

**Practice Note – PNRR1
Transport Accident Proceedings**

Application	Review and Regulation List
Effective date	18 March 2014
Supersedes Practice Note	PNRR1 - Transport Accident Proceedings - 15 February 2013
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. This practice note applies to all applications for review filed with the Tribunal under section 77 of the *Transport Accident Act 1986* ('the Act') including existing applications for review. These applications are undertaken within the Review and Regulation List.
2. This practice note should be read in conjunction with the practices and procedures set out in the Act and Rules, and other practice notes that set out common procedures that apply across all lists at the Tribunal.
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 issued by the Rules Committee pursuant to section 158 of the *Victorian Civil and Administrative Tribunal Act 1998*.

Definitions

Word	Definition
Act	<i>Victorian Civil and Administrative Tribunal Act 1998</i>
Protocols	The Transport Accident Act No Fault Dispute Resolution Protocols – These Protocols govern settlement negotiations between solicitors (who agree to be governed by them) and TAC.
TAC	The Transport Accident Commission, as defined in the <i>Transport Accident Act 1986</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 commence a proceeding?

6. Section 77 of the *Transport Accident Act 1986* provides that a person whose interests are affected by a decision of TAC may apply to the Tribunal for review of that decision.
7. The application:
 - a) must be made within 12 months of the applicant becoming aware of the decision (the Tribunal is unable to extend this deadline);
 - b) should when practical, but in any case within 28 days, be accompanied with the payment of the applicable application fee, or an application for fee waiver;
 - c) should give reasons for the application and attach a copy of TAC's letter advising of the decision which is challenged; and
 - d) may be made online at www.vcat.vic.gov.au.

8. If an applicant is seeking to review a number of different, but related, TAC decisions, the Tribunal encourages these to be listed in a single application where it is practicable to do so. The Tribunal will usually hear and determine related applications together.
9. The Tribunal will notify the parties in writing of the receipt of an application for review.

Applications Subject to the Protocols

10. Upon lodging their application with the Tribunal, the applicant must advise the Tribunal in writing in the event that the application is subject to the Protocols.
11. The Tribunal recognises the important role of the Protocols in facilitating the early exchange of relevant documents and the resolution or refinement of issues in dispute before review by the Tribunal.
12. The Tribunal discourages lodgement of an application for review earlier than nine months from the date of the disputed decision where the application for review will be subject to the Protocols.
13. Applications for review subject to the Protocols will not be dealt with by the Tribunal until they are ready to proceed. Unless contrary orders are sought in the application, VCAT will stay the VCAT proceeding until the parties advise that:
 - a. the matter is resolved under the Protocols and the VCAT proceeding is either withdrawn or consent orders are sought; or
 - b. the matter is not resolved under the Protocols in which case the parties must advise in writing as to the future conduct of the matter.
14. Within 14 days of the conclusion of the Protocols, the parties are to provide the Tribunal with consent orders proposing the future conduct of the proceeding or, where they do not agree, requesting a directions hearing.
15. While an application for review remains subject to the Protocols, the Tribunal will not usually make orders with respect to costs of the application.
16. For an application for review subject to the Protocols, the parties' obligation to lodge documents is deferred until the conclusion of the Protocols and will then include all documents in their possession as set out in paragraphs 18 to 20. A copy of the Protocols is available on the [TAC website](#).

Lodgement of documents by the applicant and TAC – Protocol cases

17. For an application for review subject to the Protocols, the parties' obligation to lodge documents is deferred until the conclusion of the Protocols and will then include all documents in their possession as set out in paragraphs 18 to 20. A copy of the Protocols is available on the [TAC website](#).

**Lodgement of documents by TAC – non-Protocol cases and
where the applicant is self-represented**

18. In non-Protocol cases and where the applicant represents him or herself, the TAC must reconsider its decision within 28 days of receiving a copy of the application. If TAC re-affirms its decision, or the decision is deemed affirmed under section 80(3) of the *Transport Accident Act 1986*, it must serve on the applicant:
- a) a statement setting out:
 - i) the findings on material questions of fact;
 - ii) the evidence or material on which the findings were based;
 - iii) the reasons for the decision.
 - b) every other document or part of a document that:
 - i) is in the possession or under the control of TAC; and
 - ii) is considered by TAC to be relevant to the review of the decision by the Tribunal;
whether supportive of the decision of TAC or not.
 - c) The documents should be lodged in a ring binder, indexed and with each page numbered consecutively.

**Lodgement of documents by the applicant – non-Protocol cases and
where the applicant is self-represented**

19. In non-Protocol Cases and where the applicant represents him or herself, within 28 days of TAC re-affirming the decision that is the subject of the application, the applicant must serve on TAC:
- a) a statement signed by the applicant which sets out the circumstances surrounding the transport accident and all matters known to the applicant which are relevant to the review of TAC's decision; and
 - b) copies of all relevant medical reports, including letters of instruction and further correspondence and other relevant documents (including relevant financial or taxation records) in the applicant's possession, power or control, on which he or she proposes to rely.
20. In applications for review concerning an applicant's level of permanent impairment, if a medical report includes an impairment assessment under the 4th Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, the report must also include a statement from the person who provided the report as to which, if any, modules of the Ministerially Approved Training Course in the Application of the Guides the person had successfully completed at the time of preparing the report.

Summoning documents to the Tribunal

21. Where TAC summonses documents to the Tribunal (usually medical files):
- a) no later than five days before the date on which they are to be delivered to the Tribunal, TAC must give the applicant copies of the summonses issued;
 - b) once the Tribunal receives the documents, the applicant may inspect them;
 - c) unless the applicant objects within 21 days after the Tribunal receives documents, TAC has leave to inspect and copy them, without further notice to the applicant; and
 - d) TAC will copy to the applicant the documents it copies.

When will a directions hearing be held?

Note: For general information about directions hearings and consent orders, see practice notes *PNVCAT1 – Common Procedures* and *PNVCAT 5 – Directions Hearings and Urgent Hearings*.

22. When both parties are legally represented and the application is subject to the Protocols, a directions hearing will be held after any stay of the proceeding is lifted (see paragraphs 13 and 14), and either party requests a directions hearing.
23. When both parties are legally represented and the application is not subject to the Protocols, the Tribunal will generally monitor progress of the proceeding and schedule the first directions hearing either once the parties indicate that is appropriate, or the Tribunal forms the view it is appropriate.
24. Where an applicant is self-represented, the Tribunal is likely to schedule a directions hearing six weeks after the applicant lodges the application. At the directions hearing, it is likely the Tribunal will schedule a compulsory conference to allow negotiations between the parties, with a Tribunal Member present.
25. Compulsory conference and hearing dates are generally not provided at the same time. A hearing date will be set if a compulsory conference is not to be held or, where a compulsory conference is held and the matter does not settle, at the end of the conference.
26. The Tribunal may make consent orders in chambers without the parties appearing. Parties should make the request for consent orders in writing at least two business days prior to any scheduled directions hearing (giving short meaningful reasons) if they wish to avoid an unnecessary appearance at a directions hearing.

What happens at a compulsory conference?

Note: For general information about compulsory conferences and other forms of alternative dispute resolution, see practice note *PNVCAT4 – Alternative Dispute Resolution (ADR)*.

27. Where a compulsory conference is directed to take place, applicants, whether with or without legal representatives, must attend, unless in exceptional circumstances the parties agree, or the Tribunal, at a party's request, gives leave for the applicant to attend by telephone.
28. A representative of TAC with authority to negotiate and settle matters must attend the compulsory conference.
29. If a compulsory conference is arranged in regional Victoria, a legal representative of TAC must attend, with TAC's other representative being available by phone.
30. If the proceeding does not settle at the compulsory conference, the Tribunal will make further directions setting out the future conduct of the matter.

Further exchange of documents and information

31. No later than seven days prior to the date fixed for the compulsory conference, each party shall provide to the other party any further documents not previously exchanged under paragraphs 18 to 20.
32. Where the applicant is not legally represented, no later than 14 days prior to the date fixed for the compulsory conference, TAC shall file with the Tribunal and provide to the applicant its Tribunal book.
33. Where parties are legally represented, no later than 14 days prior to the date fixed for the final hearing, the parties shall file with the Tribunal a joint Tribunal book or if that is not practicable, separate Tribunal books. Tribunal books are to be in ring binders, indexed and with pages numbered consecutively and with statements from individual witnesses grouped together.
34. No later than 35 days before a final hearing each party must:
 - a) notify the other in writing of those witnesses it intends to cross-examine at the hearing; and
 - b) ascertain the availability of witnesses likely to be required for a hearing.

Failure to do so, which results in an adjournment, may result in an order for costs thrown away by reason of the adjournment.

What must be in a Tribunal book?

35. The TAC must include copies of all material described in paragraph 18, together with statements of the evidence of any witness to be called by TAC at the hearing not already lodged by it.
36. The applicant must include in the Tribunal book copies of:
 - a) the applicant's practice note material (see paragraphs 19 and 20);
 - b) a brief written statement of the applicant's case including:
 - i) the decision the applicant desires the Tribunal to make;
 - ii) particulars of the loss claimed and how that loss is calculated;
 - c) a brief statement of any legal contentions, and a list of authorities on which the applicant is relying in support of those contentions;
 - d) a statement of each witness (including the applicant) to be called by the applicant at the hearing, setting out the evidence of that witness on which the applicant intends to rely, signed by the witness (a medical report is acceptable as a statement of a medical practitioner); and
 - e) copies of any document, in addition to those already lodged, on which the applicant intends to rely.

What evidence can be used at the hearing?

37. If a witness is not required for cross-examination, a signed statement of evidence from the witness will be acceptable, unless the Tribunal directs otherwise.
38. Without leave from the Tribunal, a party may not present a case different from that contained in its Tribunal book, call a witness whose statement is not included in its Tribunal book or adduce evidence in chief beyond that contained in the statement of the witness's evidence in the Tribunal book.

How do I seek an adjournment?

39. Information about adjournment procedures is set out in practice note *PNVCAT1 – Common Procedures*.

- End of Practice Note -