

LEGISLATION COMMITTEE

INQUIRY INTO THE JURISDICTION AND OPERATION OF THE STATE ADMINISTRATIVE TRIBUNAL
HEARING WITH THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
30 APRIL 2008

ABBREVIATIONS

DEC = Department of Environment and Conservation

EPA = Environmental Protection Authority

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 submission (Submission 24), the DEC states that “For both legal and policy reasons” the Government does not support amending section 41 of the *Environmental Protection Act 1986* to allow the SAT “to hear and determine town planning appeals concerning proposals which have also been referred to, and are being assessed by, the ... [EPA] ... under Part IV of the EP Act, prior to the EPA finalising its assessment.” However, the DEC also states that it “remains interested in exploring administrative ways, if possible, to align processes under Part IV of the EP Act with the SAT’s consideration of planning appeals.”

The Committee notes the following comments made by the SAT in relation to this issue:

the Tribunal suggests that it should be able to determine proceedings which fall within its current jurisdiction without having to place proceedings "on hold" while the environmental assessment process runs its course. ... a solution would be to amend

	<p><i>s 41 of the Environmental Protection Act 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 s 45(5)(b) should not be implemented. If the Tribunal determines that a proposal that is the subject of environmental assessment should not receive development, subdivision or other approval (which is within the Tribunal's jurisdiction), it will be unnecessary for the environmental assessment process under the Environmental Protection Act to be completed as the proposal cannot be implemented. On the other hand, if the Tribunal determines that the application should receive development, subdivision or other approval (which is within the Tribunal's jurisdiction) then the Minister for the Environment would still have the ability to preclude the implementation of the proposal on the basis of the environmental assessment under the Environmental Protection Act.</i></p> <p>(a) Please explain the legal and policy reasons for not supporting the suggested amendment to section 41 of the <i>Environmental Protection Act 1986</i>.</p> <p>(b) What administrative methods for aligning the SAT's consideration of planning appeals and the processes under Part IV of the <i>Environmental Protection Act 1986</i> have been considered or developed?</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 DEC agree with the suggestion? Why/why not?</p>

Proposed Questions regarding the Jurisdiction of the SAT	
3.	<p>The DEC submits (Submission 24) that any expansion of the SAT's jurisdiction to include a merits review of decisions made under Parts IV [environmental impact assessment] and V [environmental regulation] of the <i>Environmental Protection Act 1986</i> be rejected. It argues that relevant decisions under Part IV and V of that Act are "reviewed impartially and independently by the Environmental Appeals Convenor's Office" and that it is "logical and desirable for the Environmental Appeals Convenor's Office to continue this function."</p> <p>In the context of any proposed expansion of the SAT's jurisdiction, please explain why it is logical and desirable for the Appeals Convenor to continue reviewing decisions made under Parts IV and V of the <i>Environmental Protection Act 1986</i>.</p>
4.	<p>The Committee notes that the <i>Western Australian Civil and Administrative Review Tribunal Taskforce Report on the Establishment of the State Administrative Tribunal</i> (May 2002) recommended, for reasons set out at pages 66 and 110 to 112, that pollution control matters under Part V of the <i>Environmental Protection Act 1986</i> should be determined by SAT and that all other matters under that Act should remain subject to Ministerial appeal. In particular, the Taskforce said at page 111 that it is "appropriate for an independent and impartial review mechanism to be available in respect of Part V pollution control matters".</p> <p>What is the DEC's view on transferring Ministerial appeals under only Part V of the <i>Environmental Protection Act 1986</i> to the SAT?</p>
5.	<p>If the SAT's jurisdiction is expanded to include appeals under the <i>Environmental Protection Act 1986</i>, what views would the DEC have with regard to third party rights of appeal? Specifically, please identify any changes that may occur to current rights of appeal with the transfer of jurisdiction to the SAT.</p>
6.	<p>Are there any other issues/matters relevant to this inquiry which the DEC wishes to address? If so, please provide additional comment.</p>