VCAT Victorian Civil & Administrative Tribunal

PRACTICE NOTE – PNVCAT8

Applications for Reconstitution of the Tribunal under Section 108

Application	Proceedings in all Divisions
Effective date	27 June 2026
Supersedes Practice Note	Previous version of PNVCAT8 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. Section 108 of the *Victorian Civil and Administrative Tribunal Act 1998* (the Act) allows for the composition of the Tribunal to be reconstituted at any time before the conclusion of the hearing of that proceeding. If the Tribunal is reconstituted, the hearing can either be recommenced or continue from the point it was at before the reconstitution took place. Reconstitution may occur upon an application by one of the parties (under section 108(1)(a)) or where sought by the President or a member of the Tribunal (under section 108(1)(b)). A presidential member decides the outcome of the application in either situation.
4. This practice note explains the nature and purpose of reconstitution of the Tribunal and provides guidance on the appropriate basis for and the process for a party to a proceeding to make a reconstitution application under section 108(1)(a).
5. This practice note is intended to provide guidance as to the kind of information that a party needs to provide to the Tribunal to assist the Tribunal in making a decision as to whether reconstitution is appropriate.
6. This practice note has been issued by the Rules Committee pursuant to section 158 of the Act.

Definitions

Word	Definition
Act	*Victorian Civil and Administrative Tribunal Act 1998* (Vic)
Rules	*Victorian Civil and Administrative Tribunal Rules 2018* (Vic)
Regulations	*Victorian Civil and Administrative Tribunal (Fees) Regulations 2026* (Vic)

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 is reconstitution and why is it important?

8. Reconstitution of the Tribunal is the process in which the member or panel of members hearing a proceeding are replaced by a new member or panel of members.
9. This is important in circumstances where the member or panel currently assigned to the proceeding can no longer or should no longer continue to hear the matter.

10. Section 108 exists to facilitate reconstitution to ensure proceedings in the Tribunal are heard through to completion, despite the need for a change in the member or panel.

Section 108 of the Act

Reconstitution of Tribunal

(1) At any time before the conclusion of the hearing of a proceeding—

(a) a party may apply to the Tribunal for the reconstitution of the Tribunal for the purposes of the proceeding; or

(b) the President or a member of the Tribunal as presently constituted may give notice to the parties that the President or member seeks the reconstitution of the Tribunal for the purposes of the proceeding.

(2) If an application is made under subsection (1)(a) or notice is given under subsection (1)(b)—

(a) a presidential member, after allowing the parties to make submissions, may decide that the Tribunal should be reconstituted; and

(b) if so, the President must reconstitute the Tribunal.

(3) If the Tribunal is reconstituted for the purposes of a proceeding, the reconstituted Tribunal may have regard to any record of the proceeding in the Tribunal as previously constituted, including a record of any evidence taken in the proceeding.

Appropriate reasons to make a reconstitution application

11. Whilst there are no prescribed circumstances set out in s 108, the circumstances in which reconstitution of the Tribunal will be deemed appropriate are rare.[1]

12. Reconstitution is a matter of practicality – section 108 is intended to be used in circumstances where practical reasons necessitate a change in member or members. This includes, but is not limited to, the following situations:

a. The member has fallen ill or will be absent to the extent that the proceeding will suffer excessive delay or will not be completed;

b. The member has retired or resigned;[2]

[1] *Metrospan Developments Pty Ltd v Whitehorse City Council* [2000] VCAT 44, [14] (‘*Metrospan*’).
[2] See e.g. *Gray v State of Victoria* (1999) EOC 92-996.

c. It becomes apparent that more than one member or a presidential member should hear the matter, to facilitate certain procedural aspects that are only open in those circumstances (not because of a party preference);[3]

d. There is a risk that the Tribunal as presently constituted is not following its own procedures and requirements, for example as set down at s 97 and s 98(1) of the Act. Whether these provisions have not been followed turns on what is reasonable in all the circumstances.[4]

13. Other similar situations may be deemed appropriate, depending upon the circumstances, and at the discretion of the presidential member making the decision.

14. An allegation of perceived or actual bias as the basis of an application for reconstitution will need to be carefully articulated. If a party believes that there is a real risk that the member hearing their proceeding is biased, they should first ask that the member recuse themselves. The use of section 108 triggers a certain process which is not the appropriate first instance process for bias applications. However, if a member refuses to cease hearing the matter upon a bias allegation, the aggrieved party may apply for reconstitution under section 108, but this does not mean the application will be successful; it will depend on the decision-maker's assessment.[5]

15. General dissatisfaction with the member hearing a matter or an anticipation that the proceeding will not be decided in a certain manner is not an appropriate reason to apply for reconstitution of the Tribunal. Section 108 is not a method of obtaining a rehearing or review of a matter.[6] An unsuccessful party may appeal to the Supreme Court of Victoria on a question of law pursuant to section 148 of the Act.

16. Similarly, where the hearing is very near to completion and the Tribunal has already made substantive findings, an application for reconstitution may be refused on the basis that the aggrieved party can exercise their right to appeal under section 148.[7]

17. Ultimately, section 108 is not concerned with providing "legal redress for past wrongs".[8].

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[3] See *EAH Batman Pty Ltd v Melbourne CC* [2011] VCAT 1477; and *Legal Services Commissioner v Rallis* [2009] VCAT 714.
[4] *Seachange Management Pty Ltd v Benvol Constructions & Developments Pty Ltd* [2008] VCAT1479, [45] ('*Seachange*').
[5] *Victoria v Bradto Pty Ltd* (2005) 23 VAR 475; [2005] VCAT 2512
[6] Metrospan, above n 1, [13].
[7] *Legal Services Commissioner v Johnson* [2012] VCAT 1482.
[8] *Seachange*, above n 4, [31]; *Kornucopia Pty Ltd v Wong* [2019] VSC 443, [11].

Process for making and determining a reconstitution application

18. The process for making a reconstitution application is to be guided by the text of section 108 (extracted above).

"At any time before the conclusion of the hearing of a proceeding"

19. There is a timing requirement in s 108. Reconstitution applications can only be made during the course of the actual hearing of the proceeding and before the hearing concludes. This means that reconstitution applications cannot be made, for example, between directions hearings or other types of procedural hearings when the main hearing has not commenced.

"A party may apply to the Tribunal" for reconstitution

20. An application for reconstitution is to be made orally during the course of a hearing, unless the member constituting that Tribunal otherwise directs. The member maintains the discretion to direct that a written application be made, and this will usually be exercised where the particular reconstitution application is deemed to be too complex or otherwise inappropriate for an oral hearing.

21. If the reconstitution application is proceeding orally, it will usually be heard as soon as practicable, provided that a presidential member is available at that time to join the hearing. The presidential member will hear oral submissions from all parties (see further below).

The application will be decided "after allowing the parties to make submissions"

<u>Submissions before determination of the application</u>

22. Directions will be given by the Tribunal member receiving the application, or the presidential member who is allocated the application, for the hearing (if oral) or filing (if written) of submissions to enable the other party or parties to be given an opportunity to respond.

23. The member, or the presidential member who is allocated the application, may also specify a time frame for any submissions to be made and may specify the maximum length allowed for any written submissions or a time limit on any oral submissions.

<u>Content of submissions</u>

24. The Tribunal will require the party making the application to set out the reasons for the application and the facts and matters upon which the applicant relies in support of the application in a clear statement of submissions. Submissions must be concise and limited to the following:

    a. By the applicant for reconstitution, the basis for the application – why the relevant member ought not to continue to hear the matter;

b. By the responding party or parties, a concise statement of that party's position

c. For all parties, any material relied on to support their position.

Allocation to a "presidential member" who "may decide" to reconstitute

25. Regardless of whether the application proceeds orally or in writing, the application will be allocated to a presidential member to determine. "Presidential member" means the President, a Vice President or a Deputy President.

26. If an application for reconstitution does not contain sufficient information for the Tribunal to make a decision, the Tribunal may request that the relevant party provide further submissions on the issue. If such submissions are not provided, the application will be refused.

27. The decision to reconstitute the Tribunal will be considered by either the President or another presidential member as required by section 108(2)(a). The presidential member deciding the application will have access to the original member's notes and the recorded transcript of the hearing. If a presidential member decides the Tribunal should be reconstituted, they are required to refer the matter to the President who must order reconstitution as per section 108(2)(b).

28. Once the presidential member has heard the application, one of the following will occur:

    a. The application is refused – The hearing continues as normal;

    b. The application is granted – The hearing ceases immediately, and the parties are to await further correspondence from the Tribunal as to the new constitution and listing of the hearing; or

    c. The decision is reserved – In most cases the presidential member will decide the reconstitution application immediately and give oral reasons, however in some instances the presidential member may consider it appropriate to reserve their decision in order to consider the application in more detail and provide written reasons for their decision.

- END OF PRACTICE NOTE -