

## PLANNING AND ENVIRONMENT DIVISION

### PARTIES TO PROCEEDINGS

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#### WHAT DOES IT MEAN TO BE A PARTY?

##### Rights of parties

Parties to a proceeding have certain rights under the *Victorian Civil and Administrative Act 1998*. They include:

- To be given notice of a hearing, compulsory conference or compulsory conference.<sup>1</sup>
- To participate in a compulsory conference or compulsory conference.
- To be heard by the Tribunal and make submissions to the Tribunal at a hearing.<sup>2</sup>
- To call or give evidence at a hearing.<sup>3</sup>
- To cross-examine or ask questions of witnesses.<sup>4</sup>
- To receive a copy of any order made in a proceeding.<sup>5</sup>
- To appeal to the Supreme Court on a question of law.<sup>6</sup>

##### Obligations of parties

Parties to a proceeding have certain obligations. They include:

- A requirement to comply with the provisions of the *Victorian Civil and Administrative Act 1998*, the Victorian Civil and Administrative Rules 2008, regulations and provisions of any enabling enactment.
- A requirement to comply with directions made by the Tribunal.
- A requirement to attend a hearing, compulsory conference or compulsory conference.

##### Consequences of non-compliance with obligations

The consequences for a party who does not comply with their obligations include:

- Removal as a party.<sup>7</sup>

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<sup>1</sup> Sections 99(1),88(3) & 83(3) *Victorian Civil and Administrative Act 1998*

<sup>2</sup> Section 102(1)(c) *Victorian Civil and Administrative Act 1998*

<sup>3</sup> Section 102(1)(a) *Victorian Civil and Administrative Act 1998*

<sup>4</sup> Section 102(1)(b) *Victorian Civil and Administrative Act 1998*

<sup>5</sup> Section 116(2) *Victorian Civil and Administrative Act 1998*

<sup>6</sup> Section 148(1) *Victorian Civil and Administrative Act 1998*

<sup>7</sup> Sections 78(2)(b)(ii) & 87(b)(ii) *Victorian Civil and Administrative Act 1998*

- Determination of a hearing, compulsory conference or compulsory conference in their absence.<sup>8</sup>
- An award of costs against them.<sup>9</sup>

## **WHO MAY BE PARTIES TO A PROCEEDING?**

Some persons are automatically parties to a proceeding whilst other persons are eligible to become parties.

Generally, the enabling enactment will identify who may become a party to a proceeding. An enabling enactment means an enactment (i.e. the legislation) by or under which jurisdiction is conferred on the Tribunal. The legislation will specify that particular persons can make an application to VCAT either to review a particular decision (in the Tribunal's review jurisdiction) or for some other determination by the Tribunal (in the Tribunal's original jurisdiction). The legislation may also specify that other persons are eligible to contest such applications if certain procedures are followed.

A person may only make an application or contest a proceeding if there is jurisdiction under the enabling enactment. The following notes assume jurisdiction and deal with who are parties once an application is made to VCAT; how a person may contest a proceeding and become a party; and the removal of parties from proceedings.

The *Victorian Civil and Administrative Act 1998* and the *Victorian Civil and Administrative Rules 2008* contain important provisions about who are parties to a proceeding and the status of persons wishing to contest a proceeding under a planning enactment.<sup>10</sup>

It is most important that if a person is eligible to become a party to a proceeding that they closely follow any directions given by the Tribunal and comply with the requirements of the *Victorian Civil and Administrative Act 1998* and rules if they wish to become a party. In particular, this applies to lodging statements of grounds.

## **AUTOMATIC PARTIES TO A PROCEEDING**

### **Applicants**

Any person who makes an application to VCAT is a party.<sup>11</sup>

### **Decision-makers**

In a proceeding in the Tribunal's review jurisdiction, the decision-maker who made the decision under review is a party.<sup>12</sup>

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<sup>8</sup> Sections 51(5), 78(2)(a) & (b)(i), 87 & 99(2) *Victorian Civil and Administrative Act 1998*

<sup>9</sup> Section 109 *Victorian Civil and Administrative Act 1998*

<sup>10</sup> A list of planning enactments is set out in clause 2 of Schedule 1 of the *Victorian Civil and Administrative Act 1998*. The most common planning enactments are the *Planning and Environment Act 1987* (except sections 94(5) and 105), the *Subdivision Act 1988* (except Division 5 of Part 5), the *Environment Protection Act 1970* and the *Water Act 1989* (except sections 19 and 266(6))

<sup>11</sup> Sections 59(1)(a)(i) & (1)(b)(i) *Victorian Civil and Administrative Act 1998*

Most commonly with applications for review of decisions about a planning permit or permit application, this will be the responsible authority, which is usually the local council or sometimes the Minister for Planning.

In applications for review under other planning enactments, such as the *Environment Protection Act* 1970, the decision-maker will be the Environment Protection Authority; under the *Water Act* 1989, the relevant water authority; under the *Subdivision Act* 1988, the local government authority, which is usually the council; and under the *Valuation of Land Act* 1960, the valuation authority, which may be the local government authority or the Valuer-General.

### **Persons joined as a party by the Tribunal**

Any person joined as a party to the proceeding by the Tribunal is a party.<sup>13</sup>

Section 60 of the *Victorian Civil and Administrative Act* 1998 provides that the Tribunal may order that a person be joined as a party to a proceeding if the Tribunal considers that a person ought be bound by, or have the benefit of, an order of the Tribunal in the proceeding; the person's interests are affected by the proceeding; or for any other reason it is desirable that the person be joined as a party.

The Tribunal will not normally join a person under section 60 if they are eligible to become a party under any other provision of the *Victorian Civil and Administrative Act* 1998 or an enabling enactment. However, the Tribunal may join a person under section 60 if they have failed to comply with their obligations (for example, lodging a statement of grounds out of time) and it considers that one or more of the circumstances set out in section 60(1) applies.

### **Persons specified as a party**

Any other person specified by or under the *Victorian Civil and Administrative Act* 1998 or the enabling enactment as a party is a party to a proceeding.<sup>14</sup>

Sometimes an enabling enactment will specify that certain persons are automatically parties to a proceeding. For example, a permit applicant is always a party to a proceeding for an application for review by an objector under section 82 of the *Planning and Environment Act* 1987.<sup>15</sup> the responsible authority is a party to any application for a declaration under section 149A of the *Planning and Environment Act* 1987.<sup>16</sup>

In other cases, an enabling enactment will specify that certain persons are eligible to become parties to a proceeding if they comply with certain procedures. For example, an enabling enactment will often identify persons who must be given notice of an application for review<sup>17</sup> or who must be given a reasonable opportunity to be heard in

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<sup>12</sup> Section 59(1)(b)(ii) *Victorian Civil and Administrative Act* 1998

<sup>13</sup> Sections 59(1)(a)(iii) & (1)(b)(iii) *Victorian Civil and Administrative Act* 1998

<sup>14</sup> Sections 59(1)(a)(iv) & (b)(iv) *Victorian Civil and Administrative Act* 1998

<sup>15</sup> Section 83B(4) *Planning and Environment Act* 1987

<sup>16</sup> Section 149A(3) *Planning and Environment Act* 1987

<sup>17</sup> For example, see sections 83A & 83AB *Planning and Environment Act* 1987

the case of an application made in the Tribunal's original jurisdiction.<sup>18</sup> If these persons wish to contest the proceeding, they must lodge a statement of grounds in accordance with the rules.<sup>19</sup>

### **Persons not participating in hearing are not parties**

Clause 56 of Schedule 1 of the *Victorian Civil and Administrative Act 1998* affects the status of persons who wish to contest a proceeding. Clauses 56(5) and 56(6) recognise that a person may wish to contest a proceeding but without participating in the hearing of the proceeding. In these circumstances, the person may have their concerns taken into account at the hearing but they will not be a party.

### **APPLICATIONS FOR REVIEW OF NEW OR AMENDED PLANNING PERMITS – WHO ARE PARTIES?**

As these provisions are complex, the following notes deal with specific types of persons who are eligible to contest applications for review concerning the grant or amendment of a planning permit under the *Planning and Environment Act 1987*. They also set out information about statements of grounds generally in proceedings under a planning enactment and the consequences for persons who do not comply with directions of the Tribunal, the Act or the rules.

Applications for review about new or amended permits may be made under the following provisions of the *Planning and Environment Act 1987*:

- Section 77 – application by permit applicant to review decision of the responsible authority to refuse to grant a permit
- Section 79 – application by permit applicant to review failure of the responsible authority to grant a permit
- Section 80 – application by permit applicant to review conditions in a permit or a notice of decision to grant a permit
- Section 82 – application by objector to review the decision of the responsible authority to grant a permit
- Section 82B – application by an affected person who was not an original objector to review the decision of the responsible authority to grant a permit
- 82AAA – application by a recommending referral authority to review the decision of the responsible authority to grant a permit

These rights of review also apply to any application under section 72 of the *Planning and Environment Act 1987* to amend a permit.<sup>20</sup>

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<sup>18</sup> For example, see section 90 *Planning and Environment Act 1987* which identifies who must or may be given an opportunity to be heard in the case of an application to cancel or amend a permit; and section 117(1) *Planning and Environment Act 1987* in the case of an application for enforcement order.

<sup>19</sup> Clause 56(1) of Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>20</sup> Section 76C *Planning and Environment Act 1987*

## Permit applicant

A permit applicant who is the applicant for review is automatically a party to the proceeding.<sup>21</sup>

A permit applicant is a party to any proceeding by an objector under section 82 of the *Planning and Environment Act 1987*.<sup>22</sup>

A permit applicant will be joined as a party to any proceeding under section 82B or 82AAA pursuant to section 60 of the *Victorian Civil and Administrative Act 1998*.

## Responsible authority

The responsible authority is a party in all proceedings.<sup>23</sup>

## Determining referral authority

In applications for review under sections 77 (refusal) and 79 (failure)<sup>24</sup>, a determining referral authority is a party if:<sup>25</sup>

- The determining referral authority objected to the grant of the permit;<sup>26</sup> or
- The permit was refused because a condition required by the determining referral authority was refused because a condition required by the determining referral authority conflicted with a condition recommended by a recommending referral authority or required by another determining referral authority.

In applications for review under section 80 (conditions), a determining referral authority is a party if the condition being reviewed was required to be included on the permit by the determining referral authority.

In all other cases, including applications for review under sections 82, 82B and 82AAA, a determining referral authority is eligible to become a party. A determining referral authority will always be served by the Tribunal with a copy of the application for review. If the authority wishes to contest the proceeding, it must lodge a statement of grounds in accordance with clause 56 of Schedule 1 of the *Victorian Civil and Administrative Act 1998*.

## Recommending referral authority

A recommending referral authority is a party in any application for review if the recommending referral authority was given notice of the application for review under the *Planning and Environment Act 1987*.<sup>27</sup>

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<sup>21</sup> Section 59(1)(b)(i) *Victorian Civil and Administrative Act 1998*

<sup>22</sup> Section 83(4) *Planning and Environment Act 1987*

<sup>23</sup> Section 59(1)(b)(ii) *Victorian Civil and Administrative Act 1998*

<sup>24</sup> Pursuant to section 4(2)(d) *Victorian Civil and Administrative Act 1998*, a failure to make a decision is a deemed refusal.

<sup>25</sup> Section 83(1)(a) *Planning and Environment Act 1987*

<sup>26</sup> Pursuant to section 61(2) *Planning and Environment Act 1987* a responsible authority must refuse to grant a permit if a relevant determining referral authority objects to the grant of the permit.

<sup>27</sup> Section 83(3) *Planning and Environment Act 1987*

A recommending referral authority must be given notice of an application for review in applications under section 77 (refusal) or section 80 (conditions) if the recommending referral authority:<sup>28</sup>

- Objected to the grant of a permit or to the amendment of a permit; or
- Recommended that the condition that is the subject of the application be included in the permit.

In all other cases, including applications for review under sections 79, 82, and 82B, a recommending referral authority is eligible to become a party. A recommending referral authority will always be served with a copy of the application for review. If it wishes to contest the proceeding, it must lodge a statement of grounds in accordance with clause 56 of Schedule 1 of the *Victorian Civil and Administrative Act 1998*.

## **Objectors**

Objectors fall into several broad categories:

- Original objectors who lodged an objection with the responsible authority under section 57 of the *Planning and Environment Act 1987*.
- Section 83B objectors who lodge a statement of grounds as a result of being given notice of an application for review at the direction of the Tribunal under section 83B of the *Planning and Environment Act 1987* in cases where a permit application was made without notice (or with inadequate notice).
- Non-original objectors who did not lodge an objection with the responsible authority and who are not responding to notice of an application under section 83B of the *Planning and Environment Act 1987* but who otherwise wish to contest the proceeding.
- Objectors to an application to amend plans or a permit application.

### Original objectors

Original objectors must be given notice of an application for review in applications under section 77 (refusal), section 79 (failure) and section 80 (conditions).<sup>29</sup>

An original objector is eligible to become a party to a proceeding if the objector in accordance with the *Victorian Civil and Administrative Act 1998* lodges with the Tribunal a statement of grounds on which the objector intends to rely at the hearing.<sup>30</sup>

An original objector will be a party to a proceeding if:

- The person lodges a statement of grounds within time;<sup>31</sup> and
- The statement of grounds does not state that the person does not intend to participate in the hearing of the proceeding.<sup>32</sup>

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<sup>28</sup> Section 83AB *Planning and Environment Act 1987*

<sup>29</sup> Section 83A *Planning and Environment Act 1987*

<sup>30</sup> Section 83(2) *Planning and Environment Act 1987* and clause 56 of Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>31</sup> Rule 5.02 *Victorian Civil and Administrative Rules 2008*

An original objector who lodges a statement of grounds out of time or who indicates that the person does not intend to participate in the hearing of the proceeding will not be a party to the proceeding.<sup>33</sup> The Tribunal may consider their statement of grounds at any hearing of the proceeding,<sup>34</sup> but the person is not entitled to participate in a compulsory conference or to be heard at the hearing unless they are joined as a party by the Tribunal pursuant to section 60 of the *Victorian Civil and Administrative Act 1998*. Their consent is not required to any settlement of the proceeding prior to the hearing whether as an outcome of a compulsory conference or otherwise.

If a person is not a party and there is a hearing of the proceeding, the Tribunal may give them leave to be heard without being joined as a party after having obtained the views of the applicant and the responsible authority on whether or not the person should be heard.<sup>35</sup>

### Section 83B objectors

If a person is given notice of an application for review under section 83B of the *Planning and Environment Act 1987*, they are eligible to become a party to a proceeding if the person in accordance with the *Victorian Civil and Administrative Act 1998* and any direction of the Tribunal lodges with the Tribunal a statement of grounds on which the person intends to rely at the hearing.

A section 83B objector will be a party to a proceeding if:

- The person lodges a statement of grounds within time;<sup>36</sup> and
- The statement of grounds does not state that the person does not intend to participate in the hearing of the proceeding.<sup>37</sup>

A person who lodges a statement of grounds out of time under a section 83B direction or who indicates that the person does not intend to participate in the hearing of the proceeding will not be a party to the proceeding.<sup>38</sup> The Tribunal may consider their statement of grounds at any hearing of the proceeding,<sup>39</sup> but the person is not entitled to participate in a compulsory conference, or to be heard at the hearing unless they are joined as a party by the Tribunal pursuant to section 60 of the *Victorian Civil and Administrative Act 1998*. Their consent is not required to any settlement of the proceeding prior to the hearing as an outcome of a compulsory conference, or otherwise.

If a person is not a party and there is a hearing of the proceeding, the Tribunal may give them leave to be heard without being joined as a party after having obtained the

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<sup>32</sup> Section 83(2A) *Planning and Environment Act 1987* and clause 56(6) of Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>33</sup> Clause 56(6) of Schedule 1 *Victorian Civil and Administrative Rules 2008*

<sup>34</sup> Pursuant to section 98(1)(c) *Victorian Civil and Administrative Act 1998*

<sup>35</sup> Clause 56(4) of Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>36</sup> Rule 5.02 *Victorian Civil and Administrative Rules 2008*

<sup>37</sup> Section 83(2A) *Planning and Environment Act 1987* and clause 56(6) of Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>38</sup> Clause 56(6) of Schedule 1 *Victorian Civil and Administrative Rules 2008*

<sup>39</sup> Pursuant to section 98(1)(c) *Victorian Civil and Administrative Act 1998*

views of the applicant and the responsible authority on whether or not the person should be heard.<sup>40</sup>

### Non-original objectors

A person who is not an original objector or who is not given notice under a section 83B direction may still wish to contest a proceeding and may still lodge a statement of grounds. However, they will not be a party to the proceeding unless the Tribunal joins them as a party pursuant to section 60 of the *Victorian Civil and Administrative Tribunal Act 1998*.

### Objectors to an application to amend plans or a permit application.

A person who is not a party to a proceeding may be given notice of an application by a permit applicant to amend plans or the permit application during the course of a proceeding pursuant to the Tribunal's Practice Note PNPE9 – Application to Amend Plans and Applications. Such person may become a party if:<sup>41</sup>

- The person lodges a statement of grounds within time and a copy is served on the applicant and the responsible authority by no later than the date specified in the notice;<sup>42</sup> and
- The statement of grounds does not state that the person does not intend to participate in the hearing of the proceeding.<sup>43</sup>

If a person lodges a statement of grounds out of time<sup>44</sup> or indicates that the person does not intend to participate in the hearing of the proceeding, the person will not be a party to the proceeding.<sup>45</sup> The Tribunal may consider their statement of grounds at any hearing of the proceeding,<sup>46</sup> but the person is not entitled to participate in a compulsory conference, or to be heard at the hearing unless they are joined as a party by the Tribunal pursuant to section 60 of the *Victorian Civil and Administrative Act 1998*. Their consent is not required to any settlement of the proceeding prior to the hearing whether as an outcome of a compulsory conference or compulsory conference, or otherwise.

If the person is not a party and there is a hearing of the proceeding, the Tribunal may still take their statement of grounds into account or give them leave to be heard without being joined as a party after having obtained the views of the applicant and the responsible authority on whether or not the person should be heard.<sup>47</sup>

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<sup>40</sup> Clause 56(4) of Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>41</sup> Clause 18 Practice Note PNPE9 – Amendment of Plans and Applications

<sup>42</sup> Clause 18 Practice Note PNPE9 – Amendment of Plans and Applications; Rule 5.02 Victorian Civil and Administrative Rules 2008

<sup>43</sup> Section 83(2A) *Planning and Environment Act 1987* and clause 56(6) of Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>44</sup> Clause 19 Practice Note PNPE9 – Amendment of Plans and Applications; Rule 5.02 Victorian Civil and Administrative Rules 2008

<sup>45</sup> Clause 56(6) of Schedule 1 Victorian Civil and Administrative Rules 2008

<sup>46</sup> Pursuant to section 98(1)(c) *Victorian Civil and Administrative Act 1998*

<sup>47</sup> Clause 56(4) of Schedule 1 *Victorian Civil and Administrative Act 1998* and clause 20 Practice Note PNPE9 – Amendment of Plans and Applications



## STATEMENTS OF GROUNDS

### Who must lodge a statement of grounds

A person who wishes to contest a proceeding under a planning enactment must lodge with the Tribunal, in accordance with the rules, a statement of the grounds on which the person intends to rely at the hearing of the proceeding.<sup>48</sup>

This does not apply to the applicant in a proceeding, or the decision-maker who made the decision in the case of an application for review (such as the responsible authority), who are automatically parties under section 59 of the *Victorian Civil and Administrative Act 1998*.<sup>49</sup>

A statement of grounds form will usually be included with any notice of an application that is served on a person. A statement of grounds form is also available on the VCAT website.

### Time limits

A person who is required by clause 56(1) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* to lodge with the Tribunal a statement of grounds on which the person intends to rely at the hearing of a proceeding must lodge the statement with the Tribunal:

- Within the period directed by the Tribunal; or
- If there is no direction, within 14 days after being served with notice of the proceeding.<sup>50</sup>

The time by which a statement of grounds must be received by the Tribunal will normally be specified in an order of the Tribunal. It will be included in any notice served on a person, appearing on a sign on the site or in a newspaper notice if directed by the Tribunal.

If a statement of grounds is not received within time, the person lodging it will not be a party to the proceeding unless the Tribunal makes an order to join them as a party pursuant to section 60 of the *Victorian Civil and Administrative Tribunal Act 1998*.

### Intention to participate in the hearing

The statement of grounds form will require a person completing the form to indicate:

- if they intend to appear and present a submission at the hearing; or
- if they do not intend to participate in the hearing of the proceeding, but wish their statement of grounds to be considered.

There are important consequences associated with each of these options regarding the status of the person lodging a statement of grounds.

The option selected will also determine whether the person must pay a fee.<sup>51</sup>

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<sup>48</sup> Clause 56(1) Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>49</sup> See clause 56(2) Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>50</sup> Rule 5.02 *Victorian Civil and Administrative Tribunal Rules 2008*

### Statement of intention to participate in the hearing

If a person who is eligible to be a party lodges a statement of grounds within time and does not indicate they do not intend to participate in the hearing, they will be a party to the proceeding. As a party, they will have certain rights and certain obligations.<sup>52</sup>

### Statement of intention not to participate in the hearing

A person who lodges a statement of grounds may lodge with the statement a written notice that the person does not intend to participate in the hearing of the proceeding.<sup>53</sup> If a person states that they do not intend to participate in the hearing of the proceeding, the person is not, or ceases to be, a party to the proceeding (as the case requires).<sup>54</sup>

If a person states that they do not intend to participate in the hearing of the proceeding, the Tribunal may still consider their statement of grounds at any hearing of the proceeding even though they are not a party.<sup>55</sup>

At the hearing, the person is not entitled to be heard or to ask questions or cross-examine witnesses. Although the Tribunal may give them leave to be heard after having obtained the views of the applicant and the responsible authority on whether or not the person should be heard,<sup>56</sup> leave may be withheld if the person has not paid any relevant fee and there are no special circumstances.

A person who is not a party is not entitled to participate in a compulsory conference, and their consent is not required to any settlement of the proceeding prior to the hearing whether as an outcome of a compulsory conference, or otherwise.

A person who is not a party will not receive any correspondence or orders from the Tribunal about the proceeding or notice of the hearing. Other parties are not required to serve them with witness reports or correspondence unless directed by the Tribunal.

Notwithstanding a person is not a party, they may be eligible to receive notice of an application to amend plans or the permit application if they come within a relevant category of persons to whom notice must be given under the Tribunal's Practice Note PNPE9 – Amendment of Plans and Applications, unless the Tribunal otherwise directs.

If a person is given notice of an amendment of plans or the permit application and they then wish to become a party, they may become a party if:<sup>57</sup>

- The person lodges a statement of grounds within time and serves a copy on the applicant and the responsible authority by no later than the date specified in the notice;<sup>58</sup> and

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<sup>51</sup> See section headed 'Fees'

<sup>52</sup> See the rights and obligations of parties set out under the heading 'What does it mean to be a party?'

<sup>53</sup> Clause 56(5) of Schedule 1 *Victorian Civil and Administrative Tribunal Act 1998*

<sup>54</sup> Clause 56(6) of Schedule 1 *Victorian Civil and Administrative Tribunal Act 1998*

<sup>55</sup> Pursuant to section 98(1)(c) *Victorian Civil and Administrative Act 1998*

<sup>56</sup> Clause 56(4) of Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>57</sup> Clause 18 Practice Note PNPE9 – Amendment of Plans and Applications

<sup>58</sup> Clause 18 Practice Note PNPE9 – Amendment of Plans and Applications; Rule 5.02 Victorian Civil and Administrative Rules 2008

- The statement of grounds does not state that the person does not intend to participate in the hearing of the proceeding.<sup>59</sup>

## REMOVING PARTIES

### Non-attendance at a compulsory conference

In the Planning and Environment Division, the preferred method of alternative dispute resolution is a compulsory conference. Compulsory conferences are an important aspect of resolving disputes at VCAT. The functions of a compulsory conference are:

- to identify and clarify the nature of the issues in dispute in the proceeding;
- to promote a settlement of the proceeding;
- to identify the questions of fact and law to be decided by the Tribunal;
- to allow directions to be given concerning the conduct of the proceeding.<sup>60</sup>

Parties have both a right and an obligation to attend a compulsory conference.<sup>61</sup>

The Tribunal may require parties to a proceeding to attend a compulsory conference, either personally or by a representative who has authority to settle the proceeding or part on behalf of the party.<sup>62</sup>

If a party fails to attend a compulsory conference, either personally or by a representative:

- the compulsory conference may proceed in the party's absence;
- if all the parties present agree, the Tribunal may determine the proceeding adversely to the absent party and make any appropriate orders;
- the Tribunal may strike out the absent party from the proceeding.<sup>63</sup>

The Tribunal's power to strike out any parties who are not present at a compulsory conference from the proceeding<sup>64</sup> provides an opportunity for those parties who are present to reach agreement to settle the proceeding wholly or in part.

If the parties agree to settle a proceeding or any part of it at any time, the Tribunal may make any orders necessary to give effect to the settlement.<sup>65</sup>

If a person is struck out as a party because of their failure to attend a compulsory conference, and a partial settlement is agreed upon by those parties present, the Tribunal may confine the hearing of the proceeding to remaining matters in dispute.<sup>66</sup> A

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<sup>59</sup> Section 83(2A) *Planning and Environment Act 1987* and clause 56(6) of Schedule 1 *Victorian Civil and Administrative Act 1998*

<sup>60</sup> Section 83(2) *Victorian Civil and Administrative Tribunal Act 1998*

<sup>61</sup> Section 83 *Victorian Civil and Administrative Tribunal Act 1998*

<sup>62</sup> Section 84 *Victorian Civil and Administrative Tribunal Act 1998*

<sup>63</sup> Section 87 and section 78 *Victorian Civil and Administrative Tribunal Act 1998*

<sup>64</sup> Section 78(2) and section 87(b) *Victorian Civil and Administrative Tribunal Act 1998*

<sup>65</sup> Section 93 *Victorian Civil and Administrative Tribunal Act 1998*

<sup>66</sup> Section 84AB *Planning and Environment Act 1987*

person struck out as a party is not entitled to be heard at the hearing about either the matters settled at compulsory conference or the particular matters remaining in dispute.

With the leave of the Tribunal, after having obtained and considered the views of the applicant and the responsible authority, the Tribunal may hear from such a person even though they are no longer a party.<sup>67</sup> Such a person may also seek an order pursuant to section 60 of the *Victorian Civil and Administrative Tribunal Act 1998* to re-join them as a party. However, any such orders may give rise to a claim for costs.

## **Non-attendance at hearing**

### **Non-attendance by objector who is not the applicant**

The Tribunal may strike out an objector party who fails to attend the hearing<sup>68</sup> or the hearing may proceed in the absence of a party to whom notice has been given.<sup>69</sup>

### **Non-attendance by applicant**

If the applicant for review of a decision does not appear (personally or by representative) at the hearing of a proceeding, the Tribunal must confirm the decision.<sup>70</sup>

In any other type of application, if the applicant does not attend a hearing, the Tribunal may dismiss or strike out the proceeding.<sup>71</sup>

## **Removal of parties**

The Tribunal may order that a person cease to be a party to a proceeding if the Tribunal considers that the person's interests are not, or are no longer, affected by the proceeding or the person is not a proper or necessary party to the proceeding, whether or not the person was one originally.<sup>72</sup>

## **FEES**

### **When is a fee payable?**

There is a fee payable for lodging a statement of grounds in accordance with clause 56 of Schedule 1, unless accompanied by a written notice under clause 56(5) of Schedule 1, *Victorian Civil and Administrative Tribunal Act 1998*.

This means that if a person indicates they do not intend to participate in the hearing of the proceeding, there is no fee payable. In all other circumstances, a person who lodges a statement of grounds must pay the fee prescribed under the Victorian Civil and Administrative Tribunal (Fees) Regulations 2016 (Fees Regulations). The fees are also set out on the VCAT website.

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<sup>67</sup> Clause 56(4) of Schedule 1 *Victorian Civil and Administrative Tribunal Act 1998*

<sup>68</sup> Section 78(2)(b)(ii) *Victorian Civil and Administrative Tribunal Act 1998*

<sup>69</sup> Section 99(2) *Victorian Civil and Administrative Tribunal Act 1998*

<sup>70</sup> Section 51(5) *Victorian Civil and Administrative Tribunal Act 1998*

<sup>71</sup> Section 78(2)(a) *Victorian Civil and Administrative Tribunal Act 1998*

<sup>72</sup> Section 60A *Victorian Civil and Administrative Tribunal Act 1998*

The requirement to pay a fee does not apply to the following categories of persons lodging a statement of grounds, who are automatically a party to a proceeding:

- Permit applicant/permit holder
- Determining or recommending referral authority
- A person responding to an application for an enforcement order
- Applicant for works authority or licence

### **Consequences of not paying the fee**

If there is a fee payable and a person does not pay the fee, the person will not be a party to the proceeding and will not be entitled to participate in any compulsory conference or any hearing. This applies even if the person has indicated that they intend to appear and present a submission at the hearing.

### **Change of mind about participation in the hearing**

If a person lodges a statement of grounds for which there is no fee payable or fails to pay the fee, but subsequently changes their mind and wishes to participate in the hearing and become a party, they must lodge a fresh statement of grounds form (available on the VCAT website) and pay the fee not less than 48 hours before the day of the hearing or compulsory conference.

The person must attend the hearing and seek leave from the Tribunal to be heard. The Tribunal must obtain and consider the views of the applicant and the responsible authority on whether or not the person should be heard before deciding whether to grant leave or join the person as a party.

### **Fee must be paid before Tribunal will consider whether to join a person as a party**

If a person lodges a statement of grounds and pays the fee, but for any reason the person is not automatically entitled to become a party to the proceeding (for example, they are not an original objector, their statement of grounds was lodged out of time or there are no third party notice or review rights) the person cannot be a party to the proceeding unless the Tribunal makes an order to join the person as a party.

The Tribunal will not consider whether to join a person as a party unless they have first lodged a statement of grounds and paid the fee.