

QCAT Practice Direction No 1 of 2012

Hybrid hearings

Effective: 3 September 2012

Explanation of hybrid hearings

1. QCAT has an obligation to deal with proceedings in a way that is accessible, fair, just, economical, informal and quick.
2. Alternative dispute resolution (ADR) processes are an important part of how QCAT meets that obligation. Usually, if a dispute can't be settled during ADR, then it is listed for hearing on a later date.
3. However, in some proceedings when parties do not reach an agreement during ADR, it is not practical or efficient to list the proceeding for hearing on a later date. Examples of these kinds of proceedings include: "one issue" disputes, animal management cases, or where parties have travelled a long distance to attend QCAT.
4. In response, QCAT has developed a process called a hybrid hearing.
5. In a hybrid hearing, parties attend a hearing first, and then attend a mediation after the hearing. Both the hearing and the mediation are listed on the same day.
6. QCAT gives the parties the opportunity to mediate after the hearing because:
 - (a) During the hearing, parties will hear all of the evidence and submissions of the other party. Parties may have a different view about reaching an agreement afterwards.
 - (b) During the mediation, parties will not know what the Member is going to decide and can make their own agreement.
 - (c) Parties can be confident that if they don't reach an agreement and the Member does make a decision, the decision is not affected by anything said or done by the parties during the mediation.
 - (d) Mediation gives the parties the opportunity to make an agreement between them rather than have a decision made for them. Research shows that parties are more likely to honour an agreement they reach together, rather than a decision that is made for them by someone else.

- (e) Mediation gives the parties an opportunity to find middle ground instead of one party winning and one party losing. Sometimes, even the party who “wins” a tribunal hearing is not happy with the result.
- (f) QCAT may be limited in the kinds of orders it can make to resolve a dispute. The parties may be able to find creative ways to solve a dispute that the tribunal could not order.
- (g) Mediation gives parties the opportunity to say things to each other that are “off the record”.
- (h) Disputes often arise because the parties are not communicating well, or have stopped communicating. Mediation often provides the first opportunity for the parties to speak to each directly. The Member can assist in opening the lines of communication between them.
- (i) Parties may need to work together in the future. Reaching an agreement together may help maintain working relationships.

Application of practice direction

- 7. This practice direction applies if QCAT or the Principal Registrar decides that it is appropriate that a proceeding be listed for a hybrid hearing.

Standard directions

- 8. Unless otherwise ordered, the Tribunal or the Principal Registrar will make the following standard directions:

- (a) The applicant must file two copies in the Tribunal and give one copy to the respondent of the following documents:
 - (i) an indexed and page numbered bundle in date or other logical order of the documents and other material in its possession or under its control which are relevant to the application; and
 - (ii) any written submissions, by:

4:00pm on relevant date.

- (b) The respondent must file two copies in the Tribunal and give one copy to the applicant of the following documents:

- (i) an indexed and page numbered bundle in date or other logical order of the documents and other material in its possession or under its control which are relevant to the application; and
- (ii) any written submissions, by:

4:00pm on relevant date.

- (c) The proceeding is listed for a hybrid hearing;
 - (d) The proceeding is listed for hearing at a time¹ on relevant date;
 - (e) The proceeding is listed for mediation at a later time² on the same relevant date; and
 - (f) The hearing and the mediation must be listed before the same Member;
 - (g) No party will be allowed to present any document or other material at the hearing if it was not filed in the Tribunal and given to the other party, unless QCAT gives permission to that party to do so.
 - (h) All persons who gave written statements must attend the hearing in person for cross examination. Any application for a person to attend the hearing by telephone must be made prior to 14 days before the hearing.
9. The Principal Registrar will include a copy of this practice direction with the directions.

Hearing

- 10. At the hearing, the Member will take evidence and submissions from the parties in accordance with the QCAT Act and the QCAT Rules.
- 11. The hearing will take place in public unless otherwise ordered.
- 12. At the end of the hearing the Member will reserve their decision and adjourn the matter.
- 13. The Member will then consider the evidence and submissions in private and consider what decision they would make. The Member will record their proposed decision in writing and write brief reasons for the

¹ For morning sessions, the hearing will be listed at 9.30am. For afternoon sessions, the hearing will be listed at 1.30pm.

² For morning sessions, the mediation will be listed at 12.30pm on the same day. For afternoon sessions, the hearing will be listed at 3.00pm on the same day.

proposed decision including any necessary findings of fact on each of the issues in dispute in the matter.

14. The Member will place the proposed decision and the reasons in an envelope and seal it. The Member will not tell the parties what the proposed decision is or what the reasons for decision say.

Mediation

15. The Member will then hold a mediation in accordance with the QCAT Act³ and QCAT Rules. However, the Member will not meet with any of the parties in a private session during the mediation.
16. The mediation will take place in private unless otherwise ordered.
17. If the proceeding is settled at mediation, the Member will:
 - (a) record the terms of settlement in writing and make the orders necessary to give effect to the settlement⁴; and
 - (b) destroy the sealed envelope containing the proposed decision and the reasons for the decision without telling the parties what the proposed decision is and what the reasons say.
18. If the proceeding is not settled at mediation the Member will:
 - (a) open the sealed envelope containing the proposed decision and reasons for the decision and make the decision by reading the proposed decision and reasons for decision into the record;
 - (b) destroy the document containing the proposed decision and reasons for the decision; and
 - (c) make such orders as are necessary to give effect to the decision.



*Justice Alan Wilson
President
3 September 2012*

³ Excluding ss 81 and 82.

⁴ Section 85(2).