

**Practice Note – PNCCL1
Civil Claims List General Procedures**

Application	Proceedings in the Civil Claims List
Effective date	19 August 2019
Supersedes practice note	Previous version of PNCCL1 issued on 19 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 Tribunal website at www.vcat.vic.gov.au .

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Introduction

- 1 The Civil Claims List is frequently used by people who represent themselves, rather than retaining a lawyer or other agent. This practice note is issued to encourage parties to only file necessary and relevant documents.
- 2 The general procedures in this practice note apply to all proceedings in the Civil Claims List 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. Directions are often made in cases where the claim exceeds \$15,000.00 or where the issues are complex.
- 4 This practice note should be read in conjunction with the practices and procedures set out in the Act and Rules. The practice note is also complemented by other practice notes that apply to specific topics and specific Lists.
- 5 This practice note has been issued by the Rules Committee 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)
Regulations	<i>Victorian Civil and Administrative Tribunal (Fees) Regulations 2016</i> (Vic)
Rules	<i>Victorian Civil and Administrative Tribunal Rules 2018</i> (Vic)
Applicant	The person making the application
Respondent	The person against whom the application is made

- 6 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).

Describing the Dispute in the Application Form

- 7 The application form needs to tell the Tribunal and each respondent what the dispute is about, as well as what order is being sought by the person making the application. Usually, all of the necessary information can be included in the application form itself, or else in a summary that is attached to the application form.
- 8 Supporting documents that explain or are intended to prove the applicant's claim – such as an expert's report, invoices or quotes, photographs, extracts of a contract and other documents of this nature – should **not** be attached to the application form.

- 9 Instead, copies of any documents that support your claim, including those listed above, should be brought to the Tribunal on the day of your hearing and should be handed up to the Tribunal Member who has been allocated to hear your dispute.
- 10 Copies of all documents on which you intend to rely in order to support your claim should be sent to all other parties to the proceeding **within 28 days** after receiving the notice of hearing and declaration of service form from the Tribunal (see “Service of Documents”, below).
- 11 If the hearing needs to be adjourned because these documents have not been served on the other parties, the applicant will need to pay a fee for each additional day taken up in hearing the matter. These fees are set out in the Regulations.

Service of Documents by the Applicant

- 12 An application may consist of the application form alone, or may consist of the application accompanied by an attached document summarising or setting out a history of the dispute.
- 13 When filing an application, applicants should retain a copy of the application form, together with all attachments, for their own records and so they can serve a copy on the respondent/s (see ‘Service of Documents’ below).
- 14 If any one or more of the respondents is a company, a copy of an ASIC search showing the company name and registered address in respect of each respondent company must be filed along with the application form, as required in the Rules. Instructions on how to obtain an ASIC search are on the [VCAT website](#).
- 15 When an application is filed/lodged with the Tribunal it will be given a unique case number by the Tribunal. This number must be used on all documents and correspondence that relates to the case that is sent to the other party/ies and to the Tribunal.
- 16 When an application is filed, the Tribunal will send:
 - (a) to the applicant: a notice of hearing displaying the case number relating to the proceeding, as well as a declaration of service form; and
 - (b) to each respondent: a copy of the application form (including the attached summary, if any), as well as a notice of hearing displaying the case number relating to the proceeding. **The Tribunal will not send to the respondent a copy of any supporting documents filed with the application.**
- 17 **Within 28 days** of receiving the notice of hearing and declaration of service form from the Tribunal, the applicant must serve copies of the following documents on each respondent to the proceeding by sending to each respondent:

- (a) a complete copy of the application with all attachments;
- (b) any expert reports on which the applicant relies; and
- (c) any other document on which the applicant intends to rely at the hearing in support of the claim, including any relevant contracts, correspondence, invoices, quotes and photographs.

If a respondent is a company, postal service or personal delivery is made at the registered office as shown on the ASIC search or by sending it to the company's electronic address (e.g. email). An electronic address can only be used to serve documents if it has previously been used between parties to communicate or if the intended recipient has previously provided their email address as the means of communication to the Tribunal.

- 18 Applicants should retain a copy of the application form, together with all attachments, for their own records.
- 19 At the hearing, the applicant must give to the Tribunal Member a signed and completed declaration of service form.

Note: If a respondent does not attend the hearing, it is essential that the applicant proves that a complete copy of the application form with all attachments was served on the respondent. If the documents have not been served, the proceeding might be struck out or the hearing adjourned. If the hearing is adjourned, a hearing fee will be payable by the applicant for any subsequent day of hearing.

- 20 There is no need to file any documents that are served on the respondent(s) with the Tribunal prior to the hearing, unless the Tribunal orders otherwise. At the hearing, an extra copy of all documents relied on in support of the claim should be handed to the Tribunal Member. These documents will remain on the Tribunal's file.

Service of Documents by the Respondent

- 21 In the interests of fairness, all respondents should send copies of documents relied on in defence of the claim to all other parties to the proceeding as soon as possible, including any expert reports. This prevents parties from being "ambushed" at the hearing, which can lead to adjournments. Parties who cause an adjournment in a proceeding may incur hearing fees and could have some costs awarded against them once the matter has been dealt with.
- 22 The respondents must bring copies of these documents to the hearing and produce copies of them to the Tribunal Member. Unless the Tribunal otherwise orders, it is not necessary to file these documents prior to the commencement of the hearing. Such an order might be made in complex cases.

Communicating with other parties and the Tribunal

- 23 If the parties write to the Tribunal (for example, to apply for directions), they must send a copy of this correspondence to the other parties. See Practice Note *PNVCAT1 – General Procedures*.
- 24 The Tribunal encourages the parties to communicate with each other prior to the hearing. By doing so, the parties may be able to narrow the issues in the dispute, or even settle the matter entirely.
- 25 To avoid disagreements over what has been said, it is best to communicate in writing – either by letter or by email. There is no need for the Tribunal to be sent copies of correspondence between the parties.
- 26 If the purpose of a letter or email is to make an offer to settle the proceeding, it should be marked “without prejudice”. A copy of without prejudice correspondence **should not** be sent to the Tribunal. If the settlement offer is not accepted and the case proceeds to a hearing, the without prejudice offer **cannot** be disclosed to the Tribunal Member hearing the case.
- 27 Letters and emails that are not marked “without prejudice” can be disclosed to the Tribunal Member during the hearing. As an example, if you were saying to another party that you needed to inspect the building work that was the subject of the dispute, and that if he or she refused you would seek an order allowing you to do so, you may want to be able to rely on that letter in seeking such an order.

- END OF PRACTICE NOTE -