

## New AAT Practice Directions effective September 2013

### Key Issues

The AAT has issued two new practice directions:

- The Practice Direction relating to the Use of Video Surveillance Material requires relevant video surveillance material to be disclosed prior to the hearing of a matter in hearings commencing on or after 28 October 2013
- The Practice Direction relating to Release from the Implied Undertaking sets out when and how a request to be released from the implied undertaking should be made

### Practice Direction relating to the Use of Video Surveillance Material

Ordinarily, all evidence on which parties intend to rely must be filed and served prior to the hearing of a matter. Prior to this Practice Direction, an exception was made for video surveillance material, which could be revealed for the first time at hearing, due to the nature of the evidence.

In order to fulfil its obligation to provide a fair, just, economical, informal and quick resolution to disputes, the Tribunal has issued a Practice Direction which requires video surveillance material to be disclosed, to allow parties a proper opportunity to consider and respond to the material.

The requirements of the Practice Direction apply unless the party seeking to adduce the video surveillance material can provide the Tribunal with persuasive reasons that the particular circumstances of a case require the Tribunal to make a direction to the contrary.

The key points of the Practice Direction are as follows:

- If video surveillance material is in the possession or control of the decision maker at the time of lodging the T-Documents, and if the video surveillance material is relevant to the review of the decision, copies of the video surveillance footage must be lodged with the Tribunal with the T-Documents. A copy of the video surveillance material must also be provided to the other parties unless the decision maker applies for a direction to the contrary. A copy of that application must be provided to the other parties.
- If a party intends to rely on video surveillance material at the hearing of a matter in circumstances where the video surveillance material has not already been provided to the Tribunal as part of the T-Documents, the video surveillance material must be filed and served at least 28 days before the first day of hearing, or the party will not be permitted to rely on the material at the hearing.

Interestingly, the Practice Direction is contrary to past decisions of the Full Federal Court which indicate that an employer would be denied natural justice if it were not permitted to show video surveillance material for the first time in cross-examination, and ask questions based upon the material. It will be interesting to see whether the Practice Direction will be challenged on this basis.

The Practice Direction is effective from 16 September 2013, and applies to hearing that commence on or after 28 October 2013.

## Practice Direction relating to Release from the Implied Undertaking

The Implied Undertaking arises in relation to any documents provided to the Tribunal under compulsion. Documents provided under compulsion include documents in the T-Documents, documents lodged pursuant to a Tribunal direction (such as witness statements or medical reports) and documents produced under summons.

The Implied Undertaking requires the party who obtains such documents not to use those documents for any purpose other than that for which they were given, unless the party obtains the consent of the party who produced the documents, or leave of the Tribunal. Breach of the Implied Undertaking can constitute a criminal offence.

Examples of when the Implied Undertaking might operate include:

- If documents were provided in a previous AAT proceeding which has since been finalised, and a party wished to use those documents for a subsequent AAT proceeding.
- If documents were summonsed in a current AAT proceeding, and further concurrent Applications were made and joined to those proceedings.
- If documents were summonsed in a current AAT proceeding for the purpose of obtaining a medical report, which was sought to be used in the management of the claim, as well as the AAT proceeding.

The key points of the Practice Direction are as follows:

- Where the Tribunal directs that two or more Applications are to be heard concurrently, documents that have been provided to the Tribunal in one Application are permitted to be used in relation to any of the other Applications without the need to seek leave from the Tribunal or the permission of the party who produced the documents.
- Requests to be released from the Implied Undertaking must be in writing, specify the documents for which the release is sought, identify the purpose of the release and who will use the documents, and if possible, specify whether the person to whom the documents

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relate (usually, the Applicant) consents to the release from the Implied Undertaking. A copy of the request should be sent to the other parties, unless it is not necessary or appropriate.

The Practice Direction is effective from 16 September 2013

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