

Taking Your Matter to VCAT

Use this fact sheet if:

- You are a consumer, or acting for 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 fact sheet deals with the *procedural* aspects of running a case through VCAT, not with the rights and remedies available in consumer and trader disputes.

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 are the Civil Claims List, which deals with disputes between consumers and traders, and the Credit List, which deals with disputes regarding consumer credit products.

What disputes can be heard at VCAT?

The Civil Claims List & the Credit List

The Civil Claims List can hear disputes arising out of almost anything to do with trade or commerce: that is, the buying or selling of goods or services. This includes the great majority of legal disputes, however it 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.

If you have a dispute in which a breach of the *Consumer Credit (Victoria) Code* or the *Consumer Credit (Victoria) Act 1995* is alleged, your matter will normally be heard in the Credit List of VCAT. These statutes govern the business practices of credit providers (such as banks, finance companies, credit unions and pay day lenders) and finance brokers.

Fair Trading Act 1999

Normally, an applicant to the Civil Claims List will need to show that one of the provisions of the *Fair Trading Act 1999* has been breached. The most common provisions are those concerning misleading or deceptive conduct (s 9) and unconscionable conduct (ss 7 and 8).

If however you are unsure as to which provision of the *Fair Trading Act 1999* you should refer to in arguing your case, you may be able to refer to ss 107, 108 and 109 of that Act because almost any dispute between a consumer and trader will fall under these sections.

Section 107(1) defines a 'consumer and trader dispute' as:

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a dispute or claim arising between a purchaser or possible purchaser of goods or services and a supplier or possible supplier of goods or services in relation to a supply or possible supply of goods or services.

Section 108(1) then says 'The Tribunal may hear and determine a consumer and trader dispute' and s 108(2) lists a large number of types of orders the Tribunal may make in relation to resolving such a dispute, including ordering payment of a sum of money, varying any term of a contract, declaring that a debt is or is not owing, and ordering a party to do or refrain from doing something.

And to even further broaden the powers of the Tribunal in respect of consumer and trader disputes, s 109 states that the Tribunal may also 'make any order it considers fair'.

The combined effect of these sections is to give the Tribunal extremely broad powers to resolve almost any sort of dispute arising out of buying and selling goods and services.

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

Completing the form is largely self-explanatory: provide identifying details for yourself and all other parties, and outline your claim. The 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. Including photocopies of relevant documents, such as contracts, is also important.

Proceedings in the Credit List are most commonly commenced by completing the 'Form 2 - Claim form relating to a credit dispute (arising under the *Consumer Credit (Victoria) Code*)' (available at www.vcat.vic.gov.au). You will need to choose a section of the *Consumer Credit (Victoria) Code* upon which you base your dispute and then provide a detailed outline of your dispute, as well as photocopies of relevant documents. Read the Credit List User's Guide available at www.vcat.vic.gov.au under 'Application Forms and Brochures' before completing the application form.

In both the Civil Claims and Credit List, VCAT will itself arrange for service of the application, that is, delivery of the application and supporting documents to the other parties. In other courts, parties must serve the documents themselves.

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Legal representation

Lawyers are generally not permitted to represent parties appearing in the Civil Claims List. However, s 62(1)(c) of the *Victorian Civil and Administrative Tribunal Act 1998*, permits a party to make application to the Tribunal for permission to be represented. Such an application would presumably require evidence of special circumstances which would make it just and fair that representation be allowed, although the statute is silent on what such circumstances might be.

In the Credit List credit providers have an automatic right under s 62(2)(f) of the *VCAT Act 1998* to be legally represented and thus, under s 62(1)(b)(iii) of the Act, any other party to the same proceeding may also be legally represented.

Even if a party is not allowed to be legally represented, it is however permissible to have lawyers present during the hearing, who can advise what to say to the Tribunal member and how to conduct the hearing.

What happens after filing of an application?

The likelihood is that your case, like most court cases, does not end up going to hearing but settles beforehand during preliminary negotiations entered into between the parties.

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

In the Credit List, while it is not an official rule, parties are normally sent to mediation as a first step, before any directions or other 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.

Filing fees

Like other courts, VCAT charges a fee for commencing proceedings. As of 1 July 2005, it costs \$34.20 to file an application in the Civil Claims List under the *Fair Trading Act 1999* which claims less than \$10,000. The fee increases to \$283.20 for claims of \$10,000 and above, and to \$567.50 for claims of \$100,000 and above.

The standard fee for a debtor filing an application in the Credit List is \$34.20 irrespective of the amount claimed, although this fee can increase in the case of applications under certain less common statutory provisions.

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Section 132 of the *VCAT Act 1998* states that the principal registrar may waive a fee if payment of the fee would cause the person responsible for its payment financial hardship.

As of October 2007, VCAT has indicated that, generally, fees will be waived if the applicant:

- a) is a person who has no partner or children, is not in the workforce, his or her after tax income is below \$258 per week and he or she does not have cash assets of \$3,000; or
- b) is a person who has a partner, neither are in the workforce, has two children, his or her after tax income is \$538 per week, and he or she does not have cash assets of \$5,000 or more.

The 'Waiver of fees due to financial hardship' application form is simple to complete and is available at www.vcat.vic.gov.au under the heading 'Fees'.

Legal costs

Normally, courts will order that the unsuccessful party to litigation must pay the legal costs of the successful party. In VCAT however, the usual rule is that each party must bear their own costs. This provides low-income earners with additional incentive to choose VCAT as a forum for commencing proceedings, so as to avoid the risk of an adverse costs order.

However, there are exceptional circumstances in which costs may be awarded against a party to a VCAT proceeding.

Sections 78 and 109 of the *VCAT Act 1998* say that the Tribunal may award costs as a punishment to a party who has engaged in conduct that unnecessarily disadvantaged another party to the proceeding, such as failing to comply with VCAT orders, directions, legislation or rules, failing to attend mediation or a hearing, causing an adjournment, or vexatiously or deceptively conducting the proceeding.

Further, costs may be awarded – whether or not disadvantage has been occasioned to another party – where a party has unreasonably prolonged proceedings, or has made a claim that has no tenable basis in fact or law.

Finally, the Tribunal may decide that a proceeding is of a certain nature and complexity that it is proper that costs be awarded to compensate the successful party for the time and expense of conducting the matter.

Be aware however that - in the Civil Claims List particularly - it is rare that VCAT will order a party to pay costs. VCAT's own *Civil Claims Guide* states:

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In most cases no costs can be ordered for claims for \$10,000 or under. For claims over \$10,000, generally each party will pay their own costs.

In Credit List matters it is more common for costs to be awarded – although still exceptional. Credit List matters are seen to be by nature more complex, and thus the Tribunal from time to time will deem it appropriate to order costs even though no wrongdoing has been ascribed to either party's conduct of the proceeding.

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.

In determining the second limb of the above test, the court must consider whether such a transfer would cause some material advantage or disadvantage to one or other of the parties, with regard to the likely costs and duration of the proceedings and other relevant matters.

A transfer to VCAT is potentially valuable to a low-income, unrepresented litigant because it (in cases under \$10,000) protects them from adverse costs orders, and denies both parties the right to lawyers, levelling the playing field a little.

Further information and assistance

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

For consumer and credit-related enquiries, members of the public, community and public sector caseworkers and lawyers can obtain advice from our web-based advice service at www.consumeraction.org.au, or they can telephone us Monday to Friday, on 03 9629 6300 or 1300 881 020

Members of the public can also obtain advice and assistance regarding consumer disputes from Consumer Affairs Victoria by calling 1300 55 81 81.

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