agreement, we can make a decision in accordance with the terms of agreement immediately.

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

12.3 Agreements in debt cases

You and the DHS may agree to settle an application about a decision that you owe a debt. If the agreement is in writing and lodged with us by the DHS, the application is automatically dismissed.

We will write to you and the DHS to confirm that the application has been dismissed.

12.4 Dismissal of your application

As for AAT first review, if all of the parties consent, we can dismiss an application for second review without proceeding to review the decision or without completing the review.

We can also dismiss your application if:

- you or your representative fail to attend an ADR process, directions hearing or hearing;
- you fail to proceed with the application;
- you fail to comply with one of our directions; or

- we are satisfied that the application is frivolous or vexatious, misconceived or lacking in substance, has no reasonable prospect of success or is otherwise an abuse of process.

These powers are set out in sections 42A and 42B of the *Administrative Appeals Tribunal Act 1975*.

The DHS or another party may ask us to dismiss your application for one of the reasons given above but we can also do so without any application. We will generally tell you beforehand that the application may be dismissed.

See section 15.3 below for more information about our procedures for dealing with a failure by a party to comply with any legislative requirement or AAT direction.

12.5 Reinstatement of your application¹

If we dismiss your application because you failed to appear at an ADR process, directions hearing or hearing, you can apply to us to reinstate (recommence) the application: section 42A(8) of the *Administrative Appeals Tribunal Act 1975*. As for first review, you must apply within 28 days after you receive notice of the dismissal. We can only extend this time if there are special circumstances.

We can also reinstate an application if it has been dismissed in error: section 42A(10) of the *Administrative Appeals Tribunal Act 1975*.

We will deal with an application for reinstatement in the same way as other interim applications. For information on how we deal with interim applications, see section 9 above.

13. Hearing

If the application is not finalised during the pre-hearing process, we will usually hold a hearing.

In most cases, the hearing will be held at our offices, with the parties attending in person. In some cases, we will hold hearings in regional centres. We may also conduct the hearing by telephone or by videoconference. Hearings with individuals who are overseas will generally be conducted by telephone.

In some cases, it might be agreed that we will make our decision without holding a hearing. This is discussed in more detail at section 13.2 below.

General information about [hearings](#) is available on our website.

13.1 Fixing hearing dates

Hearing information

Before we set a hearing date, we will ask you and the DHS for information about:

- any witnesses who will give evidence at the hearing;

¹ Updated 18 February 2022

- your availability and the availability of any witnesses; and
- the likely length of the hearing.

If you are representing yourself, we will usually ask you to tell us about your availability for the hearing at the last conference.

If you have a representative, we will usually ask you and the DHS to lodge a Hearing Certificate with us and give a copy to the other party.

Hearing Certificates must be lodged within the time specified by us. We may list an application for hearing without further consultation if you or DHS fail to do so.

We will use our best efforts to:

- tell the parties the hearing date as soon as we can; and
- list the hearing at a time that is suitable for both parties.

If we arrange a hearing in a regional centre, our procedures may be different.

13.2 Determining an application without holding a hearing

We can make a decision without holding a hearing if:

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

We will usually ask you and the DHS to confirm in writing that you consent to the application being determined in this way.

We will review the decision by considering the documents that are before us.

13.3 Before the hearing

Disclosing and lodging evidence

We expect that, in general, all evidence to be relied on at the hearing will have been identified during the pre-hearing process. You and the DHS must comply with any directions made by us or timetables set for giving documents or other evidence to us and the other party prior to the hearing. If you or the DHS have any difficulty in meeting these obligations, you should bring this to our attention as soon as possible.

Arranging witnesses

If you or the DHS want a person to give evidence at the hearing, you must usually make arrangements for the person to attend the hearing.

Medical and other expert reports and witnesses

If you or the DHS 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 DHS must consider carefully whether it is necessary for medical practitioners or other experts to give oral evidence at a hearing.

Telephone and video evidence

We can allow part of the hearing to be conducted by telephone or videoconference. If you or the DHS want a witness to give evidence in this way, you must ask us for permission before the hearing.

Unless you are representing yourself, the request for evidence to be taken by telephone or videoconference must be made in writing. The request must:

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

If you are representing yourself, you can contact us by telephone or in writing and explain why the evidence should be taken by telephone or videoconference. We will ask the DHS whether or not they oppose the request.

The AAT member who will hear the case will decide whether or not to grant the request. We may conduct a directions hearing in person or by telephone before making a decision.

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

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

Unless we decide otherwise, the costs of taking the 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.

Pre-hearing checks and directions hearings

Before the hearing date, our staff may contact self-represented parties by telephone to confirm the arrangements for the hearing.

We can decide to hold a directions hearing in person or by telephone to discuss with the parties any issue in relation to the hearing. This may happen if you or the DHS request it, or if we decide it is necessary. We will make directions as necessary to make sure that any outstanding matters are completed before the hearing.

13.4 At the hearing

Commencement of the hearing

We expect that the parties will be ready for the hearing to commence promptly at the listed time. Unless you are representing yourself, you and the DHS should tell us at the start of the hearing:

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

Use of hearing time

On rare occasions, it may be necessary for further evidence to be lodged and/or written submissions to be made after the hearing. We will allow this only where it is strictly necessary. Any further evidence or written submissions must be lodged in accordance with the timetable set by us. If this does not occur, we may proceed to make a decision without the material.

14. Decision

We will either give our decision and reasons for the decision at the end of the hearing or at a later date. If we don't give the decision at the end of the hearing, we will usually give our decision and reasons within 2 months of:

- the last day of the hearing; or
- if you or the DHS have been given permission to lodge further evidence or submissions – receipt of those documents.

If we give our decision at the end of the hearing, we will send you and the DHS a copy of the formal decision. If you or the DHS would like the reasons for the decision in writing, a request for written reasons must be made within 28 days after receiving the formal decision. The request can be made in writing or by telephoning us. We will send a copy of our written reasons to you and the DHS within 28 days after receiving the request.

15. Other matters

15.1 Requests for adjournment

Conferences and other ADR processes

If you or the DHS are unable to attend a conference or other ADR process or think it should be postponed, you must make a request for an adjournment as early as possible. We will not grant an adjournment unless there are good reasons to do so.

Unless you are representing yourself, the request for an adjournment must be in writing. The request must:

- explain the reasons for seeking the adjournment;

- tell us whether the other party agrees to the adjournment; and
- if you or the DHS want a postponement, suggest when the conference or other ADR process should be re-listed and why.

If you are representing yourself, you can contact us by telephone to explain the reasons for requesting an adjournment. We might ask you to put the reasons in writing. We will ask the DHS and any other party whether they agree to the request and then decide whether or not to grant the request.

Hearings

Our policies and procedures about requests for adjournment of a hearing in a second review are set out in full in the AAT's General Practice Direction. We will only grant an adjournment if there are good reasons to do so. Parties should not assume we will grant a request for an adjournment.

An application for an adjournment of a hearing must be made at the earliest opportunity. It must:

- be in writing addressed to the District Registrar;
- include the reasons for asking for an adjournment;
- be signed by you or the DHS; and
- be accompanied by any documents that support the application.

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

15.2 Interpreters

Our policies and procedures about interpreters on second review are the same as for first review. See section 7.2 above.

15.3 Non-compliance with legislative requirements and AAT directions

If you or the DHS fail to comply with legislative requirements and our directions, it can significantly delay the finalisation of an application. We treat non-compliance seriously.

As soon as you or the DHS think you might not be able to comply with a legislative requirement or AAT direction and before the deadline, you should write to us to request extra time. The request must:

- explain the reasons for requesting extra time; and
- tell us whether the other party agrees to the request.

If you are representing yourself, you can contact us by telephone to ask for further time. We will ask the DHS or any other party whether they agree to the request and will then decide whether or not to grant further time.

Parties should not assume we will grant an extension of time.

If you or the DHS fail to comply with a legislative requirement or one of our directions, we will list the matter for a non-compliance directions hearing. If you comply by the day before the directions hearing, we will decide whether or not the directions hearing should proceed.

Failure to comply with legislative requirements and AAT directions may have consequences, including:

- if the applicant has failed within a reasonable time to comply with a AAT direction, we may dismiss the application: section 42A(5) of the *Administrative Appeals Tribunal Act 1975*;
- where there is a history of non-compliance by a representative, we may take a range of actions depending on the history and seriousness of the non-compliance, including writing to the representative, writing to the representative's employer or referring the non-compliance to a regulatory authority or other relevant body.

ATTACHMENT A

Note: Only for use in second reviews

EXAMPLE STATEMENT OF ISSUES, FACTS AND CONTENTIONS

File Number 20____/____

[name of applicant]

Applicant

[name of respondent]

Respondent

STATEMENT OF ISSUES, FACTS AND CONTENTIONS

Issues

[Applicant/Respondent] considers that the issues for the Tribunal to determine are as follows:

1. *[Explain what the problem is with the decision: what questions do you want the Tribunal to answer?*

For example: When did the Applicant first have a continuing inability to work for the purposes of the disability support pension? Was the Applicant an Australian resident at the time she first had a continuing inability to work?]

- 2.

Facts

The following are the relevant facts as the [Applicant/Respondent] perceives them:

1. *[Briefly explain what happened. Do not include opinions. Do not include evidence, but footnote Section 37 documents, statements or other documents if relevant.*

For example: The Applicant is ... years of age. She was first treated for a back condition on [note letter from treating doctor]. The Applicant returned to work as a hairdresser on [note employer reference] She left this position to migrate to Australia on a partner visa on [note copy of passport T documents p 5].]

2.

Contentions

[Applicant/Respondent] contends as follows:

1. *[Explain the conclusions you want the Tribunal to make and why these conclusions should be made].*
- 2.

Decision sought

3. [Applicant/Respondent] seeks an order [affirming] / [varying] / [setting aside] / [remitting] / [other] the decision.