

**Practice Note – PNVCAT5
Directions Hearings and Urgent Hearings**

Application	Proceedings in all Lists
Effective date	13 December 2018
Supersedes Practice Note	Previous version of PNVCAT5 issued on 15 March 2012
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 Tribunal’s website at www.vcat.vic.gov.au .

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Introduction

- 1 Consistency in the way the Tribunal operates is an important component of access to justice and the promotion of fairness and efficiency, whilst recognising that the circumstances of a particular case and the interests of justice may occasionally warrant a different approach.
- 2 This practice note sets out the usual practice for directions hearings and urgent hearings, and applies consistently to proceedings in all Lists unless the Tribunal varies its operation at its discretion in the circumstances of a particular proceeding.
- 3 In any proceeding, the Tribunal may at its discretion vary the operation of a practice note by direction or order.
- 4 This practice note has been approved by the Rules Committee pursuant to s 158 of the *Victorian Civil and Administrative Tribunal Act 1998*.

Definitions

Word	Definition
Act	<i>Victorian Civil and Administrative Tribunal Act 1998</i>
List	Tribunal list established under the Rules through which the functions of the Tribunal for certain types of proceedings are allocated or exercised (e.g. Domestic Building List, Guardianship List, Planning and Environment List)
Rules	<i>Victorian Civil and Administrative Tribunal Rules 2018</i>

- 5 A word or term used in this practice note has the same meaning if defined in the Act or in the *Interpretation of Legislation Act 1984*.

How do I seek a directions hearing?

Note: A directions hearing is not required in all cases, but may be scheduled if it is desirable to resolve preliminary or procedural issues prior to a final hearing, or to set out a procedural timetable to facilitate the fair and efficient conduct of the proceeding. The Tribunal may issue directions on its own initiative without a directions hearing.

- 6 A directions hearing may be scheduled by the Tribunal on its own initiative, or at the request of a party.
- 7 A party seeking directions from the Tribunal should:
 - (a) file a request in writing;
 - (b) specify the directions sought and the reasons for the directions;
 - (c) specify if a directions hearing is requested;
 - (d) indicate if the reason for the directions hearing is urgent; and

- (e) serve a copy of the request on all other parties.
- 8 A party seeking directions is encouraged to use the [Application for Directions or Orders form](#). In the Planning and Environment List, a request for a directions hearing should be made using the [Practice Day Request form](#) for that List.
- 9 A directions hearing may be scheduled at relatively short notice, particularly if the reason for the directions hearing is urgent. Parties need to be prepared for this eventuality.

Do I need to attend a directions hearing?

- 10 A party is expected to attend a directions hearing personally, unless:
 - (a) the party is represented by a professional advocate (e.g. a legal practitioner) or another person with written authority to attend on behalf of that person;
 - (b) the Tribunal has agreed or arranged for attendance by telephone or video link. (For more information, see the section of this practice note 'Can I attend a directions hearing or urgent hearing by telephone or video link?');
 - (c) minutes of proposed consent orders are provided in advance of the directions hearing, and the Tribunal has confirmed that attendance is no longer required; or
 - (d) the Tribunal has excused the party from attendance.
- 11 Failure to attend at a directions hearing may lead to orders being made in the absence of that party. If the non-attendance causes disadvantage to another party, the proceedings may be determined against the non-attending party, or costs may be awarded, under s 78 of the Act.
- 12 The Tribunal will consider making orders without the need for the parties to attend, if the parties seek a consent order at least two (2) business days prior to the scheduled directions hearing. The parties are still required to attend the directions hearing unless the Tribunal confirms that their attendance is no longer required.

What will the Tribunal consider at a directions hearing?

- 13 At a directions hearing, the Tribunal may ask the parties to:
 - (a) identify the real issues in dispute;
 - (b) indicate any special case management issues (further information requests, questions of law, priority or preliminary hearing requests, audio-visual facilities, use of interpreters, etc.);
 - (c) consider any specific issues raised in a party's request for the directions hearing;
 - (d) consider whether the proceeding should be referred to ADR;
 - (e) provide the names and availability of any witnesses whose evidence will be relied upon at the final hearing, including expert witnesses;

- (f) provide an estimate of the length of the final hearing, and when and where the hearing should most conveniently take place; and/or
 - (g) identify any other relevant matters that may facilitate the fair and efficient conduct of the proceeding.
- 14 The Tribunal expects that a professional advocate or another person representing a party will be familiar with the proceeding, and be able to address any issues that might arise during the course of the directions hearing.
- 15 Parties are encouraged to provide minutes of proposed orders for the directions they seek.
- 16 After hearing from the parties, the Tribunal may make any orders it thinks fit. This will commonly include a procedural timetable requiring certain things to be done, or certain documents to be filed and served, prior to the final hearing.
- 17 The Tribunal may make final orders at a directions hearing:
- (a) if a party fails to attend the directions hearing;
 - (b) if s 78 of the Act applies; or
 - (c) if all parties agree to the Tribunal making a final decision.
- 18 The Tribunal may also make final orders at a directions hearing, if the hearing is in the nature of an urgent or preliminary hearing that, for administrative purposes, may have been described or scheduled as a 'directions hearing'. The Tribunal will generally only make a final order at such a hearing if the parties have been given reasonable notice of the application for final orders being sought – e.g. an application for summary dismissal under s 75 of the Act, or a contested application for withdrawal of a proceeding under s 74 of the Act.

Can I amend directions or a procedural timetable?

- 19 Parties are expected to comply with any procedural orders made by the Tribunal. The Tribunal will not ordinarily deal with a unilateral request by a party to amend procedural orders, or to extend the time for doing something under a procedural timetable set down by the Tribunal.
- 20 If a party becomes aware that it cannot reasonably comply with a procedural order or timetable, that party should, as soon as possible, seek the consent of all other parties to an alternative arrangement (e.g. a new date for compliance or a change to a procedural timetable), and seek a consent order from the Tribunal to amend the procedural order or timetable. See Practice Note PNVCAT1 for more information on how to seek a consent order.
- 21 If:

- (a) another party does not consent to the alternative arrangement, or seeks compliance with the existing procedural order or timetable, or
 - (b) the Tribunal declines to make the consent order sought;
- any party may request a further directions hearing to decide the issue.
- 22 The Tribunal may also schedule a further directions hearing on its own initiative, particularly if any proposed amendment to a procedural direction or order (whether or not by consent) is likely to result in an adjournment of a scheduled hearing or ADR.

How do I seek an urgent hearing on a substantive issue?

Note: The Act and some enabling enactments empower the Tribunal to grant urgent or interim relief (e.g. by way of an injunction or stop order). Occasionally, circumstances may also arise in other proceedings where an urgent hearing is required on a substantive issue.

- 23 A party seeking an urgent hearing on a substantive issue should file with the Tribunal:
- (a) the relevant application form for the proceeding (if not already filed);
 - (b) if the relevant application form does not contain provision for the application for urgent or interim relief, a separate application setting out the urgent order sought and the reason for the request. The [Application for Directions or Orders form](#) should be used for this purpose;
 - (c) supporting material, which should generally be in the form of an affidavit or statutory declaration;
 - (d) contact details for all parties, or for prospective parties who may be affected by the making of the urgent order.
- 24 Applications made in the absence of the other party, or without the required documents, may still be considered in exceptional circumstances or if the Tribunal considers that full compliance with the requirements would be unduly onerous on a party having regard to the nature of the proceeding and the orders sought.
- 25 As soon as practicable after receipt of the application, the principal registrar will fix a time and place for the urgent hearing and, to the extent possible, will forward a Notice of Hearing (or advise the hearing details by the most expeditious means available) to all parties or prospective parties for whom contact details are provided. The applicant for urgent or interim relief must also take all reasonable steps to notify all other parties of the time and place for the urgent hearing.
- 26 If practicable, the applicant for urgent or interim relief must serve a copy of the application and supporting material on the other parties:
- (a) as soon as practicable before the hearing, for an urgent hearing fixed the same day; or

(b) in other cases, by 12 noon on the day prior to the day fixed for the urgent hearing.

27 An applicant for urgent or interim relief by way of injunction will ordinarily be required to satisfy the usual tests applied to the granting of similar relief by a court, including whether there is a serious issue to be tried, and whether the balance of convenience favours the granting of interim or interlocutory relief. The applicant will usually also be required to provide an undertaking as to costs or damages. An applicant for urgent or interim relief should therefore deal with these matters in its application and supporting material and/or be ready to deal with these matters at the urgent hearing.

Can I attend a directions hearing by telephone or video link?

28 If it is impracticable for a party or its professional advocate to attend a directions hearing or urgent hearing in person (e.g. for parties in regional or rural areas), arrangements may be made with the Tribunal registry for attendance by telephone.

29 In exceptional cases, it may also be possible for a party or its professional advocate to attend a directions hearing or urgent hearing through a video conference (including computer based video links using proprietary software such as 'Skype'). At present, the Tribunal's ability to provide or access video conferencing is limited.

30 Attendance by telephone or video conference is at the discretion of the Tribunal. The Tribunal will endeavour to meet reasonable requests, having regard to the nature of the directions hearing or urgent hearing, but attendance by telephone or video conference may not always be appropriate or available.

31 Unless the Tribunal has already arranged for attendance at a directions hearing by telephone, the following procedures apply to telephone attendances at directions hearings:

- (a) attendance by telephone should be arranged with the Tribunal registry at least two (2) business days in advance of the scheduled directions hearing. (A party may use the [Telephone Attendance Request form](#) provided on the Tribunal's website for this purpose);
- (b) the party wishing to attend by telephone must provide a telephone contact number where they can be reached at the scheduled hearing time and for a reasonable period thereafter;
- (c) if appropriate, the party should notify other parties of the attendance by telephone;
- (d) all reasonable attempts will be made by the Tribunal to contact the party on the number provided at the scheduled hearing time (or as soon as practicable

thereafter). If the party cannot be contacted, the directions hearing may still proceed in their absence.

- END OF PRACTICE NOTE -