

Confidentiality and Procedural Fairness

Guardianship & Administration Act 2019 (GAA)

Fair Hearing Obligation

VCAT has an obligation to provide a fair hearing to all parties and non-parties involved in our proceedings.

A fair hearing involves:

- a reasonable opportunity for all parties to present their case
- a reasonable opportunity to know the case that will be presented by the opposing party
- the case to be decided according to law by a competent, independent and impartial member (the person who hears and decides cases at VCAT).

For more information, visit vcat.vic.gov.au/media/113 to read the '*Practice note - PNVCAT3 - Fair hearing obligation*'.

Who is entitled to documents, the hearing notice and orders

In GAA applications, individuals fall into either the "parties" or "non-parties" category within the proceeding. A person's classification in either of these categories determines the documents to which they're entitled.

A **'party'** is entitled to:

- The application form
- Supporting documents lodged with the application
- Notice of Hearing
- Any orders made

A **'non-party'** is entitled to:

- The application form
- Notice of Hearing
- Any orders made

Applying for confidentiality

Think about whether all the information provided is relevant. VCAT cannot guarantee confidentiality of written submissions and reports if the VCAT Member takes that material into account when making the decision. Consider whether what you want to say needs to be in writing, or can simply be explained at the hearing.

Use the **application-for-confidentiality-guardianship-and-administration** form if you want VCAT to consider a request for documents to be kept confidential. A delegate of the principal registrar or VCAT Member may make a decision on the papers, or may schedule a directions (preliminary) hearing.

Victorian Civil and Administrative Tribunal Act 1998 (VCAT Act)

Section 146 says that any person may inspect a file or any part of it. There is no cost for parties, and a fee for non-parties. In limited circumstances, we may make a direction preventing access to the file.

Clause 37 and clauses **50** and **51AJ of Schedule 1** of the VCAT Act protect the confidentiality of hearings and documents in the Guardianship List. These clauses say that no one may publish or broadcast any information about a Guardianship List matter in a way that would identify any party.

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Clause 37A of Schedule 1 says that a person may make an application to the VCAT principal registrar that any document lodged in relation to a proceeding under this Act is not disclosed to a specified person or class of persons. This must be balanced against the fair hearing obligation and the principal registrar's decision may be changed by a member.

Guardianship & Administration Act 2019 (GAA)

Section 26 Who is entitled to notice of an application, the hearing and any order made in the proceeding?

For the purposes of sections 72(1), 99(1) and 116(2) of the VCAT Act, the following persons are entitled to a notice referred to in each of those sections—

- (a) any party to a proceeding on an application under this Part;
- (b) the spouse or domestic partner of the proposed represented person, if any;
- (c) the primary carer of the proposed represented person, if any;
- (d) any person referred to in the application as having a direct interest in the application;
- (e) in the case of an application for a guardianship order, the Public Advocate, if no person is proposed as guardian;
- (f) any other person VCAT directs be given notice.

Section 27 Contents of notice of application

(1) A notice of an application given to a party to the application must include the following—

- (a) a copy of the application and any information filed in support of the application, subject to clause 37A of Part 9 of Schedule 1 to the VCAT Act;
- (b) the names of—
 - (i) the parties to the proceeding; and
 - (ii) the other persons entitled to the notice under section 26;
- (c) information about the rights of the party in relation to the application.

(2) A notice of an application given to a person referred to in section 26 who is not a party to the application must include the following—

- (a) a copy of the application;
- (b) the names of—
 - (i) the parties to the proceeding; and
 - (ii) the other persons entitled to the notice under section 26;
- (c) information about the rights of the person to seek information about the application;
- (d) information about how to apply to VCAT to be made a party to the proceeding.