WESTERN AUSTRALIA

STATE ADMINISTRATIVE TRIBUNAL

Practice Note 2

# Review Proceedings

## What is this document?

1. 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) ('*State Administrative Tribunal Act*').

2. This document describes important aspects of the Tribunal's practice and procedure in "review" proceedings. "Review" proceedings involve the review by the Tribunal of a decision of an original decision-maker. However, this document does not apply to:

   (a) review by the President of decisions of the Tribunal under section 244 of the *Planning and Development Act 2005* (WA) (see *Practice Note 4 – Review of Decisions of the Tribunal under Section 244 of the Planning and Development Act 2005*);

   (b) review of decisions of the Mental Health Review Board under the *Mental Health Act 1996* (WA) (see *Practice Note 7 – Review of Decisions of the Mental Health Review Board under the Mental Health Act 1996*);

   (c) review by the Full Tribunal of decisions made by a single member under section 17A of the *Guardianship and Administration Act 1990* (WA) (see *Practice Note 9 – Proceedings under the Guardianship and Administration Act 1990*).

3. If you need help in understanding this document, please contact the Tribunal on (08) 9219 3111 or 1300 306 017.

## Making and responding to an application

### How to apply

4. Electronic copies of the application form are available on the eCourts Portal. The application and any other document to be filed in the proceedings should be filed either by using the eCourts Portal or in person at the Tribunal, by post or by fax.

### When to apply

5. Generally, and unless an enabling Act provides otherwise, applications must be made within 28 days after the day on which the decision-maker gives notice of its decision. Applications received after this date may proceed only if the Tribunal grants an extension of time.

### What documents should be included with the application?

6. The applicant should, as a minimum, include the written notice of the decision sought to be reviewed and any written reasons of the decision-maker relating to that decision. If the decision relates to an application to the original decision-maker, copies of that application and any supporting documents should be included.

7. If the applicant requires an extension of time to file the application, reasons why an extension should be granted must be included in the application form or in a separate application for an extension of time.

### Giving notice of the application to the other party

8. The applicant must give a copy of the application (including supporting documents) to the respondent(s) as soon as possible and in any event not more than 7 days after filing it.

## Initial directions hearing

9. When an application is filed it is listed for an initial directions hearing before a member of the Tribunal, usually within a few weeks. The Tribunal will give written notice to the parties of the time, date, place, and attendance requirements for the directions hearing.

10. At any directions hearing the presiding member will make directions for the speedy and fair conduct of the proceedings.

11. At any directions hearing each party or its representative must have sufficient familiarity with the proceedings and, in the case of a representative, sufficient instructions from the party to be able tell the Tribunal the party's position as to each of the matters set out in paragraphs 12 and 13.

## What will the Tribunal consider at directions hearings?

12. At a directions hearing the Tribunal will consider:

    (a) whether the proceedings should be referred to mediation (see paragraphs 22 - 24);

    (b) whether the proceedings should be referred to a compulsory conference (see paragraphs 25 - 27);

    (c) whether the proceedings should be subject to special case management;

    (d) whether any question of law, mixed question of law and fact, or question of fact should be decided as a preliminary issue;

    (e) whether the proceedings should be listed for a final hearing; and

    (f) whether the proceedings should be determined entirely on the documents.

13. If the Tribunal considers that the proceedings should be listed for a final hearing the parties or their representatives must advise the Tribunal as to:

    (a) the number, nature, and expertise (where relevant) of the witnesses whose evidence will be relied on at the hearing;

    (b) the likely length of the hearing;

    (c) any dates which are unavailable to any party or witness;

    (d) whether telephone, video link or any other system or method of communication will be required at the hearing;

    (e) whether an interpreter will be required at the hearing;

    (f) whether a view or inspection by the Tribunal of the land or thing in question will be required; and

    (g) where the hearing should most conveniently take place.

## Identification of issues in dispute and relevant documents

14. At the initial directions hearing the Tribunal will usually make orders requiring:

    (a) within 14 days the respondent to file with the Tribunal and give to the applicant a statement of the issues, facts, and contentions it says arise in relation to the decision under review and the documents which are relevant to the Tribunal's review of the decision; and

    (b) within 14 days of being given the respondent’s statement and documents, the applicant to file with the Tribunal and give to the respondent its own statement of issues, facts and contentions responding to the respondent’s statement and the documents on which it proposes to rely in the proceedings.

## What orders will the Tribunal usually make at directions hearings?

15. The orders that the Tribunal will usually make at directions hearings are in the Tribunal's 'Standard & Regularly Used Orders' document which is available on the Tribunal's website (www.sat.justice.wa.gov.au).

## What happens when proceedings are listed for a final hearing?

16. When proceedings are listed for a final hearing the Tribunal will usually make orders requiring:

    (a) at least 14 days before the hearing the parties to file with the Tribunal and give to each other a written statement of the evidence of each witness a party proposes to call at the hearing;

    (b) at least 14 days before the hearing where the proceedings involve the review of a refusal or deemed refusal of an application for development or subdivision of land the respondent to file with the Tribunal and give to the applicant a set of draft, "without prejudice" conditions of approval that the respondent says should be imposed if after hearing the evidence and submissions of the parties the Tribunal considers that approval subject to conditions is appropriate; and

    (c) at least 7 days before the hearing any experts on whose evidence the parties propose to rely to confer with each other in each field and at least 5 days before the hearing to file with the Tribunal a joint statement of all matters agreed between them, matters not agreed and the reasons for any disagreement.

17. The Tribunal will specify in its orders the number of copies of documents that the parties or the expert witnesses will be required to file.

18. If a party does not wish to cross-examine a witness whose witness statement has been given to the party it must advise the Tribunal and the party that gave the witness statement at least two days before the hearing. Where that occurs the witness does not need to attend the hearing unless required to do so by the Tribunal.

## What happens at a final hearing?

19. Any witness statement which is filed with the Tribunal and given to the other party in accordance with the Tribunal's order will usually be admitted into evidence by the Tribunal as the evidence of the witness. The presiding member may permit the witness to give any additional evidence. The other party is permitted to cross-examine the witness.

20. Any experts' joint statement will be admitted into evidence by the Tribunal at the hearing and expert evidence inconsistent with any agreement in the joint statement will be allowed only if the Tribunal permits.

21. The expert witnesses in each field will usually give evidence at the hearing concurrently. They will be:

    (a) called to give evidence together;

    (b) asked questions by the Tribunal;

    (c) given an opportunity by the Tribunal to ask each other any questions which they consider might assist the Tribunal; and

    (d) asked questions by the parties or their representatives.

## What is mediation?

22. Mediation is a structured negotiation between parties facilitated by a trained mediator. Its purpose is to achieve a mutually acceptable settlement of a dispute or to narrow the issues in dispute. Mediation often allows for a creative solution.

23. Mediation in the Tribunal is conducted by a member who is also a mediator. If a mediation does not result in settlement the member who conducted the mediation cannot take any further part in the proceedings unless all of the parties agree.

24. The Tribunal may order the parties to attend mediation without their consent.

## What is a compulsory conference?

25. The purpose of a compulsory conference is to identify and clarify the issues and to promote resolution by settlement.

26. If the compulsory conference does not result in settlement the member who conducted the conference cannot take any further part in the proceedings.

27. Attendance at a compulsory conference is compulsory.

## Who attends a mediation or compulsory conference?

28. The parties must attend the mediation or compulsory conference in person unless the orders state otherwise. Where a party is a corporation or government body a senior officer must attend. A lawyer or other person permitted by the *State Administrative Tribunal Act*, the *State Administrative Tribunal Regulations 2004* or the *State Administrative Tribunal Rules 2004* to represent a party may also attend. If a party wishes to bring along another person, it must advise the presiding member and the other party at the directions hearing at which the matter is referred to mediation or compulsory conference.

29. An officer who attends on behalf of a party must be able to identify, clarify and narrow the issues and must have authority to settle the proceedings. It is recognised, however, that officers of some respondents may not be able to settle a matter without further consideration by the respondent.

## What happens if proceedings are settled between the parties?

30. Where proceedings are settled between the parties, section 26(d) of the *State Administrative Tribunal Act* allows the decision-maker to vary the decision or set aside the decision and substitute a new decision.

31. Where orders are sought by consent from the Tribunal to give effect to a settlement a document recording the consent orders must be signed by each of the parties or their representatives and filed in the Tribunal in electronic form. If plans, photographs, or maps are to be attached to the consent orders, sufficient copies of these documents, namely one plus the number of parties, must be filed.

32. The Tribunal will make an order by consent only if it is satisfied that it has power and that it is appropriate to do so.

33. The applicant requires the leave of the Tribunal to withdraw the proceedings.

*[As amended by the Rules Committee, with effect from 1 July 2023]*