VCAT Victorian Civil & Administrative Tribunal

PRACTICE NOTE – PNVCAT3
Fair Hearing Obligation

Application	Proceedings in all Divisions
Effective date	27 June 2026
Supersedes Practice Note	Previous version of PNVCAT3 issued on 1 February 2026
Special note	Please ensure that you are using an up-to-date version of this practice note. Other practice notes may also apply.
Further information	A complete set of current practice notes are available on the VCAT website at www.vcat.vic.gov.au.

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Special Note

1. With effect from 1 February 2026, amendments to the *Victorian Civil and Administrative Tribunal Rules 2018* (Vic) come into operation
   a. to establish new divisions of the Tribunal (see rule 2.01); and
   b. to provide for the President to give directions about divisions and practice areas of the Tribunal as a matter of the business of the Tribunal (see rule 2.02).
2. From 1 February 2026 new VCAT practice areas published on the VCAT website replace the former lists.

Introduction

3. The Victorian Civil and Administrative Tribunal was established under the *Victorian Civil and Administrative Tribunal Act 1998* (the Act). The Tribunal's

purpose is to provide Victorians with a fair, accessible, efficient and independent tribunal delivering high quality dispute resolution.

4. The obligation to provide a fair hearing is an important component of the Tribunal's function. The fair hearing obligation applies to the exercise of all the Tribunal's functions.
5. The purpose of this practice note is to provide some procedural guidance as to how the fair hearing obligation may be discharged. It is not an exhaustive statement of all relevant legal principles.
6. In any proceeding the Tribunal may vary the operation of a practice note by direction or order.
7. This practice note has been issued by the Rules Committee pursuant to section 158 of the *Victorian Civil and Administrative Tribunal Act 1998*.

Definitions

Word	Definition
Act or VCAT Act	*Victorian Civil and Administrative Tribunal Act 1998*
ADR	Appropriate dispute resolution (also called alternative dispute resolution). It includes a mediation or a compulsory conference or any form of ADR as defined by the VCAT Act
Rules	*Victorian Civil and Administrative Tribunal Rules 2018*
Regulations	*Victorian Civil and Administrative Tribunal (Fees) Regulations 2026*

8. A word or term used in this practice note has the same meaning as defined in the Act or in the *Interpretation of Legislation Act 1984* (Vic).

What is the fair hearing obligation?

9. The Tribunal has a general duty to ensure a fair hearing for all parties. A fair hearing involves the provision of a reasonable opportunity to parties to put their case and to have the case determined according to law by a competent, independent and impartial tribunal.
10. In particular, the Tribunal:
    a. Must act fairly and according to the substantial merits of the case in all proceedings, section 97;

b. Is bound by the rules of natural justice, section 98(1)(a);

c. May inform itself on any matter it sees fit, section 98(1)(c);

d. May conduct all or part of a proceeding by teleconference, video links or any other system of telecommunications, section 100(1);

e. Must allow a party a reasonable opportunity to call or give evidence, question witnesses and to make submissions to the Tribunal, section 102(1);

f. Must conduct each proceeding with as little formality and technicality, and determine each proceeding with as much speed, as the requirements of the Act and the enabling enactment and a proper consideration of the matters before it permit, section 98(1)(d); and

g. May regulate its own procedure, section 98(3).

(These obligations are set out in sections 97, 98, 100 and 102 of the Act.)

11. As part of its obligation to provide a fair hearing, The Tribunal can arrange for an interpreter to assist in proceedings. Requests by a party for the arrangement of an interpreter can be made either in writing or by telephoning the Tribunal. Such requests should be made when lodging an application with the Tribunal or as soon as practicable after being notified of the hearing date. (For more information on this see PNVCAT9 – Interpreters in Tribunal Proceedings.)

What are the obligations of Members?

12. Members of the Tribunal have a responsibility to ensure that all parties receive a fair hearing. This means that Tribunal members must ensure that each party is given a reasonable opportunity to present their case, to know the case to be advanced by the opposing party and to make submissions in opposition to that case.

13. In some circumstances, a Member will be required to intervene in the proceedings to ensure a fair hearing. For example, in order to:

a. Explain the relevant law;

b. Clarify uncertainty;

c. Identify relevant issues;

d. Ensure that hearings are conducted efficiently and costs are kept to a minimum;

e. Ask a party or witness questions designed to elicit information in relation to the issues which are central to the determination of the particular proceedings;

f. Draw a party's attention to the relative weight to be given to unsworn as opposed to sworn evidence;

g. Adjourn a hearing in circumstances where it would be unfair to proceed; or

h. Deal effectively with inappropriate behaviour, including (in the case of a hearing by videoconference) by muting a participant or disabling the chat function.

14. Importantly, what a Member must do to ensure a party has a reasonable opportunity to present their case, will depend on the circumstances of each particular case. Relevant factors include:

    a. The nature of the decision to be made;

    b. The nature and complexity of the issues in dispute;

    c. The nature and complexity of the submissions which the party wishes to make;

    d. The significance to that party of an adverse decision ('what is at stake');

    e. The competing demands on the time and resources of the Tribunal; and

    f. The Tribunal's power to regulate its own procedure.

15. For example, a Member may be required to provide greater assistance in a case where a person may lose substantial freedoms and personal autonomy (such as in the Supported Decision-Making practice area) or potentially be made homeless (such as in the Home Rental practice area) as a result of Tribunal orders, than as compared with a fee recovery matter under the *Owners Corporation Act 2006*.

16. A Tribunal member may also be required to adopt special measures to facilitate the participation of people with a disability if they would otherwise be prevented from fully participating in a proceeding.

What is the duty of the Tribunal to assist self-represented parties?

17. The obligation on Tribunal members to provide a fair hearing applies to all parties, whether represented or self-represented.

18. It is necessary to balance the interests of litigants who represent themselves with the need to afford procedural fairness to all parties, and to ensure that hearings are conducted efficiently and costs are kept to a minimum.

19. However, where a party is self-represented, the level of assistance, intervention and time a Member is required to provide in order to give the party a reasonable opportunity to present their case, will vary depending on the capabilities and

attitudes of the self-represented party. For example, a member may be required to provide a high level of assistance to a self-represented party who is not able to express themselves, distressed, does not understand the proceeding or is unfamiliar with court or Tribunal proceedings, and less assistance to a self-represented party who clearly understands the case against them and is familiar with proceedings at the Tribunal.

20. To determine the level of assistance a party may need, a Member is required to assess their capabilities to formulate and communicate the case which they wish to present. This assessment may be based on their written communications with the Tribunal as well as their verbal communication at the hearing.

21. Where a Member is aware that there may be an arguable point a self-represented party cannot articulate, the Member may be required to assist them to make that point or refer them to a duty lawyer or other provider of pro bono legal services for legal advice.

22. Whilst in the circumstances of a particular case a Member may be required to assist a party to identify relevant legal issues, it is not the Tribunal's role to act as that party's advocate or to provide legal advice.

What are the obligations of parties and representatives?

23. The Tribunal requires that parties and their representatives participate in its processes in a responsible way in order to assist the Tribunal to provide a fair hearing.

24. Parties and their representatives must:

    a. Treat the Tribunal and the other parties/representatives with courtesy and respect at all times;

    b. Act honestly in relation to the proceeding and must not knowingly give false or misleading information to the Tribunal;

    c. Abide by all rulings and directions of the Tribunal;

    d. Act promptly, comply with all Tribunal directions for the timely resolution of the dispute and minimise delay;

    e. Cooperate with other parties and the Tribunal to facilitate the just, efficient, timely and cost effective resolution of the real issues in dispute;

    f. Use reasonable endeavours to ensure that the costs incurred in connection with the proceeding are reasonable and proportionate to the complexity and importance of the issues and the amount in dispute;

    g. Participate in ADR when directed to do so by the Tribunal, and;

h. When engaged in ADR, use reasonable endeavours to;

   i. Resolve the dispute by agreement; or

   ii. If the dispute cannot be wholly resolved by agreement narrow the scope of the issues in dispute.

25. The State of Victoria, its Departments and agencies have an obligation to act as a model litigant. In essence, a model litigant must act with complete propriety, fairly and in accordance with the highest professional standards.

26. The obligation to act as a model litigant may require more than merely acting honestly and in accordance with the law and Rules of the Tribunal. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations.

- END OF PRACTICE NOTE -