

22 Effect of review on reviewable decision

- (1) The start of a proceeding for the review of a reviewable decision under this Act does not affect the operation of the decision or prevent the implementation of the decision.
- (2) However, subsection (1) does not apply—
 - (a) if an enabling Act that is an Act provides otherwise; or
 - (b) to the extent the operation of all or part of the reviewable decision is stayed by an order of the tribunal under this section that is still in effect.
- (3) The tribunal may, on application of a party or on its own initiative, make an order staying the operation of all or part of a reviewable decision if a proceeding for the review of the decision has started under this Act.
- (4) The tribunal may make an order under subsection (3) only if it considers the order is desirable after having regard to the following—
 - (a) the interests of any person whose interests may be affected by the making of the order or the order not being made;
 - (b) any submission made to the tribunal by the decision-maker for the reviewable decision;
 - (c) the public interest.
- (5) Subsection (4)(a) does not require the tribunal to give a person whose interests may be affected by the making of the order, or the order not being made, an opportunity to make submissions for the tribunal's consideration if it is satisfied it is not practicable because of the urgency of the case or for another reason.
- (6) In making an order under subsection (3), the tribunal—
 - (a) may require an undertaking, including an undertaking as to costs or damages, it considers appropriate; or
 - (b) may impose conditions on the order it considers appropriate; or
 - (c) may provide for the lifting of the order if stated circumstances occur.
- (7) The tribunal may assess damages for subsection (6)(a).
- (8) The tribunal's power to assess damages under subsection (7) is exercisable only by a legally qualified member.

28 Conducting proceedings generally

- (1) The procedure for a proceeding is at the discretion of the tribunal, subject to this Act, an enabling Act and the rules.
- (2) In all proceedings, the tribunal must act fairly and according to the substantial merits of the case.
- (3) In conducting a proceeding, the tribunal—
 - (a) must observe the rules of natural justice; and
 - (b) is not bound by the rules of evidence, or any practices or procedures applying to courts of record, other than to the extent the tribunal adopts the rules, practices or procedures; and
 - (c) may inform itself in any way it considers appropriate; and
 - (d) must act with as little formality and technicality and with as much speed as the requirements of this Act, an enabling Act or the rules and a proper consideration of the matters before the tribunal permit; and
 - (e) must ensure, so far as is practicable, that all relevant material is disclosed to the tribunal to enable it to decide the proceeding with all the relevant facts.
- (4) Without limiting subsection (3)(b), the tribunal may admit into evidence the contents of any document despite the noncompliance with any time limit or other requirement under this Act, an enabling Act or the rules relating to the document or the service of it.

122 Request for written reasons

- (1) This section applies if the tribunal makes a decision in a proceeding, including its final decision, and does not give written reasons for the decision.
- (2) A party to the proceeding may, within 14 days after the decision takes effect under section 127, request that the tribunal give written reasons for the decision.
- (3) The tribunal must comply with a request under subsection (2) within 45 days after the request is made or, if the president extends the period, the extended period.
- (4) However, the tribunal is not required to comply with a request for written reasons for a decision made under section 51, 54(1), 55(1), 56(1), 57, 61(1), 62(1) or (3), 63(1) or (4) or 64(1).

143 Appealing or applying for leave to appeal

- (1) This section applies to—
 - (a) an application for the appeal tribunal's leave to appeal to the appeal tribunal against a decision of the tribunal or a decision of another entity under an enabling Act; or
 - (b) an appeal to the appeal tribunal against—
 - i) a decision of the tribunal; or
 - ii) a decision of another entity under an enabling Act.
- (2) The application or appeal must—
 - (a) be in a form substantially complying with the rules; and
 - (b) state the reasons for the application or appeal; and
 - (c) be accompanied by the prescribed fee (if any).
- (3) An application for the appeal tribunal's leave to appeal must be filed in the registry within 28 days after the relevant day.
- (4) An appeal must be filed in the registry within—
 - (a) if the appeal tribunal's leave is required for the appeal—21 days after the leave is given; or
 - (b) otherwise—28 days after the relevant day.
- (5) In this section—

relevant day, for an application or appeal, means—

 - (a) if a person makes an application under part 7, division 5, 6 or 7 about the decision being appealed against within 28 days after the person is given written reasons for the decision—the day that application is finally dealt with under that division; or
 - (b) if written reasons have not been given for the decision being appealed against and reasons have not been requested under section 122 or are not required to be given—the day the person received notice of the decision; or
 - (c) the day the person is given written reasons for the decision being appealed against.

145 Effect of appeal on decision

- (1) The start of an appeal under this division against a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.
- (2) However, the tribunal may make an order staying the operation of the decision being appealed against until the appeal is finally decided.
- (3) The tribunal may act under subsection (2) on the application of the appellant or on its own initiative.
- (4) The tribunal's power to act under subsection (2) is exercisable only by—
 - (a) the tribunal constituted for the appeal; or
 - (b) if the tribunal has not been constituted for the appeal—a judicial member.

21. If a party seeks to appear in person at the hearing, (that is, not by remote conferencing) that party must give written notice to the relevant registry and all other parties no later than 3 business days before the hearing (see Annexure A for the relevant registry details). The written notice must set out the grounds upon which the party relies on as justification for attending in person.

23. In cases where the Tribunal permits the personal appearance of a party, that person shall, before being admitted to the hearing room, provide, in writing, their full name, address, and contact telephone number and confirmation that the person:

- a) has not been currently diagnosed with COVID-19;
- b) is not presently awaiting the results of a COVID-19 test;
- c) has not been in close contact with another who already has COVID-19 such as to require the person to self-quarantine (in accordance with Queensland Government guidelines and recommendations); and
- d) is not suffering any of the symptoms of COVID-19.

The process described in clause 21 was not followed. No written notice to appear in person was given at all. Clause 23 was breached in that I did not provide any written confirmation about my COVID-19 status, nor was I requested to do so.

25. In order for the Tribunal to hear and determine matters properly and efficiently, it is very important that the Tribunal has all of the documents that each party to the proceeding wishes to rely. For hearings dealt with by remote conferencing, it is particularly important that occurs before the hearing date.

26. It is expected that applicants file all of the documents that they wish to rely upon with their application, and that the parties file any documents they wish to rely upon at hearing as soon as possible.

27. It is directed that all parties must provide all documents the party wishes to rely on at hearing to the relevant registry and the other party/parties to the proceeding **no later than three (3) business days before the hearing** (see Annexure A for the relevant registry details).

Note the emphasis in these clauses; the use of imperative language, underlining and bold type. It is obvious that QCAT regards these measures with crucial importance. However, the QCAT Act 28 (4) seems to nullify any need to adhere to any of these directions. Carte blanche!

Timeline of this matter

On 23 March 2022, the Department of Housing made an application to QCAT for a Warrant of Possession for failure to leave. A few days later, I received notice from QCAT that a hearing for this matter had been scheduled for 26 April 2022, and that it was to be heard by telephone. A copy of the *QCAT Practice Direction No. 2 of 2022* was also enclosed.

Included in the supporting documents for this application was an unsigned affidavit purportedly made by Mollie Beresford, a Senior Housing officer. The affidavit contained many easily refutable errors of fact. Legal advice was that the omission of a signature did not diminish the validity of the affidavit in any way. I find that incredible.

This affidavit summarises most of the events leading up to the application to QCAT, although it also contains a biased interpretation of those events from the view of the Department.

On 08 April 2022, I lodged a Form 42 *Application to extend or shorten a time limit or for waiver of compliance with procedural requirement* seeking to delay the hearing by one week due to all the upcoming public holidays making it difficult to schedule legal advice. QCAT refused this application on 21 April.

At approximately 1430hrs on 20 April 2022, I attempted to call QCAT to check that the contact phone number listed for me was correct. I was aware that I needed to ensure the accuracy of this data before close of business that day to satisfy the requirements of Clause 27. Instead, I got a recorded message advising that I had called outside of QCAT's calling hours, which ended at 1500hrs. Perplexed, I called again, only to get the same recorded message.

The next morning, I received an email from the Department of Housing containing a compilation of photographs of my property. This evidence had also been sent to QCAT at the same time. I contend that the timing of this submission breaches the strict requirements of Clause 27, and also Clause 26, in that the Department had these photographs at the time of submitting the original application, yet waited until two days before the hearing to attempt admission of them to evidence.

QCAT should have refused to admit this additional evidence but they decided instead to accept it, contrary to clause 27.

I immediately attempted to call QCAT to contest the admission of this late evidence. I was placed at #106 in their telephone queue. After about 30 minutes on hold, I had moved up the queue to #90. At that point, I elected to receive a callback. About four hours later, my phone rang twice and stopped. It was most likely QCAT calling back. There was no time to answer the call and no point in trying to call again.

Over the long weekend, I realised that the phone number that QCAT would attempt to call me on was probably the one listed on the original application by the Department of Housing, which was not working. I was unable to do anything about this until the next business day, which happened to also be the day of the hearing. Nevertheless, I called the service provider at around 0800hrs on 26 April. I was told that the service had lapsed on 17 April 2022, and that reinstatement was possible, but it would take 5 days. I immediately realised that any attempts by QCAT to contact me on that number would fail, and that the most likely result would be a determination by QCAT that I was not appearing at the hearing and therefore a default decision would be made against me. I immediately went in person to the QCAT registry at 259 Queen Street to investigate my options.

I arrived at QCAT around 1015, some 45 minutes after the scheduled time for the hearing. I explained to the receptionist what had happened and provided my correct contact phone number. I was advised that someone would be in touch with me later that day to assist me. I left the office and boarded a train back home. Before I arrived home, I received a call from the case manager at QCAT who asked me to return to the registry as soon as possible. I did so, arriving back about 1115. I was directed to a hearing room where the adjudicator and support staff were waiting. Within a few minutes, they had called the Department of Housing on the phone and the hearing began immediately. I was completely unprepared for the hearing at this moment, without access to any of my documents which were at home. Despite my best attempts to present my case, the adjudicator chose to accept the blatant refutable lies proffered by the Department (such as the notion that I had "refused to engage" with their nominated community service provider – despite a long email history going back six months or more and evidence of personal visits by their support worker; although this evidence was not available to me at the hearing) and rejected any of the mitigating factors I attempted to explain. Two other points raised against me were the amount of resources expended by the Department on this matter, and the availability of "alternative accommodation options", which I

was hitherto unaware of. I suspect that these “alternative accommodation options” are lower-quality, higher-cost communal room type facilities, in which I would most likely be the only resident not under the influence of some kind of substance abuse.

Inevitably, the adjudicator decided to issue the Warrant of Possession and ended the hearing.

I contend that this hearing was conducted in a manner that did not give me a fair opportunity to present my case in that I was denied access to my brief of evidence. I further contend that the handling of other aspects of this matter was injurious to my case.

On 27 April 2022, an unsigned letter appeared in my letterbox without an envelope. The letter was written by “Russell”, and sought to encourage me to liaise with the Department in procuring this “alternative accommodation” referred to at the hearing. The letter also claimed that the Warrant of Possession would be issued on 09 May 2022 and executed the following day. My independent research revealed that a Warrant of Possession must be issued within 3 days of the hearing and may be executed at any time after receipt by the police, but no later than 14 days from the issue date. I reasoned that the Warrant could feasibly be executed at any imminent time, so I wrote an email requesting a written guarantee that the Warrant would not be executed before 10 May.

I resent the email the following day after no response was received. The Department was silent until 04 May 2022, when I was sent an email by “Russell”, which contained another unsigned letter. This letter did not even bear the name of an officer, it was merely issued in the name of “Fortitude Valley Housing Centre”. The letter claimed that the Warrant would not be executed until 16 May 2022, which contradicts the claim of the email sent a week prior and the Notice of Decision sent by QCAT which arrived earlier in the week.

On 05 May 2022, I attended the QCAT Registry at 259 Queen Street and filed the following forms:

- *Request for reasons* which is the first step in the appeals process
- *Form 44 – Application to stay a decision* which stops enforcement of the original decision until the appeals process is completed. QCAT will serve a copy of this form on all parties by email, negating the requirement for me to complete and file a *Form 9 – Affidavit of service*.
- *Form 49 – Application for a fee waiver or appeal fee reduction of fees by reason of financial hardship* to take advantage of my status as a welfare recipient to not pay the fee for the stay application. I was required to lodge a copy of a recent Centerlink Statement to support this application.

A few hours later, I received an email from QCAT advising that the application to stay the decision had been refused. I immediately returned to the QCAT Registry to learn more. It gets even more confusing from this point. Advice received from staff was that I would have to file a *Form 39 – Application for leave to appeal or appeal* to appeal the decision made today refusing to stay the order. This will cost \$100 with a *Form 49 – Application for a fee waiver or appeal fee reduction of fees by reason of financial hardship* or \$358 without. Concurrently, another *Form 44 – Application to stay a decision* would need to be filed, in this case applying to stay the decision to refuse to stay the original decision. Are you staying with me? Essentially, the decisions have been nested inside each other and the appeal/stay process needs to go from the inner layer outwards. I was referred back to QSTARS for further legal advice which I will follow up tomorrow, although I haven’t had much help from their services previously.

Here is the absurdity of the situation. By refusing to stay the decision, QCAT is allowing the Warrant of Termination to proceed in light of a currently active appeals process which has the potential to overturn the decision which granted the Warrant in the first place. Common sense would seem to suggest that the stay should be automatic upon application and not subject to refusal, but that would be just too easy for QCAT now, wouldn’t it?

Further steps:

QCAT must respond to my request for reasons form within 45 days, ie 19 June 2022. When the reasons are released, I will have 28 days from that date to file a *Form 39 – Application for leave to appeal or appeal*. QCAT will consider this application and decide whether or not to grant leave. I have not investigated the process beyond this point, but I assume that refusal to grant leave to appeal would result in the Warrant of Possession being reissued for execution at another date and time.