Western Australia

State Administrative Tribunal Act 2004

State Administrative Tribunal Rules 2004

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Defined terms

Western Australia

State Administrative Tribunal Act 2004

State Administrative Tribunal Rules 2004

Part 1 — Preliminary

1. Citation

These are the *State Administrative Tribunal Rules 2004*.

2. Commencement

These rules come into operation on 1 January 2005.

3. Terms used

In these rules, unless the contrary intention appears —

Act means the *State Administrative Tribunal Act 2004*;

address for service in the proceedings means —

(a) an address given in an application or a notice of representation, as changed from time to time in accordance with these rules;

(b) in the case of a public sector body, if a number or address is recorded for it in the register under rule 34(5), that number or address;

approved form means a form approved under rule 47(1);

business day means a day other than —

(a) a Saturday or Sunday; or

(b) a day that is a public holiday in the place to which the document is sent or delivered or at which it is given;

Corporations Act means the *Corporations Act 2001* of the Commonwealth;

direction means a direction given under the Act section 34;

document means anything in writing;

ECMS means the electronic case management system for the management of proceedings in Western Australian courts and tribunals;

guardian ad litem means a guardian ad litem appointed under the *Legal Representation of Infants Act 1977* section 5(1);

notice of representation means a notice of representation filed under rule 34(6) or (8);

notifiable person has the meaning given to that term in the Act section 45(2);

ordinary service means service effected under rule 33;

personal service means service effected under rule 31 or 56(3), (4) or (5);

practice note means a practice note issued under the Act section 33;

pre-paid post means service effected under rule 32;

public sector body means —

(a) a chief employee, chief executive officer, executive officer, or public sector body as defined in the *Public Sector Management Act 1994* section 3(1); or

(b) a local government; or

(c) a Minister of the Crown; or

(d) a vocational regulatory body;

referring person means a person referred to in the exception to the definition of ***applicant*** in the Act section 3(1).

[Rule 3 amended: Gazette 13 Apr 2007 p. 1682; 9 Jul 2010 p. 3241; 24 Apr 2018 p. 1351; SL 2022/219 r. 4.]

Part 2 — General

Division 1 — Applications

4. Filing applications and other documents

(1) Subject to these rules, a person may file an application or a document with the executive officer by —

(a) presenting it at an office of the Tribunal when the office is open for business; or

(b) sending it to the executive officer by pre-paid post; or

(c) sending it to the executive officer by fax transmission; or

[(d) deleted]

(e) filing it by using the ECMS.

(2) An application must be accompanied by any documents required to accompany the application under the Act, the enabling Act, these rules, a practice note or the approved application form.

(3) Subject to a practice note or direction, if an application or a document is required to or may be filed, it is not necessary to file the original of the application or document.

(4) A document must be filed —

(a) in such manner as is specified in a practice note, if any; or

(b) whether or not such a practice note has been issued, in accordance with any direction.

[Rule 4 inserted: Gazette 6 Feb 2015 p. 567-8; amended: Gazette 24 Apr 2018 p. 1351; SL 2022/219 r. 5 and 15.]

5. Filing applications by electronic means

(1) An application or other document sent to the executive officer by fax transmission must —

(a) be sent to a fax number specified for that purpose in a practice note; and

(b) to the extent practicable, be in a form that complies with an approved form.

(2) A person who files an application or other document by fax transmission or by using the ECMS must —

(a) keep a copy of it; and

(b) produce a copy of it as ordered by the Tribunal.

[Rule 5 inserted: Gazette 6 Feb 2015 p. 568; amended: Gazette 24 Apr 2018 p. 1352; SL 2022/219 r. 6 and 15.]

6. Applications must be legible

An application and any document accompanying it must —

(a) be legible; and

(b) if filed by using the ECMS, capable of being printed with the content and in the form in which it was created.

[Rule 6 inserted: Gazette 6 Feb 2015 p. 568; amended: Gazette 24 Apr 2018 p. 1352; SL 2022/219 r. 7 and 15.]

6A. When application or other document is taken to be filed

An application or other document (the ***document***) is taken to have been filed —

(a) if the document is filed by using the ECMS — on the day and at the time recorded by the ECMS; or

(b) if the document is filed otherwise than by using the ECMS and —

(i) the whole document is received before 4.30 pm on a day when the office of the Tribunal is open for business — on that day; or

(ii) the whole document is not received before 4.30 pm on a day when the office of the Tribunal is open for business — on the next day when the office of the Tribunal is open for business.

[Rule 6A inserted: Gazette 24 Apr 2018 p. 1352; amended: SL 2022/219 r. 15.]

*[**7A.** Deleted: Gazette 24 Apr 2018 p. 1352.]*

7. Acceptance of applications

(1) For the purposes of section 42(3) of the Act, an application is taken to have been accepted by the executive officer when —

(a) the application is filed in accordance with rule 4 or, in the case of an oral application, recorded in the ECMS in accordance with rule 8(2); and

(b) the executive officer is satisfied that the prescribed fee has been paid.

[(2) deleted]

(3) If an application is not accepted, the executive officer is to notify the sender of the application by using any of the sender's contact details provided in the application.

[Rule 7 inserted: Gazette 6 Feb 2015 p. 569; amended: SL 2022/219 r. 8.]

8. Oral applications

(1) In this rule —

oral application means an application that under an enabling Act may be made —

(a) orally; or

(b) partly in writing and partly orally.

(2) If an oral application is made, the executive officer must —

(a) complete an approved application form in relation to the application; and

(b) record it in the ECMS as if it had been filed under rule 4(1)(e).

[(3), (4) deleted]

[Rule 8 amended: Gazette 6 Feb 2015 p. 569; SL 2022/219 r. 9.]

9. Time limit for applications: review jurisdiction

Subject to these rules, an application to the Tribunal under its review jurisdiction must be made within 28 days of —

(a) the day on which the decision-maker gives a notice under the Act section 20(1); or

(b) the day on which the decision-maker makes the decision under the Act section 20(5); or

(c) if, under the Act section 3(3)(a), the Act applies as if a person had made a decision, the day on which any provision of the enabling Act as to when the decision is taken to have been made has effect.

10. Extension of time limit

(1) The Tribunal, on application by any applicant, referring person or on its own initiative, may extend any time fixed under

the Act, an enabling Act or these rules for the commencement of a proceeding.

(2) Under this rule, the Tribunal may extend time even if the time fixed expired before an application for an extension was made or the Tribunal on its own initiative considered extending the time.

11. Time specified for the purposes of section 22(2) of Act

For the purposes of the Act section 22(2) the time specified is 7 days after the day on which the application is accepted by the executive officer.

12. Provision of documents and materials by decision maker: section 24 of Act

(1) In this rule —

material means a statement, document and other material referred to in the Act section 24.

(2) The decision-maker must provide the material to the Tribunal in accordance with, and within the period specified in, any order made by the Tribunal.

(3) The Tribunal may order a decision-maker to provide a copy of the material to any other party or to a person who has been granted leave by the Tribunal to make submissions in the proceedings.

(4) The Tribunal may order a decision-maker to provide it with additional copies of the material.

[Rule 12 amended: Gazette 14 Oct 2005 p. 4569.]

13. Protected matter

(1) If a party considers that any document comprises or contains protected matter and would, in accordance with an order of the Tribunal, be required to be included in that party's bundle of documents to be filed with the Tribunal and given to another

party, the party must file with the Tribunal and give to the other party, within the period specified in the order for the filing of and giving the party's bundle of documents, a list of documents which —

(a) indicates which document or documents comprise or contain protected matter; and

(b) sufficiently identifies any document that comprises or contains protected matter without disclosing the protected matter; and

(c) indicates that any protected matter has been included within Part B of the party's bundle of documents.

(2) If subrule (1) applies, a party's bundle of documents must be divided into 2 parts, Part A and Part B.

(2a) If a document contains protected matter and non-protected matter, the protected matter must be excised from the document before it is included in Part A.

(2b) Subject to subrule (2a), Part A must —

(a) include all documents in the party's bundle excluding protected matter; and

(b) be filed with the Tribunal and given to the other party within the period specified in the order for the filing of and giving the party's bundle of documents.

(2c) Part B must —

(a) include all documents in the party's bundle which the party considers comprise or contain protected matter; and

(b) be clearly marked as containing protected matter and must be placed into a sealed envelope clearly marked as containing protected matter; and

(c) be filed with the Tribunal within the period specified in the order for the filing of the party's bundle of documents but must not be given to any other party.

(3) Any application under section 159 or section 160 of the Act must be made to the President in writing within 14 days of the receipt of the list of documents which identifies the document the subject of the application.

[Rule 13 inserted: Gazette 14 Oct 2005 p. 4569-70; amended: Gazette 13 Apr 2006 p. 1557; 13 Apr 2007 p. 1683.]

Division 2 — Proceedings and hearings

14. Filing of other applications

Rules 4 to 7 apply to the filing of —

(a) an application under these rules other than an application as defined in the Act section 3(1) (***interim application***); and

(b) an election or request under these rules,

as if a reference in those rules to an application were a reference to an interim application, election or request.

[Rule 14 amended: Gazette 14 Oct 2005 p. 4570; 6 Feb 2015 p. 569.]

15A. Changing contact details given in application

(1) An applicant or referring person may change the contact details given to the Tribunal in an application or subsequent notice by filing a notice with the executive officer showing the new contact details.

(2) An applicant or referring person who files a notice under subrule (1) must, on the date of filing, give a copy of it to a notifiable person.

(3) A change of contact details under this rule is not effective as between the person who is required to give the notice of the change and another person until the notice is filed with the executive officer and given to that person.

[Rule 15A inserted: Gazette 6 Feb 2015 p. 569-70.]

15B. Changing name of party given in application

(1) A person who has made an application to the Tribunal may make a written request for the leave of the Tribunal to change the name of a party specified in the application.

(2) The Tribunal may, at any time before making a final decision, grant the request referred to in subrule (1).

(3) A person who makes a request under subrule (1) must, on the date of filing, give a copy of it to a notifiable person.

[Rule 15B inserted: Gazette 6 Feb 2015 p. 570.]

15. Amendment of grounds or reasons for application

(1) A person who has made an application to the Tribunal may make a written request for the leave of the Tribunal to amend the grounds or reasons specified in the application.

(2) The Tribunal may, at any time before making a final decision, grant the request referred to in subrule (1).

(3) A person who makes a request under subrule (1) must, on the date of filing, give a copy of it to a notifiable person.

[Rule 15 inserted: Gazette 6 Feb 2015 p. 570.]

16. Notice of compulsory conference

The executive officer is to give notice of a compulsory conference in writing and in accordance with any other requirements of these rules.

17. Notice of mediation

The executive officer is to give notice of a mediation in writing and in accordance with any other requirements of these rules.

18. Notice of hearing

The executive officer is to give notice of the time and place for a hearing in a proceeding to the applicant and any notifiable person involved in the proceeding either —

(a) by endorsing the time and place on the copy of the application form to be given to the person; or

(b) by a written notice given to the person.

19. Authentication of decision: section 74 of Act

For the purposes of the Act section 74, a decision of the Tribunal is authenticated by —

(a) being signed by a member of the Tribunal or the executive officer and having the seal of the Tribunal affixed to it; or

(b) being recorded in the ECMS and being confirmed by an entry into the ECMS made by a member of the Tribunal or by the executive officer.

[Rule 19 amended: SL 2022/219 r. 10.]

20. Time limit for purposes of section 84(3) of Act

The time limit specified for the purposes of the Act section 84(3) is —

(a) in the case of a decision other than a final decision, within 2 days of the day on which the decision was made; or

(b) within 7 days of the later of the days referred to in the Act section 105(5)(a) or (b),

whichever is the later.

21. Limit on applications: section 84(4) of Act

For the purposes of the Act section 84(4), the number of applications is 2.

22. Relief from procedural requirements: section 92(1) of Act

The Tribunal may exercise any of the powers referred to in the Act section 92(1) in connection with any proceeding.

*[**23.** Deleted: Gazette 6 Feb 2015 p. 570.]*

24. Request for and return of summons to witness and production of documents and other material by third parties

(1) A request for the issue of a summons under section 66(1) of the Act must be made —

(a) in an approved form; and

(b) at least 14 days before the date on which the summons is to be returnable, unless the Tribunal grants leave to make a request nearer to that date.

[(2) deleted]

(3) A summons will usually be made returnable by the Tribunal at a final hearing. Where a party wishes to have any document or other material produced by a third party prior to a final hearing, the party should make an application under the Act section 35(1).

(4) Any application to set aside a summons or to discharge an order made under the Act section 35(1) in whole or in part or to limit access to any document or other material produced in answer to a summons or in compliance with an order may be made at the hearing at which the summons is returnable or at which the order requires production or at another time prior to the date on which the production of the document or material is required by the summons or order.

(5) A person who is required by a summons or an order made under the Act section 35(1) to produce any document or other material may, unless the person intends to apply to set aside the summons or to discharge the order or to limit access to any document or material, produce the document or material to the

executive officer at least 48 hours before the date specified in the summons or order and is not then required to attend the hearing on the date specified in the summons or the order, unless the Tribunal orders otherwise or unless the person is also required by the summons to give evidence.

(6) Where a document or material is produced to the executive officer in accordance with subrule (5), each party may inspect and photocopy the document or material within the Tribunal's office for the purpose of the proceedings unless the Tribunal orders otherwise.

[Rule 24 inserted: Gazette 13 Apr 2006 p. 1557-8; amended: Gazette 14 May 2013 p. 1970; SL 2022/219 r. 11.]

24A. Issue of summons

A summons is taken to be signed on behalf of the Tribunal by the executive officer, and is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10, if —

(a) the summons is recorded in the ECMS; and

(b) the executive officer enters a confirmation of the summons into the ECMS.

[Rule 24A inserted: SL 2022/219 r. 12.]

25. Service of summons

(1) A summons in an approved form must be served —

(a) by the party who requested its issue, unless the Tribunal orders otherwise; or

(b) if it is issued at the initiative of the Tribunal, as ordered by the Tribunal.

(2) A summons must be served on the person to whom it is addressed by personal service.

(3) The party who requested the issue of a summons to produce a document or thing must serve a copy of the summons on each

other party as soon as practicable after the summons has been served on the person to whom it is addressed.

(4) When a summons to a witness is served, a sufficient sum must be provided as conduct money.

Division 3 — Service

26. Giving copy of application

(1) Subject to these rules or a decision of the Tribunal, a copy of an application must be given under the Act section 45(1) or (2)(a) immediately after it is filed but in any event not more than 7 days after the day on which the application is accepted by the executive officer.

(2) Subject to a decision of the Tribunal, a referring person is to give a copy of an application to the applicant within one day of the day on which the application is accepted by the executive officer.

(3) Subject to these rules or a decision of the Tribunal, a copy of an application may be given —

(a) by personal service; or

(b) by ordinary service; or

(c) by pre-paid post.

[(4), (5) deleted]

[Rule 26 amended: Gazette 6 Feb 2015 p. 570.]

27. Exemption: section 45(2)(c) of Act

A person is exempt under the Act section 45(2)(c) from the requirement to give a copy of the application to a notifiable person if the notifiable person is the decision-maker and is a referring person in respect of the decision the subject of the application.

28. Giving other documents

Subject to a practice note or direction, if a document, other than an application or a summons, is required to or may be given to a person, the document must be given —

(a) by ordinary service; or

(b) by pre-paid post; or

(c) in the case of a company, as defined in the Corporations Act section 9, in a way permitted in the Corporations Act section 109X; or

(d) in the case of an incorporated association, as defined in the *Associations Incorporation Act 2015* section 3, in accordance with section 176 of that Act; or

(e) in the case of an unincorporated association, by delivering it personally to the president, secretary or other similar officer of the association.

[Rule 28 amended: Gazette 24 Apr 2018 p. 1352.]

29. Giving documents by Tribunal or executive officer

If a document, other than an application or summons, is required to or may be given to a person by the Tribunal or the executive officer, the document, unless the rules otherwise provide or the Tribunal otherwise orders, is sufficiently given if it is given by ordinary service or pre-paid post.

30. Giving application to decision-maker

If a copy of an application must be given to a decision-maker, it may be given —

(a) if the decision-maker is not a public sector body, to the chief executive officer of the Department administered by the Minister to whom the administration of the enabling Act under which the decision concerned is given; or

(b) if these rules or an enabling Act prescribes the holder of a particular office as a person to whom the copy may be given, to the holder of that office.

[Rule 30 amended: Gazette 6 Feb 2015 p. 571.]

31. Personal service: how effected

(1) If a document is required to or may be given by personal service, it is given to —

(a) a natural person, by leaving a copy of the document with him or her;

(b) a corporation, by leaving a copy of the document —

(i) at the registered office of the corporation; or

(ii) at the principal place of business, or the principal office, of the corporation in the State,

with some person apparently an officer of or in the service of the corporation and apparently a person who has reached 16 years of age;

(c) an unincorporated association, by leaving a copy of the document at the principal place of business or the principal office of the association with some person apparently an officer of or in the service of the association and apparently a person who has reached 16 years of age,

or as the Tribunal or a judicial member or non-judicial member may order.

(2) If a person refuses to accept a document, it may be given to him or her by putting the document down in his or her presence and telling him or her the nature of it.

(3) It is not necessary in order to effect personal service that the original document be shown.

(4) Despite subrule (1)(a), personal service on a natural person who is not of full legal capacity is effected by leaving a copy of the document with —

(a) the person's litigation guardian appointed under the Act section 40(2) or guardian ad litem;

(b) if the person does not have a litigation guardian or guardian ad litem, an administrator of the person's estate appointed under the *Guardianship and Administration Act 1990* or the person's guardian appointed under a law of a State or Territory;

(c) if the person does not have a litigation guardian, a guardian ad litem, an administrator or a guardian, an adult person who apparently has the care of the person, including the person in charge of a hospital, nursing home or other care facility at which the person is a patient or resident.

(5) A document given by personal service is to be taken to have been given to a person at the time the document is left with a person or at a place in accordance with this rule.

[Rule 31 amended: Gazette 6 Feb 2015 p. 571.]

32. Pre-paid post: how effected

(1) If a document is required to or may be given by pre-paid post, it is given by sending a copy of the document by pre-paid post addressed to the person to be served at —

(a) the address for service in the proceedings of that person; or

(b) the address of that person's legal practitioner, litigation guardian, guardian ad litem or agent; or

(c) if, at the time when the copy is to be posted, the person has no address for service in the proceedings, the person's usual or last known place of business or residence.

(2) A document given by pre-paid post is to be taken to have been given to a person 2 business days after the day on which the document was posted.

33. Ordinary service: how effected

(1) For the purposes of subrule (2), the proper address of a person is —

(a) the address for service in the proceedings of that person; or

(b) the address of that person's legal practitioner, litigation guardian, guardian ad litem or agent; or

(c) if, at the time when the copy is to be left or posted under that subrule, the person has no address for service in the proceedings, the person's usual or last known place of business or residence.

(2A) A document given by ordinary service must comply with any requirements under these rules, a practice note or a direction.

(2) If a document is required to or may be given by ordinary service, it is given —

(a) by leaving a copy of the document at the proper address of the person to be served between the hours of 9 a.m. and 5 p.m. on a business day; or

(b) by giving a copy of the document in accordance with the *Interpretation Act 1984* section 76(d); or

(c) if the person to be given the document has specified or authorised a number for service by fax transmission, by sending the document to that fax number; or

(d) if the person to be given the document has specified or authorised an address for service by email, by sending the document to that email address; or

(e) if the person to be given the document is a public sector body, by sending the document to the body's address for service in the proceedings.

[(3)-(5) deleted]

(6) The time of giving any document is, where the document or copy of the document —

(a) is sent by post under subrule (2)(b), 2 business days after the day on which the document was posted; or

(b) is sent by fax transmission or email under subrule (2)(c), (d) or (e), at the time the fax or email is received.

(7) If a fax or an email is received after 4.00 p.m. on any day, it is to be taken to have been received on the next business day.

[Rule 33 amended: Gazette 14 May 2013 p. 1970; 6 Feb 2015 p. 571.]

34. Address for service

(1) The address of a place for service in the proceedings must be an address within this State at which documents may, during ordinary business hours —

(a) be left for the person whose address for service it is; and

(b) to which documents may be posted to that person.

(2) If a person is represented by a legal practitioner, the address for service in the proceedings must be the address of that legal practitioner or of the legal practitioner's agent located within this State.

(3) If a person is represented by an agent, the address for service in the proceedings must be the address of that agent located within this State.

(4) A public sector body may by written notice —

(a) give the executive officer a fax number or an address for service by email; or

(b) change or withdraw that number or address for service.

(5) The executive officer is to keep in a register an accurate record of a fax number or an email address of a public sector body.

(6) If a party to a proceeding is represented by a legal practitioner or an agent and the name and address of the legal practitioner or agent is not provided in the application, the legal practitioner or agent must within 7 days of receiving instructions to represent the party —

(a) file with the executive officer a notice of representation in an approved form duly completed; and

(b) give a copy of the notice to each other party to the proceeding or, if a party is represented by a legal practitioner or agent, that legal practitioner or agent.

(7) If —

(a) a party to a proceeding is represented by a legal practitioner or an agent; and

(b) the name and address of the legal practitioner or agent is not provided in the application; and

(c) the legal practitioner or agent has not complied with subrule (6),

the legal practitioner or agent may not appear in or file any document with the Tribunal or executive officer in relation to the proceeding.

(8) If a legal practitioner or agent ceases to represent a party in proceedings, the legal practitioner or agent must within 7 days of ceasing to represent the party —

(a) file with the executive officer a notice of representation in an approved form duly completed stating —

(i) the legal practitioner or agent has ceased to represent the party; and

(ii) the party's address for service in the proceedings; and

(b) give a copy of the notice to each other party in the proceeding or, if a party is represented by a legal practitioner or agent, that legal practitioner or agent.

[Rule 34 amended: Gazette 13 Apr 2007 p. 1684; 6 Feb 2015 p. 571.]

35. Acceptance by legal practitioner or agent

(1) This rule applies to —

(a) an application; or

(b) any document required or permitted to be given in any proceeding,

that is required to be given by personal service.

(2) If a legal practitioner or an agent representing a person in accordance with the Act, an enabling Act or these rules (the ***representative***) makes on a copy of a document to which this rule applies a note that he or she accepts the document on behalf of a person, the document is to be taken, unless the representative is shown not to have had authority to represent the person, to have been duly given to that person on the date on which the representative makes the note or on such earlier date as may be proved.

36. Substituted service

(1) If for any reason it is impractical to give a document in the manner set out in the rules, the Tribunal may order that, instead of using such a manner, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person to be given the document.

(2) If the Tribunal makes an order under subrule (1), the Tribunal may order that the document is to be taken to have been given on the happening of any specified event, or on the expiry of any specified time.

[Rule 36 amended: Gazette 6 Feb 2015 p. 572.]

37. Informal service: confirmation

If for any reason it is impractical to give a document in the manner set out in the rules, but steps have been taken to bring the document to the notice of the person to be given the document, the Tribunal may order that the document is to be taken to have been given to that person on a date specified in the order.

38. Proof of service

For the purposes of the proof that a document has been given to a person, evidence of a statement by a person of his or her identity, that he or she holds some office or has a representative capacity is evidence of his or her identity, that he or she holds that office or has that representative capacity, as the case may be.

Division 4 — Litigation guardian

39. Litigation guardian: section 40(2) of Act

(1) A person is qualified for appointment as a litigation guardian to conduct proceedings or proposed proceedings for a party or potential party if the person —

(a) is an adult; and

(b) has no interest in the proceedings or proposed proceedings that is adverse to the interest of the party or potential party; and

(c) can fairly and competently conduct the proceedings or proposed proceedings for the party or potential party; and

(d) has consented to act as the litigation guardian.

(2) On application by any person or of its own motion the Tribunal may —

(a) under section 40(2) of the Act, appoint a qualified person as a litigation guardian for a party or potential party; or

(b) remove a litigation guardian previously appointed; or

(c) if satisfied that in the circumstances of the case it is proper to do so, permit a party or potential party to participate in the proceedings without a litigation guardian.

(3) A person appointed as a litigation guardian of a party or potential party must give written notice of the appointment to an applicant or a notifiable person.

(4) A person appointed as a litigation guardian of a party or potential party —

(a) is bound by these rules; and

(b) must do anything required by these rules to be done by the party or potential party; and

(c) may, for the benefit of the party or potential party, do anything permitted by these rules to be done by the party or potential party.

(5) Subject to the Act Part 4 Division 5, the Tribunal may order the costs of a litigation guardian to be paid —

(a) by a party; or

(b) from the income or property of the person for whom the litigation guardian is appointed.

[Rule 39 amended: SL 2022/219 r. 13.]

Division 4A — Expert evidence

[Heading inserted: Gazette 17 May 2016 p. 1491.]

39A. Experts' duties

An expert at a hearing, or at a conference referred to in rule 39B(1), has these paramount duties as to matters within their expertise —

(a) to be impartial and independent;

(b) to assist the Tribunal;

(c) not to be an advocate for the party that has engaged them.

[Rule 39A inserted: Gazette 17 May 2016 p. 1491.]

39B. Conference of experts pre-hearing

(1) This rule applies if in a proceeding the Tribunal orders experts with a common or overlapping expertise to confer and to file a joint statement about matters such as the points on which they agree and disagree.

(2) Unless the Tribunal orders otherwise, the experts must confer in the absence of the parties and the parties' representatives.

(3) An expert who is required to confer must not, before the joint statement is filed, discuss any matter raised in the conference with, or disclose any such matter to, any person who is not part of the conference.

(4) Evidence of anything said or done in the course of the conference of experts, other than the joint statement, is not admissible at any later stage of the proceeding without the Tribunal's leave.

(5) Unless the Tribunal orders otherwise, it will admit the joint statement filed by the experts into evidence at the hearing of the proceeding.

(6) If the joint statement is admitted into evidence, no party can adduce any evidence inconsistent with any matters on which the statement says the experts agree, without the Tribunal's leave.

[Rule 39B inserted: Gazette 17 May 2016 p. 1491.]

39C. Experts to give evidence concurrently

(1) If at the hearing of a proceeding one or more of the parties propose to adduce evidence of 2 or more experts with a common or overlapping expertise then the experts must all be present (including by means of a video link or an audio link) together in the witness box at the same time, unless the Tribunal orders otherwise.

(2) Subject to the Tribunal's directions, when experts are together in the witness box —

(a) they may be questioned together or separately by the Tribunal, the parties or the parties' representatives; and

(b) they may respond immediately to each other's evidence; and

(c) they may ask each other questions.

[Rule 39C inserted: Gazette 17 May 2016 p. 1491-2.]

Division 5 — Settlements

40. Settlement offers

(1) An offer to settle a proceeding that is before the Tribunal may be made —

(a) with prejudice, meaning that any party may refer to the offer, or to any terms of the offer, at any time during the proceeding; or

(b) without prejudice, meaning that the Tribunal is not able to be told of the making of the offer until after it has made its decision in respect of the matters in dispute in

the proceeding (other than in relation to the making of orders in respect of costs).

(2) If an offer does not specify whether it is made with or without prejudice, it is to be treated as if it had been made without prejudice.

(3) A party may make more than one offer.

(4) If an offer provides for the payment of money, the offer must specify the amount of money to be paid and when and how that money is to be paid.

41. Acceptance of settlement offers

(1) An offer may be open for acceptance for any period. However, an offer must be open for acceptance until the commencement of the hearing or until the expiry of a specified period after the offer is made, whichever is the shorter period.

(2) The minimum period that can be specified is 14 days.

(3) An offer cannot be withdrawn while it is open for acceptance without the permission of the Tribunal.

(4) In deciding whether to give permission, the Tribunal may examine the offer, even if it was made without prejudice.

(5) If the offer was made without prejudice, a member of the Tribunal who examines it for the purposes of subrule (4) must take no further part in the proceeding after determining whether or not to give permission.

(6) A party can only accept an offer by giving the party who made it a signed notice of acceptance.

(7) A party may accept an offer even though the party has made a counter-offer.

[Rule 41 amended: Gazette 13 Apr 2006 p. 1558.]

Division 6 — Costs

42A. Time within which costs application may be made

Subject to these rules, an application to the Tribunal for costs under this Division can be made within 21 days of the orders to which the application relates being made by the Tribunal.

[Rule 42A inserted: Gazette 14 May 2013 p. 1970.]

42. Order for costs if settlement offer is rejected

(1) This rule applies if —

(a) a party to a proceeding (other than a proceeding in the Tribunal's review jurisdiction) gives another party to the proceeding an offer in writing to settle the proceeding; and

(b) the other party does not accept the offer within the time the offer is open; and

(c) the offer complies with rules 40 and 41; and

(d) in the opinion of the Tribunal, the orders made by the Tribunal in the proceeding are not more favourable to the other party than the offer.

(2) If this rule applies, the Tribunal is to, in determining the costs that may be awarded, take into account that the party did not accept an offer more favourable than the Tribunal's order.

(3) In determining whether its orders are or are not more favourable to a party than an offer, the Tribunal —

(a) must take into account any costs it would have ordered on the date the offer was made; and

(b) must disregard any costs it ordered in respect of any period after the date the offer was received.

43. Amount of costs

(1) If the Tribunal makes an order under the Act Part 4 Division 5 for the payment of costs and does not fix the amount of costs, that amount is to be assessed or settled by the executive officer or a member of the Tribunal nominated by the President (the ***nominated member***).

(2) An assessment of costs by the executive officer or a nominated member is to be taken to be an assessment of costs by the Tribunal.

(3) If —

(a) a party fails to attend an assessment of costs having been given reasonable notice of the assessment by the executive officer or a nominated member; and

(b) the assessment is adjourned as a result; and

(c) another party incurs additional costs because of the adjournment,

the executive officer or a nominated member may order that the party who failed to attend pay an amount fixed by the executive officer or nominated member in respect of the additional costs of the other party.

(4) An order under subrule (3) may be enforced under the Act section 85 as if it were a monetary order.

Division 7 — Miscellaneous

*[**44.** Deleted: Gazette 6 Feb 2015 p. 572.]*

45. Barring people from being agents representing parties

(1) If a judicial member is satisfied a person, other than a legal practitioner —

(a) has, under the Act section 39(1), represented a party to a proceeding before the Tribunal; and

(b) in doing so has acted inappropriately or improperly,

the judicial member may, by order, prohibit the person from again representing a party.

(2) The practice and procedure for making an order under subrule (1) is to be determined by the President.

[Rule 45 inserted: Gazette 17 May 2016 p. 1492.]

46. Dispensing with compliance with requirement of a rule

The Tribunal may dispense with compliance with a requirement of a rule, either before or after the time for compliance with the requirement arises.

[Rule 46 amended: Gazette 6 Feb 2015 p. 572.]

47. Forms

(1) A form to be used under the Act must be one approved by the President.

(2) An approved form must be completed in accordance with these rules and any instructions on or attached to the form.

(3) A form may be accepted by the executive officer or dealt with by the Tribunal if it is substantially in the approved form and has been substantially completed.

(4) The executive officer is to make the approved forms available to persons requiring them.

[Rule 47 amended: SL 2022/219 r. 14.]

Part 3 — Special rules

48. *Animal Welfare Act 2002*

For the purposes of the Act section 75(1)(c), the following persons are prescribed —

(a) the Minister of the Crown to whom the administration of the *Animal Welfare Act 2002* is committed; and

(b) the Director General as defined in the *Animal Welfare Act 2002* section 5(1); and

(c) if the original decision-maker was an inspector, as defined in the *Animal Welfare Act 2002* section 5(1), that inspector.

48A. *Community Titles Act 2018*

If a community corporation is given a copy of an application under the Act section 45, the community corporation must give a copy of the application to the persons referred to in the *Community Titles Act 2018* section 163(2)(a), (b) or (c).

[Rule 48A inserted: SL 2021/123 r. 4.]

49. *Credit (Administration) Act 1984*

(1) In this rule —

cognate Acts and ***Commissioner*** have the meanings given to those terms in the *Credit (Administration) Act 1984* section 4.

(2) In any proceedings before the State Administrative Tribunal under the cognate Acts a person is authorised under the Act section 39(1)(f) to be represented by the Commissioner or by a counsel, solicitor or agent for the Commissioner.

50. *Employment Agents Act 1976*

Under the Act section 39(1)(f), a party to a review of a decision by the Tribunal under the *Employment Agents Act 1976* section 22(4) is authorised to be represented by an agent.

51. *Equal Opportunity Act 1984*

(1) An application for an interim order under the *Equal Opportunity Act 1984* section 126 must be made on an application to commence proceedings before the Tribunal under that Act.

(2) In cases of urgency an application for an interim order may be made ex parte.

(3) If an application is made ex parte, a member of the Tribunal may order that the hearing of the application be delayed until any other interested party is informed of the application and given a copy of any documents which have been filed in relation to the application.

(4) If an order is made ex parte, a member of the Tribunal may order the executive officer to give, in any manner which the member considers appropriate, a copy of the order to any person affected by the terms of the order and any other person.

(5) Rule 34(6) and (7) do not apply if the Commissioner for Equal Opportunity, or a counsel or representative of the Commissioner, is the legal practitioner or agent representing the complainant in proceedings relating to a complaint referred to the Tribunal under the *Equal Opportunity Act 1984* section 93(1).

[Rule 51 amended: Gazette 28 Mar 2008 p. 918; 29 Aug 2008 p. 4043.]

52. *Firearms Act 2024*

(1) This rule applies to an application for review of a decision under the *Firearms Act 2024* section 335.

(2) Under the Act section 39(1)(f), a party to a review of a decision by the Tribunal is authorised to be represented by an agent.

[(3) deleted]

(4) Under the Act section 39(1)(f), the Commissioner of Police is authorised to be represented by a member of the Police Force of Western Australia or an officer of the Department as defined in the *Firearms Act 2024* section 5.

[Rule 52 amended: Gazette 14 Oct 2005 p. 4570; SL 2025/147 r. 4.]

53. *Fish Resources Management Act 1994*

Subject to any order the Tribunal may make for costs under the Act Part 4 Division 5, if an application for review under the *Fish Resources Management Act 1994* Part 14 is successful one half of the fee referred to in the *State Administrative Tribunal Regulations 2004* Schedule 12 item 1 [1] is to be refunded to the applicant.

54. *Guardianship and Administration Act 1990*

(1) This rule applies to proceedings under the *Guardianship and Administration Act 1990*.

(2) Rules 26 and 47 do not apply to an application made to the Tribunal under the *Guardianship and Administration Act 1990* section 40.

(3) Despite Part 2 Division 3, if a document is required to be given to a person referred to in the *Guardianship and Administration Act 1990* section 115(1) under the Act it must be given personally to that person in the manner specified in section 115 of that Act.

55. *Medical Act 1894*

Under the Act section 39(1)(f), a person who makes an application for review under the *Medical Act 1894* [2] section 13(8) is authorised to be represented by a person other than a legal practitioner.

56. *Mental Health Act 1996*

(1) In this rule —

authorised hospital, ***community treatment order***, ***involuntary patient*** and ***supervising psychiatrist*** have the meanings given to those terms in the *Mental Health Act 2014* section 4.

[(2) deleted]

(3) Despite rule 31, if a document is required to or may be given to an involuntary patient who is not the subject of a community treatment order, personal service is effected by leaving a copy of the document with the person in charge of the authorised hospital in which the person is detained.

(4) Despite rule 31, if a document is required to or may be given to an involuntary patient who is the subject of a community treatment order personal service is effected —

(a) by leaving a copy of the document with him or her; or

(b) if the involuntary patient cannot be found, by leaving a copy of the document with his or her supervising psychiatrist.

(5) Despite rule 31, if a document is required to or may be given to an involuntary patient who is absent on leave of absence and cannot be found, personal service is effected by leaving a copy of the document with the person in charge of the authorised hospital in which the person is required to be detained.

(6) A copy of a document that must be given to an involuntary patient under the Act, an enabling Act or these rules must also be given to —

(a) the patient's litigation guardian appointed under the Act section 40(2) (if any); and

(b) the patient's guardian ad litem (if any); and

(c) if an administrator of his or her estate has been appointed under the *Guardianship and Administration Act 1990*, the administrator; and

(d) if the patient has a guardian appointed under a law of a State or Territory, that guardian.

[Rule 56 amended: Gazette 12 Feb 2016 p. 384.]

57. *Pawnbrokers and Second-hand Dealers Act 1994*

(1) Under the Act section 39(1)(f), a licensing officer who makes an allegation to the Tribunal under the *Pawnbrokers and Second-hand Dealers Act 1994* section 27(2) that it should take action against a specified licensee under section 27 of that Act is authorised to be represented by a member of the Police Force of Western Australia or an officer of the Department as defined in section 3(1) of that Act.

(2) Under the Act section 39(1)(f), a licensing officer whose decision is subject to review under the *Pawnbrokers and Second-hand Dealers Act 1994* section 30(1) is authorised to be represented by a member of the Police Force of Western Australia or an officer of the Department as defined in section 3(1) of that Act.

[Rule 57 inserted: Gazette 14 Oct 2005 p. 4570; amended: Gazette 13 Apr 2007 p. 1684.]

58. *Public Order in Streets Act 1984*

(1) This rule applies to an application for review under the *Public Order in Streets Act 1984* section 8(1).

(2) Under the Act section 45(2)(c), the applicant is exempt from the requirement to give a copy of the application to the notifiable person.

(3) The executive officer in determining the date for hearing the application must ensure that it takes place as soon as is practicable, but in any event on a date before the date of the proposed public meeting or procession.

(4) In addition to the persons referred to in rule 18, the executive officer is to give notice of the time and place for a hearing in a

proceeding to the Commissioner of Police, or the authorised officer to whom the application for the permit was made, as the case may require.

[(5) deleted]

(6) Under the Act section 39(1)(f), the Commissioner of Police, or the authorised officer to whom the application for the permit was made, as the case may require, is authorised to be represented by a member of the Police Force of Western Australia.

[Rule 58 amended: Gazette 14 Oct 2005 p. 4570; 13 Apr 2007 p. 1685.]

59. *Retirement Villages Act 1992*

(1) In this rule —

agent means any person who is not a legally qualified person;

Commissioner has the meaning given to that term in the RV Act section 3(1);

legally qualified person means —

(a) a legal practitioner; or

(b) a person who is in the course of completing the practical legal training requirements specified in the *Legal Profession Uniform Rules (WA)* for the purposes of the *Legal Profession Uniform Law (WA)* section 17(1)(b); or

(c) any person who holds or has held legal qualifications under the laws of this State or any other place;

RV Act means the *Retirement Villages Act 1992*.

(2) A party to a proceeding before the Tribunal under the RV Act may be represented by an agent if —

(a) the party is unable to appear personally or conduct the proceedings properly himself or herself; and

(b) no other party will be unfairly disadvantaged by the fact that the agent is allowed so to act.

(3) Under the Act section 39(4), a party to a proceeding before the Tribunal under the RV Act is not entitled to be represented by a legal practitioner unless —

(a) all the parties agree and any party who is not so represented will not be unfairly disadvantaged; or

(b) one of the parties is a legally qualified person; or

(c) one of the parties is a body corporate and any other party elects to be so represented; or

(d) one of the parties is unable to appear personally or conduct the proceedings properly himself or herself; or

(e) the proceedings are instituted or defended, or the conduct thereof has been assumed, by the Commissioner.

(4) Subrule (3) does not apply to a minor proceeding as defined in the Act section 93(1).

[Rule 59 amended: Gazette 9 Jul 2010 p. 3242; SL 2022/73 r. 4.]

60. *Rights in Water and Irrigation Act 1914*

(1) Under the Act section 39(1)(f), a person who makes an application for review under the *Rights in Water and Irrigation Act 1914* Part III Division 3B is authorised to be represented by an agent.

(2) For the purposes of the Act section 75(1)(c), the Minister to whom the administration of the *Rights in Water and Irrigation Act 1914* is committed is prescribed.

(3) Subject to any order the Tribunal may make for costs under the Act Part 4 Division 5, if an application for review under the *Rights in Water and Irrigation Act 1914* Part III Division 3B is withdrawn before a hearing is held, the executive officer may

refund to the applicant one half of the fee referred to in the *State Administrative Tribunal Regulations 2004* Schedule 15 [1] paid by the applicant.

61. *Security and Related Activities (Control) Act 1996*

(1) Subrules (2), (3) and (4) apply to —

(a) an allegation by the Commissioner to the Tribunal that there is proper cause for disciplinary action under the *Security and Related Activities (Control) Act 1996* section 67(1); and

(b) a reference by the Commissioner to the Tribunal under section 67(3b) [3] of that Act; and

(c) an application for review under section 72 of that Act.

(2) In this rule —

Commissioner has the meaning given to that term in the *Security and Related Activities (Control) Act 1996* section 3;

Department has the meaning given to that term in the *Security and Related Activities (Control) Act 1996* section 3.

(3) Under the Act section 39(1)(f), the Commissioner or a licensing officer whose decision is subject to review is authorised to be represented by a member of the Police Force of Western Australia or an officer of the Department.

(4) On the determination of a review the executive officer is to give the Commissioner a copy of any relevant decision and, if a licence has been revoked, any licence and identity card that has been delivered to the Tribunal.

[(5) deleted]

[Rule 61 amended: Gazette 14 Oct 2005 p. 4570; 29 Aug 2008 p. 4043-4; 6 Feb 2015 p. 572.]

62. *Strata Titles Act 1985*

If a strata company is given a copy of an application under the Act section 45, the strata company must give a copy of the application to the persons referred to in the *Strata Titles Act 1985* section 198(2)(a), (b) or (c).

[Rule 62 amended: Gazette 31 Dec 2019 p. 4661.]

63. *Planning and Development Act 2005*

(1) This rule applies to a review by the Tribunal under the *Planning and Development Act 2005* Part 14.

(2) Under the Act section 39(1)(f) a party to the review is authorised to be represented by an agent, unless the review is one referred to in the *Planning and Development Act 2005* section 244 and is applied for by a party.

(3) As soon as practicable after the Minister makes a referral under the *Planning and Development Act 2005* section 211(2), the Tribunal is to notify the person who made the representation and the relevant local government that the representation has been referred to the Tribunal.

(4) Rule 34(6) and (7) do not apply if the State Solicitor is the legal practitioner representing a Development Assessment Panel or the Western Australian Planning Commission in proceedings under the *Planning and Development Act 2005* Part 14.

[Rule 63 inserted: Gazette 13 Apr 2006 p. 1558; amended: Gazette 29 Aug 2008 p. 4044; 28 Jan 2014 p. 182; 17 May 2016 p. 1492.]

64. *Taxation Administration Act 2003*

Rule 34(6) and (7) do not apply if the State Solicitor is the legal practitioner representing the Commissioner of State Revenue in proceedings under the *Taxation Administration Act 2003*.

[Rule 64 inserted: Gazette 29 Aug 2008 p. 4044.]

Notes

This is a compilation of the *State Administrative Tribunal Rules 2004* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Citation	Published	Commencement
State Administrative Tribunal Rules 2004	30 Dec 2004 p. 6849-89	1 Jan 2005 (see r. 2)
State Administrative Tribunal Rules (Amendment No. 1) 2005	14 Oct 2005 p. 4568-70	17 Oct 2005 (see r. 2)
State Administrative Tribunal Rules (Amendment No. 1) 2006	13 Apr 2006 p. 1556-8	13 Apr 2006 [4]
State Administrative Tribunal Amendment Rules 2007	13 Apr 2007 p. 1682-5	13 Apr 2007
Reprint 1: The *State Administrative Tribunal Rules 2004* as at 13 Jul 2007 (includes amendments listed above)		
State Administrative Tribunal Amendment Rules 2008	28 Mar 2008 p. 918-19	r. 1 and 2: 28 Mar 2008 (see r. 2(a)); Rules other than r. 1 and 2: 29 Mar 2008 (see r. 2(b))
State Administrative Tribunal Amendment Rules (No. 2) 2008	29 Aug 2008 p. 4043-4	r. 1 and 2: 29 Aug 2008 (see r. 2(a)); Rules other than r. 1 and 2: 30 Aug 2008 (see r. 2(b))
State Administrative Tribunal Amendment Rules 2010	9 Jul 2010 p. 3240-2	r. 1 and 2: 9 Jul 2010 (see r. 2(a)); Rules other than r. 1 and 2: 10 Jul 2010 (see r. 2(b))
State Administrative Tribunal Amendment Rules 2013	14 May 2013 p. 1969-70	r. 1 and 2: 14 May 2013 (see r. 2(a)); Rules other than r. 1 and 2: 15 May 2013 (see r. 2(b))
Reprint 2: The *State Administrative Tribunal Rules 2004* as at 19 Jul 2013 (includes amendments listed above)		

Citation	Published	Commencement
State Administrative Tribunal Amendment Rules (No. 2) 2013	28 Jan 2014 p. 181-2	r. 1 and 2: 28 Jan 2014 (see r. 2(a)); Rules other than r. 1 and 2: 29 Jan 2014 (see r. 2(b))
State Administrative Tribunal Amendment Rules 2014	6 Feb 2015 p. 567-72	r. 1 and 2: 6 Feb 2015 (see r. 2(a)); Rules other than r. 1 and 2: 7 Feb 2015 (see r. 2(b))
State Administrative Tribunal Amendment Rules 2016	12 Feb 2016 p. 384	r. 1 and 2: 12 Feb 2016 (see r. 2(a)); Rules other than r. 1 and 2: 13 Feb 2016 (see r. 2(b))
State Administrative Tribunal Amendment Rules (No. 2) 2016	17 May 2016 p. 1490-2	r. 1 and 2: 17 May 2016 (see r. 2(a)); Rules other than r. 1 and 2: 18 May 2016 (see r. 2(b))
State Administrative Tribunal Amendment Rules 2018	24 Apr 2018 p. 1351-2	r. 1 and 2: 24 Apr 2017 (see r. 2(a)); Rules other than r. 1 and 2: 25 Apr 2018 (see r. 2(b))
State Administrative Tribunal Amendment Rules (No. 2) 2019	31 Dec 2019 p. 4661	r. 1 and 2: 31 Dec 2019 (see r. 2(a)); Rules other than r. 1 and 2: 1 May 2020 (see r. 2(b) and SL 2020/39 cl. 2)
State Administrative Tribunal Amendment Rules 2021	SL 2021/123 16 Jul 2021	r. 1 and 2: 16 Jul 2021 (see r. 2(a)); Rules other than r. 1 and 2: 17 Jul 2021 (see r. 2(b))
State Administrative Tribunal Amendment Rules (No. 2) 2022	SL 2022/73 10 Jun 2022	r. 1 and 2: 10 Jun 2022 (see r. 2(a)); Rules other than r. 1 and 2: 1 Jul 2022 (see r. 2(b)) and SL 2022/113 cl. 2)
State Administrative Tribunal Amendment Rules 2022	SL 2022/219 30 Dec 2022	r. 1 and 2: 30 Dec 2022 (see r. 2(a)); r. 3, 4 and 8-15: 31 Dec 2022 (see r. 2(c)); r. 5-7: 1 Jul 2023 (see r. 2(b))

Citation	Published	Commencement
State Administrative Tribunal Amendment Rules 2025	SL 2025/147 15 Aug 2025	r. 1 and 2: 15 Aug 2025 (see r. 2(a)); Rules other than r. 1 and 2: 16 Aug 2025 (see r. 2(b))

Other notes

[1] Schedule deleted by the *State Administrative Tribunal Amendment Regulations (No. 2) 2007* r. 8 (see *Gazette* 26 June 2007 p. 2979-96).

[2] Repealed by the *Medical Practitioners Act 2008*, which was repealed by the *Health Practitioner Regulation National Law (WA) Act 2010*.

[3] Section 67(3b) deleted by the *Security and Related Activities (Control) Amendment Act 2008* s. 46(4).

[4] The commencement date of 9 Apr 2006 that was specified in r. 2 was before the date of gazettal.

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
Act	3
address for service in the proceedings	3
agent	59(1)
approved form	3
authorised hospital	56(1)
business day	3
cognate Acts	49(1)
Commissioner	49(1), 59(1), 61(2)
community treatment order	56(1)
Corporations Act	3
Department	61(2)
direction	3
document	3, 6A
ECMS	3
guardian ad litem	3
interim application	14
involuntary patient	56(1)
legally qualified person	59(1)
material	12(1)
nominated member	43(1)
notice of representation	3
notifiable person	3
oral application	8(1)
ordinary service	3
personal service	3
practice note	3
pre-paid post	3
public sector body	3
referring person	3
representative	35(2)
RV Act	59(1)
supervising psychiatrist	56(1)

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