

LEGISLATION COMMITTEE

INQUIRY INTO THE JURISDICTION AND OPERATION OF THE STATE ADMINISTRATIVE TRIBUNAL  
HEARING WITH THE ENVIRONMENTAL DEFENDER'S OFFICE AND THE CONSERVATION COUNCIL OF WA  
30 APRIL 2008

**ABBREVIATIONS**

EDO = Environmental Defender's Office

CC = Conservation Council of WA

SAT = State Administrative Tribunal

SAT Act = *State Administrative Tribunal Act 2004*

SAT Regulations = *State Administrative Tribunal Regulations 2004*

SAT Rules = *State Administrative Tribunal Rules 2004*

**Proposed Questions regarding the Operation of the SAT**

1. In its Annual Report for 2006, the SAT recommends amending section 41 of the *Environmental Protection Act 1986*. The following is an excerpt from the Annual Report 2006, pp42-43:

*the DR stream has been constrained in its ability to achieve the objective stated in section 9(a) of the State Administrative Tribunal Act 2004, to act as speedily as is practicable, by the referral of proposals, which are the subject of review proceedings, by original decision-makers to the Environmental Protection Authority (EPA) for environmental assessment under the Environmental Protection Act 1986 or the requirement of the EPA that Tribunal itself refer proposals the subject of review applications to the EPA for environmental assessment.*

*Although, where a proposal has been referred for environmental assessment, the DR stream is able to undertake mediations or*

*compulsory conferences and to determine preliminary issues, Tribunal is precluded by section 41 of the Environmental Protection Act 1986 from making a decision which could have the effect of causing or allowing the proposal to be implemented and it seems, therefore, from making a final decision in relation to the review, until an authority is served on it by the Minister for Environment under section 45(7). As the Tribunal determined in Burns and Commissioner of Soil and Land Conservation [2006] WASAT 83 at [27], the word, could, in section 41 of the Environmental Protection Act 1986 refers to a potential event or situation. Section 41 does not only apply to a decision which will remove the last impediment to the lawful implementation of a proposal.*

*Section 27(3) of the State Administrative Tribunal Act 2004 states that the purpose of the review is to produce the correct and preferable decision at the time of the decision upon the review. Even if the parties were in agreement, it would not be possible for the Tribunal to list proceedings for final hearing, but limited to determining whether the application should be refused. If the correct and preferable decision is that the review should succeed, the Tribunal is bound to so determine. However, section 41 of the Environmental Protection Act 1986 precludes the Tribunal from making a decision that could have the effect of allowing a referred proposal to be implemented.*

*The environmental assessment process in relation to referred proposals, while no doubt complex, appears to take a considerable period of time. The result is that a number of applications have had to be repeatedly adjourned from directions hearing to directions hearing, awaiting the result of environmental assessment by the EPA and then any appeal to the Minister for Environment.*

...

*A possible solution to the problem is the New South Wales position, which was referred to in passing in Burns and Commissioner of Soil and Land Conservation at [42], under which the Land and Environment Court is authorised to determine an appeal against the decision of a council or consent authority whether or not any concurrence or approval required before the council or consent authority could determine the application has been granted.*

	<p><i>A variation on this theme would be to amend section 41 of the Environmental Protection Act 1986 to permit the Tribunal to finally determine proceedings involving a referred proposal, but to preclude the implementation of the proposal until the Minister is satisfied that there is no reason why a proposal in respect of which a statement has been published under section 45(5)(b) should not be implemented.</i></p> <p>What are the EDO's and/or CC's views on this recommendation and what action is being proposed or undertaken?</p>
2.	<p>In its Annual Report 2006 at p43, the SAT made the following observations regarding section 37 of the SAT Act:</p> <p><i>It is to be noted that section 37(1) of the State Administrative Tribunal Act 2004 confers a right on the Attorney General, on behalf of the State, to intervene in proceedings of the Tribunal at any time and that section 37(3) confers a discretion on the Tribunal to permit any person to intervene in proceedings. Section 37 could be amended to permit the Minister for Environment to intervene in proceedings which concern a proposal which has been referred to the EPA for environmental assessment under the Environmental Protection Act 1986. This would enable all environmental planning issues to be determined in a single proceeding.</i></p> <p>Does the EDO and/or CC agree with the suggestion? Why/why not?</p>
<b>Proposed Questions regarding the Jurisdiction of the SAT</b>	
3.	<p>The EDO and the CC submit (Submission 83) that appeals under Part V of the <i>Environmental Protection Act 1986</i> should be dealt with by the SAT rather than the Minister and recommends that the "SAT adopt this additional jurisdiction on a trial basis for an initial two years." The EDO and CC indicate that they would like to be consulted as to the precise form that this trial should take.</p> <p>What further comments do you wish to make in this regard?</p>
4.	<p>Are there any other issues/matters relevant to this inquiry which the EDO and/or CC wish to address? If so, please provide additional comment.</p>

