This paper was prepared and settled jointly by the members of ADRAC

Dispute resolution in Tribunals

Introduction

Over the years, there has been a multitude of tribunals established across the various states and territories of Australia. Previously these tribunals were purpose specific, often established to handle the regulatory and disciplinary litigation arising from the regulation of particular professions or industries.

In more recent years, states and territories have recognised the benefits of establishing 'super tribunals'[1], leading to the establishment of the:

- Australian Capital Territory Civil and Administrative Tribunal (ACAT);
- New South Wales Civil and Administrative Tribunal (NCAT);
- Northern Territory Civil and Administrative Tribunal (NTCAT);
- Queensland Civil and Administrative Tribunal (QCAT);
- South Australian Civil and Administrative Tribunal (SACAT);
- Victorian Civil and Administrative Tribunal (VCAT); and
- Western Australian State Administrative Tribunal (WASAT).

Each of these tribunals seeks to offer fast, simple, inexpensive and fair resolution of disputes.

The tribunals have embraced concepts of alternative dispute resolution to resolve disputes without the need for adjudication wherever possible. In fact, resolving matters through alternative dispute resolution methods is expressly referenced in a number of pieces of legislation which establish tribunals.[2]

The ideals and the methods of alternative dispute resolution pursued by the various tribunals tend to be reasonably consistent. However some variation arises in the practical application of these approaches. This paper considers some of the key aspects of tribunal approaches to alternative dispute resolution.

Forms of alternative dispute resolution

Generally, tribunals offer:

- Mediation; and
- Conference or Compulsory Conference.

QCAT also offers conciliation.

[1] The current exception is Tasmania, which is in the process of establishing the Tasmanian Civil and Administrative Tribunal which is expected to commence operations in 2021.
[2] Section 31 ACT Civil and Administrative Tribunal Act 2008 (ACT); section 37 Civil and Administrative Tribunal Act 2013 (NSW), section 10 (d) Northern Territory Civil and Administrative Tribunal Act 2014 (NT), section 8(1)(c) South Australian Civil and Administrative Tribunal Act 2013 (SA), section 4 (b) Queensland Civil and Administrative Tribunal Act 2009 (Qld.

General approach

Broadly put, the purpose of mediation is to achieve resolution of matters by settlement[3] or to promote settlement of the dispute.[4] On the other hand, the purpose of conferences is to identify and clarify the issues in the proceeding and promote the resolution of the matter by settlement.[5] The annexure to this paper provides more detail in respect of the forms of resolution offered by each tribunal along with an explanation of the processes adopted by the particular tribunal.

The tribunals are all empowered to require parties to attend mediation, conciliation or a conference.[6] The consequences of the parties not attending as required by the tribunal include adverse cost awards, having the application struck out, having orders made in favour of the other party or facing criminal charges.[7]

Should resolution be agreed through mediation, conciliation or conference, then, if the person conducting the session is a member of the tribunal or, as a registrar, is empowered to make orders, the matter can be resolved by orders at the session.

If the session will not be conducted by a member or registrar, the matter will be referred back to the tribunal for orders to give effect to the resolution.

In the event that there is no resolution at the mediation, conciliation or conference, there is a variety of approaches across the tribunals as to whether a tribunal member who conducted the mediation, conciliation or conference is able to continue to hear the matter.

In the Australian Capital Territory and New South Wales, a tribunal member who presides over an unsuccessful mediation, conciliation or conference will not hear the matter. In the Northern Territory[8], Queensland[9], South Australia[10], Victoria[11] and Western Australia[12], a tribunal member who has presided over a mediation (or conference) can proceed to hear the matter if the parties agree or do not object.

Many Tribunal members are qualified under the National Mediation Accreditation System (NMAS).

Practice

The general principles set out above suggest that the approach to dispute resolution is reasonably consistent. In practice however, some variation appears.

Type of resolution

In terms of the type of dispute resolution, most tribunals order conferences in the occupational discipline or regulation division whereas WASAT orders the parties to take part in mediation.

In some respects, the variation in the type of dispute resolution is somewhat illusory. The person conducting the resolution is generally a member of the tribunal and the process will generally involve

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[3] For example, section 51 South Australian Civil and Administrative Tribunal Act 2013 (SA) and section 54 State Administrative Tribunal Act 2004 (WA).

[4] For example, section 77 Queensland Civil and Administrative Tribunal Act 2009 (Qld).

[5] For example, section 108 Northern Territory Civil and Administrative Tribunal Act 2014 (NT), section 69 Queensland Civil and Administrative Tribunal Act 2009 (Qld).

[6] Sections 33 and 35 ACT Civil and Administrative Tribunal Act 2008 (ACT); section 37 Civil and Administrative Tribunal Act 2013 (NSW), sections 107 and 118 Northern Territory Civil and Administrative Tribunal Act 2014 (NT), sections 50 and 51 South Australian Civil and Administrative Tribunal Act 2013 (SA), section 4 (b) Queensland Civil and Administrative Tribunal Act 2009 (Qld); sections 83 and 88 Victorian Civil and Administrative Tribunal Act 1998 (Vic), sections 52 and 54 State Administrative Tribunal Act 2004 (WA).

[7] Sections 48 and 74 ACT Civil and Administrative Tribunal Act 2008 (ACT); section 37 Civil and Administrative Tribunal Act 2013 (NSW), section 10 (d) Northern Territory Civil and Administrative Tribunal Act 2014 (NT), section 89 South Australian Civil and Administrative Tribunal Act 2013 (SA), section 72 Queensland Civil and Administrative Tribunal Act 2009 (Qld), section 87 Victorian Civil and Administrative Tribunal Act 1998 (Vic), section 53 State Administrative Tribunal Act 2004 (WA).

[8] Section 125 Northern Territory Civil and Administrative Tribunal Act 2014 (NT).

[9] Section 81 Queensland Civil and Administrative Tribunal Act 2009 (Qld).

[10] Section 51 South Australian Civil and Administrative Tribunal Act 2013 (SA).

[11] Section 93A Victorian Civil and Administrative Tribunal Act 1998 (Vic).

[12] Section 54 State Administrative Tribunal Act 2004 (WA).

a joint session, followed by private sessions with the parties and finally a joint session. The person conducting the session will offer views on the matter and raise possible outcomes. There is a strong focus on resolution even in the conferences. The main difference between conferences and mediation in practice arises at the conclusion of the session. At the end of conferences, if settlement has not been achieved, directions will be made for the future conduct of the matter. In mediations, the parties are left to return for a future mention/directions hearing in order to progress the matter.

Whether and when ordered

Tribunals can order parties to attend mediation or a conference at any stage of the proceeding, with or without the agreement of the parties. Whether, and when, they do so varies widely between tribunals and even between the divisions within the same tribunal.

For example, in the occupational discipline or regulation divisions, VCAT and QCAT will, as a matter of course, require a (compulsory) conference to take place and will include relevant directions for that at the first mention of the matter. On the other hand, WASAT will consider the matter and the attitude of the parties prior to deciding whether to order mediation.

Before the session

Another important difference between tribunals is the requirements imposed upon parties prior to the session occurring. This varies from requiring parties to file their case statements and evidentiary material before the session, to just requiring an outline of the parties' position to requiring no material to be filed.

These different approaches causes a significant variation in the value of dispute resolution between tribunals. Where no, or very limited material, is required to be filed, it is not uncommon for the respondent party or their legal representative to attend without having considered the applicant's material and without having reached a considered position in response. This completely undermines the purpose of the session.

Some tribunals will allow this to occur and simply order that another session take place in the future. In divisions in which legal representatives (up to senior counsel) commonly appear for the parties, this may incur significant additional costs.

The alternative is for tribunals to ensure that relevant material has been filed and, in particular, for legal representatives to file an outline of their client's position prior to the session occurring. This ensures that the legal representative has taken instructions and has carefully considered the material and the client's case prior to attending.

Not all tribunals are willing to adopt such an approach. This does lead to greater cost and where the proceeding has been brought in the public interest, it also delays the possibility of effective action being taken.

If resolution is reached

The material in the annexure suggests that there is a fairly standard approach to finalising a matter if resolution is achieved through the dispute resolution process. Generally, the legislation and guidance suggests that in the event of resolution, the matter will be finalised at the conference and additional orders only be made if required to give effect to the agreement.

In practice, at least in the regulatory or disciplinary jurisdiction, that is not necessarily the case.

In the regulatory/disciplinary jurisdiction of most tribunals, despite any agreement reached between the parties at conference or mediation, the tribunals still expect to formally consider the matter to determine whether to accept any agreement on the facts, characterisation of conduct and sanction to be applied. Most tribunals still require all evidence to be filed along with submissions from the parties on every aspect. Some tribunals will then decide the matter on the papers while others require a hearing to determine whether to accept any agreement between the parties.

WASAT is an exception. In WASAT, mediation is a standard feature of regulatory/disciplinary proceedings. When the parties at mediation agree on findings of fact, the characterisation of the alleged conduct and the sanction that should be applied, WASAT will generally embody that agreement in an order without the need for further evidence or submissions from the parties. This ensures a very efficient and cost effective outcome for the parties and the tribunal.

Multiple dispute resolution sessions

While the legislation applicable to the different tribunals does not prevent multiple conferences or mediation sessions occurring, the practice of tribunals vary as to whether multiple sessions will be ordered.

Some tribunals such as QCAT tend to require a compulsory conference in every matter but will then progress the matter toward a hearing after the conference if resolution is not achieved.

Others, like VCAT and WASAT, will order multiple sessions if considered useful in the particular case, with or without the agreement of the parties. While there is sometimes a benefit in adopting this course if the parties are close to agreement, it can become very expensive (as parties are often legally represented) and cause significant delay in the resolution of matters if parties are required to return on multiple occasions.

Conclusion

From a review of the legislation and the published guidance material, it would seem that the dispute resolution approaches adopted by the various tribunals is reasonably similar. However, it is in the practical application of these standard approaches that variation arises.

Parties involved in dispute resolution in the tribunals should therefore not only consider the applicable legislation and guidance, but also consider the actual practice adopted by the tribunals in the course of handling matters.

Annexure

Australian Capital Territory Civil and Administrative Tribunal (ACAT)

The *ACT Civil and Administrative Tribunal Act 2008* provides for the tribunal to take all reasonably practicable steps to resolve matters before the application is heard. The Act goes on to reference two methods of potentially resolving matters at an early stage – preliminary conferences and mediation.

Preliminary conference

The tribunal may require the parties to attend a preliminary conference. Such conferences commonly occur in civil or rental property disputes but can be held for other case types.

There are three types of preliminary conference:

- Conference
  A conference is an informal meeting between the parties convened by a tribunal member or registrar, the aim of which is to come to an agreement as to how the case should be resolved.

  If agreement is reached at the conference, the member or registrar makes orders giving effect to the resolution. If the matter is not resolved, it proceeds to hearing and the convenor is not involved in the subsequent hearing.

- Conference and immediate determination
  A conference and immediate determination is held in some civil and fencing disputes. Essentially it is a 45 minute conference which, in the event that no resolution is reached, is immediately followed by a hearing.

  In the event that resolution is reached, the convenor will make appropriate orders giving effect to the settlement. Should resolution not be reached, the matter will be heard by a different ACAT member.

- Conference and evaluation
  A conference and evaluation is an informal meeting of around 3 hours in duration, convened by an ACAT member or registrar. The aim of the conference and evaluation is to:

  - Decide the issues in dispute;
  - Discuss how the matter can be resolved; and/or
  - Reach an agreement or identify what steps need to be taken before a hearing.

  In the event that resolution is reached, the convenor will make appropriate orders giving effect to the settlement. Should resolution not be reached, the matter will immediately proceed to a directions hearing, conducted by the convenor.

Mediation

If ACAT considers that a matter is suitable for, and may be resolved by, mediation, ACAT may refer the matter to mediation and require the parties to attend.

Mediation commonly occurs in occupation regulation cases and in review of government decisions.

The stated goal of mediation is to reach an agreement between the parties. The mediation is conducted by an accredited mediator who is usually also an ACAT member.

If agreement is reached in mediation it will be reduced to writing and may by the subject of order by ACAT. While no express provision is made in respect of whether a member who has conducted the mediation going on to conduct the final hearing, the fact that this is not allowed in respect of conferences suggests that the mediator would not hear the final proceeding.

New South Wales Civil and Administrative Tribunal (NCAT)

The *Civil and Administrative Tribunal Act 2013* differs from other legislation establishing tribunals in that it does not provide for particular forms of dispute resolution. Instead, section 37 very generally provides that the tribunal may use (or require parties to use) any one or more resolution process, which is defined to mean any process in which parties are assisted to narrow or resolve the issues between them.

To assist, divisions of NCAT have published guidance which may assist parties understand the approach of the tribunal to different forms of resolution.

In particular, the Administrative and Equal Opportunity Division and Occupational Division have issued a joint guideline on Resolution Processes.

That Guideline describes the aim of a resolution process to be to resolve all or some of the issues in dispute. That objective is consistent with NCAT's guiding principle to "facilitate the just, quick and cheap resolution of the real issues in the proceedings."

In addition to directions hearings and final hearings, the Guideline also refers to case conferences and mediation. Case conferences are also referred to as pre-hearing conferences and are typically used to identify and narrow the issues in dispute shortly before a final hearing.

The Guideline indicates that a member of NCAT may refer any matter in the Administrative and Equal Opportunity Division and some matters in the Occupational Division to mediation. This can occur even if the parties do not agree to mediate.

The mediation may be conducted by:

- a member of the tribunal;
- a person on the tribunal's list of mediators;
- an external mediator; or
- a community justice centre.

If the mediation is not successful, the proceeding will continue to hearing and the mediator will not hear the proceeding. If the mediation is successful, the parties might agree on final disposition (such as the applicant withdrawing the application) or, alternatively, the parties may seek consent orders from the tribunal.

As a matter of practice, in the Occupational Division, mediations are not ordered in matters of disciplinary referral or for review of disciplinary decision. Instead in such matters, case conferences are ordered in the lead up the final hearing but the purpose tends to be to ensure that the matter is ready to proceed to final hearing.

Northern Territory Civil and Administrative Tribunal

The *Northern Territory Civil and Administrative Tribunal Act 2014* makes provision for two types of alternative dispute resolution; compulsory conference and mediation.

Compulsory conference

The Northern Territory Civil and Administrative Tribunal (NTCAT) describes compulsory conferences as follows:

> Compulsory conferences are a dispute resolution method where the parties have an opportunity to meet, discuss the issues in dispute, and explore the possibility of settlement with the assistance of an NTCAT member.

The purpose of a compulsory conference is to identify and clarify the issues in a proceeding and promote resolution of the matter by settlement.

NTCAT may require parties to attend a compulsory conference. The presiding member for a proceeding will generally preside over the compulsory conference, however if the matter does not resolve, the presiding member is disqualified from deciding the proceeding unless the parties consent.

While any NTCAT matter may be referred to compulsory conference, the decision to refer will be influenced by the complexity and urgency of the matter.

Generally, straightforward matters and particularly urgent matters will not be referred to compulsory conference.

Compulsory conferences are usually scheduled for two hours. In exceptional cases, the Tribunal member may order a further compulsory conference be conducted.

In practice, NTCAT will generally require evidentiary material to be filed prior to the compulsory conference taking place. Case statements may be required instead in appropriate cases.

NTCAT compulsory conferences are conducted in two stages.

Stage one involves negotiation with each party providing their perspective of the dispute followed by a discussion of the main issues in dispute and options that may resolve the matter. Most of the negotiations are handled with all parties present although the presiding member may decide to speak to the parties individually. If the parties agree to a settlement during this stage, the matter is concluded on the basis of that settlement. If the matter is not resolved, the compulsory conference proceeds to stage two.

Stage two involves the presiding member making orders and directions about the future steps in the proceeding. This will typically be a timetable to hearing.

Mediation

NTCAT may require parties to attend mediation, conducted by an approved mediator.

The purpose of mediation is to promote the resolution of the matter by a settlement between the parties.

If the mediator is a member of NTCAT and the parties reach a settlement, it must be accepted by the mediator/member for it to take effect. The mediator/member must not accept a settlement that appears to be inconsistent with the relevant Act to which the dispute relates. The mediator/member may decline to accept the settlement if the settlement may prejudice a person who was not represented at the mediation but who has a direct or material interest in the matter. If the mediator/member accepts the settlement, the mediator/member can make an order to give effect to it which may be enforced as if it were an order of NTCAT.

A member of NTCAT who has presided over a mediation is disqualified from sitting as member for the purpose of deciding the matter, unless the parties consent to the member's continued participation.

In practice, it seems that compulsory conferences are preferred by NTCAT to mediation. While there is specific reference to the success of settling matters at compulsory conference in the most recent Annual Report of NTCAT, there is no reference at all to mediations. Moreover, there is published guidance about compulsory conferences on the NTCAT website with no guidance about mediations.

Queensland Civil and Administrative Tribunal

The Queensland Civil and Administrative Tribunal (QCAT) has three forms of alternative dispute resolution available to it under the *Queensland Civil and Administrative Tribunal Act 2009:*

- Conciliation
- Compulsory conference
- Mediation

Conciliation

QCAT or the Principal Registrar may refer parties to a conciliation, whether or not the parties consent.

While the stated purpose of a conciliation is simply to promote the settlement of the matter, the function of a conciliator includes:

- Identifying and clarifying the issues in dispute and how the law applies
- Arranging and assisting the negotiations between the parties
- Promoting the open exchange of information between the parties, and
- Giving the parties information about how the relevant law applies to the matter.

A conciliator may be a member of QCAT, an adjudicator, the Principal Registrar or a person approved by the Principal Registrar.

If the conciliation concludes with an agreement between the parties, the member or adjudicator will produce a written record of the agreement and may make appropriate orders

If the conciliator is a QCAT member or adjudicator, that person must not constitute the Tribunal for the proceeding unless all parties agree otherwise.

Compulsory conference

QCAT describes a compulsory conference as a meeting the purpose of which is to:

a. identify and clarify the issues in dispute
b. promote a settlement of the dispute
c. identify the questions of fact and law to be decided by the tribunal
d. if the dispute cannot be settled, to make orders and give directions about the conduct of the proceedings, and
e. to make orders and give directions that the member considers appropriate to resolve the dispute.

The tribunal or the principal registrar may direct the parties to attend one or more compulsory conferences.

A compulsory conference must be heard by a member, an adjudicator or the principal registrar of QCAT. While the conference may be conducted in the way decided by the person presiding over it, generally the conference will involve an initial joint meeting with all parties present, followed by individual sessions (and potentially some degree of shuttle negotiation) and a final joint session.

If the conference concludes with an agreement between the parties, the member or adjudicator will produce a written record of the agreement and may make appropriate orders.

At the conclusion of the conference, if the matter is not resolved, the member or adjudicator will make directions or orders aimed at reducing the issues to be determined at the subsequent hearing. Either party may object to the member or adjudicator constituting the Tribunal to determine the proceedings. If a party does object, the member or adjudicator must not constitute the tribunal.

Mediation

The tribunal or principal registrar may refer the subject matter of a proceeding for mediation by a mediator.

The purpose of a mediation is to promote settlement of the dispute the subject of the proceeding.

The parties to a proceeding need not consent to a matter being referred to mediation. The mediation may be conducted in a way decided by the mediator.

The mediator may be appointed by the tribunal or principal registrar but must be:

- a member of QCAT;
- an adjudicator;
- the principal registrar;
- a mediator under the *Dispute Resolution Centres Act 1990; or*
- a person approved by the principal registrar as a mediator.

If the mediation concludes with an agreement between the parties, the member or adjudicator will produce a written record of the agreement and may make appropriate orders.

If the mediator is a member of QCAT or an adjudicator, the person must not constitute the tribunal for the proceeding unless all of the parties to the proceeding agree otherwise.

South Australian Civil and Administrative Tribunal (SACAT)

The South Australian Civil and Administrative Tribunal (SACAT) has two forms of alternative dispute resolution available to it under the *South Australian Civil and Administrative Tribunal Act 2013:*

- Conference; and
- Mediation

Conference

The tribunal may, at any time, require parties to attend a compulsory conference. The purpose of the conference is to identify and clarify issues in the proceeding and to promote the resolution of matters by settlement between the parties.

A compulsory conference is conducted by a member of the Tribunal who may determine the procedure to be followed.

At the compulsory conference the presiding member may require parties to furnish particulars of their case and, while the conference is generally held in private, may determine who may be present at the conference.

Should the parties reach a settlement agreement at conference, the member may record the agreement and make orders to give effect to it.

A member who presides at the conference is disqualified from sitting as a member of the Tribunal to hear and determine the matter, unless all parties agree to the member's continued participation.

Mediation

The tribunal may, at any time, refer a matter or any aspect of a matter for mediation. The parties need not consent to the referral.

The purpose of the mediation is to achieve the resolution of the matter by a settlement between the parties.

A mediation is conducted by a person specified as a mediator by the Tribunal. The mediator may determine the procedure to be followed at the mediation.

If the mediator is a member of the Tribunal and settlement is reached at the mediation, the mediator may record the agreement and make orders to give effect to it.

If the mediator is a member of the Tribunal, the member cannot take any part in dealing with the proceedings after the mediation unless all parties agree.

If the mediator is not a member of the Tribunal, the parties to the mediation must pay or contribute to the costs of the mediation as directed by the Tribunal.

Victorian Civil and Administrative Tribunal (VCAT)

The *Victorian Civil and Administrative Tribunal Act 1988* Provides for two forms of alternative dispute resolution; compulsory conference and mediation.

Mediation

VCAT describes mediation as a process by which parties come together to discuss ways to reach an agreement with the help of a mediator. VCAT tends to use mediation (rather than compulsory conference) in civil disputes between parties.

VCAT or the principal registrar may refer a proceeding or any part of a proceeding for mediation, with or without the consent of the parties.

The mediator may be a VCAT member or an accredited mediator appointed by VCAT. If the dispute is suitable for VCAT's Fast Track Mediation and Hearing, the mediator will be an accredited mediator from the Dispute Settlement Centre of Victoria.

A party to a proceeding must pay the fee prescribed by VCAT for mediation. If a party does not pay the prescribed fee, VCAT may refuse to continue with the proceeding. Accordingly, the mediation is a compulsory step for the parties, if so ordered by the Tribunal or principal registrar.

At the conclusion of the mediation, the mediator provides notice to the principal registrar of the outcome. If the parties have agreed to resolve the proceeding, VCAT or the principal registrar may make orders to give effect to the settlement.

If the mediator is a member of VCAT and the proceeding is not settled at mediation, VCAT must notify the parties of their right to object to the member continuing to hearing the proceeding. If a party does object, the member must take not further part in the hearing of the proceeding.

Compulsory conference

The purpose of a compulsory conference is to:

- Identify and clarify the nature of the issues in dispute;
- To promote settlement of the proceeding;
- To identify the questions of fact or law to be decided; and
- To allow directions to be given concerning the conduct of the proceeding.

VCAT or the principal registrar may require the parties to attend one or more compulsory conferences before a member of VCAT, the principal registrar or a person nominated by VCAT or the principal registrar. Generally, it is a member that conducts the compulsory conference.

VCAT will generally occur early in the process, after the initial directions hearing and relevant material (or at least an outline of argument) has been filed and served.

A party may object to a member of VCAT who presided over the compulsory conference hearing the proceeding. If a party does object, the member must take no further part in the hearing and the Tribunal must be reconstituted.

Western Australian State Administrative Tribunal (SAT)

The SAT offers two forms of dispute resolution –mediation and compulsory conference.

Mediation

The SAT describes mediation as:

> a confidential and cooperative problem-solving process designed to help the parties find constructive solutions to their dispute with the assistance of a trained mediator. Mediation is a flexible and informal process, and the purpose of mediation is to resolve a dispute by agreement between the parties, or to narrow the issues in dispute.

The basic requirements in respect of mediations at SAT are set out in section 54 of the *State Administrative Tribunal Act 2004 (WA).*

The purpose of a mediation is to achieve resolution of the matter by settlement between the parties. Each case at the SAT is considered to see if it is suitable for mediation and this is normally discussed at the first directions hearing. A mediation can occur at any stage before the final hearing of a matter.

Mediations may be conducted by any person specified as a mediator by the SAT. Typically they are conducted by a SAT member trained in mediation. The cost of the mediation is included in the initial application fee and there is therefore no additional cost for the mediation.

Mediations are generally scheduled for three hours but may take longer if necessary.

If the mediation is successful, the mediator (if a SAT member) may reduce the settlement to writing and make relevant orders in those terms. If the mediation is not successful, directions will be given about the future conduct of the matter.

If the mediator is a SAT member, the member can take no further part in the proceeding unless all parties agree.

From a practical point of view, SAT has started requiring parties to a mediation to file a two page confidential position statement approximately two days prior to the mediation. This assists in ensuring that both parties (and their lawyers) have given proper thought to their position and what they are seeking from the mediation.

There is no limit to the number of mediations which could be ordered during a proceeding. The SAT has shown a willingness to order additional mediations if requested by one party, even if other parties resist such an order.

Compulsory conference

The SAT describes a compulsory conference as being similar to mediation but usually involves the SAT member taking a more active approach to resolving the dispute.

The basic requirements in respect of mediations at SAT are set out in section 52 of the *State Administrative Tribunal Act 2004 (WA).*

The purpose of a compulsory conference is to identify and clarify the issues in the proceeding and to promote the resolution of the matter by settlement between the parties.

Parties may be required to attend a compulsory conference at an initial directions hearing or at any other time before a hearing.

The compulsory conference is presided over by a SAT member. If the compulsory conference is not successful, the member is not able to constitute, or be a member constituting, the Tribunal to deal with the matter, even if the parties agree to the member hearing the matter.

If the compulsory conference is successful, the member may reduce the settlement to writing and make relevant orders in those terms. If the compulsory conference is not successful, directions will be given about the future conduct of the matter.