PS LA 2007/17 (Withdrawn) - Tax technical litigation in the Administrative Appeals Tribunal

This cover sheet is provided for information only. It does not form part of *PS LA 2007/17 (Withdrawn) - Tax technical litigation in the Administrative Appeals Tribunal*

This practice statement is withdrawn with effect from 20 November 2009 and has been replaced by PSLA 2009/9

This document has changed over time. This version was published on *20 November 2009*

Generated on: 26 November 2026, 07:40:54 AM

Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2007/17

This practice statement is withdrawn with effect from 20 November 2009 and has been replaced by PSLA 2009/9.

FOI status: may be released

This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax Office staff must follow their business line's escalation process.

SUBJECT:	**Tax technical litigation in the Administrative Appeals Tribunal**
PURPOSE:	**To outline the best practice in carrying on litigation in the Administrative Appeals Tribunal.**

Table of contents **Paragraph**

STATEMENT	**1**
General obligations to be adhered to throughout the proceedings	11
Contempt	14
Jurisdiction	15
Commencing the process	17
Filing and record keeping	21
The Strategic Internal Litigation Committee (SILC)	25
Section 37 Tribunal documents	29
Filing of Section 37 Tribunal documents	32
Instruction SILC	34
Engaging external legal providers	37
AAT conferences	39
Prior to the first conference	45
First conference	46
Prior to the second conference	51
Second conference	55
Hearing	59
Decision handed down	64
Appeal	66
Other matters	67
Summons	67
Directions hearings	69

Adjournments 71
Settlement 74
Discontinuance or dismissal 81

STATEMENT

1. The procedures set out in this practice statement are a general guide to all officers involved in legal proceedings on behalf of the Commissioner in the Administrative Appeals Tribunal (AAT) in tax technical issues which arise generally under Part IVC of the *Taxation Administration Act 1953* (TAA).[1]

2. Law Administration Practice Statements PS LA 2007/18 and PS LA 2007/19 provide guidance for officers involved in legal proceedings in the Federal Court and High Court.

3. Officers should generally comply with all aspects of this practice statement but should apply common sense in a given situation. When in doubt about any aspect of the management of a case in the AAT, officers should seek guidance from any of the Assistant Commissioners, Litigation within the Legal Services Branch (LSB).

4. Those involved in AAT litigation may include LSB officers and officers from the Tax Counsel Network (referred to as Tax Counsel), the respective business line (BSL) officers, Centres of Expertise, and external legal service providers, including counsel. It is important that all of these parties communicate effectively and work collaboratively in order to ensure that the Commissioner adheres to all of the laws, policies and guidelines with which the Commissioner must comply as a model litigant in the AAT.

5. The roles of each of the areas involved in litigation are set out in PS LA 2007/12 Conduct of Tax Office Litigation in Courts and Tribunals. Importantly, LSB is responsible for managing the litigation process and ensuring that as a litigant, the Commissioner acts in accordance with all relevant internal and external policies and guidelines. Tax Counsel and the Centres of Expertise, where involved, must ensure that the ATO view is maintained in the way the case is prepared for hearing. The business lines retain risk ownership of the case.

6. Where Tax Counsel is not involved in litigation, LSB will be the final decision maker on all issues arising in the course of the litigation, including the technical argument and issues relating to the conduct of the litigation, such as the litigation strategy or issues concerning Tribunal processes. Although the BSL officer will be consulted, the decision will ultimately rest with LSB. If members of the litigation team cannot resolve an issue, it should be escalated to the Senior Tax Counsel (Strategic Litigation)[2] or an Assistant Commissioner, Litigation. Depending on the significance of the issue, it may need to be escalated to Chief Tax Counsel or the Deputy Chief Tax Counsel.

7. The management of AAT litigation by LSB includes an obligation to ensure that all officers, including external solicitors and counsel acting for the Commissioner in relation to the proceedings are aware of and act in accordance with the relevant policies and guidelines.

[1] This includes reviewable decisions under section 334 of the *Superannuation Industry (Supervision) Act 1993.*

[2] Senior Tax Counsel (Strategic Litigation) takes a corporate leadership role in relation to all strategic litigation and is located in Legal Services Branch. There is also a Senior Tax Counsel (Strategic Litigation) Indirect Taxes and a Senior Tax Counsel (Strategic Litigation) Aggressive Tax Planning. These latter positions are located in the Tax Counsel Network and have specialised areas of interest.

8. This practice statement outlines in chronological order the procedures required to be observed by officers in AAT matters. The procedures arise as a result of obligations in the:

- *Administrative Appeals Tribunal Act 1975* (AAT Act)
- Administrative Appeals Tribunal Regulations 1976
- AAT Practice Directions
- The Attorney-General's Legal Services Directions 2005
- Law Administration Practice Statements, and
- Other LSB and Tax Office directives.

9. This practice statement should be read in conjunction with the following:

- PS LA 2005/22 Litigation and priority technical issues
- PS LA 2007/2 Management of Decisions of Courts and Tribunals
- PS LA 2007/5 Settlements
- PS LA 2007/12 Conduct of Tax Office Litigation in Courts and Tribunals
- PS LA 2007/15 Briefing Counsel, and
- PS LA 2007/16 Risk Management in litigation.

10. All legislative references in this practice statement are to the AAT Act unless otherwise indicated.

General obligations to be adhered to throughout the proceedings

11. The Tax Office conducts and manages its litigation in accordance with its obligations under the law, the Attorney-General's Legal Services Directions 2005, relevant Court and Tribunal rules and directions, and other relevant internal and external policies and guidelines.

12. One of the most important parts of the Legal Services Directions 2005 is the Model Litigant Guidelines contained in Appendix B. These guidelines require that the Commissioner and the external legal providers that represent the Commissioner act honestly and fairly in handling claims. All tax officers involved in litigation on behalf of the Commissioner must be aware of and adhere to the specific obligations set out in the Model Litigant Guidelines. Officers must also ensure that all external legal providers are made aware of and act in accordance with them. Further details on the conduct of the Commissioner before the AAT can be found in PS LA 2007/12 Conduct of Tax Office Litigation in Courts and Tribunals.

13. Staff must be mindful of the requirement under subsection 33(1A) which requires decision makers to use their best endeavours to assist the Tribunal to make its decision in the proceedings. The object of the inclusion of the requirement is to allow the Tribunal to conduct its reviews as efficiently as possible.

Contempt

14. The law of contempt applies to the AAT because of paragraph 63(5)(b), which provides that a person is guilty of contempt of Tribunal if a person engages in conduct, and:

the person's conduct would, if the Tribunal were a court of record, constitute a contempt of that court.[3]

Despite paragraph 63(5)(b), the Commissioner will not be in contempt of the AAT if he uses his powers to obtain material for the purpose of placing it before the Tribunal. This is because the AAT does not make a judgment for or against a particular party, but stands in the shoes of the Commissioner and so may use any material put before it.[4]

Jurisdiction

15. The AAT does not have a general power to review decisions made under Commonwealth legislation. The AAT can only review a decision if an enactment provides that applications may be made to the AAT.[5] In taxation matters the relevant decision will generally be the determination of an objection under section 14ZZ of the TAA, however, some of the legislation administered by the Commissioner provides for an application directly to the AAT.[6]

16. The AAT is split into several divisions: the relevant one for tax technical matters is the Taxation Appeals Division. When hearing an application for review of certain taxation decisions, generally where the tax in dispute is less than $5,000 or where there has been a refusal by the Commissioner to extend time to lodge an objection, the Taxation Appeals Division is known as the Small Taxation Claims Tribunal (STCT).[7] Applications for the relief from tax liability on the ground of serious hardship[8] are also heard in the STCT.

Commencing the process

17. The process is commenced when an application is made to the AAT for review of a decision. The AAT notifies the Commissioner pursuant to subsection 29(11) that an application has been made for a review of a decision, including a copy of the application.

18. LSB must advise the appropriate BSL within 24 hours of receiving the application.

19. On receipt of the application, the LSB Business Manager will allocate the matter to an LSB officer. The factors which the LSB Business Manager considers when allocating a case include:

- whether it is a significant issue
- whether a particular LSB officer has other similar issues or prior involvement
- the knowledge base of LSB officers
- any input from the BSL, and
- the caseload of LSB officers and general resource availability.

20. The BSL case officer will prepare the documents that the Commissioner is required to lodge with the AAT pursuant to section 37.

---

[3] See definition of Tribunal at section 3.
[4] *Saunders v. DC of T* 88 ATC 4349; 19 ATR 1289.
[5] Section 25.
[6] For example, a decision to cancel a tax file number – section 202F of the *Income Tax Assessment Act 1936*.
[7] Section 24AC.
[8] Subsection 24AC(1).

Filing and record keeping

21. Upon receipt of a new AAT matter, the LSB officer allocated the case is responsible for maintaining a paper file that records all actions taken with the litigation. The paper file is to be kept up to date; all relevant documents and correspondence must be attached. The record keeping requirements set out in PS CM 2005/27 Record keeping and the LSB file management protocol[9] must be adhered to at all times by the LSB officer.

22. The BSL officer will, at the request of the LSB officer, provide all information and documents relevant to the appeal.

23. To ensure that cases are appropriately managed in the absence of the LSB officer, all current record keeping systems, or other databases and callover spreadsheets must be kept up to date. These systems ensure that reports can be generated, cases can be found, issues can be escalated and corporate and statutory reporting requirements complied with.

24. The LSB officer must record the case in ATOlegals if an external legal service provider is engaged. This system enables electronic billing for our external solicitors. If counsel has been directly briefed without an external solicitor's involvement, a new request in ATOlegals will need to be completed in respect of counsel's engagement, but billing will continue from paper invoices outside the system.

The Strategic Internal Litigation Committee (SILC)

25. SILCs are to be convened in the course of all tax technical litigation at critical stages. SILCs are generally called at the following stages of litigation:

    - Document Preparation SILC
    - Instruction SILC
    - Pre-hearing SILC
    - Post-hearing SILC
    - Pre-decision SILC
    - Decision SILC
    - Post-decision SILC, and
    - Appeal SILC.

26. Each SILC has a particular purpose in managing the litigation matter. The purpose of each is not set out in detail in this practice statement but references will be made to SILCs in relation to issues of specific relevance to AAT proceedings.

27. It is recognised that due to the fast timeframes set by the AAT, particularly in STCT matters, it is not always possible to convene every SILC for each litigation matter. Good judgment and consultation between the litigation team members is required to ensure continual good management of the case and that key decisions are made collaboratively. Although preferable, it is not always necessary to convene a SILC formally. A SILC can be conducted by phone. Officers should consider the practicalities of travel and time when organising a SILC.

[9] Which can be found on the LSB home page on the intranet.

28. The actual SILC can vary depending on the significance of the matter but will always include an LSB officer. The LSB officer should liaise with the BSL officer to determine all appropriate attendees. Depending on the particular case, it may include the following people:

- BSL officer, and their manager (where appropriate)
- Tax Counsel Network officer, or
- Centre of Expertise officer.

Section 37 Tribunal documents

29. Section 37 documents (commonly referred to as T documents) must be prepared by the BSL officer. These will be reviewed and lodged with the AAT by the LSB officer within 28 days of receipt of the section 29 notice[10] or 14 days for STCT matters.[11]

30. The Tax Office should make every effort to meet all timeframes set by the AAT. However, in circumstances where the LSB officer is unable to lodge the section 37 documents within the stipulated time frame they must request a realistic extension of time in writing from the AAT before the expiration of the relevant deadline with an adequate reason clearly explained.

31. In the event that a deadline set by the AAT is not met, the LSB officer must advise their manager as soon as they are aware that the timeframe has been breached. Officers should also ensure that appropriate safeguards are put into place so as to minimise the chances of similar breaches in the future.

32. The steps for preparation of section 37 documents are:

(a) The BSL officer sends through to the LSB officer the relevant documents including an electronic copy of the Draft Index of the documents within 14 days of receipt of the application for AAT matters and 7 days for STCT matters. The documents required include:[12]

i) the 'Reasons for Decision'

ii) the notice of the taxation decision objected against

iii) the taxation objection

iv) the notice of the objection decision

v) every other document that is in the Commissioner's possession or under the Commissioner's control and is considered by the Commissioner to be necessary to the review of the objection decision concerned, and

vi) an Index of all the documents lodged under subparagraph (v) .

(b) The LSB officer undertakes a quality review of the Draft Index (referred to in (vi) above) and the section 37 documents. The LSB officer also decides whether the 'Reasons for Decision' given as part of the objection decision can be used or whether a new statement of reasons is required. If the 'Reasons for Decision' is used, it is essential that at a minimum, it clearly and logically sets out the facts, issues and reasons for the decision. If this is not the case, a new statement of reasons is required which sets out in a logical manner the facts, issues

[10] Subsection 37(1).
[11] Section 37 requires that the Respondent file certain documents.
[12] Section 37 as modified by section 14ZZF of the TAA.

and relevant law. Each issue must be dealt with separately. The LSB officer must ensure that the documents are of a professional standard.

Filing of section 37 documents

32. The LSB officer files the section 37 documents with the AAT and also sends a copy to each party involved.[13] The AAT may request further copies as the matter proceeds to hearing.[14]

33. The LSB officer may file supplementary section 37 documents if all the necessary documents were not included initially.

Instruction SILC

34. The LSB officer should organise an Instruction SILC within 7 days of lodging the section 37 documents.[15] This SILC will include a general discussion on the litigation strategy (such as evidence, settlement possibilities and alternative dispute resolution/mediation). This discussion will also require a risk assessment of the case.

35. If there is a possibility that the facts of the case expose flaws in the reasoning underlying an ATO view, or if an ATO view has not yet been determined, this committee will be the forum to escalate the issue. If the underlying issue is not already the subject of a Priority Technical Issue (PTI), the SILC is the forum to consider whether the matter should be considered as a PTI or strategic litigation. This decision must be made by reference to PS LA 2003/10 The Management of 'Priority Technical Issues' and PS LA 2005/22 Litigation and priority technical issues.

36. For matters in the AAT, the Instruction SILC will include a discussion on who should be the appropriate advocate before the AAT. Depending on the nature and significance of the case, it may be appropriate to engage counsel either directly or through an external legal service provider to assist in the case. Generally, in less complex matters it would be appropriate for the LSB officer to conduct the case as the advocate.

Engaging external legal providers

37. As a result of decisions made at the Instruction SILC it may be necessary to engage external legal providers. It may be decided that counsel is required to appear for the Commissioner due to the complexity of the matter. Whether counsel is engaged directly by the LSB officer or via an external solicitor will depend on the particular circumstances of the case.

38. Whether or not counsel is directly briefed or briefed through an external solicitor, the LSB officer will consult the litigation team about the selection of counsel. Briefing counsel is subject to strict guidelines under the Attorney-General's Legal Services Directions 2005. Staff should familiarise themselves with the Directions and in particular the Engagement of Counsel guidelines in Appendix D, and follow the guidelines set out in PS LA 2007/15 Briefing Counsel.

AAT conferences

39. Conferences are a key part of the AAT's processes and are designed to assist the Tribunal achieve the dual purpose of attempting to obtain an agreed

[13] Subsection 37(1AE).
[14] Subsection 37(1AA).
[15] PS LA 2007/12 Conduct of ATO Litigation in Courts and Tribunals.

resolution where possible and ensuring that appropriate steps are taken to prepare for the hearing of those matters which are not otherwise resolved.

40. The AAT has issued a General Practice Direction and an STCT Practice Direction dealing with the conference process and matters leading up to hearings.

41. Conferences are part of the Tribunal's alternative dispute resolution (ADR) processes which also include mediation, neutral evaluation, case appraisal and conciliation.[16] It is the standard practice of the AAT to initially refer all matters to a conference. At the first conference or at anytime thereafter the AAT may, after consultation with the parties, decide to refer the matter to one of the other ADR processes.[17]

42. The parties must act in good faith in relation to the conduct of any ADR process.[18] Evidence of anything said or done during an ADR process is not admissible in any subsequent hearing unless the parties agree that the evidence is admissible.[19]

43. If the AAT indicates that it is considering referring a matter to one of the above ADR processes (outside of the normal conference process) the LSB officer should escalate the issue to the Part IVC Business Manager.

44. AAT conferences are generally attended by the LSB officer, and the external solicitor if involved. The LSB officer must advise all interested parties not in attendance as to the outcome of the conference.

Prior to the first conference

45. The LSB officer must file with the AAT and serve on the Applicant a Statement of Issues[20] at least one day prior to the first conference. The statement should be brief and set out the issues that the Commissioner considers are in dispute. These should be drafted in specific not general terms.

First conference

46. For non STCT matters, the first conference, which is usually by telephone although it can be in person, takes place approximately 6-10 weeks after the taxpayer lodges an application, and will usually be conducted by a Conference Registrar.[21]

47. At the first conference both parties will discuss the issues in dispute including whether further evidence is required and explore the possibility of settlement.

48. The LSB officer should be prepared to explain the Commissioner's view of the matter and in appropriate cases, ask the taxpayer for further evidentiary material that may assist the Tribunal in reaching a decision or persuade the Commissioner of the strength of their argument.

49. The Conference Registrar may set a timetable for the parties, including filing a Statement of Facts, Issues and Contentions and setting a date for a second conference. If it is clear that the matter is not going to settle then the

[16] Section 34A.
[17] The AAT has issued guidelines on the general principles it will consider in deciding whether to refer the matter to one of the other ADR processes, for example mediation.
[18] Subsection 34A(5).
[19] Section 34E.
[20] This is not required in STCT matters.
[21] Although it rarely occurs the conference can be conducted by a member of the Tribunal.

Conference Registrar may set a complete timetable for the preparation of the matter for hearing and no further conferences will be held.

50. For STCT matters the process is comparable although shorter. The first conference will be held approximately 4 weeks after the taxpayer lodges an application. There will only be one conference unless there is a real prospect that a second conference will facilitate settlement of the matter. If the matter does not settle through the conference process, then the Tribunal will usually set the matter down for hearing within 6 weeks.

Prior to the second conference

51. Unless there have been directions giving a different timeframe, the Applicant is to file a Statement of Facts, Issues and Contentions at least 14 days prior to the second conference and the Commissioner is to file a Statement in reply at least 7 days prior to the second conference. The AAT's General Practice Direction also requires that both parties' evidence be filed at this time. Although this may occur it is usually the case that a timetable for filing evidence is agreed to by the parties which may extend beyond the second conference.

52. The LSB officer is responsible for drafting the Statement of Facts, Issues and Contentions in reply and should ensure that it clearly and concisely sets out the issues, the facts upon which the Commissioner seeks to rely and any contentions to be drawn from those facts.

53. Alternatively, a Statement of Agreed Facts can be filed on behalf of both parties if the parties agree that the matter raises no factual or evidentiary issues. A Statement of Agreed Facts should only be used after careful consideration of all the particular facts. The litigation team must consider whether such a Statement would change the nature of the contentions and allow interpretations of the law to be canvassed. A Statement of Agreed Facts has the advantage of saving time and allowing the parties to focus on the issues in contention. However, it should only be used where the team is confident that there are no ambiguities in relation to the facts.

54. Where counsel is engaged, either directly or via an external solicitor, then depending on the nature of the case both the external solicitor and counsel may be involved in drafting and settling the Statement of Facts, Issues and Contentions or Statement of Agreed Facts. Final approval of the document rests with LSB or Tax Counsel if they are involved and the BSL should always be consulted.

Second conference

55. The second conference is usually held 12-16 weeks after the first conference.

56. During the second conference the parties discuss the merits of each case which have been detailed in the parties' respective Statement of Facts, Issues and Contentions, consider any additional evidence which has been filed and explore the possibility of settlement.

57. If the matter does not settle and it is considered that further conferences will not progress the matter then the Conference Registrar will make any further directions required for preparation of the matter for hearing and direct the parties to file Hearing Certificates.

58. The LSB officer will complete and file the Hearing Certificate with the AAT as soon as possible which confirms that in our view, the matter is ready for hearing or will be ready for hearing in accordance with the timetable or directions that have been made. The Hearing Certificate also indicates which

witnesses will be called, which of the Applicant's witnesses will be cross-examined, an estimate of the length of the hearing and any unsuitable dates.

Hearing

59. When the LSB officer is appearing as advocate they will usually file written submissions to assist the Tribunal and make it easier to explain the ATO view. If the matter is a simple one it may not be necessary to file written submissions. The LSB officer should draft the submissions in collaboration with the relevant stakeholders and these should be cleared by the LSB Business Manager or any other officer nominated by the LSB Business Manager before they are filed. Submissions, whether in writing or provided orally from the bar table, should always be consistent with any articulated ATO view.

60. Where counsel is briefed, the LSB officer will ensure that a conference or conferences are arranged with counsel (and our external solicitor, if involved) in anticipation of the hearing to ensure that the case is properly prepared. Allocation of responsibility for any specific tasks should be clearly outlined to ensure that the Commissioner's case runs as smoothly as possible.

61. If counsel is briefed, the LSB officer is to attend the hearing with our external solicitors (if instructed on the matter) so that any necessary instructions can be provided in a timely manner. Depending on the nature of the case, it may also be necessary for the BSL officer and Tax Counsel to attend, however the efficient and ethical use of Commonwealth resources should be considered. Prior to the hearing, the LSB officer should be contacted if officers unrelated to the case are interested in attending the hearing.

62. Where counsel is appearing for the Commissioner, they will prepare the submissions and finalise them after comments from all relevant stakeholders. The LSB officer should ensure that counsel's first draft of submissions is provided to the LSB officer in sufficient time for relevant stakeholders to provide comment before the final submissions are filed and served. Where an external solicitor is involved they will be the conduit to counsel.

63. At the conclusion of the hearing, the LSB officer is to advise all interested parties not in attendance whether the decision has been reserved or handed down.

Decision handed down

64. The AAT will usually notify the LSB officer when a decision is to be handed down with approximately one or two days notice. When a decision is handed down, the LSB officer should forward a copy of the decision to the BSL case officer, Tax Counsel and any other interested parties.

65. The decision management process is to follow the requirements of PS LA 2007/2 Management of Decisions of Courts and Tribunals.

Appeal

66. An appeal against a decision must be lodged in the Federal Court (and in some limited circumstances to the Full Federal Court) within 28 days of the AAT decision being handed down. For appeals in the Federal Court, refer to PS LA 2007/18 Tax technical litigation in Federal Court matters.

Other matters

Summons

67. Where additional evidence is required the LSB officer may request the AAT to issue a summons to a person to appear at a hearing to:[22]

    (a) give evidence, or

    (b) give evidence and produce books, documents or things in their possession, custody or control.

68. In respect of a summons to produce documents, the AAT will generally have the summons returnable at a return of summons hearing held once a month.

Directions hearings

69. The LSB officer can request the AAT to hold a directions hearing before a member of the AAT if specific directions are required in a matter,[23] for example if the Applicant is not complying with the AAT General Practice Direction or directions made by a Conference Registrar in respect of the filing of evidence or other statements.

70. The written request should set out the reason for which the directions hearing is sought.

Adjournments

71. The AAT has a practice of not setting a matter down for hearing until it is satisfied that it is ready for hearing or that a fixed timetable is in place to ensure that it will be ready before the hearing date. Accordingly, once a matter has been listed for hearing before the AAT an adjournment will not be granted unless the party requesting the adjournment can satisfy the Tribunal that it should be granted.

72. The matters that the AAT will take into account in deciding an application for adjournment are set out in the AAT's Listing and Adjournment Practice Direction.

73. Before any LSB officer makes an application for adjournment it should be discussed with the Part IVC Business Manager.

Settlement

74. If both parties agree to terms of settlement then the LSB officer is to lodge the agreement under section 42C,[24] signed by both parties to the settlement. The LSB officer must consider in every case whether the section 42C agreement made by the parties relates to a settlement for the purposes of the Code of Settlement Practice.[25]

75. Although the possibility of settlement would have already been canvassed at the Instruction SILC, the possibility of settlement may arise at any stage throughout the proceedings.

---

[22] Subsection 40(1A).
[23] Subsection 33(1A).
[24] Or an agreement under section 34D if the parties have agreed in the course of an alternative dispute resolution process.
[25] Where the agreement represents a genuine change of view by the Commissioner as to the facts or the application of the law there would not ordinarily be a settlement for the purposes of the Code of Settlement Practice.

76. The litigation team should refer to PS LA 2007/5 Settlements and follow the guidelines if it appears that settlement is likely to occur.

77. If the section 42C[26] agreement sets out the terms of an agreement representing a genuine change of view by the Commissioner and not a settlement for the purposes of the Code of Settlement Practice, it can be signed by the LSB officer with carriage of the case, whether or not the officer is authorised to conclude settlements. LSB officers should always confer with their manager to confirm that the agreement represents a genuine change of view and not a settlement.

78. Once a matter is in litigation, the decision whether a case should be settled or conceded rests with Tax Counsel, or where Tax Counsel is not involved, LSB. It is expected that in most cases a consensus will be reached between the relevant stakeholders.

79. If the agreement falls under the Code of Settlement Practice, and there is agreement on all issues, the LSB officer or Tax Counsel will endorse the settlement submissions prepared by the BSL. Where there is disagreement between the LSB officer or Tax Counsel and the BSL officer on an issue concerning settlement, the matter will be escalated to the Assistant Commissioner, Litigation. Where there is agreement about the resolution of the case, any settlement Deed will be signed off by the relevant BSL Senior Executive Service (SES) officer. If the issue is escalated for a final view within the Law Sub-plan, the SES who is the final decision maker in the Law sub-plan will sign the Deed.

80. Where Tax Counsel is involved in the matter, they will make any decisions relating to settlement. If the Tax Counsel is at the SES level, they should sign the relevant Deed. However, if the Tax Counsel involved is not at the SES level, then it should be escalated to the relevant SES officer in the Tax Counsel Network.

Discontinuance or dismissal

81. The Applicant may withdraw the application by writing to the AAT advising of the withdrawal.

82. The AAT may also dismiss an application where the Applicant fails to appear, to proceed with the application or to comply with the directions of the AAT. The AAT may also dismiss the application if the Applicant is unable to show that the decision is reviewable or if it is satisfied that the application is frivolous or vexatious.

[26] Or section 34D agreement.

Subject references	
Legislative references	AAT Act 3 AAT Act 24AC AAT Act 25 AAT Act 29 AAT Act 29(11) AAT Act 33(1A) AAT Act 34A AAT Act 34A(5) AAT Act 34D AAT Act 34E AAT Act 37 AAT Act 37(1) AAT Act 37(1AA) AAT Act 37(1AE) AAT Act 40(1A) AAT Act 42C AAT Act 63(5)(b) ITAA 1936 202F TAA 1953 Pt IVC TAA 1953 14ZZ TAA 1953 14ZZF Superannuation Industry (Supervision) Act 1993 334
Related public rulings	
Related practice statements	PS LA 1998/1; PS LA 2003/10; PS LA 2005/22; PS CM 2005/27; PS LA 2007/2; PS LA 2007/5; PS LA 2007/12; PS LA 2007/15; PS LA 2007/16; PS LA 2007/18; PS LA 2007/19
Case references	Saunders v. DC of T 88 ATC 4349; 19 ATR 1289
File references	06/10690
Date issued	25 July 2007
Date of effect	25 July 2007
Other Business Lines consulted	All