

QCAT Practice Direction No 3 of 2013

Hearings in Administrative Review Proceedings

Effective: 6 May 2013

Updated: 23 November 2015

Updated: 18 February 2019

1. This practice direction applies to matters heard in the review jurisdiction, other than disciplinary reviews.
2. Administrative review is different from other areas of the Tribunal's jurisdiction. Decisions made by government officials or officials of government agencies may be reviewed by the Tribunal when an enabling Act provides for review by QCAT. The role of the Tribunal in review proceedings is to produce the correct and preferable decision, following a fresh hearing on the merits.¹
3. The government or agency official (the decision-maker) which made the decision is required to use their best endeavours to assist the Tribunal so that it can make its decision on the review: that is, the decision-maker must assist the Tribunal to make the correct and preferable decision. Therefore, the decision-maker's role is not adversarial. However, in discharging its obligations the decision-maker must properly test the evidence relied upon by the applicant (and the evidence of any other party intervening in or joined as a party to the proceeding), to perform its function of assisting the Tribunal.
4. Hearings in this jurisdiction will follow the order outlined in this practice direction unless the presiding member determines that in a particular proceeding a different order of events is required either to meet the individual needs of a party or parties or to comply with the requirements of the enabling Act under which the decision under review was made.²
5. The general order of events at the hearing will be as follows:
 - (a) The Member's Overview including the Tribunal's role in administrative review proceedings, the nature of merits review, and the procedure at the hearing;

¹ *Queensland Civil and Administrative Tribunal Act 2009*, s 20.

² For example, see the *Liquor Act 1992* and the *Gaming Machine Act 1991* which provide for the review hearing to be by way of reconsideration of the evidence before the decision-maker.

- (b) The representative for the decision-maker of the decision under review shall, in its role of assisting the Tribunal to make the correct and preferable decision, outline the issues that the Tribunal must decide, the statutory framework for decision-making, and any policy which it considers relevant;
 - (c) The applicant and any witnesses relied upon by the applicant will confirm their previously filed written witness statements under oath or affirmation and will then be made available for cross-examination by the decision-maker;
 - (d) The decision-maker's witnesses will confirm their previously filed written witness statements under oath or affirmation and will then be made available for cross-examination by the applicant (Note: because the Tribunal's role in merits review is to make the decision afresh, the decision-maker shall not give evidence or be cross-examined about why it made the decision. However, depending on the nature of the particular review, the decision-maker may have other evidence to present. For example, in a review of a decision by the Queensland Building and Construction Commission, a building inspector or engineer's evidence which was relied upon in making the decision; in a review of a Child Safety decision about contact with children, departmental officers may give evidence about interactions between a parent and themselves; in a review of a decision by a local Council about a dangerous dog declaration, the Council may present evidence from witnesses to an incident involving the dog.);
 - (e) The applicant will make oral submissions;
 - (f) The decision-maker's representative will make oral submissions including about how the oral evidence relates to the legislative framework for decision-making, and what the decision-maker considers is the correct and preferable decision having regard to the framework and the evidence, including the oral evidence given at the hearing;
 - (g) The applicant will have the opportunity to make oral submissions in reply to the decision-maker's submissions;
 - (h) Member's decision and reasons or closing if the decision is reserved and time estimate of time as to when the decision is likely to be made.
6. If there is an intervener, joined party or, in child protection proceedings, a separate representative, the procedure will be adapted by the

Presiding Member at hearing to accommodate the party in the manner the Member considers most expeditious and procedurally fair, ensuring that all parties have the opportunity to present the evidence they rely upon, to cross-examine the witnesses relied upon by other parties, and to make submissions.



*Hon Justice Daubney AM
President*

18 February 2019