



# Persons Giving Expert and Opinion Evidence

## 1. About this Guideline

### *Application*

- 1.1 The Administrative Appeals Tribunal (AAT) has jurisdiction to review a broad range of administrative decisions and must determine issues in a wide variety of subject areas. In many applications, evidence given by persons with special knowledge or experience in an area assists the AAT to reach the correct or preferable decision.
- 1.2 The AAT is not bound by the rules of evidence and may take into account any matter that is relevant to the issues to be determined. In particular, the AAT is not bound by the rules relating to opinion evidence and may have regard to material that would not be admissible in a court applying the rules of evidence. The AAT must determine the weight that should be given to any evidence that is before it.
- 1.3 This Guideline is designed to inform parties, their representatives and persons giving evidence about the AAT's expectations in relation to this kind of evidence
- 1.4 This Guideline applies to any evidence before the AAT that has been obtained from a person because he or she has special knowledge or experience in a subject area.
- 1.5 This Guideline applies to written reports and oral evidence. It applies to evidence which consists of factual information only as well as evidence which consists of factual information and the expression of an opinion.<sup>1</sup>
- 1.6 Compliance with the matters referred to in this Guideline may be relevant to determining the weight that will be given to evidence from the person.
- 1.7 Parties or their representatives must ensure that any person who is engaged to prepare a report or to give evidence in proceedings before the AAT:
  - is provided with a copy of this Guideline at the time the person is engaged; or
  - already has a copy of this document.

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<sup>1</sup> Treating doctors, for example, may wish to confine a report and any oral evidence to factual matters relating to a patient's condition.

## 2. Relevance of this Guideline to reports in the Section 37 documents

- 2.1 Documents provided to the AAT pursuant to section 37 of the *Administrative Appeals Tribunal Act 1975* may include reports that fall within the scope of this Guideline. If a party wishes to place particular reliance on such a report but the report does not include information of the kind referred to in paragraphs 4.1 and 4.2 of this Guideline, the party should consider whether any additional information should be sought from the person and provided to the AAT.

## 3. Duty to the AAT

- 3.1 A person giving evidence based on his or her special knowledge or experience in an area:
- (a) has an overriding duty to provide impartial assistance to the AAT on matters relevant to the person's area of knowledge or experience;
  - (b) is not an advocate for a party to a proceeding.

## 4. Reports

- 4.1 A written report prepared for the purpose of proceedings in the AAT must include the following information either in the body of the report or as an annexure:
- (a) details of the person's area of knowledge and his or her qualifications and/or experience;
  - (b) the letter of instruction or details of the questions or issues the person was asked to address in the report as well as a reference to any documents or other materials the person was given to consider;
  - (c) details of any facts and assumptions that inform the report and the sources for the factual information in the report;
  - (d) reasons for any opinion that is expressed.
- 4.2 Where relevant, the written report must also include the following information either in the body of the report or as an annexure:
- (a) details of any examinations, tests or other investigations upon which the person has relied in preparing the report as well as the identity, qualifications and experience of the person who conducted any examinations, tests or investigations;
  - (b) details of any literature or other material relied on particularly in preparing the report.
- 4.3 If the person preparing the report believes that his or her opinion is not a concluded opinion or the person is unable to reach a concluded opinion for any reason, this must be stated in the report. Where the person believes the report may be incomplete or inaccurate without some qualification, that qualification must also be stated in the report.
- 4.4 A person preparing a report must make it clear when a particular question or issue falls outside his or her field of knowledge.

## **Declaration**

- 4.5 Any report prepared for the purpose of proceedings before the AAT, whether it consists of factual information only or factual information and opinion, must include the following declaration:

*I acknowledge that I have an overriding duty to provide impartial assistance to the Tribunal. No matters of significance have been withheld from the Tribunal.*

## **General matters relating to reports prepared for the purposes of AAT proceedings**

- 4.6 The AAT has developed a template cover sheet which a person may wish to use for a report prepared for the purpose of proceedings before the AAT. The cover sheet is attached to this Guideline and can also be downloaded from our website: [www.aat.gov.au](http://www.aat.gov.au).

- 4.7 If a person who has prepared a report:

- (a) becomes aware of a material error or omission relating to a factual matter in a report; or
- (b) changes his or her opinion on a material matter for any reason;

the party who engaged the person must be notified of this in writing. If the report has been, or is subsequently, lodged with the AAT then the party must notify the AAT and the other party or parties of the material error or omission or the change in opinion without delay.

## **5. Conflict of interest**

- 5.1 If a person is, or becomes, aware of an actual or perceived conflict of interest that may impact on his or her role, the person must disclose this to the party who engaged the person. If the person has prepared a report that has been, or is subsequently, lodged with the AAT then the party must notify the AAT and the other party or parties of the actual or perceived conflict of interest without delay.
- 5.2 If a person:
- (a) has a pre-existing relationship with the party who has engaged the person; or
  - (b) is party to any unusual remuneration arrangements, including whether the person's remuneration is dependent on the outcome of the matter;
- this must be disclosed in any report or disclosed to the AAT before the person gives oral evidence

**Justice Duncan Kerr**  
**President**

30 June 2015

## COVER SHEET

REPORT PREPARED FOR THE PURPOSE OF A PROCEEDING IN THE  
ADMINISTRATIVE APPEALS TRIBUNAL

<b>File Number(s):</b>	
<b>Applicant:</b>	
<b>Respondent:</b>	
<b>Report prepared by:</b>	

- I have attached my CV or included in the report details of my qualifications and/or experience.
  
- I have attached the letter of instruction or included in the report details of the questions or issues that I was asked to address and a reference to any documents or other materials that I was given to consider.
  
- I have included in the report details of the facts and any assumptions that inform the report and the sources for the factual information in the report.
  
- I have included any other relevant matters such as details of examinations, tests and other investigations that I have relied upon or details of literature and other secondary sources that I have relied upon.

### ***Declaration***

I acknowledge that I have an overriding duty to provide impartial assistance to the Tribunal. No matters of significance have been withheld from the Tribunal.

\_\_\_\_\_  
(Signature)

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(Date)