

QCAT Practice Direction No 6 of 2011

Access to documents in applications for review and referral matters

Effective: 6 January 2012

In some proceedings in the tribunal, parties may be required to file material. In other proceedings, parties may be required to provide material. This discrepancy can lead to an inconsistent approach as to when that material is available to be inspected or copied as part of the record for the proceeding. This practice direction will ensure that there is a consistent practice in the tribunal about that material.

1. This practice direction applies to applications for administrative review in the tribunal's review jurisdiction, and to referrals of matters to the tribunal in the tribunal's original jurisdiction.
2. This practice direction does not apply to matters arising from a referral to the tribunal under the *Anti-Discrimination Act 1991*, the *Property Agents and Motor Dealers Act 2000* or the *Retail Shop Leases Act 1994*.
3. Unless otherwise ordered, the tribunal will direct the decision-maker or referral agency to file and give to every other party to the proceeding¹:
 - a. An indexed and page numbered bundle, in date or other logical order, of any documents or other things in its possession or control that may be relevant to the tribunal's review of the decision, or consideration of the matter.
 - b. For applications for administrative review, a written statement of reasons for the decision being reviewed.
4. Any documents or other things filed by the parties in compliance with the tribunal's directions made under this practice direction form part of the record for the proceeding under section 230(1) of the *Queensland Civil and Administrative Tribunal Act 2009*.
5. Parties should be aware that under section 230(3) of the *Queensland Civil and Administrative Tribunal Act 2009* a non-party to a proceeding may inspect and obtain a copy of any document or thing in the record for the proceeding, unless inspection, copying, publication or disclosure has been prohibited under a non-publication order or under an enabling Act.

¹ For a discussion of the issues relevant to providing copies of material to all parties in a proceeding, see *Crime and Misconduct Commission v Deputy Commissioner Queensland Police Service and Chapman* [2010] QCAT 319.

6. The decision-maker or the referral agency should consider whether there is any valid claim to privilege from disclosure in respect of any document before complying with any tribunal directions made under this Practice Direction.²
7. Parties should consider whether any material filed in compliance with the tribunal's directions as made under this practice direction should be subject to a non-publication order, taking into account the grounds set out in section 66 of the *Queensland Civil and Administrative Tribunal Act 2009* or any relevant enabling Act.
8. No inspection by a non-party will be permitted, and no copy will be provided to a non-party, of any material filed in compliance with the tribunal's directions as made under this practice direction for a period of 5 business days from the date the material is filed.
9. If the tribunal is considering whether a non-publication order should be made in respect of the material filed in compliance with the tribunal's directions as made under this practice direction, whether by application or on its own initiative,³ no inspection or copying will be permitted by a non-party while that matter is being determined.
10. For any proceedings commenced prior to the date of this practice direction, where a request has been made by a non-party to inspect or copy the record for the proceeding, parties will be advised accordingly, and allowed a period of 5 business days to make an application for a non-publication order. No inspection or copying will be permitted by a non-party during that 5 day period, or while any application for a non-publication order is being determined.
11. Where the tribunal makes a non-publication order, it will make the following further directions:
 - a. The parties must file in the tribunal a redacted version of any material they have filed in the proceedings, which removes any material which may not be published pursuant to the non-publication order made by the tribunal;
 - b. The original version of the material filed in the tribunal will be sealed and noted "Not to be copied or inspected without order of the tribunal".

² Parties should consider the application of sections 21(6) and 62(5) of the *Queensland Civil and Administrative Tribunal Act 2009* to any claim for privilege.

³ *Queensland Civil and Administrative Act 2009*, s 66(3); *Adoption Act 2009*, s 307N(5); s 99ZD(5) *Child Protection Act 1999*; *Legal Profession Act 2007*, s 656D.

12. Further directions for the proper conduct of the proceeding will be made as required.

*Justice Alan Wilson
President
23 December 2011*