

Practice Note – PNVCAT 6 Hearing Fees

Application	Proceedings in all Lists
Effective date	1 June 2013
Supersedes practice note	Not applicable
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 Victorian Civil and Administrative Tribunal (Fees) Regulations 2013 introduce a range of hearing fees for proceedings before the Tribunal.
- 2 This practice note sets out the usual procedures that will apply to the charging of daily hearing fees in proceedings before the Tribunal.
- 3 In any proceeding, the Principal Registrar may at his or her discretion vary the operation of this practice note or reduce a daily hearing fee in accordance with the Regulations.
- 4 This practice note should be read in conjunction with the Regulations, and any additional information about hearing fees published from time to time on the Tribunal's website.
- 5 This practice note has been issued by the Rules Committee pursuant to section 158 of the *Victorian Civil and Administrative Tribunal Act 1998*, in consultation with the Principal Registrar.

Definitions

Word	Definition
Act	<i>Victorian Civil and Administrative Tribunal Act 1998.</i>
Commencement	As defined in the Regulations. It includes 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> , or a licence or works approval under the <i>Environment Protection Act 1970</i> .
Regulations	Victorian Civil and Administrative Tribunal (Fees) Regulations 2013
Rules	Victorian Civil and Administrative Tribunal Rules 2008

- 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*, unless separately defined in this practice note.

Which proceedings are liable for a daily hearing fee?

- 7 The proceedings that are liable for payment of a daily hearing fee are set out in the Regulations. In general terms, a daily hearing fee is payable for the hearing of:
 - (a) any proceeding in the Major Cases List within the Planning and Environment List, including the first day of hearing; and
 - (b) any other proceeding at the Tribunal 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.
- 8 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 the Human Rights Division of the Tribunal – e.g. in guardianship matters.
- 9 A daily hearing fee is not payable for any directions hearing, practice day hearing, mediation or compulsory conference.
- 10 Under the Regulations, a daily hearing fee is payable for a proceeding that has commenced, but is not completed, when the Regulations commence operation. If the proceeding is liable for a daily hearing fee, the daily hearing fee is payable for a proceeding commenced at the Tribunal prior to the Regulations coming into force, if the hearing has not been held or completed when the Regulations commence operation.

Example 1: An applicant commenced a proceeding in the Domestic Building List in February 2013. A 3-day hearing is listed in August 2013. Although the application was lodged prior to the Regulations commencing operation, the hearing takes place after the Regulations commence operation. A daily hearing fee is payable for the second and subsequent days of the hearing.

Example 2: A hearing in the Review and Regulation List is adjourned part-heard after a 1-day hearing in April 2013, and requires a second hearing day to complete the hearing. The further hearing day is listed in August 2013. Unless the Principal Registrar waives or reduces the fee, a daily hearing fee is payable for the further hearing day, as it is a hearing day after the Regulations commence and after the first day of hearing.
- 11 Under the Regulations, the amount of the daily hearing fee will differ if the proceeding has been designated as a complex case. However, the liability for payment of the daily hearing fee, and the arrangements for payment, are the same in each case.

Who is liable to pay the daily hearing fee ?

- 12 For proceedings in the Major Cases List within the Planning and Environment List, practice note *PNPE8 – Major Cases List* continues to apply. The permit applicant or permit holder is liable to pay the whole daily hearing fee in all proceedings in the Major Cases List, including the first day of hearing.
- 13 For proceedings in all Lists at the Tribunal 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 for the second or subsequent hearing day, unless:
 - (a) the requirement to pay the fee has been waived or reduced under the Act and/or Regulations, or
 - (b) the Principal Registrar directs otherwise in the exercise of his or her discretion under the Regulations.

Hearings arising from a single application or commencement

- 14 If there has been only one commencement of a proceeding, the applicant to the Tribunal 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, Domestic Building List or Retail Tenancies List, and there is no counterclaim. The applicant pays the whole daily hearing fee.

Example 4: An objector makes an application to the Tribunal under s 82 of the *Planning and Environment Act 1987*. 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.

- 15 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 as for Example 4. The s 82 objector is the sole applicant to the Tribunal and 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

- 16 If a number of persons together make a joint application to the Tribunal, and pay a single commencement fee, those persons 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. Multiple or part payments will not be accepted.

Example 6: Fifteen objectors make a joint application to the Tribunal under s 82 of the *Planning and Environment Act 1987*. 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. The Tribunal will not accept multiple part-payments from various individuals within the group.

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

- 17 If multiple applications or commencements are heard together, only one daily hearing fee is payable for each of the second and subsequent hearing days. The daily hearing fee will therefore be reduced for certain parties or apportioned between the parties otherwise liable to pay the daily hearing fee for their respective commencement or application.
- 18 In all Lists other than the Planning and Environment List, if there are multiple commencements being heard together in a proceeding, or multiple applications being heard together, the daily hearing fee will be apportioned equally for each commencement or application.

Example 7: An applicant commences a proceeding in the Civil Claims List, Domestic Building List or Retail Tenancies List. The respondent makes a counterclaim against the initial applicant. The counter-claim is a separate ‘commencement’ under the Regulations. The applicant and respondent will therefore each pay 50% of the daily hearing fee.

Example 8: Sample as for Example 7, but the respondent commences both a counterclaim against the initial applicant and a third party notice against another person. The third party notice is also a separate ‘commencement’, so there are now three separate commencements or applications being heard together. One-third of the daily hearing fee will be apportioned to each matter unless the Principal Registrar directs otherwise. The applicant will therefore pay one-third of the daily hearing fee, arising from its initial application, and the respondent will pay two-thirds, arising from its separate counterclaim and third party notice.

- 19 If there are multiple commencements or applications being heard together in a proceeding in the Planning and Environment List (but not the Major Cases List), and any one of those commencements or applications involves the permit applicant or permit holder as the applicant to the Tribunal, that permit applicant or permit holder is liable to pay the whole daily hearing fee.

Example 9: An objector makes an application to the Tribunal under s 82 of the *Planning and Environment Act 1987*, and the permit applicant also makes an application under s 80 to review permit conditions. The second application involves the permit applicant as an applicant to the Tribunal. If both matters are heard together, the permit applicant pays the whole daily hearing fee.

Example 10: A responsible authority seeks an enforcement order under s 114 of the *Planning and Environment Act 1987*, 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. The second application involves the permit applicant as an applicant to the Tribunal. If both matters are heard together, the permit applicant pays the whole daily hearing fee.

- 20 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 the Tribunal:
- (a) the daily hearing fee will usually be apportioned equally between the applicants to the Tribunal for each commencement or application; or
 - (b) in appropriate circumstances, the Principal Registrar may re-apportion the amount of the daily hearing fee as between those liable to pay the fee. A practice day hearing will usually be convened in these circumstances.

Example 11: Four objectors make separate applications to the Tribunal under s 82 of the *Planning and Environment Act 1987* 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% of the daily hearing fee.

Example 12: Same as Example 11. However, the Principal Registrar becomes aware that one of the s 82 objectors is a 'major' objector calling several expert witnesses over several hearing days, and the other three are objectors requiring half an hour to make submissions. The Principal Registrar may determine an alternative apportionment as between the s 82 objectors, and require the 'major' objector to pay a higher proportion of the daily hearing fee.

Can a daily hearing fee be waived or reduced?

- 21 The Principal Registrar has the power to waive or reduce a daily hearing fee in certain circumstances under the Act and/or the Regulations. In particular:
- (a) under s 132 of the Act, the Principal Registrar may waive or reduce any Tribunal fee if he or she considers that the payment of the fee would cause the person responsible for its payment financial hardship; and
 - (b) under the Regulations, the Principal Registrar may reduce the daily hearing fee if he or she considers it appropriate having regard to the number of parties to the proceeding, and the likely length of the hearing.
- 22 Further information about fee waiver or reduction is available on the Tribunal's website.

- 23 Any application to the Principal Registrar to waive or reduce a daily hearing fee should be made as soon as possible after the circumstances justifying the reduction arise, in order to avoid any delay in a hearing.
- 24 The Principal Registrar may also, without application by a party liable to pay the daily hearing fee, waive or reduce the fee in appropriate or exceptional circumstances – e.g. where a hearing delay arises through no fault of the parties such as member illness or building evacuation.
- 25 A member of the Tribunal has no discretion under the Regulations 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.

What procedures apply to the payment of a hearing fee?

- 26 The person or persons liable to pay the daily hearing fee, or the proportion of the fee payable if the hearing relates to multiple applications or commencements, will usually be notified to the parties on the Hearing Notice or by separate written communication from the Tribunal before the hearing.
- 27 As indicated, except in the Major Cases List within the Planning and Environment List, a daily hearing fee is not payable for the first day of any hearing. Parties are encouraged to act co-operatively and to use the hearing time as efficiently as possible, to reduce the prospect of less complex matters requiring a second or subsequent hearing day. Whilst adhering to its obligation to accord procedural fairness, the Tribunal may regulate the conduct of a hearing to facilitate this.
- 28 In appropriate cases, a Tribunal member may inform or remind a party on the first day of a hearing that is expected to exceed one day that a daily hearing fee is payable for any second or subsequent day of hearing.
- 29 Under the Regulations, if a daily hearing fee is payable, it must be paid by the person(s) responsible for its payment by 9:30am on the day of the hearing to which the fee relates. Any non-payment of the daily hearing fee by this time will constitute a failure to comply with the Regulations.
- 30 The daily hearing fee payment may be made by using the payment portal on the Tribunal's website, or by payment at the ground floor counter at 55 King Street, Melbourne. Parties in regional locations should contact the Tribunal registry to make

alternative arrangements for payment if they are unable to access the website payment portal. A receipt number will be issued, which will be the basis of proof that the hearing fee has been paid.

- 31 Unless the Principal Registrar directs otherwise, a daily hearing fee will not be refunded if the proceeding is settled, withdrawn or adjourned after the fee is paid.
- 32 A hearing day will normally conclude no later than 4.30pm. The Tribunal may occasionally sit beyond this time if convenient to the Tribunal and the parties, but it will not do so solely to avoid the payment of a daily hearing fee for another hearing day. In an appropriate case, the Principal Registrar may be prepared to waive or reduce the daily hearing fee for the last day of a hearing if the hearing will be concluded within a short period of time on that day. An application to waive or reduce the fee should be made before the commencement of that relevant hearing day as the daily hearing fee will still be payable by 9:30am and, unless the Principal Registrar directs otherwise, a daily hearing fee will not usually be refunded (in whole or part) once paid.
- 33 Although costs are not often awarded at the Tribunal, and without limiting the general discretion of the Tribunal under ss 78 and 109 of the Act (if applicable), the daily hearing fee (or a proportion of it) may be awarded against another party if that other party conducts 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?

- 34 If a daily hearing fee is not paid at the commencement of the second or subsequent hearing day, the Tribunal may stand the matter down for a short time to allow the fee to be paid. In such circumstances, the party in default of payment may be advised that the costs of any delay in payment may be ordered against that party under s 78 of the Act.
- 35 If the daily hearing fee remains unpaid after the matter has been stood down, the Tribunal will not usually continue with the hearing and may (without limiting its discretion):
 - (a) order that the proceeding 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 proceeding 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 the Tribunal:
- 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 ?

- 36 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 and/or their representatives. It does not include an informal site visit or inspection by a Tribunal 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.
- 37 An accompanied site visit or inspection that forms part of a hearing will usually be listed in the Daily Hearings List on the Tribunal's website or the Daily Law List, and/or will be advised to the parties through a direction or order of the Tribunal.
- 38 If a daily hearing fee is payable for an accompanied site visit or inspection, it must still be paid prior to 9:30am on the day of the site visit or inspection, and prior to the site visit or inspection taking place.

- END OF PRACTICE NOTE -