

Factsheet 5

Pre-hearing procedures

The Land and Resources Tribunal is an independent statutory body established under the *Land and Resources Tribunal Act 1999*. Prior to the commencement of a formal hearing parties will be required to participate in certain procedures designed to clarify and possibly resolve legal and factual issues.

Directions hearings

After the filing of an application a directions hearing will be held to decide how the proceeding will be conducted. The purpose of direction hearings is to clarify the matters in contention and establish a framework for further proceedings. The Tribunal may make orders and give directions relating to:

- the need for, and extent of, disclosure and interrogatories
- the inspection of property
- the inclusion of other parties
- the way in which service is to be effected
- when and where a proceeding is to be heard and how the hearing will be conducted
- evidence, including expert evidence
- participation in other pre-hearing procedures such as mediation and pre-hearing settlement conferences.

Parties should be prepared to make submissions to the tribunal as to how the proceedings should be conducted. Parties can attend directions hearings by telephone if they are outside Brisbane.

Mediation

Mediation can be requested by any party at the directions hearing or may be ordered by the Tribunal. In mediation, an independent person (the mediator) assists the parties to discuss the dispute, consider options for resolving it, and ideally, to reach agreement. The mediator does not make a decision for the parties nor do they provide advice on the solution. If chosen by the Tribunal, the mediator will be appropriately trained with relevant experience and may even be another Member of the Tribunal. Parties are also free to appoint a mediator they agree to. Mediation provides you with an opportunity to have your say and to communicate with

the other party directly in an informal but structured setting.

The mediator must treat everything that happens in the mediation as confidential. Evidence of anything said or done during mediation cannot be admitted in legal proceedings without the consent of all of the mediation participants. If an agreement is reached it will be recorded in writing and sealed on the Tribunal's file and will not be opened without an order of the Tribunal. If parties cannot reach agreement they will be referred to a hearing. Parties are under a duty to negotiate in good faith, act reasonably and genuinely and must not impede the mediation process.

Pre-hearing settlement conferences

A pre-hearing settlement conference is a conference chaired by a Member of the Tribunal or the Registrar which is attended by the parties. Unless the Tribunal otherwise orders, a conference must be held in all contested matters (other than applications within a proceeding or appeals) before a hearing date is set. The objectives of the conference are to ensure that the issues between the parties are clear, all relevant evidence has been presented and an opportunity to resolve the issues before a hearing is explored.

The chairperson of the conference will facilitate a discussion between the parties but will not make a decision although they may express an opinion on the merits of arguments put by the parties. The content of a conference is not confidential although the chairperson will not discuss the conference with Members. A report on the outcome of the conference will be given to the Presiding Member for the hearing if the matter is not resolved.

For further information

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