

**Practice Note – PNVCAT 6
Hearing Fees**

Application	All Lists
Effective date	20 September 2019
Supersedes practice note	Previous version of PNVCAT6 issued on 13 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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Introduction

- 1 The *Victorian Civil and Administrative Tribunal (Fees) Regulations 2016* (Vic) set out a range of fees that apply to hearings before VCAT.
- 2 This practice note sets out the usual procedures used to apply the daily hearing fees for VCAT cases.
- 3 The Regulations allow the Principal Registrar to use their discretion to reduce, waive, postpone or refund a daily hearing fee.
- 4 This practice note should be read alongside the Regulations and the VCAT website, which have more information about hearing fees.
- 5 The Rules Committee, in consultation with the Principal Registrar, has issued this practice note pursuant to section 158 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

Definitions

Word	Definition
Act	<i>Victorian Civil and Administrative Tribunal Act 1998</i> (Vic)
Commencement	The Regulations define Commencement as including the lodgement of an application, a claim, a counterclaim, a third party notice, or any other originating process.
Daily Hearing Fee	The fee payable for each day or part of a day of a hearing.
Hearing	Includes an accompanied site visit or inspection occurring as part of a hearing, but does not include a directions hearing, practice day hearing, mediation or compulsory conference.
Permit applicant or permit holder	The applicant for, or the holder of, a planning permit under the <i>Planning and Environment Act 1987</i> (Vic), or a licence or works approval under the <i>Environment Protection Act 1970</i> (Vic).
Regulations	<i>Victorian Civil and Administrative Tribunal (Fees) Regulations 2016</i> (Vic)
Rules	<i>Victorian Civil and Administrative Tribunal Rules 2018</i> (Vic)

- 6 Unless defined separately, the meaning of words or terms used in this practice note are as defined in the Act or in the *Interpretation of Legislation Act 1984* (Vic).

Which hearings involve a daily hearing fee?

- 7 The Regulations set out the hearings that attract a hearing fee for each day or part of a day. These hearings are:
- (a) a major or complex case being heard by the Administrative Division;
 - (b) a major or complex case being heard by the Planning and Environment Division;
 - (c) a complex case being heard by the Civil Division or the Human Rights Division;
 - (d) a case claiming a sum of more than \$100,000; or
 - (e) any other proceeding (other than those categorised as exempt) for which a commencement fee is payable under Part 1 of Schedule 1 of the Regulations, for each day or part of a day of hearing after the first day where:
 - (i) the claim is not for a sum, or is for an unspecified sum; or
 - (ii) a claim is for a specified sum that is more than \$15,000.
- 8 Proceedings where the sum of the amount claimed is between \$1 - \$15,000 are exempt from paying daily hearing fees.
- 9 A daily hearing fee is not payable in a proceeding where a commencement fee is not payable under Part 1 of Schedule 1 of the Regulations. This means that a daily hearing fee is not payable for many types of proceedings in VCAT's Human Rights Division of the Tribunal, – for example in, guardianship matters.
- 10 A daily hearing fee is not payable for any directions hearing, practice day hearing, mediation or compulsory conferences.
- 11 Cases that attract a daily hearing fee will be charged for any hearing dates held after the Regulations came into force, even if they commenced prior to the Regulations.

Example 1: In February 2016, an applicant lodged a claim for \$187,000 in relation to a Building and Property case and their three-day hearing was listed to take place in August 2016. Even though they lodged their application before the Regulations began, the applicant was liable for a daily fee for all three hearing days as they were to take place after the Regulations came into force.

Example 2: A Review and Regulation hearing was adjourned part-heard after a one-day hearing in April 2016 and a further hearing day was scheduled for August 2016. Unless the Principal Registrar waived or reduced the fee, the applicant would need to pay the daily hearing fee for the second day, which fell after the Regulations came into force.

- 12 Complex cases attract a higher daily hearing fee, but the payment arrangements and requirement to pay are the same as for standard hearings.

Who is liable to pay the daily hearing fee?

- 13 Practice note *PNPE8 – Major Cases List* continues to apply for hearings in the Major Cases List within the Planning and Environment List, with the permit applicant or permit holder liable to pay the daily fee for all hearings, including the first day of hearing.
- 14 For hearings in all VCAT Lists other than the Major Cases List within the Planning and Environment List, the following principles will generally apply where a daily hearing fee is payable, unless:
- (a) the requirement to pay the fee has been reduced, waived, postponed or refunded under the Act and/or Regulations; or
 - (b) under the Regulations, the Principal Registrar uses their discretion to direct otherwise; or
 - (c) VCAT has made an order under s 115B of the Act that another party pay some or all of the daily hearing fee that would otherwise be required to be paid by a party.

Hearings arising from a single application or commencement

- 15 If there has been only one commencement of a proceeding, the applicant to VCAT in that proceeding is liable to pay the whole of the daily hearing fee.

Example 3: An applicant commences a proceeding in the Civil Claims List or the Building and Property List, and there is no counterclaim. The applicant pays the whole daily hearing fee.

Example 4: An objector makes an application to VCAT under s 82 of the *Planning and Environment Act 1987* (Vic). There are no other related applications, and the proceeding is not in the Major Cases List. The s 82 objector is liable for the whole daily hearing fee.

- 16 The Principal Registrar will not transfer the initial obligation to pay the hearing fee to a party not otherwise liable to pay the daily hearing fee.

Example 5: Same scenario as for Example 4. The s 82 objector is the sole applicant to VCAT and is liable to pay the whole daily hearing fee. The Principal Registrar will not require the permit applicant to pay the daily hearing fee.

Hearings arising from a joint application

- 17 If a number of people make a joint application to VCAT, and pay a single commencement fee, they are treated as a single applicant for the purpose of the payment of any daily hearing fee. Unless the Principal Registrar directs otherwise, the first-named of the joint applicants is responsible for the collection and payment of the whole daily hearing fee at one time. VCAT will not accept multiple or part payments.

Example 6: Fifteen objectors make a joint application to VCAT under s 82 of the *Planning and Environment Act 1987* (Vic). The first-named objector/applicant is Fred Smith. Mr Smith is responsible for collecting and paying the whole daily hearing fee on behalf of the objector group. VCAT will not accept multiple part-payments from various individuals within the group.

Hearings arising from multiple applications or ‘commencements’ being heard together

- 18 Only one daily hearing fee is payable for each hearing day. If multiple applications or commencements are heard together, the fee will be shared between the parties whose commencement or applications are heard on that day.
- 19 Apart from Planning and Environment matters, if multiple commencements are being heard together in a hearing, or multiple applications are being heard together, the daily hearing fee will be divided equally between each commencement or application.

Example 7: An applicant begins a Civil Claims proceeding and the respondent makes a counterclaim, which is a separate ‘commencement’ under the Regulations. Both the applicant and respondent will be required to pay 50 per cent of the daily hearing fee.

Example 8: Following on from the previous example, the respondent commences both a counterclaim against the initial applicant and a third party notice against another person. The third party notice is a separate ‘commencement’, so there are now three separate commencements or applications being heard together. Unless the Principal Registrar directs otherwise, the daily hearing fee will be split into thirds with the applicant to pay one-third for their initial application, and the respondent to pay two-thirds for their separate counterclaim and third party notice.

- 20 If multiple Planning and Environment commencements or applications are being heard together in one proceeding in the Planning and Environment List (but not the Major Cases List), and the permit applicant or permit holder is responsible for one of the applications, that applicant is liable to pay the whole daily hearing fee.

Example 9: An objector makes an application to VCAT under s 82 of the *Planning and Environment Act 1987* (Vic) and their hearing is held on the same day as the permit holder’s application to have their permit conditions reviewed. As both matters are being heard together, the permit applicant has to pay the whole daily hearing fee.

Example 10: A responsible authority seeks an enforcement order under s 114 of the *Planning and Environment Act 1987* (Vic), and the permit applicant makes an application under s 77 to review a refusal by the responsible authority to grant a permit to regularise the alleged breach. If both matters are heard together, the permit applicant has to pay the whole daily hearing fee.

- 21 If there are multiple commencements or applications being heard together in the Planning and Environment List (but not the Major Cases List), and none of the commencements or applications involves the permit applicant or permit holder as the applicant to VCAT:
- (a) the daily hearing fee will usually be divided equally between the VCAT applicants for each commencement or application; or
 - (b) in appropriate circumstances, the Principal Registrar may re-apportion the daily hearing fee between those liable to pay the fee. A practice day hearing will usually be convened in these circumstances.

Example 11: Four objectors make separate VCAT applications under s 82 of the *Planning and Environment Act 1987* (Vic) seeking to review the same permit application. There are no other related applications, and the proceeding is not in the Major Cases List. Each of the s 82 applicants will pay 25 per cent of the daily hearing fee.

Example 12: As in the example above, the Principal Registrar may vary the apportionment between objectors to take into account an objector who intends calling expert witnesses or making lengthy submission over several hearing days, whilst the other objectors only require minimal time to make their submissions.

Can a daily hearing fee be waived or reduced?

- 22 Under the Act and/or the Regulations, the Principal Registrar has the power to reduce, waive, postpone or refund a daily hearing fee in certain circumstances. In particular:
- (a) under s 132 of the Act, the Principal Registrar may waive or reduce a VCAT fee if they consider that paying it would cause the person responsible for the fee to experience financial hardship; and
 - (b) the Principal Registrar may reduce, waive, postpone or refund the daily hearing fee if they consider it appropriate, having regard to the criteria set out in the Regulations.
- 23 Further information about fee reduction, waiver, postponement or refund is available on VCAT's website.

- 24 To avoid a hearing delay, applicants should apply to the Principal Registrar to reduce, waive, postpone or refund a daily hearing fee as soon as circumstances justifying their need for fee relief arise.
- 25 Without an application by a party liable to pay the daily hearing fee, the Principal Registrar may also reduce, waive, postpone or refund the fee in appropriate or exceptional circumstances. These circumstances could include, for example, where a hearing delay arises through no fault of the parties such as illness of a VCAT Member or building evacuation.
- 26 The Regulations do not allow a VCAT Member to waive or reduce a daily hearing fee. An application to reduce a hearing fee can only be made to the Principal Registrar and cannot be made to the presiding Member during a hearing.

Can another party be made liable to pay or reimburse a daily hearing fee?

- 27 Section 115B of the Act allows VCAT to make an order, in certain circumstances and after having regard to certain specified matters, that another party must pay or reimburse some or all of an application fee or daily hearing fee. Section 115C of the Act creates a presumption that a party that has substantially succeeded in certain types of hearings is entitled to an order for reimbursement.
- 28 An order under s 115B of the Act for payment or reimbursement of fees by another party may be made by VCAT on its own initiative or at the request of a party.
- 29 A party seeking an order for payment or reimbursement of fees by another party should do so as soon as possible after the circumstances that warrant the making of an order arise. They should do this by writing to VCAT and all other parties, specifying the order sought and the reasons for the order. If the circumstances that warrant the making of the order arise during or at the end of a hearing, the party seeking the order should make the request to the Presiding Member.
- 30 When dealing with requests for an order to be made, VCAT may, depending on the circumstances and the interests of procedural fairness, give other parties the opportunity to make submissions in writing or at a hearing. VCAT may also make other directions about the matter. In some cases, the application for payment or reimbursement of fees may be dealt with in conjunction with an application for costs.

What procedures apply to the payment of a hearing fee?

- 31 The person or people who are liable to pay all or part of the daily hearing fee will usually be notified on the Hearing Notice, in Orders or by separate written communication from VCAT before the hearing.
- 32 To reduce the prospect of less complex matters needing a second or subsequent hearing day, parties are encouraged to act co-operatively and to use the hearing time as efficiently as possible. Whilst keeping its obligation to ensure procedural fairness, VCAT may regulate the conduct of a hearing to facilitate this.
- 33 When appropriate, if it appears that a hearing is going to exceed the time allocated to it, a VCAT Member may inform or remind a party that a daily hearing fee is payable for any subsequent hearing days.
- 34 If a daily hearing fee is payable, payment must be made by 4.30 pm on the day before the hearing.
- 35 Unless the Principal Registrar directs otherwise, daily hearing fees will not be refunded if the hearing is settled, withdrawn or adjourned after the fee is paid.
- 36 A hearing day will normally finish no later than 4.30 pm. VCAT may occasionally sit beyond this time if it is convenient to VCAT and the parties, but it will not do so solely to avoid the payment of a daily hearing fee for another hearing day.
- 37 In an appropriate case, the Principal Registrar may be prepared to reduce the daily hearing fee where parties are required to attend a next hearing day to conclude the proceeding and the hearing takes no more than 1 hour to complete.
- 38 Although costs are not often awarded at VCAT, and without limiting the general discretion of VCAT under ss 78 and 109 of the Act (if applicable), some or all of the daily hearing fee may be awarded against another party if they conduct the hearing in a manner that unnecessarily causes disadvantage or delay (for the purposes of s 78 of the Act) or causes an adjournment or unreasonably prolongs a hearing (for the purposes of s 109 of the Act).

What happens if a daily hearing fee is not paid?

- 39 If a daily hearing fee is not paid before 4.30 pm on the day prior to the hearing day, and remains unpaid on the day of the hearing, VCAT may stand the matter down for a

short time to allow the fee to be paid. In such circumstances, the costs of any delay may be ordered against the responsible party under s 78 of the Act.

- 40 If the daily hearing fee remains unpaid after the matter has been stood down, VCAT will not usually continue with the hearing and may (without limiting its discretion):
- (a) order that the hearing be dismissed or struck out, with or without any other appropriate orders under the Act, including an order for costs under s 78(2) or an order any further order under s 130; or
 - (b) in deserving cases:
 - stay the application;
 - give directions for the daily hearing fee (and other hearing fees) to be paid;
 - adjourn the hearing to a later date; and/or
 - order costs thrown away to be paid by the party in default of payment.
 - (c) in cases where the dismissal or striking out of the proceeding would cause disadvantage to a party other than the applicant to VCAT:
 - order that the party failing to pay the fee, and thereby causing the disadvantage, be struck out of the proceeding under s 78(2)(b) of the Act;
 - proceed to a final determination of the proceeding as appropriate; and
 - consider making an order for costs under ss 78 or 109 of the Act (if applicable).

What procedures apply to accompanied site visits and inspections?

- 41 Under the Regulations, a 'hearing' includes an accompanied site visit or any inspection occurring as part of a hearing. This applies to a formal site visit or inspection arranged as part of the hearing, and conducted in the presence of the parties or their representatives. It does not include an informal site visit or inspection by a VCAT Member before or after a hearing in the absence of the parties or their representatives, even if the site visit or inspection is arranged during the hearing, or one or more of the parties is involved in providing access to a site.
- 42 An accompanied site visit or inspection that forms part of a hearing will usually be listed in the Daily Hearings List on VCAT's website or the Daily Law List, and/or will be advised to the parties through a direction or order of VCAT.
- 43 If a daily hearing fee is payable for an accompanied site visit or inspection, it must be paid prior to 4.30 pm the day before the site visit or inspection.

- END OF PRACTICE NOTE -