



Victims of Crime Assistance Tribunal

Chief Magistrate's Chambers
Melbourne Magistrates' Court

Practice Direction

No. 1 of 2009

RESPONSE TO APPLICATIONS FOR REVIEW OF DECISIONS

PRACTICE DIRECTION ISSUED PURSUANT TO SECTION 58
OF THE VICTIMS OF CRIME ASSISTANCE ACT 1996

Purpose

The purpose of this Practice Direction is to:

- note the role of the Victims of Crime Assistance Tribunal (VOCAT) as primary decision maker in any applications for review of its decisions to the Victorian Civil and Administrative Tribunal (VCAT); and
- specify the procedure to be followed by VOCAT upon receipt of a Notice of Review to VCAT.

Background

Section 59 of the *Victims of Crime Assistance Act 1996* provides as follows:

59 *Review of Tribunal decisions*

- (1) A person whose interests are affected by the relevant decision may apply to the Victorian Civil and Administrative Tribunal for review of a final decision of the Tribunal –
 - (a) refusing to make an award of assistance on an application under Division 2 of Part 3;
 - (b) determining the amount of assistance on an application under Division 2 of Part 3;
 - (c) refusing to vary an award under section 60;
 - (d) determining under section 62(2) that a person is required to make a refund, or determining the amount of that refund.
- (2) An application for review must be made within 28 days after the later of –
 - (a) the day on which the final decision is made;

- (b) if, under the *Victorian Civil and Administrative Tribunal Act 1998*, the person requests a statement of reasons for the final decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Sections 46(1) and (2) of the *Victorian Civil and Administrative Tribunal Act 1998* provide as follows:

46 Decision-maker to give statement of reasons on request

- (1) A decision-maker must give a written statement of reasons for a decision to a person as soon as practical, and in any event within 28 days or such other period as is specified in the enabling enactment, after receiving a request under section 45.
- (2) Subject to this Act, the statement must set out –
- (a) the reasons for the decision; and
 - (b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based.

Role of VOCAT as primary decision maker

Where a decision of VOCAT is subject to review by VCAT, VOCAT, as primary decision-maker, will actively participate in the VCAT review of its decision. This approach is consistent with the Court of Appeal's decision in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd & Anor* [2008] VSCA 45.

VOCAT will engage legal representation to represent it in the application for review of its decision to VCAT. VOCAT will usually engage the Victorian Government Solicitor to represent it in applications for review of its decisions.

Procedure upon receipt of a Notice of Review

Upon receipt of a Notice of Review of a decision of VOCAT, procedures will apply in relation to:

- requesting reasons for decision;
- preparing the section 49 material;
- the provision of material to parties to the review when **sensitive material** has been identified by the decision-maker; and
- the provision of material to parties to the review when **no sensitive material** has been identified by the decision-maker.

Requesting reasons for decision

When a Notice of Review is received, the registrar must record the date that the Notice of Review was received from VCAT on VOCAT's case management system, and comply with the following steps:

1. The registrar shall notify the VOCAT Principal Registrar of receipt of the Notice of Review and provide them with a copy.
2. The registrar shall provide a copy of the Notice of Review to the VOCAT member who made the decision subject to review (referred to as the **primary decision-maker**), together with a request for:
 - a. written reasons for the decision under review, as required by Section 49(1) of the *Victorian Civil and Administrative Tribunal Act 1998* (see **Attachment A**);
 - b. a list of documents in VOCAT's possession that the primary decision-maker considers relevant to the review of the decision (referred to as **relevant documents**); and
 - c. the identification of any relevant documents containing sensitive material and which may require consideration by a VCAT member prior to being released to any person.

These documents are collectively referred to in this Practice Direction as the '**section 49 material**'.

Refer to the Chief Magistrate's *Practice Direction No.9 of 2008 – Access to information and documents on Tribunal files*, for information as to what types of documents may contain sensitive material (referred to in that Practice Direction as **classified documents**).

Preparing the section 49 material

Once the registrar has collated the section 49 material, he or she must paginate it and make copies as directed by VCAT in the Notice of Review.

Provision of material to parties to the review when **sensitive material** identified

Paginated copies of the section 49 material must be sent to the following, by **Registered Post**, within the 28 day time-limit:

- VCAT;
- VOCAT's legal representative;
- the applicant's solicitor (or the applicant themselves if they are not legally represented); and
- any third parties if so directed by VCAT in the Notice of Review.

If the section 49 material contains material identified as sensitive by the primary decision-maker, the registrar must comply with the following steps **before** sending the section 49 material to VCAT, VOCAT's legal representative and the parties to the review proceeding:

1. **Material provided to VCAT:** The registrar **must** remove the sensitive material from the paginated section 49 material and place it in a separate sealed envelope. The registrar must attach a letter to the front of the sealed envelope advising the VCAT registrar that:
 - a. the envelope contains relevant documents that have been identified as sensitive;
 - b. the sensitive material has been separated from the rest of the section 49 material;
 - c. the sensitive material has not been released to any of the other parties to the review proceeding; and
 - d. VCAT is requested to give consideration to an order pursuant to section 146 of the *Victorian Civil and Administrative Tribunal Act 1998* with respect to access to the sensitive material.

Please see **Attachment B** for the form of this letter to VCAT.

2. **Material provided to VOCAT's Legal Representative:** The registrar **must** provide the complete section 49 material to VOCAT's legal representative, **including the sensitive material**. The registrar must provide VOCAT's legal representative with a copy of the letter sent to VCAT referred to in paragraph one above.
3. **Material provided to Applicant's Solicitor/Applicant:** The registrar **must not** provide any sensitive material to the applicant/applicant's solicitor. The registrar must also attach a letter to the section 49 material advising that certain pages have been removed because they contain sensitive material and that release of this material is subject to determination by a VCAT member. A copy of the letter sent to the Applicant's solicitor / Applicant must be provided to VOCAT's legal representative and VCAT.
4. **Material provided to Third parties (if any):** The registrar **must not** provide any sensitive material to any third parties. The registrar must also attach a letter to the section 49 material advising that certain pages have been removed because they contain sensitive material and that release of this material is subject to determination by a VCAT member. A copy of the letter sent to the third party must be provided to VOCAT's legal representative and VCAT.

The registrar must notify the VOCAT Principal Registrar that the section 49 material has been sent within the 28 day time-limit.

Provision of material to parties to the review where **no sensitive material** identified

Paginated copies of the section 49 material must be sent to the following, by **Registered Post**, within the 28 day time-limit:

- VCAT;
- VOCAT's legal representative;
- the applicant's solicitor (or the applicant themselves if they are not legally represented); and
- any third parties if so directed by VCAT in the Notice of Review.

Each copy of the section 49 material must be accompanied by a covering letter advising that the section 49 material is enclosed.

The registrar must notify the VOCAT Principal Registrar that the section 49 material has been sent within the 28 day time-limit.

Revocation of previous Practice Direction

This Practice Direction revokes Practice Direction 2/2006.

Commencement

This Practice Direction has effect from 1 July 2009.

IAN L GRAY
Chief Magistrate
30 June 2009

ATTACHMENT A – RELEVANT LEGISLATION

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 1998

49 *Decision-maker must lodge material*

- (1) If a proceeding is commenced for review of a decision, the decision-maker must lodge with the Tribunal as many copies as the rules require of –
 - a. the statement of reasons given by the decision-maker under section 46(1) or, if no such statement has been given, a statement containing the matters set out in section 46(2) or, in the case of the Business Licensing Authority, section 46(2)(a); and
 - b. every other document in the decision-maker's possession that the decision-maker considers is relevant to the review of the decision.
- (2) Copies must be lodged under sub-section (1) within 28 days after –
 - a. the day on which the decision-maker received notice of the application to the Tribunal; or
 - b. the day on which the decision-maker referred the decision to the Tribunal – as the case requires.
- (3) If the Tribunal considers that there are further documents in the possession of the decision-maker that may be relevant to the review, the Tribunal may give written notice to the decision-maker requiring the decision-maker to lodge the number of copies of those documents required by the rules with the Tribunal within the time specified in the notice.
- (4) If the Tribunal considers that a statement lodged under sub-section (1)(a) is not adequate, the Tribunal may order the decision-maker to lodge the number of copies required by the rules of an additional statement containing the further particulars specified in the order within the time specified in the order.
- (5) This section applies despite any rule of law relating to privilege or the public interest in relation to the production of documents.

146 *Proceeding files*

- (1) The principal registrar must keep a file of all documents lodged in a proceeding until the expiration of the period of 5 years after the final determination of the proceeding.
- (2) A party in a proceeding may inspect the file of that proceeding without charge.
- (3) On paying the prescribed fee (if any) any person may –
 - a. inspect the file in that proceeding; and
 - b. obtain a copy of any part of the file.
- (4) The rights conferred by this section are subject to –
 - a. any conditions specified in the rules;
 - b. any direction of the Tribunal to the contrary;
 - c. any order of the Tribunal under section 101;
 - d. any certificate under section 53 or 54.



**Victims of Crime
Assistance Tribunal**

Phone: [INSERT]
Facsimile: [INSERT]

Our Ref: [INSERT]
Your Ref: [INSERT]

[INSERT VENUE]
[INSERT STREET ADDRESS]
[INSERT SUBURB / POSTCODE]

[INSERT POSTAL ADDRESS]
[INSERT SUBURB / POSTCODE]
[INSERT DX NUMBER]

[INSERT DATE]

Registrar
General List
Victorian Civil and Administrative Tribunal
DX 210160 Melbourne

Dear Registrar,

[Insert applicant name] -V- Victims of Crime Assistance Tribunal

The attached envelop contains documents that have been identified as relevant by the primary decision-maker pursuant to Section 49(1)(b) of the *Victorian Civil and Administrative Tribunal Act 1998*, but which contain sensitive information.

The sensitive documents have been removed from the rest of the section 49 material and have not been provided to any other party to the application. It is requested that the Victorian Civil and Administrative Tribunal (VCAT) give consideration to making an order pursuant to section 146(4) of the *Victorian Civil and Administrative Tribunal Act 1998* regarding access to this material.

For VCAT's information, I have provided a copy of the Chief Magistrate's Practice Directions 9/2008 and 1/2009 which detail the Victims of Crime Assistance Tribunal's procedures regarding access to documents contained on its files and response to requests for review of its decisions.

Yours sincerely,

[Insert name of Registrar]
Registrar