

## PRACTICE DIRECTION 14: Civil Enforcement Proceedings

**14.1 OVERVIEW:** Civil enforcement proceedings may be initiated with the Tribunal under various Acts including:

- (a) Section 64 of the *Land Use Planning & Approvals Act 1993*,
- (b) Section 48 of the *Environmental Management & Pollution Control Act 1994*,
- (c) Section 53 of the *Historic Cultural Heritage Act 1995*,
- (d) Section 264, 266 or 280 of the *Water Management Act 1999*,
- (e) Section 111 of the *Marine Farming Planning Act*, or
- (f) Section 96 of the *Strata Title Act*.

Any person commencing actions under these, or any other empowering legislation should be familiar with these Practice Directions. Persons not legally trained are strongly encouraged to take legal advice regarding commencing Civil Enforcement Proceedings.

**14.2 WHO MAY COMMENCE CIVIL ENFORCEMENT PROCEEDINGS:** The relevant legislation will specify persons who have standing to commence proceedings under the relevant section. Ordinarily, a person with a proper interest may apply to the Tribunal for an order restraining another person from acting in a manner which is contrary to the *Land Use Act* or a planning scheme or a permit. Certain other agencies and persons may have automatic standing to bring proceedings.

**14.3 FILING AN APPLICATION:** The Tribunal has provided various forms for the making of applications under specific legislation. Please have regard to the Tribunal's website at [www.rmpat.tas.gov.au](http://www.rmpat.tas.gov.au) under the heading "Forms". The following must be provided:

- a) Evidence that the person named as the Respondent is the person who is allegedly breaching either the planning scheme or permit (or relevant legislation). In proceedings brought under Section 64 of the *Land Use Act* such evidence may include a copy of the Certificate of Title which shows the Respondent as the owner of the subject property. The Tribunal must be satisfied that the party named as being responsible for the breach is actually the person directly responsible for the alleged conduct and breach.

You should also identify any other person with a legal or equitable interest in the subject property.

- b) Specific and clear orders that are within the power of the Tribunal to grant, clearly articulating the nature of the relief or the orders that you are seeking from the Tribunal. The specific provisions of the legislation giving rise to the civil enforcement proceedings should be listed to ensure that the orders that you are seeking are within the power of the Tribunal to grant.
- c) Evidence of the breach – The Tribunal must be satisfied on a prima facie basis that a breach has occurred. It is necessary, therefore, to file sufficient evidence to demonstrate to the Tribunal that a summons should issue. As such, the Tribunal requires that evidence be filed in Affidavit or Statutory Declaration form.

Applicants are required to file with the Tribunal four (4) copies of the application and supporting documentation. In addition where there is more than one respondent to an application the applicant is to file two additional copies of each document for each additional respondent.

**14.4 ASSESSMENT OF THE APPLICATION:** If the Tribunal is satisfied, on a prima facie basis, that a breach appears to have occurred, it will issue you with three copies of a

summons. The first is titled "Original for Service" and it is the document that you will be required to serve upon the Respondent forthwith. You will also receive a copy titled "For Return to the Tribunal" and a copy titled "Your Copy". You should complete the form on the reverse side of the copy titled "For Return to the Tribunal" which is a declaration that you have served the summons upon the Respondent. The Tribunal must be satisfied that the Respondent has been served with a copy of the summons. The final copy is for you to keep for your own records.

The summons will contain a return of service date which will require the attendance of both the Applicant for the summons and the Respondent to the summons.

- 14.5 EX-PARTE HEARING:** The Tribunal may not be satisfied on a prima facie basis that a summons should issue and may direct the Applicant to attend an ex parte hearing for the purposes of gaining further information as to whether a summons should issue. You will be notified by the Tribunal Registry of any requirement to attend an ex parte hearing and must attend.
- 14.6 INTERLOCUTORY ORDERS:** A party may seek to apply for an interim or interlocutory order to restrain a party from undertaking certain activities in order to preserve the party's rights or interests. You should ensure that any such application clearly indicates that it is for an interim or interlocutory order. Supporting evidence and submissions are required to justify the making of such an order. An undertaking to the Tribunal may be required that, in the event the Respondent was restrained from an activity which they were lawfully entitled to undertake, that you, as the Applicant, will reimburse the Respondent for any financial loss suffered as a result of a temporary order being made.
- 14.7 SERVICE OF SUMMONSES OR TEMPORARY ORDERS:** The Applicant for a summons must, as soon as possible, serve upon the Respondent any summonses or orders which are made as the Respondent must have sufficient time to consider the summonses or orders before attending any hearing before the Tribunal.
- 14.8 THE RETURN OF SERVICE LISTING:** This is the first appearance before the Tribunal. It is the opportunity for the Respondent to advise the Tribunal whether they seek to "show cause". That is, whether they contest either the orders sought, whether a

breach has in fact occurred or any other matter which has been included in the application which the Respondent will resist.

Alternative dispute resolution procedures will be considered and, if appropriate, the matter may be listed for mediation or conciliation. The matter will also be listed for full hearing if the parties are in dispute as to either the orders sought or the allegations of a breach.

**14.9 RESOLUTION BY CONSENT:** After ADR or if reaching an agreement outside the Tribunal process, the parties may lodge an agreement with the Tribunal. This should be done as soon as practicable after having reached an agreement. If the Chairperson is satisfied that a decision in the terms of the agreement is within the power of the Tribunal and is appropriate, a decision may be issued without the need for a hearing. Practice Direction 5 covers Alternative Dispute Resolution procedures.

**14.10 HEARING:** Matters unresolved through ADR or agreement will proceed to hearing. The practice directions of the Tribunal with respect to the filing of evidence and the conduct of proceedings are applicable to any civil enforcement proceedings although a variation will occur in the filing of evidence. Ordinarily, the Applicant for a summons will be directed to file, at least four weeks before a hearing, any further and final material that it seeks to rely upon in support of the application. The Respondent to the proceedings will be afforded until two weeks prior to the hearing an opportunity to file any evidence and material in response. The Applicant will then be given a final right of response whereby any final evidence and material may be filed seven days prior to the hearing. On the day of the hearing the order of proceedings will be that the Applicant for the orders and summons will present its case first. The Respondent will then present its case. Final submissions will be presented in reverse order.

**14.11 PERSONS ENTITLED TO BE HEARD:** Under Section 64(4) of the *Land Use Act*, a person with a legal or equitable interest in land to which an application relates is entitled to be heard in proceedings. The Tribunal ordinarily advertises the commencement of proceedings. A person with a legal or equitable interest in the proceedings should write to the Tribunal as soon as practicable after being made aware of those proceedings. They will be required to comply with all directions set by the Tribunal in the resolution of the application.

**14.12 ENFORCEMENT OF ORDERS:** The Tribunal is not responsible for the enforcement of orders that are issued. Parties must take their own legal advice in relation to seeking penalties against a person who fails to comply with an order of the Tribunal. Ordinarily, such proceedings would be commenced in a Court of competent jurisdiction, such as the Civil Division of the Magistrates Court.