

Practice Note 6

Proceedings under the *Retirement Villages Act 1992*

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 proceedings under the *Retirement Villages Act 1992* (WA).
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.

Initial directions hearing

7. When an application is filed it is listed for an initial directions hearing before a member of the Tribunal in approximately two to three weeks. The Tribunal will give written notice to the parties of the time, date and place of the directions hearing.
8. 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.
9. At any directions hearing the presiding member will make directions for the speedy and fair conduct of the proceedings.
10. 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 11 and 12.

What will the Tribunal consider at directions hearings?

11. At a directions hearing the Tribunal will consider:
 - (a) whether the proceedings should be referred to mediation (see paragraphs 16 – 18);
 - (b) whether the proceedings should be referred to a compulsory conference (see paragraphs 19 – 21);
 - (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.
12. 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.

What orders will the Tribunal usually make at the initial directions hearing?

13. Unless the presiding member determines otherwise the following orders will be made at the initial directions hearing:
 - (a) If the administering body is not a respondent, within 7 days of this order the applicant must give a copy of the order and the application and supporting documents to the administering body. The administering body may apply to the Tribunal within 14 days of receipt of these documents to be joined as a party to the proceedings under section 38 of the State Administrative Tribunal Act; and
 - (b) within 14 days of this order any respondent must file with the Tribunal and give to the applicant any response that it wishes the Tribunal to take into account in its determination of the proceedings.
14. Where the administering body is joined as a party the Tribunal will usually order that within 14 days it must file with the Tribunal and give to the applicant any response that it wishes the Tribunal to take into account in its determination of the proceedings.
15. At the initial directions hearing or at any other directions hearing the Tribunal will consider whether the proceedings should be determined by hearing or entirely on the documents and will make orders accordingly.

What is mediation?

16. 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.

17. 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.
18. The Tribunal may order the parties to attend a mediation without their consent.

What is a compulsory conference?

19. The purpose of a compulsory conference is to identify and clarify the issues and to promote resolution by settlement.
20. If the compulsory conference does not result in settlement the member who conducted the conference cannot take any further part in the proceedings.
21. Attendance at a compulsory conference is compulsory.

Who attends a mediation or compulsory conference?

22. The parties must attend the mediation or compulsory conference in person. Where a party is a corporation 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.
23. 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.

What happens if proceedings are settled between the parties?

24. Where proceedings are settled between the parties a document recording any 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 consent orders sufficient copies of these documents, namely one plus the number of parties, must be filed.
25. The Tribunal will make an order by consent only if it is satisfied that it has power to do so.
26. The applicant requires the leave of the Tribunal to withdraw the proceedings.