REFORMING QUEENSLAND'S TRIBUNALS
PROCEDURAL REFORM TO REALIZE THE RHETORIC

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Abstract

The Queensland Attorney-General is currently considering reforms to Queensland's Tribunals. The models under consideration include a general administrative tribunal in the style of Victorian Civil and Administrative Tribunal and groupings of Tribunals with similar or related jurisdictions. Regardless of which model is adopted, a key potential benefit of Tribunal reform is procedural reform. To realise that benefit, Tribunal objectives need to be clearly articulated and embedded in procedural design. This paper proposes a set of generic objectives for Tribunals which respond to the claims often made about the advantages of resolving a matter within a Tribunal setting. This paper also outlines a generic set of procedures designed to meet those objectives. Given the rationale for and rhetoric used in support of Tribunals, the procedures are designed on the assumption that all parties are self-represented. The procedures place a stronger and more sustained emphasis on a resolution phase actively supervised by a Tribunal Member. They offer a range of options for identifying; narrowing and resolving the issues in dispute and for assisting parties to prepare for a hearing should that prove necessary.

What is this about?

On a number of occasions, the Queensland Attorney-General has indicated his interest in Tribunal and administrative law reform. He has raised a range of possibilities, including the creation of a general administrative tribunal, along the lines of the AAT and VCAT. He has also expressed an interest in bringing together related review processes, currently spread amongst a number of specialist bodies. Most recently, in November 2003, the Attorney General stated his intention to further consider a proposal to merge the Queensland Land and Resources Tribunal (LRT) and the Land Court of Queensland in the context of a broader analysis of how planning issues generally across the state might be more conveniently addressed in an appropriate forum[2].

This paper does not address the merger proposal. Rather, its purpose is to focus on a key potential benefit of an amalgamated tribunal structure, whatever its jurisdiction – procedural reform. Whether that benefit is realised will depend on a number of factors, including the objectives of the Tribunal and the procedures that are adopted by it. This paper proposes a set of generic Tribunal objectives and procedures. It is recognised that further objectives and additional procedures may well be required to meet the needs of specific jurisdictions.

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[1] The views expressed in this paper are the views of the author and do not necessarily represent the views of the other Members of the Tribunal.
[2] Hansard, Queensland Legislative Assembly, 11 November 2003 p92

Why have Tribunals?

There are at least 33 external review bodies, including specialist Tribunals in Queensland.[3] For the purpose of this paper, the number of Tribunals is less important than their rationale. It is the rationale from which a Tribunal's objectives should be drawn and it is the objectives of the Tribunal which should shape the procedures adopted.

There are a number of common themes that emerge in the legislation establishing Tribunals, in second reading speeches introducing such legislation and in other publications advocating or examining the use of Tribunals.[4] They include claims that compared with courts Tribunals are less formal; more accessible; more user-friendly; less concerned with legal forms and technicality; more focussed on the merits; cheaper; and faster.

Tribunals are promoted to parties as accessible forums in which legal representation is not required; environments in which they can adequately represent themselves without suffering the disadvantages they face when they represent themselves in a court applying civil litigation procedure, in particular the rules of evidence. Further, the Acts establishing Tribunals routinely contain a statutory direction to the effect that the Tribunals must act with as little technicality and formality as is consistent with a fair and proper consideration of the issues[5]. For recently established Tribunals, their role has extended beyond determining disputes to facilitating the parties resolving the disputes themselves. Tribunals have been promoted as forums where a range of dispute resolution approaches are provided and encouraged, such as conciliation, mediation, early neutral evaluation and expert assessment.

Recently, the Chief Justice of Queensland, the Hon Paul de Jersey said "The great ultimate challenge for Tribunals, I think, is while ensuring just results under law, that they should not ape courts." There is a danger that, unless the objectives of Tribunals are not only clearly articulated but are also firmly embedded in their procedures and administrative processes, that they will resemble quasi courts, offering a "quick and dirty" version of the civil litigation process. If Tribunals are to fulfil their promise (and the rhetoric of their advocates) their objectives need to be at the core of procedural design.

Work out where you want to go

So what should those objectives be? The "Woolf Principles"[6], are a widely accepted set of objectives for the justice system. In summary, the justice system should:

- be just in the results it delivers;

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[3] Department of Premier and Cabinet discussion paper A*ppeals from Administration Decisions* (2001)

[4] Creyke R "Tribunals and Access to Justice" (2002) 2 QUT Law and Justice Journal

[5] Eg *Land and Resources Tribunal Act 1999 (Qld)* s.49(1) " When conducting a proceeding, the Tribunal must – (a) observe natural justice; and (b) act as quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the issues before it."

[6] Lord Woolf MR *Access to Justice, Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (HMSO, London 1996)

- be fair in the way it treats litigants;
- offer appropriate procedures at a reasonable cost;
- deal with cases with reasonable speed;
- be understandable to those who use it;
- be responsive to the needs of those who use it;
- provide as much certainty as the nature of the particular case allows; and
- be effective, adequately resourced and organised.

These are objectives for the justice system as a whole and do not specifically encapsulate the rationale for Tribunals. They should be the foundation from which specific Tribunal objectives are derived.

I propose the objectives for the Tribunal be further articulated. One impetus for this comes from the parties seeking to access Tribunals. Over the last decade increasing attention has been given to the plight of the self represented litigant and the impact on the judicial system of their increasing number. Some courts, most notably the Family Court, have responded by revising their procedures to accommodate self represented litigants. Some lawyer and judicial associations have sought to hold back the tide by calling for increased funding for legal aid.[7] At a workshop on self represented litigants at the 13th Commonwealth Law Conference in Melbourne in April 2003, Lord Woolf referred to self representation as a right not an indulgence. He argued the justice system had to respond by revising processes predicated on an assumption he considered was no longer valid, if, indeed, it ever was.[8] That is, that the parties will be represented by advocates skilled in the law and civil procedure and of roughly equivalent ability. If that is an imperative for the justice system as a whole, the requirement for Tribunals to respond is critical and immediate in the light of the rationale for Tribunals.

Tribunal Members are aware of the difficulties faced by self represented parties. In many cases, however, their contact with the parties occurs some time after the matter reaches the Tribunal and in the context of a directions hearing or a final hearing. A hearing is an inappropriate forum for providing self represented litigants with information and procedural assistance. Rather than cast around at the end of the process with Tribunal Members trying to fill in the gaps for self represented parties, Lord Woolf would have us reconsider the assumptions upon which our procedures are based. Given the rationale for Tribunals and the rhetoric employed in relation to them, the Tribunal should design all of its processes and procedures from the outset on a new assumption – that all parties will be self represented. Rather than analyse each step of the process and question what could be done to assist the self represented litigant at that stage, the needs of the self represented litigant in the particular jurisdiction should form the basis of the procedures that are devised to resolve or determine the disputes.

With this in mind the author suggests the following as a set of generic objectives for Tribunals:

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7 Eg *Erosion of Legal Representation in the Australian Justice System*, Law Council of Australia February 2004.
8 Author's notes from the workshop session.

- To provide opportunities for effective involvement regardless of whether a party is legally represented;
- To create an early and enduring focus on issues rather than legal form or technicalities;
- To efficiently access technical expertise to assist resolution or determination of disputes;
- To promote and assist resolution by the parties not determination by the Tribunal; and
- To promote early determination by the Tribunal if a dispute cannot be resolved by other means.

Work out how to get there

At the conclusion of this paper is a flow chart showing proposed procedures and a brief description of each of them. They have been designed to achieve the objectives set out above. They are derivative of procedures developed and operating in a number of other jurisdictions, including the Family Court of Australia, VCAT, resource management and land use tribunals in Canada and the US. They provide a skeleton outline only and are offered as a contribution to debate about how an amalgamated Tribunal in Queensland might operate.

At their heart is a commitment to a greater focus on resolution with determination by the Tribunal as a least preferred alternative. For the commitment to be fulfilled, resolution phase activities must be more than procedural hoops that parties must jump through in order to get to a hearing. The Queensland Attorney General has spoken in the past of the "enormous untapped potential for ADR". I agree with his observation that "we have barely begun to scratch the surface in terms of the potential for an expanded role for ADR."[9] I interpret ADR to encompass a range of alternatives to an adversarial hearing, not merely mediation. The procedures suggested include a range of ADR options. Not all of the options will be accessed in any one case. By having a Tribunal Member supervise the resolution phase, parties will be directed to carefully selected resolution options when they are most likely to be effective.

Whilst, for any one dispute, it may not be appropriate to utilise all the resolution options, certain steps should be routine:

- an information session - to provide case specific information;
- a case summary - to clarify and define the nature and scope of the dispute;
- a conciliation conference - to provide an early opportunity to resolve the dispute; and
- a pre-trial conference - to assess when Tribunal determination is necessary and to prepare for the hearing.

Other options, at the direction of the Tribunal Member presiding at the conciliation conference, are:

[9] Opening address by the Attorney-General at the 2002 Queensland Environmental Law Association Conference.

- mediation - to provide a forum for assisted negotiations;
- expert assistance - to incorporate expert opinion in the context of resolution not adjudication; and
- legal ruling - on preliminary issues that present an impediment to resolution activities.

Supervision of the resolution phase by a Tribunal member will ensure that an appropriately skilled and knowledgeable person oversees the passage of the matter through this most important phase. This should maximise the prospects of resolution. Given the close involvement of that member, it would be inappropriate for the member who supervises the resolution phase to preside at the hearing, if it is not resolved.

Information Sessions - give the parties what they need

All of the suggestions in this paper are intended to assist parties, whether represented or not. As a practical example of how procedures may be designed from this revised assumption, the focus is on a key disadvantage for the self represented litigant - lack of information. The information needs of the self represented litigant must be met as a first priority.

Judicial officers experience difficulties in seeking to walk the fine line between procedural assistance and legal advice. Lawyers used to pressing a procedural advantage at a hearing to further their prospects of a favourable outcome can be critical of Tribunal Members assisting the self represented party at a hearing. It challenges the central concept of our justice system, the impartiality of the decision maker.

I am also aware of the dilemmas faced by lawyers sitting on the other side of the table to a self-represented party. When they become aware that the self-represented party does not understand a legal or procedural concept, he or she has to weigh up how to deal with this confusion in light of their obligations to their client and to the Tribunal. Little guidance is given during legal education in dealing with unrepresented opponents and I have witnessed a wide range of responses by lawyers appearing before the Land and Resources Tribunal.

I also question whether procedural assistance at a final hearing actually does anything much to address the disadvantage which the self represented litigant suffers. Allowing the admission of material with little prospect of affecting the outcome is of little benefit if relevant information is available but has not been produced because a party has not understood the context in which the decision will be made. Informing a party at the hearing that there are procedures to obtain information from third parties may lead to a late application for an adjournment. In summary, procedural assistance at the hearing may be too little too late. My concern, then, is that the self represented litigant may receive little effective assistance at a high cost, in terms of the perceived impartiality of the process.

I consider the information needs must be met and procedural assistance provided well before the matter reaches a hearing. Most tribunals and courts have made some

attempt to provide generic information about their procedures in plain English. This only partially addresses the information needs of the self represented litigant. Case specific information is also necessary. Litigants need information about the laws and policies that apply to their dispute and how those laws and policies have been interpreted in similar cases.

In some tribunals, information is provided to parties during a conciliation conference. In others, it is delivered during mediation and sometimes during a directions hearing. A formal information session which provides case specific information could set the scene for preparation by and informed discussions between the parties. It could also provide an interactive forum for parties to have their questions about laws, policies and procedures answered by a suitably qualified Tribunal member. It could set the scene for the first attempt at resolution, the conciliation conference.

Whether it is appropriate to move straight from the information session into a conciliation conference may depend on the nature of the dispute. Particularly in cases where there is an individual representing a group of objectors, there may be benefits in allowing time for the information to be communicated to others, digested and assessed before attempts are made to conciliate the matter. All parties could benefit from the opportunity to reflect on information they receive in these sessions.

I can also see benefits in extending the information session to include provision of information by the parties. In some cases, parties may have little information before the matter has commenced in the Tribunal. Like the initial stage of mediation, parties could be asked to make opening statements about the dispute at the information session. This would also provide an early opportunity to develop the case summary referred to below.

Case summaries - focus on the issues

Written pleadings are intended to clarify what the dispute is about. Recently, Justice Davies observed that "even with skilled lawyers at work, pleadings do not always achieve that (identification of the questions in issue between the parties)" and that its achievement "is quite beyond the capacity of litigants in person."[10]

In some Tribunals, written pleadings have been abandoned or are not relied upon to exclusively define the issues in dispute, sometimes at the expense of clarity of the issues. This can disadvantage both represented and self represented litigants.

In the Family Court a joint Case Summary is produced by the parties[11]. It may be amended, by agreement, during the passage of the matter through the court processes until the hearing. It progressively records agreed facts and the issues in dispute.

This is an initiative that warrants further investigation. I perceive the following advantages of a case summary:

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[10] G.L. Davies "*The reality of civil justice reform: why we must abandon the essential elements of our system*" paper delivered at the 20th Australian Institute of Judicial Administration Annual Conference, Brisbane 13 July 2002.

[11] Family Court of Australia Practice Direction 3 of 2004

- it casts the focus on the issues in dispute not on the form in which it has been presented before it reached the Tribunal;
- it tracks the progress of the matter through the Tribunal;
- it will aid settlement negotiations by recording agreements as well as issues in dispute;
- it will assist in directing the matter to appropriate resolution options (eg by identifying legal disputes which are an impediment to negotiations and which could be dealt with by a legal ruling during the resolution phase).

It also has the potential to ameliorate the disadvantage self represented litigants suffer in preparing written material. In some cases, it may be appropriate for Tribunal staff to prepare the first draft of the case summary on the basis of the information provided by the parties at the information session.

Expert assistance - use experts wisely

The controversies about expert evidence are notorious. There have been widespread complaints of trial by "hired gun" experts; the length and cost of extensive oral examination of experts; inequity for parties unable to afford expert opinion; decision makers being distracted by minor points of difference between the experts; and abdication of decision-making to expert witnesses.[12]

Courts and tribunals have responded with an array of case management procedures designed to address these concerns. Now under consideration in Queensland is a proposal that, except in limited circumstances, only one expert's opinion is obtained on any topic, from an expert appointed by the court or agreed to by the parties[13].

Whilst the proposal to limit the number of experts has attracted significant attention from the profession, the draft rules raise what I consider to be a more important issue – the timing of expert assistance. The draft rules allow the parties to appoint a single expert to provide an opinion, even before proceedings commence in the court. This initiative to encourage disputants to seek expert assistance jointly and at an early stage could help avoid expert capture, the hired gun syndrome and expert bias, which are almost inevitable risks of engagement of experts in an adversarial contest.

The Tribunal should certainly encourage pre-filing access to expert assistance. However, it can be expected that many parties will require assistance in identifying when and how an expert can assist. If parties are in substantial dispute about other issues, they may well find it impossible to agree on a proposal to jointly appoint an expert without the assistance of a third party. For these reasons, I consider a Tribunal can play an important role in encouraging the early engagement of expert assistance in the resolution phase of the proceedings. Options could involve the expert:

- providing a written opinion based on agreed documents or a joint briefing;

[12] eg Freckleton I et al *Australian Judicial Perspectives on Expert Evidence: An Empirical Study* (AIJA 1999)
[13] Revised Expert Evidence Rules 4 August 2003, http://www.courts.qld.gov.au viewed 21 June 2004.

- visiting the site with the parties so they can discuss the dispute in the presence and with the assistance of the expert; and
- making a determination of an issue within their area of expertise.

Other options may arise out of different cases or types of jurisdiction. I do not consider that one single approach to the involvement of experts will be suitable for all cases. If, however, the need for expert assistance is identified and addressed at an early stage in the proceedings, the prospects of resolution should be enhanced.

At the pre-trial conference, consideration should be given to what use, if any, should be made of the expert assistance obtained during the resolution phase. If an expert has made a determination or given an opinion, that may be placed before the Tribunal for its consideration. Consistent with the approach proposed by the draft rules in Queensland, parties may not be able to call further expert evidence at the hearing, unless the member presiding at the conference is persuaded that this would assist the Tribunal to determine an issue at the hearing.

Legal rulings – don't get stuck on technicalities

Many disputes involve legal issues that, until they are determined impede attempts to resolve the dispute. For example, there could be a challenge to the jurisdiction of the Tribunal to deal with the dispute or it may be argued that failure to comply with a procedural requirement is fatal to the proceedings. There is little point in trying to resolve the matter if one of the parties considers they have a "killer" point. Such issues could be identified at an early stage of the resolution phase during the information session or conciliation conference. Legal rulings could be obtained expeditiously. This may have the effect of either terminating the proceedings or clearing the way for productive discussions.

Hearing – let's make it efficient and effective

Most Tribunals already employ a range of techniques to make the most effective and efficient use of member time. They include:

- hearing simple or uncontested matters "on the papers"; and
- using telephone and video facilities to meet party and witness convenience.

Tribunals, unlike courts, are not bound by the rules of evidence. Most Tribunals have interpreted this to allow parties to submit evidence that is relevant to the dispute without compliance with the strict requirements of the rules of evidence. However, they still proceed, in most cases, on the basis of sworn evidence. VCAT has gone further and requires little evidence to be sworn. In planning matters, it accepts statements by parties and does not allow cross-examination, except of expert witnesses.

An alternative approach is to limit the oral evidence that may be given, both as evidence in chief and under cross-examination. In New South Wales, the Cripps Report[14] recommended that:

- oral evidence should only be allowed with the leave of the Land and Environment Court;
- cross-examination should only be allowed if the judge or commissioner is satisfied that it will contribute to his or her understanding of the issues in dispute; and
- cross-examination should be controlled accordingly.

These proposals deserve consideration in Queensland, especially in cases where parties are legally represented and are able to prepare written material in advance of the hearing. They may be less suitable for parties who are self-represented and are less experienced in preparing written material in support of their case. A pre-trial conference would provide the Tribunal with the opportunity to assess, on a case by case basis, the most appropriate form of and scope for evidence to be presented at the hearing.

Impediments to procedural reform

I consider there are three significant impediments to procedural reform:

- a legalistic culture;
- resort to civil procedure rules focused on preparation for an adversarial hearing;
- constraints imposed by the legislation that confers jurisdiction on the Tribunal.

Culture

Articulating a Tribunal's objectives and embedding those objectives in the design of its procedures can do much to prevent a Tribunal lapsing into quasi-court mode. However, the culture is as attributable to the Tribunal's people as it is to the Tribunal's processes. Members reflect the culture from which they are drawn. It is hardly surprising that legal members bring with them a legalistic culture. Leadership is critical. Justice Kellam spoke of the need for a "concerted focus by presidential members to change the culture of tribunal members to one in which hearings are styled according to the matter."[15] This is a matter to take into account in assessing options for reform of Tribunals.

Civil Procedure

The Queensland Uniform Civil Procedure Rules have substantially revised civil procedure. Nevertheless, their purpose is to guide parties through preparation for an adversarial hearing. This is not the approach that I have recommended for the Tribunal, where the focus rests on the resolution phase with the adversarial hearing as

[14] The Report of the Land and Environment Court Working Party, NSW, September 2001 Recommendation 20.
[15] Kellam J, paper presented at the ANU's Public Law Weekend, 11 November 2000.

the least preferred alternative. Procedures need to reflect this. I consider the Tribunal should be unshackled from inappropriate form and procedure by severing the connection to civil procedure rules. For some of the existing Tribunals, this is not an issue. The LRT, however, has a statutory requirement to follow the procedure of the Supreme Court where the procedure is otherwise not provided for by the rules of the LRT. This is inconsistent with the statutory direction to act with as little formality and technicality as is possible and undermines the accessibility of the forum.

Conferring legislation

My experience in the LRT has convinced me that procedural reform requires attention to the constraints or requirements imposed by the legislation that confers jurisdiction on the Tribunal. For example, the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994* both contain provisions that direct how a matter will commence, who can be heard about what matters, and whether costs can be awarded. To some extent, these directions are inconsistent even when there is a combined hearing of related matters under the two Acts. These provisions also override more general procedural provisions and can frustrate the Tribunal's overall objectives. Such constraints and requirements should be reviewed in light of the Tribunal's objectives.

Any reform of Queensland tribunals must address these impediments in order to realise the benefits of reform.

Conclusions

In considering reform of Tribunals in Queensland attention should be given to the objectives and procedures for the new body. The objectives and procedures should be designed on the assumption that all parties are self represented. Procedures should place a stronger and more sustained emphasis on a resolution phase actively supervised by a Tribunal Member and should involve:

- Information sessions — to provide case specific information by the Tribunal to the parties and by the parties to each other;
- Case summaries — prepared under the supervision of a Tribunal Member to clarify and define the scope of the dispute and to track its progress through the resolution phase;
- Conciliation conferences — to promote early resolution once initial information has been obtained;
- Directions — to case manage the matter through the resolution phase during which the following options will be available:

    - Mediation — to promote resolution by the parties;
    - Expert assistance — during the resolution phase to avoid issues that arise from adversarial use of experts;
    - Legal rulings — on preliminary legal issues to promote more effective use of resolution options;

- Pre-hearing conferences to mark the end of the resolution phase and to case manage the determination phase;
- Hearings which adopt processes to facilitate early determination if resolution is not possible.

Impediments to reform such as a legalistic culture; the use of civil procedure rules; and constraints imposed by the legislation that confers jurisdiction should be addressed.

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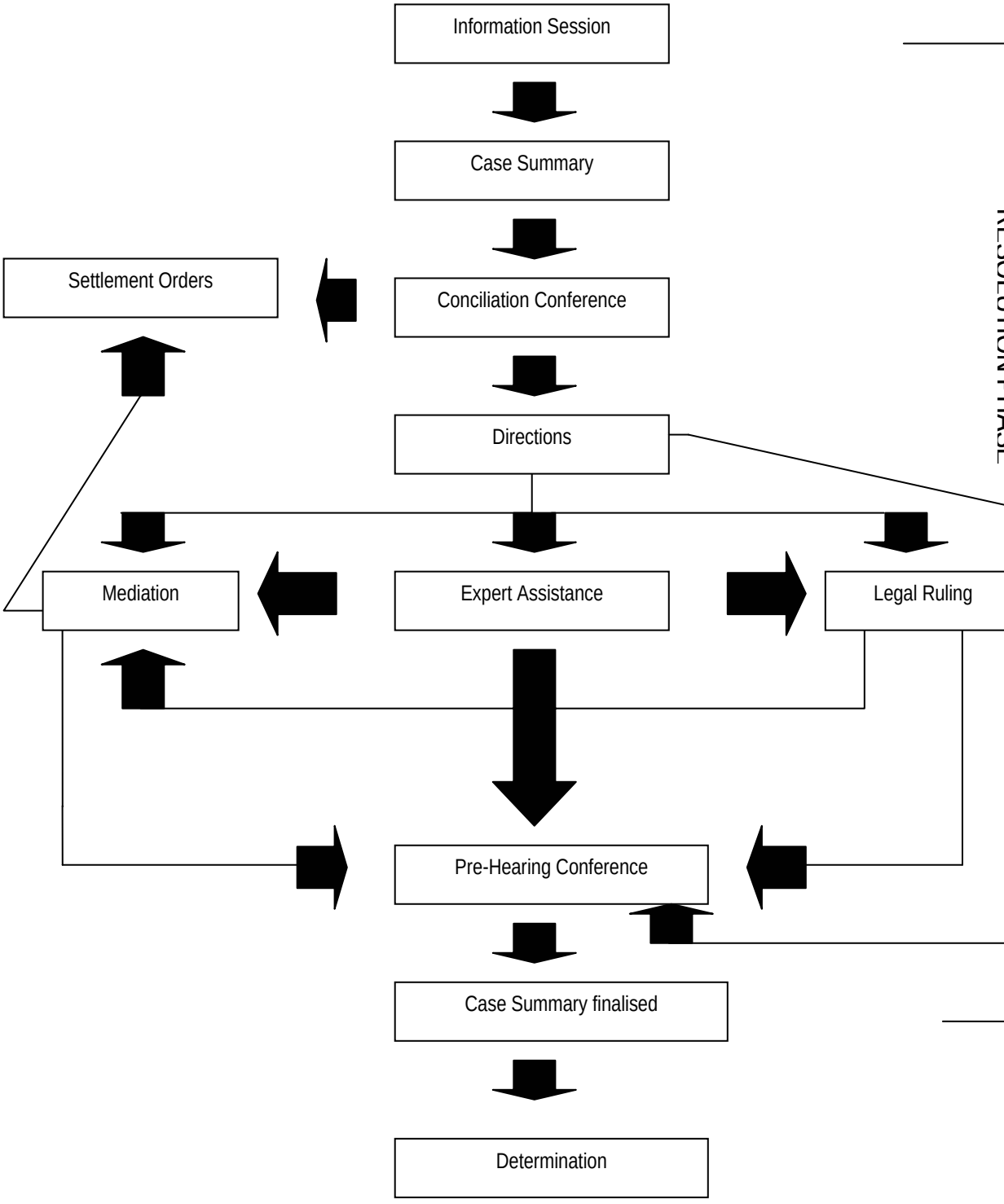
ATTACHMENT 1

PROCEDURE FLOWCHART



Information Session

An Information Session held at the commencement of proceedings before the Tribunal will further the objective of providing opportunities for effective involvement regardless of whether a party is legally represented. Lack of information is a key disadvantage for the self-represented litigant. An information session will enable parties to receive case specific information about the laws and policies that apply to their dispute and how those laws and policies have been interpreted in similar cases. It will also provide an interactive forum for parties to obtain answers to queries about process and options. Parties will also provide information to each other. This would be similar to the initial stage of mediation when parties make opening statements. It will also provide information for the first version of the case summary (referred to below). An information session will set the scene for informed discussions between and preparation by the parties.

Case Summary

A case summary prepared at the conclusion of the information session will create an early and enduring focus on issues rather than on legal form and technicalities. It will be a substitute for pleadings and other pre-trial processes designed to clarify the nature and scope of the dispute. The case summary will evolve throughout the resolution phase. It will be prepared under the supervision of the tribunal member presiding over the resolution phase. It will record agreements between the parties as to facts agreed and issues in dispute. It will track the progress of the matter through the tribunal. This will assist settlement negotiations by focusing on agreements reached and identifying issues that remain in dispute. It will also assist the tribunal member presiding over the matter to identify case management options that will facilitate resolution.

Conciliation Conference

This is a familiar concept for most tribunals. A conciliation conference will promote and assist resolution by the parties. It is likely to have enhanced prospects of success if it is held after parties have had the opportunity to consider information (provided at an information session) and the case summary. If resolution is not possible, the conciliation conference will conclude with the tribunal member setting directions for further resolution activities. The conference will allow the member to explore with the parties the options of mediation, expert assistance and legal rulings.

Settlement Orders

If, at any stage of the resolution phase, the parties reach an agreement that would dispose of all issues before the tribunal, settlement orders will be entered without the need for appearance by the parties. In some matters, eg where the tribunal has public interest objectives it must fulfil, there may need to be a process for the member to consider the proposed settlement orders in the light of those objectives. This could be done on the papers, unless the member needed to hear submissions in support of the proposed settlement orders.

Directions

If the matter is not resolved at the conciliation conference, the tribunal member presiding will set directions for the case management of the matter through the resolution phase in the tribunal. Those directions will be discussed with the parties during the conciliation conference and will be designed to further clarify and, if possible, resolve the dispute. Options will include: hearing of preliminary issues, mediation and expert assistance. In some cases, the tribunal member may consider the matter should proceed to determination without further attempts at resolution. In such a case, the tribunal member will proceed to a pre-hearing conference.

Legal Ruling

Sometimes an early ruling on a legal point will resolve the matter entirely or facilitate more productive discussions between the parties. If this can be identified early in the proceedings this could save the parties considerable time and trouble. It will contribute to a focus on issues rather than legal form or technicalities. Issues that could be determined in this way will be identified at the conciliation conference.

Mediation

Mediation is a key mechanism to promote and assist resolution by the parties. The tribunal member presiding at the conciliation conference will have the power to direct the parties to undertake mediation. Whilst voluntary participation in mediation is preferable, courts and tribunals are increasingly recognising that, even when, initially, there is resistance to mediation, progress can be made if the parties are brought together for structured negotiations.

Expert Assistance

Controversies about expert evidence are notorious. The tribunal's objective will be to efficiently access technical expertise to assist resolution or determination of disputes. The tribunal will seek to introduce expert assistance when it is most likely to assist resolution. If expert opinion is seen as placed firmly in the resolution phase, even at least initially, this may address issues arising from experts being engaged in an adversarial context. Expert evidence could take a number of forms including: a report to the tribunal and parties; an on-site conference; or a reference to an expert for determination. Expert assistance may precede a legal ruling or set the scene for productive negotiations in mediation.

Pre-Hearing Conference

The purpose of a pre-hearing conference will be to determine whether there are any prospects of resolution or whether the matter should proceed to determination by the tribunal. If the presiding member decides the matter should proceed to determination, directions for any further preparation for hearing will be set. If expert evidence has been obtained during the resolution phase, leave must be sought at the pre-trial conference to adduce further expert evidence or opinion at the hearing. This will further the tribunal's objective of promoting early determination if a dispute cannot be resolved by other means.

Case Summary finalised

At each stage of the resolution phase the case summary will be revised and amended by agreement between the parties under the supervision of the presiding member. At the pre-trial conference, final amendments to the case summary will be made. The tribunal supervision of the case will then cease. The case summary will define the scope of the tribunal's determination. This will promote an enduring focus on issues not on legal form or technicalities and an early determination of the dispute if it cannot be resolved by other means.

Determination

Tribunal hearings will be appropriately informal and the rules of evidence will not apply. Hearings on the papers will be available as will electronic hearings using e-mail, telephone and video facilities. Tribunal members will have the power to control the proceedings including the power to limit oral evidence, both in chief and cross-examination. Reasons will be given promptly.