

Taking Your Matter to VCAT

Read this information sheet if:

- You are a consumer in a dispute with a trader.
- You are considering issuing proceedings, or you have had proceedings issued against you, in relation to that dispute

This information sheet deals with the *procedural* aspects of running a case through VCAT. For information on your consumer rights and remedies, click [here](#).

What is VCAT?

The Victorian Civil and Administrative Tribunal (**VCAT**) is a court of law designed to be accessible to people who are not legally represented. It is divided up into separate divisions, or 'lists', of which the most relevant for consumers is the Civil Claims List, which deals with disputes between consumers and traders.

What disputes can be heard at VCAT?

The Civil Claims List

The Civil Claims List at VCAT can hear disputes arising from the buying or selling of goods or services by a consumer from a business.

This includes disputes where you buy goods or services from a trader and:

- there is a defect with the goods or services you bought;
- the goods do not match the description which you relied on when you bought the goods;

- the goods or services are not fit for the purpose for use which was known to the trader, e.g. you said you needed a 12-inch TV because of the size of your lounge and you were sold a 20-inch TV;
- the trader does something which you didn't agree to in your contract;
- you were misled by the trader as to the nature or functions of the services or goods you were sold.

This does not include matters such as motor vehicle accidents, family disputes, and crimes compensation. Importantly, given that land is not classified as 'goods', the Civil Claims List cannot usually hear disputes regarding dealings with houses or land.

VCAT has very broad powers to resolve a consumer-trader dispute, including:

- ordering the payment of a sum of money;
- declaring a debt is or is not owing;
- ordering a party to do or refrain from doing something.

Commencing proceedings

Proceedings are normally commenced in the Civil Claims List by completing the 'Application to Civil Claims List' form (available at www.vcat.vic.gov.au) and either



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mailing or hand-delivering the form to VCAT at 55 King St, Melbourne.

Claims under \$10,000 fall into the 'Small Claims Division' of the Civil Claims List.

The Application Form only provides about a paragraph of space to detail the subject matter of the dispute, and it is usually worthwhile preparing a separate letter which sets out your claim clearly and in as much detail as necessary. You should also include photocopies of relevant documents, such as contracts.

Once you lodge the Application Form, VCAT will notify the other party who you have a dispute with that you have commenced proceedings in VCAT.

Legal representation

Lawyers are generally not permitted to represent parties appearing in the Small Claims List unless there are special circumstances which indicate a party must have representation.

What happens after filing of an application?

When you issue in the Civil Claims List you will normally receive a letter within a few weeks which gives you a hearing date for your case. In more complex cases, the Tribunal may first set the matter down for a directions hearing before the final hearing.

It is a good idea to write down what you want to say at the hearing and bring copies to give to the Tribunal

member who hears your case, and to the other party to the dispute. This will help to clarify the facts of the case, and what it is you want the Tribunal to order.

Usually issuing in VCAT means that you will be better placed to negotiate with the trader with whom you have a dispute. Most disputes are settled privately between parties before hearing.

Filing fees

As of 1 July 2010, it costs \$37.00 to file an application in the Civil Claims List at VCAT for claims of less than \$10,000.

The Principal VCAT registrar may waive a fee if payment of the fee would cause the person responsible for its payment financial hardship.

As of October 2010, VCAT has indicated that fees will generally be waived if the applicant is a pensioner, health care card holder or on a similar low income.

The 'Waiver of fees due to financial hardship' application form and guidelines for the fee waiver are available at www.vcat.vic.gov.au under the heading 'Miscellaneous Forms' under 'Fees-Forms-Brochures'.

Legal costs

It is very rare that VCAT will order you to pay the legal costs of the other party, even if you lose your case.

Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated in July 2011.



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For claims under \$10,000, VCAT will not order one party to pay the legal costs of another party.

For claims over \$10,000, generally, parties will pay their own legal costs.

However, there are exceptional circumstances in claims over \$10,000 where costs may be awarded against a party to a VCAT proceeding, for example::

- if that party engaged in conduct that unnecessarily disadvantaged the other party to the proceeding, e.g. failing to comply with VCAT orders or rules;
- if that party has unreasonable prolonged proceedings;
- if that party has made a claim that has no tenable basis in fact or law; or
- if the successful party should be compensated due to the nature and complexity of the claim brought by them,

Transferring matters to VCAT

Section 112 of the *Fair Trading Act 1999* allows proceedings commenced in another court to be transferred to VCAT if:

- a) VCAT has *jurisdiction* to hear the proceedings, and
- b) the proceedings would be *more appropriately* dealt with by VCAT.

If, for example, a trader is claiming under \$10,000 from you in the Magistrates Court where it has sold a defective product, it may be worth your while to apply for a transfer to VCAT because you will not be ordered to pay the other party's costs if you lose and neither of you will have the right to be represented by a lawyer, which levels the playing field.

Further information and assistance

VCAT online: www.vcat.vic.gov.au

For further information on consumer law, members of the public and community workers can telephone us Monday to Friday, on 03 9629 6300 or 1300 881 020.

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