

# Applying for documents to be produced by a 'non-party' before a Tribunal Hearing



Generally, disclosure of documents between the parties to a complaint should be completed before applying for non-party disclosure. Disclosure usually takes place after a Tribunal conciliation conference. Efforts should also be made to obtain the documents without an order of the Tribunal.

## **What is a 'non-party'?**

A non-party is a term used to describe a person, organisation or business that is not named as either a Complainant or a Respondent to the complaint in the Tribunal. In other words, the person or entity is not a party to the complaint in which you are involved.

## **What you need to file in the Tribunal:**

The Applicant must file:

1. an Application for Order (Form 2);
2. an affidavit or statement in support of the application; and
3. a Draft Order to Attend form (Form 7).

The forms are available at <http://www.adcq.qld.gov.au/tribunal/forms.html>, or from the Tribunal Registry.

## **The Application and Draft Order Forms:**

The Form 2 (Application) and the Form 7 (Draft Order to Attend) will contain similar information, however, the Form 2 is the formal document that you use to apply to the Tribunal for the orders sought, and the Form 7 is the document that is signed by the Tribunal Member or Registrar if your application is granted. The Form 7 should not be signed by anyone other than a Tribunal Member or the Tribunal Registrar.

In the past, some Applications have been a two-step process:

1. The Applicant would apply to the Tribunal for the documents to be produced to it; then
2. The Applicant would make a subsequent Application to the Tribunal to view the documents.

In order to save time as well as costs, you should make it clear that you are applying for orders for the documents to be produced to the Tribunal, and then to view the documents (at a time, date and place to be arranged in consultation with the Tribunal Registry) and take copies of them.

### **The Supporting Affidavit:**

A supporting affidavit or statement should be filed at the time you file your application. In this affidavit you should attempt to at least set out the following to the best of your ability:

1. evidence of the probable existence of the documents or class of documents of which production is sought;<sup>1</sup>
2. evidence that the documents or class of documents in question are within the possession or power of the 'non-party';<sup>2</sup>
3. evidence, or at least a submission, which demonstrates that the documents sought are directly relevant to the matters in issue between the parties;<sup>3</sup>
4. evidence that there is not available to the applicant another reasonably simple and inexpensive way of proving the issues that are sought to be proved by obtaining the documents.<sup>4</sup>

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<sup>1</sup> *Waite v King's College* [2005] QADT 1 at paragraph 18.

<sup>2</sup> *Waite v King's College* [2005] QADT 1 at paragraph 19.

<sup>3</sup> *Waite v King's College* [2005] QADT 1 at paragraph 20.

<sup>4</sup> *Waite v King's College* [2005] QADT 1 at paragraph 21.

### **Filing and Serving the Application and Supporting Material:**

When filing any document in the Tribunal, you must file one original, plus at least two copies of the material in the Tribunal. The original plus one copy are kept on file in the Tribunal. The remaining copy is stamped with the Tribunal's seal and returned to you. You must serve this copy on the other party to the complaint.

### **Hearing the Application:**

The Registrar will usually make an order giving the other party to the complaint the opportunity to file and serve material or submissions in response to the Application.

The Application, the supporting documents and any material from the other party is then given to a Tribunal Member for consideration.

The Tribunal Member will either:

1. Decide the Application on the papers – this means there is no public hearing about the Application and the Member will make a decision based on the material that has been filed in relation to the Application; or
2. Set the Application down for hearing – this means that the parties are required to appear before the Tribunal and argue why the application should or should not be granted.

### **Relevant Case Law:**

Two cases that should be considered before making an application for non-party disclosure are:

- *Waite v Kings College* [2005] QADT 1; and
- *RK v State of Queensland & Ors* [2007] QADT 24.

These cases are available at <http://www.austlii.edu.au/au/cases/qld/QADT/>.