VCAT Victorian Civil & Administrative Tribunal

PRACTICE NOTE – PNVCAT4

Appropriate Dispute Resolution (ADR)

Application	Proceedings in all Divisions
Effective date	1 February 2026
Supersedes Practice Note	Previous version of PNVCAT4 issued on 19 December 2018
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. Appropriate dispute resolution (sometimes called alternative dispute resolution) or 'ADR' as it is defined in the VCAT Act plays an important role at the Tribunal in facilitating the resolution of a wide range of disputes informally and cost-effectively. The Tribunal is an acknowledged leader in the delivery of ADR services, which are usually provided through either a mediation or compulsory conference.
4. This practice note sets out the main practices and procedures that apply to ADR at the Tribunal.
5. In any proceeding the Tribunal may at its discretion vary the operation of the practice note by direction or order.
6. 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
Compulsory Conference	A compulsory conference under section 83 of the Act

Mediation	A mediation under section 88 of the Act
Rules	*Victorian Civil and Administrative Tribunal Rules 2018*

7. 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 are the benefits of participating in ADR?

8. ADR gives parties to a dispute the best opportunity to settle their differences as early as possible to avoid potentially high litigation costs and achieve more tailored solutions.
9. Parties who resolve their disputes through ADR avoid the risks, stress and costs of a hearing.
10. Parties are often more satisfied with a resolution achieved through ADR due to having greater control of the process and in making their own decisions, and an opportunity to influence the outcome.
11. ADR encourages effective communication between parties so is more conducive to maintaining ongoing relationships.
12. In a compulsory conference, parties may also benefit from seeking the Tribunal Member's view privately as to the strengths and weaknesses of their case.

Is a compulsory conference or mediation confidential?

13. Sections 85 and 92 of the Act make evidence of communications in ADR processes inadmissible at a hearing. In addition to these provisions, the parties to a mediation or compulsory conference may be asked to sign a confidentiality undertaking, at the commencement of the mediation or compulsory conference. A form of undertaking is available on the Tribunal website. The undertaking provides, among other things, that parties must not disclose to outsiders, including the media, what was said or done in a mediation or compulsory conference or any confidential documents produced in the ADR process. Alternatively to the use of an undertaking, in a compulsory conference, the Tribunal may make an order as to confidentiality.
14. Nothing discussed during a private session will be disclosed to the other party unless express authority is given to the mediator or Tribunal Member to do so.
15. Mediations and compulsory conferences are not recorded.
16. Notes of the mediation or compulsory conference are destroyed and not kept on the file.

What happens in a mediation?

17. A mediator, who may or may not also be a Tribunal Member, will conduct the mediation. The mediator will explain the process and then ask each party or their representative to give a summary of how each sees the dispute. All parties will be given an opportunity to speak and listen and to respond.
18. The mediator will assist the parties to identify the key issues in dispute.
19. At some stage, the mediator may talk to the parties in private to clarify issues and discuss settlement options. Private sessions are confidential and the mediator will not disclose anything said without consent. Parties can also request to speak to the mediator privately and confidentially at any time.
20. The parties may continue to meet with the mediator privately, and ask the mediator to communicate options for resolution. Parties will sometimes come back together to focus on negotiating resolution of the dispute.
21. For further information about the mediator's role and other aspects of mediation at the Tribunal refer to the Code of Conduct, which can be found on the Tribunal website.

What happens in a compulsory conference?

Note: Section 83 of the Act sets out the functions of a compulsory conference. These are:

(a) to identify and clarify the nature of the issues in dispute in the proceeding;
(b) to promote a settlement of the proceeding;
(c) to identify the questions of fact and law to be decided by the Tribunal; and
(d) to allow directions to be given concerning the conduct of the proceeding.

22. A Tribunal Member will conduct the compulsory conference. The Member will explain the process and then ask each party or their representative to give a summary of how each sees the dispute. All parties will be given an opportunity to speak and listen and to respond.
23. The Tribunal Member will assist the parties to identify the key issues in dispute and the questions of fact and law to be determined by the Tribunal.
24. Because settlement discussions are such an important part of the compulsory conference, it will be held in private [section 83(4) of the Act].
25. The way in which the compulsory conference is conducted is at the discretion of the Member [section 83(5)]. Generally a compulsory conference is in two parts:

a. the first part is similar to a mediation in that it is an officially sanctioned, private meeting at which settlement of the case is considered. However, the Member may play a more active role than in a mediation; and

b. the second part takes place when the negotiations are complete. If settlement has been reached, the Member can make Orders which adjourn or dispose of the case as appropriate. If settlement is not achieved, the Member can make directions to prepare the case for final hearing.

26. As in a mediation, the discussions will be conducted on a "without prejudice" basis – meaning that a settlement offer which is not accepted cannot be disclosed to the Tribunal at the hearing, and is confidential. Section 85 of the Act provides that, with few exceptions: "Evidence of anything said or done in the course of a compulsory conference is not admissible in any hearing before the Tribunal in the proceeding".

27. The Member may discuss the case with all the parties together, or in private sessions.

28. If the Member holds a private session, the Member will not disclose anything said or done in that session to the other party, unless expressly authorised to do so. Private sessions are useful opportunities to answer parties' questions, to discuss the possible outcome of the case at a final hearing, and to help the party formulate a settlement offer. If there are lawyers involved, the Tribunal Member may hold some discussions with the parties' lawyers, without the parties present.

29. The parties may continue to meet with the Tribunal Member privately, and ask the Tribunal Member to communicate options for resolution, or they may come back together to focus on negotiating a resolution of the dispute.

30. If a party would prefer not to discuss offers directly with the other party, the Member can pass on the offers.

31. Unlike in a mediation, at a compulsory conference the Tribunal Member may express an opinion on the parties' prospects in the case, or on relative strengths and weaknesses of a party's case. The Member will exercise this power if the Member considers it to be of assistance in promoting settlement.

How is a matter referred to ADR?

32. The Tribunal may decide:

a. on its own initiative; or

b. at the request of a party

to refer a proceeding or part of a proceeding to a mediation or compulsory conference.

33. Any party can make a request in writing for a proceeding or part of a proceeding to go to a mediation or compulsory conference. A copy of the request must be sent to the other parties. Alternatively, a party may raise the matter at a Directions Hearing if one is held. In some practice areas at the Tribunal, the Tribunal may seek information from the parties as part of the application process as to whether they seek mediation or a compulsory conference.
34. The Tribunal will decide whether ADR will be used, or the type of ADR to be used. In reaching its decision, the Tribunal will consider factors including:
    a. the nature of the dispute and (if relevant) the amount claimed;
    b. the stage the dispute is at;
    c. the relationship between the parties, and the willingness of the parties to be involved in ADR;
    d. the likelihood that ADR will resolve the matter or materially reduce the issues in dispute; and
    e. any other relevant consideration.

Can I be represented by a lawyer at a mediation or compulsory conference?

35. Unless section 62 of the Act or an enabling Act entitles a party to be represented by a professional advocate or another person at a hearing, or unless all parties agree, a party will usually require the permission of the Tribunal before that party can be represented at a hearing. The same principles apply to a mediation.
36. If representation is permitted at a mediation, the Mediator will usually decide who is present in the mediation room and the extent to which they participate.
37. Parties will be encouraged to participate directly in the mediation or compulsory conference, even if represented.

How do I prepare for a mediation or compulsory conference?

38. The Tribunal will send orders or a Notice of ADR. The orders or notice will state the time, date and place for the proceeding that is to be dealt with by ADR. A party should attend 15 minutes prior to the advised commencement time.
39. Each party or its representative should be prepared to make an opening statement at the mediation or compulsory conference, outlining its view as to the issues in dispute, how these issues affect that party, and how the party would like to see the case resolved.

40. A party may be required to prepare a position paper and bring it on the day, or exchange it with the other parties before the mediation or compulsory conference. You should read the orders or notice carefully. Unless the parties agree otherwise, the position paper is a confidential document in the ADR process.
41. A party should bring all relevant documents including expert reports, invoices, photographs, plans etc. that are relevant to the dispute.
42. If you are representing someone else as well as yourself, or you are an agent for a party, you will need a signed letter of authority on an appropriate letterhead. You will also need this if you are representing a company, club, government body, or group.

How long will the mediation or compulsory conference take?

43. Mediations and compulsory conferences are usually listed for either two hours, half a day or a whole day. Some mediations and compulsory conferences may be listed for a shorter time, such as one hour. The amount of time allocated will be set out in the order or notice, and you should plan to be at the Tribunal for all of the time allocated.

Is there a fee or cost for the mediation or compulsory conference?

44. Mediations and compulsory conferences at the Tribunal are provided free of charge. If you choose to bring a professional advocate, you will need to make these arrangements and meet the cost yourself.
45. A party must notify the Tribunal promptly if the mediation or compulsory conference is not ready to proceed, or settles prior to commencing, to ensure that Tribunal resources are not wasted.

How do I seek an adjournment?

46. The Tribunal will only allow the adjournment of a mediation or compulsory conference in special circumstances. You should not expect that an adjournment will be granted. Please see PNVCAT1 Common Procedures for further information as to how to apply for an adjournment.

What happens if one of the parties does not turn up?

47. If one of the parties does not attend for a mediation or compulsory conference, sections 78 and/or 87 of the Act allow a Member to make an order against that party without them being present. The Tribunal Member may:
    a. make an order against the absent party;

b. strike out the application made by the absent party, or strike out the absent party as a party in the proceeding; or

c. make an order for costs against the absent party.

What happens if the mediation or compulsory conference is successful?

48. If a settlement offer is accepted, settlement is confirmed when it is recorded in writing and signed by the parties. Where practicable, parties should sign the settlement agreement (sometimes called Terms of Settlement) before leaving the mediation or compulsory conference. Parties may use standard Terms of Settlement pro forma documents available from the Tribunal.

49. Sometimes it is not possible to complete a settlement agreement because time is limited or some details need to be confirmed. Parties might then agree to sign "Heads of Agreement" recording the outline of the agreement, pending the signing of a more complete settlement agreement.

50. In certain circumstances, the Tribunal may adjourn the mediation or compulsory conference to another date, or to an administrative mention on an agreed date, when the parties can let the Tribunal know in writing whether the settlement agreement has been signed.

51. Where appropriate, and where the terms of settlement are not confidential, the settlement may be given effect through a consent order of the Tribunal.

What happens if the mediation or compulsory conference is not successful?

52. If a mediation or compulsory conference is unsuccessful or not entirely successful, the proceeding will usually be listed for a final hearing. The Tribunal may make directions for the final hearing, including setting a procedural timetable.

53. Sometimes the proceeding will be listed for a directions hearing on another day, before a different Member, especially if there are contentious procedural issues to be resolved.

54. If the mediation was conducted by a Member, a different Member will hear the case at the final hearing, and that Member will not know about discussions that occurred at the mediation.

55. If the parties all consent, the Member conducting a compulsory conference may hear the case at the final hearing.

Should I expect a phone call before the mediation or compulsory conference?

56. If you have a date set for a mediation (not a compulsory conference) the Tribunal may telephone you or your professional advocate before your mediation

to confirm the date and time of your mediation, and to answer any questions you may have about the process.

57. You may also receive a telephone call from the other parties in the dispute. Parties can have discussions to settle their dispute at any time. If you wish for these discussions to be confidential, make sure you tell the other party that you are speaking "without prejudice".

58. If your case does settle before mediation or compulsory conference, you should let the Tribunal know immediately by telephone and confirm this advice in writing.

What is the cooling off period and when does it apply?

59. In the circumstances when a party, or parties, are not legally represented and an agreement is reached at a mediation, and except as set out in paragraph 63, the agreement is subject to a mandatory cooling off period of two clear business days.

60. A 'business day' is between the hours of 9.00am and 4.30pm, Monday to Friday (excluding public holidays). For example, if a mediation is held on Friday, the cooling off period is calculated as follows:

Friday	Mediation
Saturday	not counted, not a business day
Sunday	not counted, not a business day
Monday	First Business Day
Tuesday	Second Business Day Cooling off period finishes at 4:30pm on this day

61. No steps will be taken by the Tribunal to implement the finalisation of the proceeding during the mandatory cooling off period.

62. If the cooling off period applies and any party, upon reflection, wishes to withdraw from the settlement they should notify the Tribunal by phone on (03) 9628 9762 during the two business days following the mediation. If you call this number to revoke your agreement, you must provide the Tribunal representative with the following information:

    a. confirm you are calling to revoke your agreement;

    b. your VCAT Reference number;

    c. your name; and

d. your daytime contact number.

63. The Tribunal will contact the other parties to advise the settlement has been revoked.

64. In the event that the proceeding has not already been scheduled for another date, a new listing will be scheduled by the Tribunal. Notice of this will be mailed to all parties.

65. The cooling off period does not apply in any of the following cases:

    a. where the mediator is a Member;

    b. where all parties at the mediation are legally represented;

    c. for mediations in the Consumer & Business Disputes practice area;

    d. for a mediation in the Resources & Environment practice area;

    e. at a compulsory conference.

How can I help make the mediation or compulsory conference successful?

66. Attend the mediation or compulsory conference with a commitment to negotiate in good faith to resolve the case.

67. Approach the mediation or compulsory conference with an open mind and be flexible when considering options that may resolve your case.

68. Be prepared and ensure you are familiar with all the evidence on which you wish to rely.

69. Consider which issues are most important to you, what it might take to resolve these, and the outcomes you may reasonably expect to achieve (as opposed to those you may hope to achieve). Consider your interests in resolving or continuing the dispute, and the interests of the other parties.

70. You may also wish to consider the following:

    a. the strengths and weaknesses of your case, and of the other party's claim;

    b. what will be needed to present your case at a hearing: who you would call as witnesses, whether you would call any expert witnesses and the like;

    c. the amount of time the hearing could take;

    d. the costs you might incur in the hearing;

    e. what the Tribunal may be able to order if you succeeded in the case, and whether that order would give you the solution to the dispute; and/or

    f. options for resolving the dispute.

Can I tell the Tribunal about my experience with ADR?

71. Yes. Although what is discussed at the mediation or compulsory conference is confidential, you can tell the Tribunal what you think about the process. You will be given a survey form (or you can ask for one) and you may complete it and leave it in the box provided at the Tribunal. The survey is anonymous, although you can write your name on it if you wish.

Where can I obtain further information?

72. There is more information on ADR available on the Tribunal website at https://www.vcat.vic.gov.au/the-vcat-process/mediations-and-compulsory-conferences.

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