



SAT

State
Administrative
Tribunal

Western Australia

Town planning law – past, present and future

Senior Member David Parry
“The rise of facilitative dispute resolution
in planning review proceedings”



Introduction

SAT may –

- 'give directions at any time in a proceeding and do whatever is necessary for the speedy and fair conduct of the proceeding'
- 'refer the matter, or any aspect of it, for mediation by a person specified as mediator by the tribunal'
- 'require the parties to the proceeding to attend a compulsory conference'
- 'invite the [respondent] to reconsider the decision'



Introduction

- '(a) to achieve the resolution of questions, complaints or disputes, and to make or review decisions, fairly and according to the substantial merits of the case;
- (b) to act as speedily and with as little formality and technicality as is practicable, and to minimise the costs to the parties; and
- (c) to make appropriate use of the knowledge and experience of tribunal members.'



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Introduction

- What is facilitative dispute resolution (FDR)?
- Why FDR, not ADR?
- Proportion of planning cases resolved by FDR in SAT in comparison with other major Australian planning jurisdictions
- Benefits of FDR – The 'six s's of success'



What is facilitative dispute resolution (FDR)?

- Resolution of cases or issues, with the assistance of tribunal members, but without the parties having to engage in a tribunal adjudication –
 - Directions hearings
 - Mediations
 - Use of compulsory conferences
 - Invitations to respondents to reconsider decisions under s 31 of SAT Act



What is facilitative dispute resolution (FDR)?

- Directions hearings –
 - Class 1 planning applications –
 - overview of the planning review process
 - issues identified, options developed and alternatives discussed
 - Class 2 planning applications –
 - issues identified and options discussed
 - presumption of referral for mediation or compulsory conference to facilitate resolution or narrowing of dispute



What is facilitative dispute resolution (FDR)?

- Mediation – 'to achieve the resolution of matters by settlement between the parties'
- Compulsory conference – 'to identify and clarify the issues in the proceeding and promote the resolution of the matters by settlement between the parties'
- Private and confidential
- Section 31 invitation to reconsider often in light of further information or clarification provided, or modifications or amendments made, by applicants through the other FDR processes



What is facilitative dispute resolution (FDR)?

- All FDR processes are conducted by tribunal members
- Members have – and are seen by the parties to have – independence, credibility, knowledge and experience
- Factors assisting successful outcome –
 - 72% 'the mediator was a tribunal member'
 - 93% 'the mediator had knowledge of the topic'
 - 100% 'the mediator understood the issues in dispute'
 - 83% 'the venue was neutral to both parties'
 - 93% 'the mediator assisted the process'



What is facilitative dispute resolution (FDR)?

'[B]ecause of the knowledge and experience of the mediators [as tribunal members], the identification and narrowing of issues is usually achieved quickly and effectively. As a result, parties can move to problem-solving faster ...

“reality testing” ... may often have a rigorous edge to it, as the parties are aware that the member conducting the mediation could be hearing the matter ... There is, therefore, a high credibility in the presence of the member, the questions they pose and the issues they raise. ...'



Why FDR, not ADR?

- Not alternative, but central methods of dispute resolution
- Not only to resolve disputes, but also to narrow disputes
- Used in tandem with adjudicative processes
- Suite of processes applied in a co-ordinated and determined fashion, one leading to another –
 - a directions hearing; leading to
 - two or three mediation sessions; leading to
 - withdrawal of the application; or
 - invitation to reconsider; leading, if necessary, to
 - further mediation to resolve any outstanding aspect

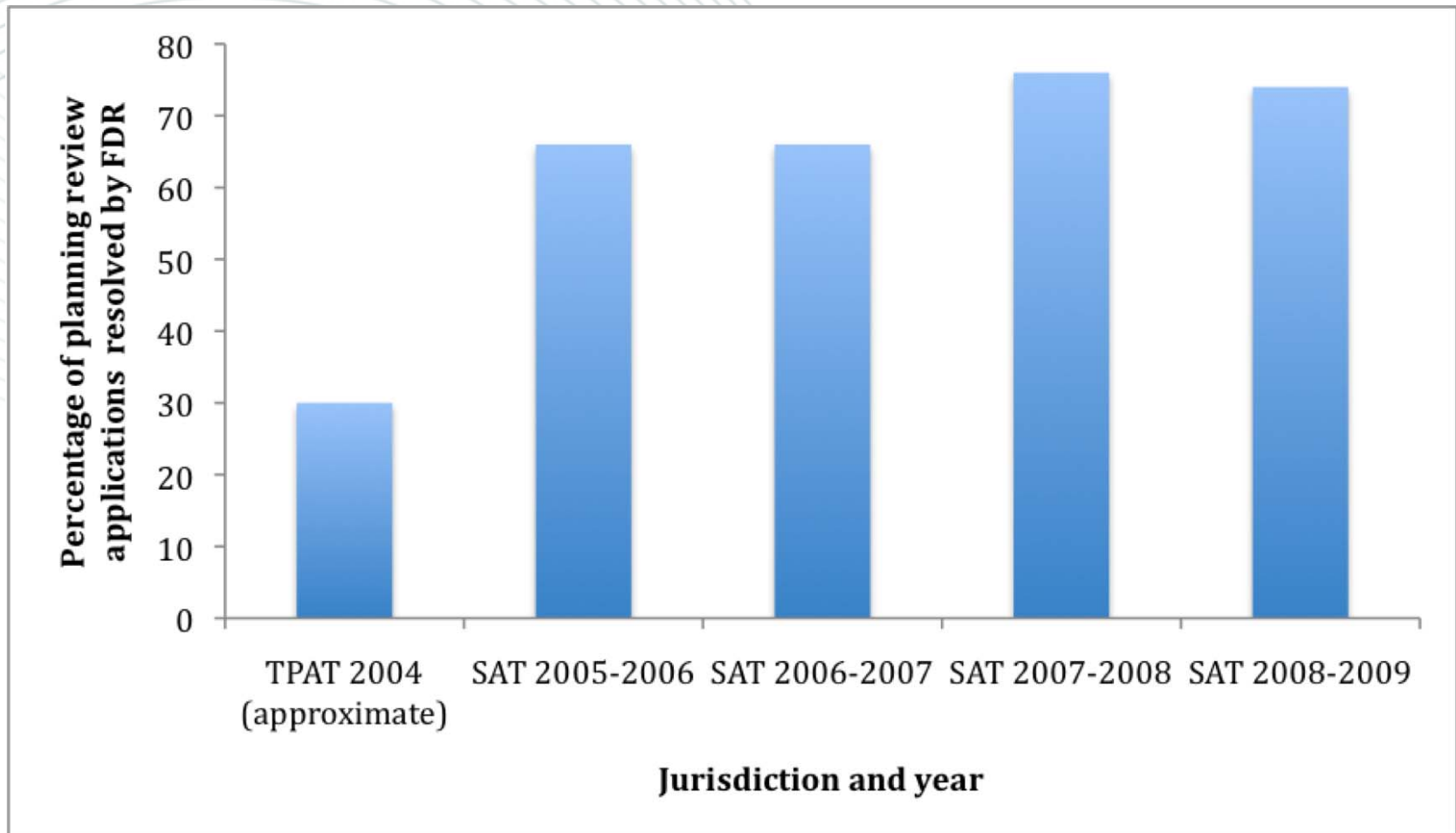


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Planning cases resolved by FDR in SAT



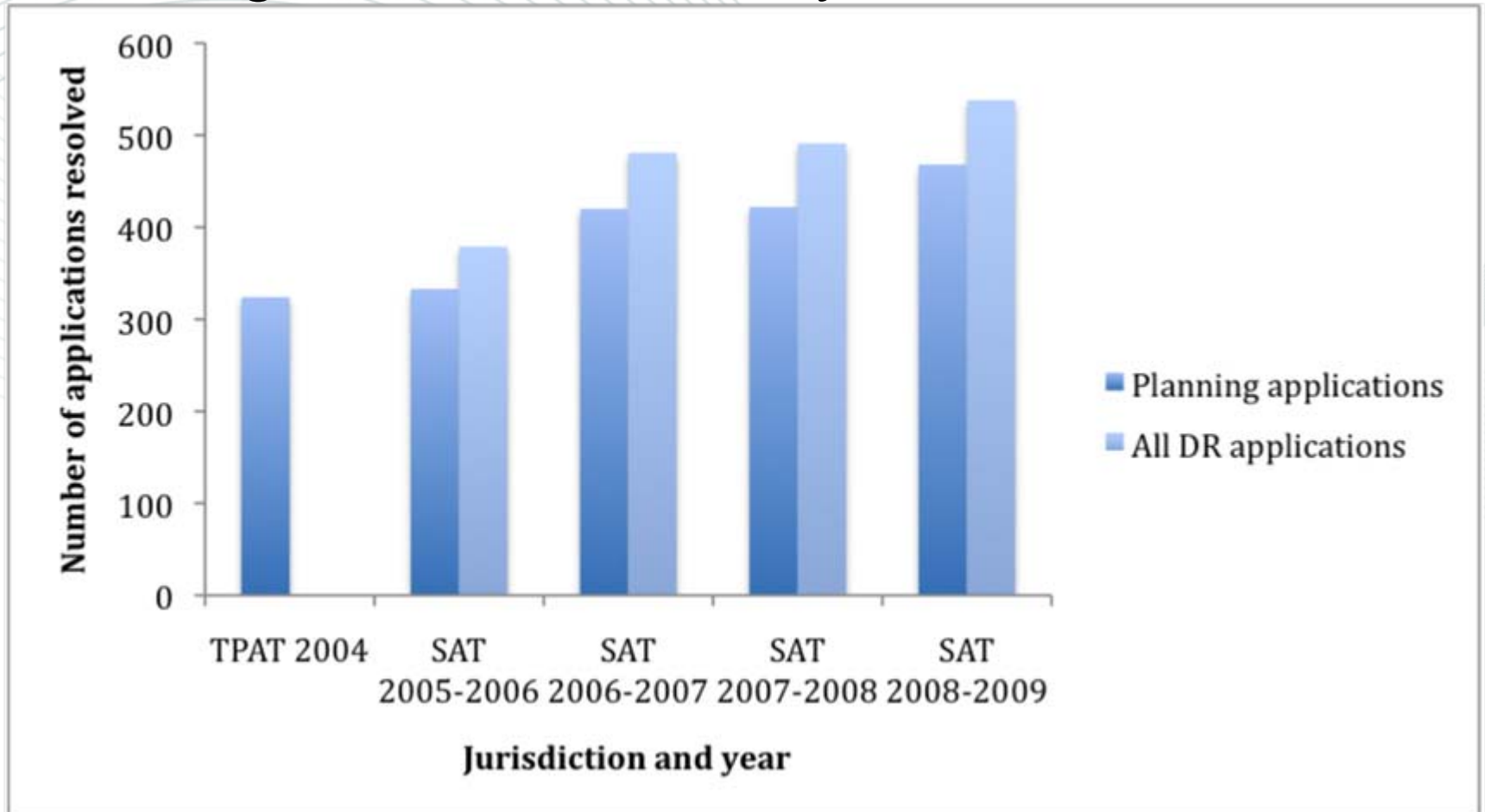


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Planning cases resolved by FDR in SAT



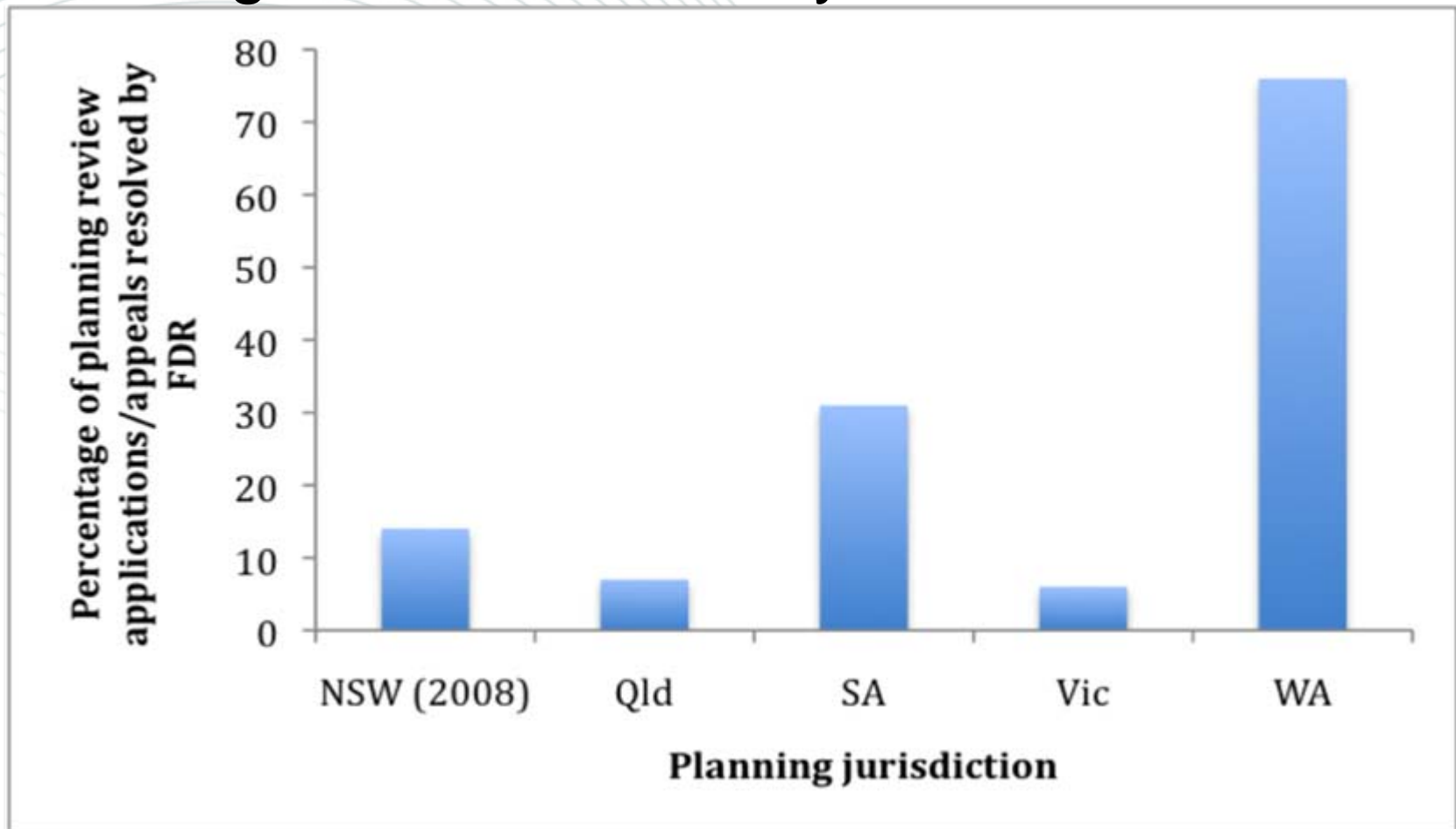


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Planning cases resolved by FDR in SAT





Planning cases resolved by FDR in SAT

- Distinctive approach and practice –
 - central, rather than alternative, dispute resolution
 - conducted exclusively by members
 - applied in a co-ordinated and determined fashion, one process leading to another
- Range and nature of FDR methods available –
 - directions hearings for FDR, not just case management
 - invitation to reconsider not available in other major Australian planning jurisdictions



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Benefits of FDR – The 'six s's of success'

- Satisfaction
- Speed and cost
- Superior outcome
- Super resolution
- Scope of dispute
- Sustainability of the planning review system