

# CHAPTER 6: SUMMONS PROCEDURES

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## Introduction

The Tribunal has the power to issue three types of summonses.<sup>1</sup> The member listed to hear the application (presiding member), the Registrar a District or a Deputy Registrar may summon (call) a person to:

- give evidence;
- produce certain books, documents or things in the possession, custody or control of the person; or
- give evidence and produce certain books, documents or things in the possession, custody or control of the person.

One of the parties usually requests the issue of a summons. However, the Tribunal may decide to issue a summons without a request from one of the parties.

Failing to comply with a summons is an offence punishable by 30 penalty units or imprisonment for 6 months or both<sup>2</sup>.

The AAT Regulations set out the form that must be used each type of summons:<sup>3</sup>

- Form 7: summons to give evidence;
- Form 8: summons to give evidence and produce documents; and
- Form 9: summons to produce documents.

All these forms can be found on the intranet, <http://intranet/siteindex.htm#forms> or on the external website at [www.aat.gov.au/FormsAndFees/Forms.htm](http://www.aat.gov.au/FormsAndFees/Forms.htm).

## 6.1 Summonses to produce documents

### Overview

A summons to produce documents can be issued at any stage of an application. The kind of summonses most frequently issued by the Tribunal are summonses requiring medical practitioners to produce medical records in worker's compensation applications.

The AAT Act requires a person to be summoned to produce documents at a hearing or directions hearing ('return of summons hearing'). However, a person who is summoned only to produce documents does not need to attend the hearing if the person produces the documents at the Registry before the date specified in the summons. In most cases a person who is summoned to produce documents will not want to attend the Tribunal for a hearing, so they will send the documents to the Tribunal.

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<sup>1</sup> Section 40(1A) of the AAT Act.

<sup>2</sup> Section 61 of the AAT Act.

<sup>3</sup> Regulation 15(a) of the AAT Regulations.

A summons to produce documents usually involves the following steps:

- A party sends the Tribunal a request to issue a summons;
- The Tribunal issues the summons and returns it to the requesting party;
- The requesting party serves the summons on the person summoned and pays their expenses for complying with the summons;
- The person summoned complies with the summons by producing the documents to the Tribunal;
- The Tribunal makes orders allowing the parties to inspect the documents – these orders are generally made in the absence of the parties but can also be made at a return of summons hearing;
- The parties inspect the documents and make copies of any documents they need;
- At the conclusion of the matter, the documents are destroyed or returned to the person summoned.

These steps are described in detail below, including the steps to take where something happens that is out of the ordinary.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 6.1.1 Requesting a summons

A party who wants the Tribunal to issue a summons must make a request for the issue of the summons. Parties are able to lodge requests for summons by hand, fax, mail or email, but email is the preferred method. Each registry has an email address for receiving requests for summonses: [city].summons@aat.gov.au.

If the request is filed by hand or mail, four copies of the completed summons form (Form 9) must be provided.

If the party is represented, the request to issue a summons must be in writing and must set out the reasons for the request.

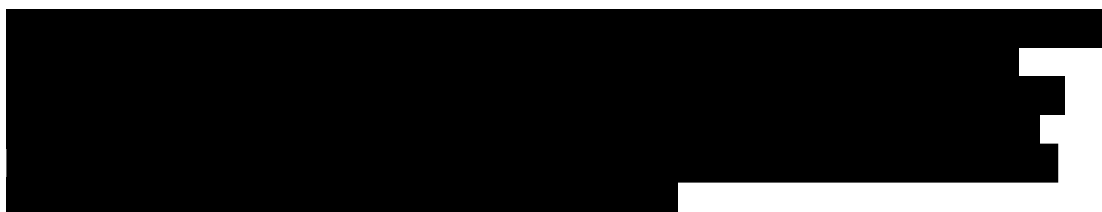
If an unrepresented party wants to issue a summons, you may need to give them assistance. The amount of assistance will vary from person to person – in some cases, you may simply need to send them a blank summons form and explain to them how the summons process works; in other cases, you may need to prepare the summons for them. Make a file note of any instructions that an unrepresented party gives you about preparing a summons for them and place this on the file.

Where the Tribunal has requested the issue of the summons of its own motion, MST or registry staff may prepare the summons.

A summons must be directed to a natural person (not a company) because the summons must be served personally<sup>4</sup>. If a summons is addressed to a company, incorporated association or other body, it must be directed to a natural person such as “The Proper Officer” or “The Chief Executive Officer” of the organisation.

When you receive a request for summons, you should check that the correct form has been used, the form has been completed in full and sufficient copies have been provided.

If there is a problem with the summons provided, contact the requesting party and inform them of the problem. If you are able to rectify the problem simply, ask the party’s consent to fix the problem. If the party does not agree or the problem is not simple, ask the party to send a fresh request for summons. Make a file note of your discussions with the party.



The request must also be accompanied by the applicable fee or request for fee waiver.

### Checklist

Has the form been completed in full?

Is the summons directed to a natural person?

Have sufficient copies of the summons been provided?

Has payment of the fee been provided or a waiver requested?

### 6.1.2 Fees for summonses

Different registries currently have different practices concerning fees for summonses. Your District Registrar will advise you what fees apply in your registry<sup>5</sup>. The fees reflect the costs to the Tribunal in processing requests to issue summonses and handling summoned documents.

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<sup>4</sup> Regulation 15(b) of the AAT Regulations.

<sup>5</sup> Amendments proposed to the AAT Regulations will provide for a flat fee of \$25 for each summons issued (indexed to CPI every two years).

Many frequent Tribunal users such as major law firms will set up accounts with the Tribunal for paying for summonses. Individuals and one-off users can pay by the usual means of cheque, credit card, etc.

Where a fee is paid in respect of a summons and the request to issue the summons is refused (see below at [XR 6.1.3](#)), the fee must be refunded.

The exemptions and waivers that apply to application fees also apply to fees for issuing summonses.

### 6.1.3 Issuing or refusing to issue a summons

The following steps are involved in issuing a summons:

- Decide whether the summons should be issued (Deputy Registrar)
- Decide whether standard orders are appropriate (Deputy Registrar)
- Check the return/listing date and adjust if required
- Process the fee
- Sign and stamp the summons (Deputy Registrar)
- Generate listing notice and return the summons to the requesting party

The steps are described in more detail below (except information about fees which is found above at [XR 6.1.2](#)).

#### Should the summons be issued?

A Deputy Registrar, District Registrar or Tribunal member must decide whether a summons requested by a party should be issued. If the application is listed for a hearing before a member, the member should be given the opportunity to decide whether or not the summons should be issued. Otherwise, normally, a Deputy Registrar will decide whether the summons should be issued, after considering:

- the reasons given for requesting the summons;
- the person to whom the summons is directed; and
- the description of the documents the person will be required to produce.

Circumstances where it might not be appropriate to issue the summons include where the information sought in the summons is not relevant to the issues in the dispute or where the summons is too broad or incomprehensible.

Tribunal staff cannot refuse to issue a summons that has been requested by a party unless a Tribunal member authorises the refusal. If the Deputy Registrar decides that it is not appropriate to issue the summons, they must refer the request to a Tribunal member.<sup>6</sup> The member may wish to hold a hearing with the parties to decide whether the summons should be issued – this could be conducted at the next scheduled return of summons hearing.



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<sup>6</sup> Section 40(1C) of the AAT Act.

[REDACTED]

**Are standard orders appropriate?**

When issuing a summons, the Deputy Registrar must also decide whether standard orders for the inspection of the documents will be appropriate.

The standard orders allow the applicant one week of exclusive access to the documents before the respondent is allowed to see them. The purpose of the exclusive access period is to allow the applicant to see if there are any confidential or privileged documents that the respondent should not be allowed see (see section XR 6.1.9 on objections below).

The standard orders will apply in most common cases, e.g. medical records summoned in compensation applications.

Examples of cases where standard orders might not be appropriate are:

- Where the applicant is unrepresented and needs guidance through the process – in this case the Tribunal may wish to hold a return of summons hearing that both parties can attend and make inspection orders at that hearing;
- Where the applicant is an agency – in this case the standard orders may need to be reversed to allow the individual respondent to see the documents first, where there is the potential for a privilege or confidentiality issue to arise (see XR 6.1.9);
- Where neither party has a potential privilege/confidentiality claim over the documents – in this case, orders could be made giving both parties access to the documents at the same time ('general access') (see XR 6.1.9)

[REDACTED]

**Checking the return/listing date**

Before issuing the summons, ensure that the return date and time on the summons matches the date and time of the hearing or return of summons hearing listed in the application.

If there is a substantive hearing or directions approaching, it may be preferable for the summons to be returnable at that hearing and for the parties to inspect the

documents at the hearing. Check how the presiding member wishes to deal with inspection of the documents – if the hearing is several weeks away, the member may prefer for the inspection of documents to occur by way of standard orders or at an earlier directions hearing or return of summons hearing, rather than at the substantive hearing.

[REDACTED]

**Sign/stamp the summons, generate listing notice and return stamped copies to the requesting party**

Once the fee has been paid or waived as appropriate (see above at [XR 6.1.2](#)) and the summons is ready for issue, the Deputy Registrar must sign and stamp the summons. The signed/stamped summons should be kept on file.

Additional copies of the signed/stamped summons should be sent to the requesting party together with one 'Notice to the person summoned to produce documents' for each summons issued, a listing notice and a 'Notice to the party requesting summons'.

The listing notice to be used depends on whether the inspection orders will be made at a return of summons hearing or by written orders issued to the parties.

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

This letter includes a list of the summonses issued that have the same return date, so that the parties are aware of what summonses have been issued. It also includes information about the proposed standard orders that the Tribunal will make for the inspection of the documents.

Where it is proposed that non-standard orders will be issued, you should amend this letter to indicate what orders the Tribunal is likely to make. This gives the parties the opportunity to advise the Tribunal if they think that the proposed orders are not appropriate.

#### 6.1.4 Serving a summons and paying expenses for production

The requesting party must serve an original stamped copy of the summons on the person summoned. The regulations currently require for the summons to be served personally<sup>7</sup>.

When serving the summons, the requesting party must also include a copy of the 'Notice to person summoned' which will be attached to the updated version of Form 9. The notice explains the summons, and how to comply with it, to the person summoned.

The requesting party is responsible for paying the person summoned reasonable expenses for complying with the summons. Where the person summoned considers that sufficient money has not been paid, they should first contact the requesting party to ask for additional money. If a dispute about the expenses to be paid for complying with the summons cannot be resolved by the requesting party and the person summoned, it should be referred to a member. The member may require the requesting party and the person summoned to attend a summons hearing to deal with the question of the expenses payable<sup>8</sup>.

Where the Tribunal has requested the issue of the summons of its own motion, the Tribunal must serve the summons on the person summoned and pay that person's expenses for complying with the summons. Refer the request to your Deputy or District Registrar. An external process server may need to be engaged and the payment of expenses authorised.

#### 6.1.5 Objecting to a summons or requesting a variation

A party can object to a summons being issued, for example because the information sought in the summons is not relevant to the issues before the Tribunal. A person who has been summoned can also object to the summons, for example because it is oppressive or too onerous (in terms of costs, time or effort) for the person to comply with it. There may also be confidentiality, client legal privilege or public interest reasons for objecting to a summons.

The objection should be made in writing.

The objection should be referred to a member – usually the member who will be presiding at the hearing or a return of summons hearing.

The member may require the parties to attend a summons hearing to deal with the objection (see [XR 6.1.11](#) below). If the person summoned has objected, that person may also be required to attend the hearing. The member might first ask for the parties to indicate their views about the objection. If all parties agree in writing that the summons should be revoked or set aside, the member may decide to revoke it or set it aside without holding a hearing.

Sometimes a party or a person summoned may request a variation of the summons. For example, this may be a request for an extension of time for complying with the summons, or a request to limit the scope of the summons. Such a request should be

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<sup>7</sup> Regulation 15(b) of the AAT Regulations.

<sup>8</sup> The proposed amended regulation will provide a specific power for a member to order the payment of additional expenses to the person summoned.



forwarded to the member or officer who issued the summons to decide whether the variation is appropriate, in consultation with the parties<sup>9</sup>. Any issues that cannot be resolved may need to be dealt with by a member at a return of summons hearing (see XR 6.1.11 below).

### 6.1.6 Complying with the summons (producing documents)

A person summoned to produce documents can comply with the summons by producing the documents to the Tribunal by 4pm on the day before the return date.

Original documents are not generally required unless specified in the summons. In general, copies are preferred as these can be destroyed at the conclusion of the proceedings, which saves the Tribunal costs in returning documents to the person summoned. Documents can also be provided in electronic formats<sup>10</sup>.

A person can also comply with the summons by advising the Tribunal in writing by 4pm on the day before the return date that they do not have the documents that were requested in the summons.

It is the responsibility of the party who requested the summons to follow up with the person summoned to ensure that the person produces the documents.

[REDACTED]

#### **If the person produces the documents subject to an objection:**

At the time a person produces documents, they may raise an objection to one or more of the parties inspecting the documents.

[REDACTED]

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<sup>9</sup> Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to issue any instrument, the power shall be construed as including a power to revoke, amend, or vary such an instrument.

<sup>10</sup> XR The electronic formats accepted will be described in the 'Notice to the person summoned' once facilities are available in all registries.

The objection should be referred to the member to consider prior to issuing the inspection orders. Such an objection may need to be dealt with at a return of summons or directions hearing. The parties and the person summoned may be required to attend.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **If a person fails to comply with the summons:**

There are serious penalties for failing to comply with a summons without a reasonable excuse – up to 30 penalty units and/or 6 months imprisonment.

The Tribunal has no power to deal with a person who does not comply with a summons. Any possible offence must be dealt with by the Commonwealth Director of Public Prosecutions (DPP).

If a party fails to comply with a summons and a member wishes to pursue the matter further, the file, the summons and all details of the matter must be referred to the Assistant Registrar who can refer the matter to the DPP.

If the person summoned simply needs more time to produce the documents, the Tribunal may be able to vary the summons by changing the return date (see **XR 6.1.5** above in relation to requesting a variation).

#### **6.1.7 Generating and issuing inspection/access orders**

The parties to an application are not entitled to inspect any summons documents until a member makes an order allowing the inspection.

Where inspection of documents is dealt with at a return of summons hearing, the member presiding at that hearing may make orders orally or in writing allowing the parties to inspect the documents. Where orders are made orally, a written order should also be made as a record for the file – this can be generated easily using the standard orders facility.

[REDACTED]

[REDACTED]

[Redacted]

- | [Redacted]
- | [Redacted]
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- | [Redacted]
- | [Redacted]
- | [Redacted]
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[Redacted]

### 6.1.8 Inspecting and copying documents

A party or representative can inspect and make copies of documents at any time on or after the dates shown in the order. You should always check the inspection order

before letting a party see the documents. A party or their representative can only inspect documents where an order has been made by a tribunal member authorising the inspection.

The party or their representative should provide identification when they come to inspect the documents. It is important to ensure that parties do not remove any original summons documents from the Tribunal's premises following inspection (except where uplift of documents has been authorised – see below). The following steps should be taken:

### When a person comes to inspect summons documents

Ask the person whether they are a party to the application

If they are not a party to the application, explain that they are not entitled to inspect the documents

If they say they are a party to the application or a party's representative, ask them to show identification

Obtain the file and check the orders to see which document the party is allowed to inspect

Open each envelope the party would like to inspect and check how many documents are contained in the envelope

Give the party or representative the envelopes, which they are entitled to inspect

If the representative is not the party's legal representative, you should stay with them while they inspect the documents

When the party returns the documents, check each envelope to make sure that all documents have been returned

Place the envelopes with the file



The party may have to pay a fee for copying the documents using the Tribunal's photocopiers. The fees vary from registry to registry. The fee can be waived in appropriate circumstances by a Deputy Registrar upon receipt of a request for fee waiver.

If a party is unable to attend the Tribunal to inspect the documents during their exclusive inspection period, they may request a variation of the order (see below at [XR 6.1.10](#)).

If an unrepresented party is unable to attend the Tribunal at all due to distance, disability or other exceptional circumstances, the Tribunal may make copies of the summons documents and post them to the unrepresented party. First check with the Deputy or District Registrar whether this is appropriate.

#### Documents in electronic formats

Where documents have been received on a CD or DVD, the Tribunal may make a copy of a disc for the party upon request. A fee may be charged for this service.

Parties may also inspect documents in electronic formats on the computer terminal provided for this purpose.

#### Uplift of summons documents

In general, parties may not remove summons documents from the Tribunal premises. However, in exceptional circumstances, a legal practitioner may be allowed to uplift (remove) the documents. This might occur for example where there is an extremely large quantity of summons documents and it would be too onerous for the party to copy them at the Tribunal premises.

Uplift should only be allowed where an order has been made by a member and the solicitor has signed an undertaking guaranteeing the safe keeping of the documents and their return by a specified date.

[REDACTED]

[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

#### 6.1.9 Objecting to a party inspecting the documents

A party that has first access to documents can object to another party inspecting those documents. A person who produces documents under summons may also object to one or more of the parties seeing some or all of those documents.

The most common grounds for objection are confidentiality/privacy, client legal privilege and public interest:

- **Confidentiality/privacy** – there may be information among the summons documents that is private or confidential in nature. It might be information about the parties, their friends or family, or commercially sensitive information. It may be appropriate to restrict inspection of those documents to protect the confidential/private information from disclosure to the other parties.
- **Privilege** – communications between solicitors, their clients and third parties may be subject to client legal privilege where they were created for the purpose of providing legal advice or services relating to actual or anticipated litigation, for

example, a letter from a solicitor to a client or a medical practitioner about the client's claim for compensation.

- **Public interest** – the summons documents may contain information relating to government activities that should be protected from disclosure to the parties on grounds of public interest. An objection of this kind will usually be raised by a government body when it produces documents to the Tribunal and will be dealt with at the time of issuing the original document inspection order (see [XR 6.1.6](#) above).

The person wishing to object to the inspection should make any objections in writing. The objection should clearly identify which specific documents should be restricted. Often the objection relates to only a small number of documents out of a larger set.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**When an objection is lodged, the inspection orders relating to the documents that were the subject of the objection are suspended.** This means that nobody is allowed to inspect those documents until the suspension is lifted or new orders are made.

Where the objection only relates to selected documents out of a larger set of documents produced, you should separate the specified documents from the larger set. The inspection orders remain in force for all documents which are not subject to the objection, and parties can still inspect those documents in accordance with the inspection orders made.

If a party wishes to inspect documents for which the inspection orders are suspended, the party can apply to the Tribunal in writing to have the orders reinstated or new orders made. When such an application is received, refer the file to

a member to deal with at the next return of summons hearing or by a telephone directions hearing. The member may make an order upholding the objection or re-instating the inspection.

### 6.1.10 Varying inspection orders

A party may also wish to request a variation of inspection orders that have been made. For example, the party with first access to documents may not be able to attend the Tribunal to inspect the documents during their period of exclusive access, and may wish to have that period extended.

Any request to vary inspection orders should be made in writing. The views of the other parties to the proceedings should be obtained. The request should then be referred to the member who made the orders, or to another member if the member who made the inspection order is unavailable.

Where the parties are in agreement, and the member considers that the variation is appropriate, the member may make a varied order, or may revoke the original order and make a new order in the absence of the parties.

Where the parties do not agree, the variation request may need to be dealt with at a directions hearing or return of summons hearing.

### 6.1.11 Return of summons hearings

In some cases, parties or a person summoned may be required to attend a return of summons hearing in person. Where attendance is required, standard listing notices should be sent advising details of the hearing:

Document Type: Listing Notices

Document Title: Listing Notice

At the hearing, the member can deal with objections to summonses, requests to vary summonses, objections to inspection of documents and requests to vary inspection orders (see [XR 6.1.5](#), [6.1.6](#), [6.1.9](#) and [6.1.10](#) above).

The member may also make orders permitting parties to inspect documents that have been produced.

[REDACTED]

### 6.1.12 Return or destruction of summons documents

If an application is finalised by consent of the parties, summons documents may be returned or destroyed immediately. Otherwise, the documents should be retained for 8 weeks after the application is finalised. If an appeal is lodged against the Tribunal's decision, the documents should be retained until the conclusion of the appeal and any subsequent appeals.

[REDACTED]



If the documents are original documents or the person summoned requested that the documents be returned to them, they should be returned. If the person summoned does not require the documents to be returned to them (e.g. the documents are photocopies and the person still has the originals), the documents should be destroyed. The appropriate action should have been recorded at the time the documents were received.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

If a person asks the Tribunal to return a document produced under summons before the application is finalised (for example, a doctor may ask for an original medical report to be returned for the purpose of treating the patient), do not return it unless directed by a member to do so.

### 6.1.13 Using summons documents in other proceedings

Where documents have been summoned for use in particular proceedings, the parties to those proceedings are under an implied undertaking not to use the documents for any other purpose.

Where a party wishes to use documents summoned in one proceeding in another proceeding, they should make a request in writing to be released from this implied undertaking. The request should be referred to a Tribunal member, who has the power to make an order releasing the party from the implied undertaking.

## 6.2 Summonses to give evidence, or to give evidence and produce documents

A summons to give evidence (Form 7), or give evidence and produce documents (Form 8), is usually issued shortly before the hearing of an application.

The procedures for requesting, issuing, serving and objecting to a summons to give evidence are the same as for summonses to produce documents (see [XR 6.1](#) above), except there is no fee payable to the Tribunal for issuing the summons.

When checking the summons for issuing, ensure that the date, time and place described on the summons match the details of the hearing at which the person is to give evidence.

The party requesting the issue of a summons to give evidence is responsible for payment of witness fees and allowances to the person summonsed. The details of the fees and allowances payable to a person summoned to appear as a witness in the Tribunal are set out in Schedule 2 to the AAT Regulations.

Where the summons requires a person both to give evidence and to produce documents, the person will usually bring the documents to the hearing. If the person produces the documents in advance of the hearing, notify the member presiding at the hearing. The member may wish to make orders allowing the parties to inspect the documents prior to the hearing if there is sufficient time before the hearing.

If a person fails to comply with a summons to give evidence, the presiding member may wish to refer the failure to comply to the Assistant Registrar for possible referral to the Director of Public Prosecutions (see [XR 6.1.6](#) above).