

## Practice Note 14

# Use of Electronic Devices in Hearings

This document is a practice note issued by the Rules Committee of the Tribunal under section 33 of the State Administrative Tribunal Act 2004 (WA).

### What is this document?

1. This Practice Note takes effect from 3 December 2014.
2. Subject to any direction to the contrary by the Tribunal, this Practice Note regulates the use of electronic devices to record, transmit or receive by anyone attending the Tribunal. Special provisions are made for:
  - a. parties and their representatives engaged in a matter (see paragraphs 8 and 11); and
  - b. members of the media at paragraph 11 (also see paragraphs 16 - 17).
3. This Practice Note:
  - a. prohibits the use of electronic devices to harass or intimidate persons attending the Tribunal (paragraph 6);
  - b. regulates the use of electronic devices:
    - i. to create audio or visual records, including photographs (paragraphs 7 - 8); and
    - ii. for other purposes (paragraphs 9 - 11);
  - c. regulates applications for leave to depart from the terms of this Practice Note (paragraphs 12 - 15); and
  - d. provides for the identification of members of the media seeking to make use of special provisions under this Practice Note (paragraphs 16 - 17).
4. This Practice Note applies to any electronic device capable of recording, transmitting or receiving information whether audio, visual or other data in any format (including but not limited to mobile phones, computers, tablets and cameras) and the term 'devices' used hereafter is to be construed accordingly. This Practice Note does not apply to the making or use of sound recordings for the purposes of official transcripts of proceedings.

### In what circumstances is there a right of review?

5. With the relaxation of some of the restrictions on the use of devices in the Tribunal, and in particular the potential for members of the media to use live text-based communications, such as mobile email, social media and internet enabled laptops from hearing rooms:
  - a. parties and their representatives should:
    - i. ensure that applications for non-publication (suppression) orders are timely and, where ever possible, foreshadowed prior to evidence being heard or admitted;
    - ii. apply to vary the application of this Practice Note if there are concerns about its application in a particular case (see paragraphs 12 - 15).

- b. members of the media should exercise additional care to ensure that material they communicate:
  - i. is not subject to any non-publication (suppression) order or other restriction which may be affected by the publication of the material (e.g. the potential to inform witnesses who are excluded from the hearing room while other evidence is being adduced); and
  - ii. can be deleted immediately if a non-publication (suppression) order is made subsequent to the communication.

## **Use of devices to harass or intimidate**

### **Paragraph 6 prohibits any use of devices to harass or intimidate persons attending the Tribunal**

- 6. Devices must not be used in a way which:
  - a. constitutes intimidation or harassment of persons attending the Tribunal whether in the hearing room, in the Tribunal building or in public spaces exterior but adjacent to the Tribunal building.
  - b. records persons attending the Tribunal without their permission.

## **Audio or visual recording**

### **Paragraphs 7 - 8 regulate the use of devices to record in hearing rooms and the Tribunal building**

- 7. Any form of audio or visual recording, including photography, or any actions which appear to be or are preparatory to the making of audio or visual recordings or the taking of photographs are prohibited without the leave of the Tribunal (see paragraphs 12 - 15 in relation to applications for leave) and subject to paragraph 8. This prohibition applies inside the hearing rooms and the Tribunal building, whether or not the hearing is underway.
- 8. Parties and their representatives may make audio recordings on a dictaphone or other device outside the hearing room but inside the Tribunal building.

## **Uses other than audio or visual recording**

### **Paragraphs 9 - 11 prohibit any use of devices which is disruptive and limits use while the hearing is underway**

- 9. Devices are not to be used within the hearing room in any manner which could interfere with the smooth and efficient operation of the Tribunal, or the comfort or convenience of other users of the hearing room, whether or not the hearing is underway.
- 10. While the hearing is underway, except as provided in paragraph 11 or in accordance with permission granted by the Tribunal (see paragraphs 12 - 15), all devices are to be turned off and their use within the hearing room is prohibited.
- 11. Devices may be used within the hearing room while the hearing is underway by:
  - a. parties and their representatives who are engaged in the matter; and
  - b. members of the media; provided:
    - I. earphones are not used; and
    - II. the device is in silent mode and does not make any noise.

## Applying for leave to depart from the terms of this Practice Note

12. Applications for leave may be made orally or in writing to the presiding member or the President of the Tribunal.
13. Leave under paragraphs 2, 7 or 10 may be granted or refused at the discretion of the Tribunal. Leave may be granted subject to such conditions as the Tribunal thinks proper. Where leave has been granted the Tribunal may withdraw or amend leave either generally or in relation to any particular part of the proceedings.
14. The discretion to grant, withhold or withdraw leave to use any device or to impose conditions as to the use of any material generated by the use of a device or devices is to be exercised in the interests of justice and giving due weight to the open justice principle. However, the following factors may be relevant to the exercise of the discretion:
  - a. the existence of any reasonable need on the part of the applicant, whether a party, their representative or a person connected with the media, for the device to be used or for any audio or visual recording or photograph to be made;
  - b. in a hearing in which a direction has been given excluding one or more witnesses from the hearing, the risk that any audio or visual recording, including photographs, could be used for the purpose of briefing witnesses out of the hearing or informing such witnesses of what has transpired in the Tribunal in their absence; and
  - c. any possibility that the use of any such device would disturb the proceedings or distract or cause alarm or concern to any witnesses or other participants in the proceedings.
15. The discretion to grant, withhold or withdraw leave to use any device or to impose conditions as to the use of any material generated by the use of a device or devices is to be exercised in the interests of justice and giving due weight to the open justice principle. However, the following factors may be relevant to the exercise of the discretion:

## Identifying members of the media

16. Media representatives seeking to make use of the exception provided at paragraph 11 are expected to produce a Court Media Accreditation card issued by the Supreme Court (WA) should this be requested by Tribunal staff.
17. If a media representative is unable to produce such identification when requested, Tribunal staff will contact the department's Media Liaison Officer to verify that a person seeking to make use of the exception allowed at paragraph 11 is a member of the media. Any question or issue as to whether a person is a member of the media will be determined by the Media Liaison Officer.

*[Issued by Rules Committee on 31 March 2021]*