



PRACTICE NOTE 3 Original 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).
2. This document describes important aspects of the Tribunal's practice and procedure in "original" proceedings. "Original" proceedings are all matters which do not involve the review by the Tribunal of a decision of an original decision-maker. However, this document does not apply to proceedings under:
 - (a) the *Strata Titles Act 1985* (WA) (see *Practice Note 5 – Proceedings under the Strata Titles Act 1985*);
 - (b) the *Retirement Villages Act 1992* (WA) (see *Practice Note 6 – Proceedings under the Retirement Villages Act 1992*); or
 - (c) 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 (STD callers) or email the Tribunal at info@sat.justice.wa.gov.au.

Making an application

How to apply

4. Application forms may be obtained:
 - (a) from the Tribunal's website at www.sat.justice.wa.gov.au by using the SAT Wizard;
 - (b) by telephoning the Tribunal on (08) 9219 3111 or 1300 306 017 (STD callers); or
 - (c) by emailing the Tribunal at info@sat.justice.gov.wa.au.

What documents should be included with the application?

5. The applicant should include copies of all documents to which the application refers or which will otherwise assist the Tribunal in understanding the subject matter.

Giving notice of the application to the other party

6. 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.

What happens after an application is filed?

7. After an application is filed the Tribunal will consider whether the proceedings should be listed for an initial directions hearing or be determined entirely on the documents which have been filed and which will be filed in accordance with orders made by notice to the parties.
8. Whether the proceedings are listed for an initial directions hearing or not, where appropriate, the Tribunal will make directions for the speedy and fair conduct of the proceedings.

Initial directions hearing

9. If the proceedings are listed for an initial directions hearing the Tribunal will give written notice to the parties of the time, date and place of the directions hearing.
10. Parties may attend the initial directions hearing and any other directions hearing by telephone if they live outside the Perth metropolitan region or have difficulty in attending in person. In order to arrange for attendance at a directions hearing by telephone, parties should contact the Tribunal on the telephone number or email address set out in paragraph 3 as soon as possible after receiving notice of the directions hearing.
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 to 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 applicant to file with the Tribunal and give to the respondent a statement of the issues, facts and contentions it says arise and the documents on which it proposes to rely in the proceedings; and
 - (b) within 14 days of being given the applicant's statement and documents the respondent to file with the Tribunal and give to the applicant its own statement of issues, facts and contentions responding to the applicant'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 SAT *Standard Orders Made at Directions Hearings* document which is available on the SAT website (www.sat.justice.wa.gov.au) and in the directions hearing room.

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; and
 - (b) 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 at the hearing 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 referred to in paragraph 16(b) 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 a 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. 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, Regulations or Rules* 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 a document recording the orders sought by consent from the Tribunal must be filed with the Tribunal in hard copy signed by each of the parties or their representatives and in electronic form if possible. 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.
31. The Tribunal will make an order by consent only if it is satisfied that it has power to do so.
32. The applicant requires the leave of the Tribunal to withdraw the proceedings.

[Issued by Rules Committee on 19 August 2008]