# Review of DHHS Child Protection Service decisions by Victorian and Civil Administrative Tribunal – toolkit

## Introduction and purpose

This toolkit provides:

* a brief overview for legal practitioners of the processes involved in applying to the Victorian and Civil Administrative Tribunal (VCAT) for review of any decision made by the Child Protection Service of the Department of Health and Human Services (DHHS) concerning a child
* a guide through the various steps necessary to seek the review of such a decision.

It features the following:

* legislation, rules, practice notes and forms
* case planning process – important points since 1 March 2016
* internal review of a case plan
* VCAT review process:
  + initiating a review to VCAT
  + lodgement of the application for review
  + the directions hearing
  + material in support of the application for review
  + functions of VCAT on review
  + fair hearing obligations
  + costs.
* a checklist for practitioners.

## Legislation, rules, practice notes and forms

### Legislation

*Children, Youth and Families Act 2005* (CYFA):

* s. 331 – internal review
* s. 333 – review by Victorian Civil and Administrative Tribunal
* s. 167 – permanency objectives
* s. 168 – preparation of case plan
* s. 169 – review of case plan

*Victorian Civil and Administrative Tribunal Act 1998* (VCATA):

* s. 4 – when does a person make a decision?
* s. 5 – when are a person’s interests affected by a decision?
* s. 45 – request for statement of reasons for decision
* s. 46 – decision maker must give statement of reasons on request
* s. 50 – effect of the original decision pending review
* s. 51 – functions of the Tribunal on review
* s. 67 – how to make an application to the Tribunal
* s. 78 – conduct of proceeding causing disadvantage
* Division 4, s. 98 – general procedure
* s. 102 – evidence
* s. 105 – rule against self-incrimination does not apply
* s. 109 – power to award costs
* s. 140 – service

### Rules

*Victorian Civil and Administrative Tribunal Rules 2008* (VCATR):

* R4.02 – appointment of litigation guardian for a child
* R4.05 – lodgement of application or referral
* R5.06 – form of application
* R4.11-4.13 – notices of compulsory conference, mediation and hearing

### Practice Notes

* Practice note PNVCAT1 – common procedures
* Practice note PNVCAT2 – expert evidence
* Practice note PNVCAT3 – fair hearing obligation

### Forms

* [Application for review of a decision](https://www.vcat.vic.gov.au/resources/application-for-review-of-a-decision-review-and-regulation) (https://www.vcat.vic.gov.au/resources/application-for-review-of-a-decision-review-and-regulation)
* [Application for an order](https://www.vcat.vic.gov.au/resources/application-for-an-order-review-and-regulation-list) (https://www.vcat.vic.gov.au/resources/application-for-an-order-review-and-regulation-list)
* [Summons to appear](https://www.vcat.vic.gov.au/resources/summons-to-appear-form-and-affidavit-of-service) (https://www.vcat.vic.gov.au/resources/summons-to-appear-form-and-affidavit-of-service)
* [File and document access form](https://www.vcat.vic.gov.au/resources/file-and-document-access-request-form) (https://www.vcat.vic.gov.au/resources/file-and-document-access-request-form)
* [Application for an adjournment](https://www.vcat.vic.gov.au/resources/application-for-adjournment) (https://www.vcat.vic.gov.au/resources/application-for-adjournment)
* [Request for consent to an adjournment](https://www.vcat.vic.gov.au/resources/adjournment-application-request-for-consent-to-an-adjournment) (https://www.vcat.vic.gov.au/resources/adjournment-application-request-for-consent-to-an-adjournment)
* [Application for leave to withdraw a proceeding](https://www.vcat.vic.gov.au/resources/application-for-leave-to-withdraw-a-proceeding) (https://www.vcat.vic.gov.au/resources/application-for-leave-to-withdraw-a-proceeding)

## Case planning process – important points since 1 March 2016

### Case planning since 1 March 2016

The *Children Youth and Families (Permanent Care and other matters) Act 2014* (CYFAA PC) commenced operation on 1 March 2016. Amongst other things, this amending Act made changes to the CYFA provisions relating to case planning.

Section 167 now requires that a case plan include one of the following five ‘permanency objectives’ to be considered in the stated order of preference as determined to be appropriate in the best interests of the child:

1. family preservation – the objective of ensuring a child who is in the care of a parent of the child remains in the care of a parent
2. family reunification – the objective of ensuring that a child who has been removed from the care of the child is returned to the care of a parent
3. adoption – the objective of placing the child for adoption under the *Adoption Act 1984*
4. permanent care – the objective of arranging a permanent placement of the child with a permanent carer or carers
5. long-term out of home care – the objective of placing the child in:
6. a stable, long-term care arrangement with a specified carer or carers, or
7. if (i) is not possible, another suitable long-term care arrangement.

Section 167(3) provides that a permanency objective of family reunification would be appropriate if the child has been in out of home care for less than 12 months and the safe reunification of the child with a parent is likely to be achieved.

Section 167(4) provides that a permanency objective of adoption, permanent care or long-term out of home care would be appropriate if:

1. the child has been in out of home care for 12 months and there is no real likelihood for the safe reunification of the child with a parent in the next 12 months, or
2. except in exceptional circumstances, the child has been in out of home care for a total of 24 months.

### Administrative conversions from 1 March 2016

The amendments contained within the CYFAA PC empower the DHHS to make significant administrative changes to protection orders. Sections 288A and 289A provide that the Secretary may administratively convert family reunification orders and care by Secretary orders to family preservation orders.

## Internal review process

Section 333 of the CYFA empowers a child or parent to apply to VCAT for review of a decision contained in a case plan prepared in respect of the child or any other decision made by the Secretary concerning the child.

However, s. 333(3) prohibits an application to VCAT unless the applicant has exhausted all available avenues for the review of the decision under s. 331.

Section 331 of the CYFA provides for internal review of decisions made as part of the decision making process following the making of a protection order.

The internal review process covers all significant decisions, including, but not limited to:

* permanency objectives
* classification of reports at intake and substantiation
* removal of children from and reunification of children with family
* placement and care of children
* access between children and their parents and others
* education and health
* case planning
* placement at a secure welfare service
* involvement of other agencies and services
* permanent care.

To seek an internal review, you must submit in writing a ‘request for a review of a child protection decision’ to the Senior Regional Officer at the relevant office of DHHS.

The written request should contain:

* the name of the child(ren) or young person(s) subject to the decision
* the date of request
* the decision or decisions you wish to have reviewed
* the name(s) of the currently allocated Child Protection Practitioner.

According to the [DHHS Child Protection Manual](http://www.cpmanual.vic.gov.au/policies-and-procedures/case-planning/internal-review-decision) (http://www.cpmanual.vic.gov.au/policies-and-procedures/case-planning/internal-review-decision):

Reviews are conducted by an executive officer with line management responsibility for the case, or by another executive officer with child protection expertise.

The reviewing officer may delegate the review process to a child protection practitioner (at minimum CPP6.2 level), as long as this will not compromise the requirements of a visibly robust, transparent and impartial review process.

The reviewer must not have had prior direct involvement in the decision under review.

Following receipt of your request for review, a review meeting with the senior regional officer will be arranged. You should receive advance notice of this meeting.

At the meeting, the chairperson (the senior regional officer) will outline their role and provide a summary of the situation. You will be asked to explain your reasons for wanting the decision change and what you would like it to be instead.

After the meeting, the matter will be looked at further and within two weeks you will receive a decision in writing.

### Requesting a ‘Statement of Reasons’

In the event that you do not receive a decision in writing following a review meeting, s. 45 of the VCATA enables a person who is entitled to have a decision reviewed by VCAT to request a decision maker provide a statement of reasons for the decision.

Such a request must be made within 28 days of the decision being made (s. 45(2) of VCATA).

The decision maker is required by s. 46 of the VCATA to provide a statement of reasons within 28 days of the request being made.

In the event that you do not receive a statement of reasons within 28 days of making the request, you may make an application for an order to VCAT, seeking that the Tribunal order a statement of reasons pursuant to s. 47 of the VCATA.

This application is to be made to the review and regulation list of the administrative division (O. 3.02 of the VCATR). The form is available on the [VCAT website](https://www.vcat.vic.gov.au/resources/application-for-an-order-review-and-regulation-list) (https://www.vcat.vic.gov.au/resources/application-for-an-order-review-and-regulation-list).

### Prescribed contents of a statement of reasons

Section 46(2) of the VCATA provides that the statement must set out:

1. the reasons for the decision
2. 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.

When filed and served, the statement of reasons provided by DHHS will usually attach copies of all materials, including reports and other documents from the CRIS file, which were relied upon in the internal review.

## VCAT review process

### Initiating a review to VCAT

Once an internal review has taken place, s. 333 of the CYFA empowers a child or parent to apply to VCAT for review of a decision contained in a case plan prepared in respect of the child or any other decision made by the Secretary concerning the child.

Section 3 of the CYFA provides that a child includes:

* a person who is under the age of 17 years, or
* if a protection order, a child protection order within the meaning of Schedule 1 or an interim order within the meaning of that Schedule continues in force in respect of him or her, a person who is under the age of 18 years.

That section also provides that a parent, in relation to a child, includes:

1. the father and mother of the child
2. the spouse of the father or mother of the child
3. the domestic partner of the father or mother of the child
4. a person who has parental responsibility for the child
5. a person whose name is entered as the father of the child in the register of births in the Register maintained by the Registrar of Births, Deaths and Marriages under Part 7 of the *Births, Deaths and Marriages Registration Act 1996*
6. a person who acknowledges that he is the father of the child by an instrument of the kind described in section 8(2) of the *Status of Children Act 1974*
7. a person in respect of whom a court has made a declaration or a finding or order that the person is the father of the child.

### Applications for review on behalf of ‘carers’

There have been recent applications for review made on behalf of carers relying on a paragraph (d) argument that they are parents under the CYFA due to them having ‘custody of the child’ under the pre-1 March 2016 definition. These were unsuccessful and it is unlikely that the amended paragraph (d) will enable carers to have standing without formal paperwork or a family law order for parental responsibility.

In the case of *PMA v DHHS* [2015] VCAT 1820 (9 November 2015), carers sought a review of the DHHS decision to exclude them as potential ‘permanent carers’ due to there being a greater than 40-year age difference between themselves and the children.

The children were aged two and three and the subjects of custody to Secretary orders. The carers argued that since the children’s birth – and prior to DHHS involvement – they had shared ‘custody’ or ‘day-to-day care’ of the children with the children’s mother and following the intervention of DHHS had assumed their full-time care. The carers argued that their case could be distinguished from other cases, where carers had been delegated custody of a child by DHHS, as their care of the children preceded DHHS involvement.

In response to this submission, Senior Member Davis concluded (at 7):

While the mother had delegated powers to the applicants to make decisions in relation to the child and those powers may have been similar to custody, it is not in my view the same as having custody of the child. That is something that needs to be obtained either through being a parent, or a definition in an Act or court order. The applicant was not entitled to any order for custody per se and certainly not by definition in the Act. There was no court order giving the applicant custody or similar such as care and control.

In his reason for judgment, Senior Member Davis referred to *UE v DHS* [2000] VCAT 59, where an application for review by carers was similarly rejected. Senior Member Davis quoted the following paragraph from his earlier judgment (at 5):

The term ‘custody’ is a technical term whether used in this Act or in the *Family Law Act*. While I may have a lot of sympathy with the applicant’s argument that they are entitled to be heard because they have in fact looked after the child almost since birth, this is not something which I should consider. What I must consider is whether they have custody within the meaning of the Act and looking at the Act as a whole and the various definitions, it appears to me they do not. While they may have done things that are consistent with custody, at all times, the Secretary of the department had an overriding power which he was entitled to exercise. The fact that he may not have exercised that power at all during the time when they have been looking after KG or exercised it rarely, to my view, is not to the point.

### Application for review

Section 48 of the VCATA provides that the review jurisdiction is invoked by a person entitled to do so under the CYFA in accordance with s. 67 of the VCATA.

The application for review of a decision form is accessible [via the VCAT website](https://www.vcat.vic.gov.au/resources/application-for-review-of-a-decision-review-and-regulation) (https://www.vcat.vic.gov.au/resources/application-for-review-of-a-decision-review-and-regulation).

This application will be made via the review and regulation list of the administrative division (O. 3.02 of the VCATR).

The application for review requires you to:

* describe the decision to be reviewed
* provide a decision makes reference number
* provide the date of decision
* outline the reasons for making the application.

You must provide documents that support your application, including any written reasons provided to you following the internal review or any statement of reasons requested from DHHS.

### Time limits

Section 333(2) of the CYFA provides that an application for review must be made within 28 days after the later of:

* the day on which the decision was made
* if a request for a statement of reasons was made, the day on which the statement of reasons was provided
* after being informed that a statement of reasons will not be provided.

If you are attempting to initiate an application for review outside of the prescribed time limits you will need to lodge an application for order, seeking an order that the time for application be extended. The form is available on the [VCAT website](https://www.vcat.vic.gov.au/resources/application-for-an-order-review-and-regulation-list) (https://www.vcat.vic.gov.au/resources/application-for-an-order-review-and-regulation-list).

### Lodgement of the application for review

Once completed, the application for review must be lodged with the Principal Registrar (R. 4.05 VCATR).

#### Online

On the [VCAT website](https://www.vcat.vic.gov.au/resources/application-for-review-of-a-decision-review-and-regulation) (https://www.vcat.vic.gov.au/resources/application-for-review-of-a-decision-review-and-regulation), you will need to have or create an account to lodge applications and documents online.

#### Via Mail

Principal Registrar

Victorian Civil and Administrative Tribunal

GPO Box 4508 Melbourne VIC 3001

#### In person

Deliver it to the Principal Registrar

Victorian Civil and Administrative Tribunal

Ground Floor, 55 King Street

Melbourne VIC 3000

Office hours: 8.30 am to 4.30 pm Monday to Friday

For further information, you can contact VCAT Review and Regulation List via telephone on (03) 9628 9755 or facsimile on (03) 9628 9788 or email [vcat-admin@vcat.vic.gov.au](mailto:vcat-admin@vcat.vic.gov.au).

The Principal Registrar will give your application a VCAT file number. Use this number on all correspondence and documents relating to your case.

The Principal Registrar will notify DHHS that the application has been received and notify both parties of the date, time and location of a Directions Hearing. This is generally in about four weeks’ time.

### DHHS must lodge material

Section 49 of the VCATA provides that within 28 days of DHHS receiving notice of the application for review, they must lodge a statement of reasons. Section 46(2) provides that the statement must set out the reasons for their decision and any findings on material questions of fact that led to the making of the decision, referring explicitly to the evidence or material relied upon.

Section 49(1)(b) goes even further, requiring DHHS to lodge ‘every other document in the decision maker's possession that the decision maker considers is relevant to the review of the decision’.

Not all documents lodged will be attached to the statement of reasons provided to parties by DHHS. Should you wish to examine the full quantity of documents lodged by DHHS, you should complete the file and document access request form, which is available on the [VCAT website](https://www.vcat.vic.gov.au/resources/file-and-document-access-request-form) (https://www.vcat.vic.gov.au/resources/file-and-document-access-request-form).

### The directions hearing

A directions hearing is a short preliminary hearing where a tribunal member will:

* decide what you and DHHS need to do to prepare the case for hearing
* set the timetable for key dates, including dates for the filing and serving of material
* decide whether there should be a compulsory conference or mediation
* make decisions about any procedural issues the parties may raise
* decide whether an expert assessment is required.

### Compulsory conferences and mediation

Section 83 of the VCATA empowers the tribunal or principal registrar to require parties to attend one or more compulsory conferences before a member of the tribunal or principal registrar before the proceeding is heard by the tribunal.

Section 86 enables a party to object to a member of the tribunal presiding over the compulsory conference, then constituting the tribunal for the purposes of hearing the proceeding.

Section 83(2) lists the functions of a compulsory conference as being to:

* identify and clarify the nature of the issues in dispute in the proceeding
* promote a settlement of the proceeding
* identify the questions of fact and law to be decided by the tribunal
* allow directions to be given concerning the conduct of the proceeding.

Section 85 provides that evidence of anything said or done in the course of a compulsory conference is not admissible in any hearing before the tribunal in the proceeding, except:

* where all parties agree to the giving of the evidence
* evidence of directions given at a compulsory conference or the reasons for those directions
* evidence of anything said or done that is relevant to:
  + a proceeding for an offence in relation to the giving of false or misleading information, or
  + a proceeding under s. 137 (contempt).
* a proceeding in relation to an order made under s. 87(b)(i).

Section 88 of the VCATA empowers the tribunal or the principal registrar to refer a proceeding or any part of it for mediation by a person nominated by the tribunal or principal registrar (as the case requires). A referral may be made with or without the consent of the parties.

Section 92 provides that evidence of anything said or done in the course of mediation is not admissible in any hearing before the tribunal in the proceeding, unless all parties agree to the giving of the evidence

Section 93A enables a party to the proceeding to object to the mediator constituting the tribunal (whether with or without others) for the purpose of hearing the proceeding. This objection must be made before or at the commencement of any hearing.

### Referral to experts and special referees

The tribunal may appoint its own expert under Cl. 7 of Schedule 3 of the VCATA or a special referee under s. 95. The tribunal may do this at the request of the parties or occasionally on its own initiative.

Schedule 3 of the VCATA sets out certain powers in relation to expert witnesses and expert evidence.

The objects of Schedule 3 are stated in Cl. 1 as being to:

1. enhance the case management powers of the tribunal in relation to expert evidence in proceedings
2. restrict expert evidence to that evidence which is reasonably required to resolve a proceeding
3. emphasise the paramount duty of an expert witness to the tribunal.

Practice Note 2 should be read in conjunction with Schedule 3. It sets out the primary obligations of an expert witness and further requirements about the preparation and giving of expert evidence.

### Material in support of the application for review

Following the directions hearing, you may be required to lodge additional written material, including statements in support of your application for review. Legal representatives do not ordinarily submit a written statement in their own name, as to do so would open them up to the possibility of cross-examination.

Statements in support should be sourced instead from:

* the applicant
* family members who hold views or information that strengthen the applicant’s position
* agency or support workers with information that strengthens the applicant’s position
* experts who are either not referred to by DHHS or who hold views or information that strengthens the applicant’s position.

### Effect of original decision pending review

Section 50 provides that the commencement of an application for review does not affect the operation of the decision or prevent the taking of action to implement the decision. However, this is subject to s. 50 (3).

Section 50 (3) empowers the tribunal to make an order staying the operation of a decision that is the subject of proceedings.

### Functions of tribunal on review

In exercising its review jurisdiction in respect of a decision, s. 51 of the VCATA provides that the tribunal has all the functions of the decision maker.

In determining a proceeding for review of a decision the tribunal may:

* affirm the decision under review
* vary the decision under review
* set aside the decision under review and make another decision in substitution for it
* set aside the decision under review and remit the matter for re-consideration by DHHS in accordance with any directions or recommendations of the tribunal
* at any time in the proceeding invite DHHS to reconsider the decision.

Section 51 of the VCATA provides that in conducting a review pursuant to s. 133 of the CYFA, the tribunal has all functions conferred under the enabling legislation. In other words, the tribunal must ‘stand in the shoes’ of the decision maker (the Secretary), and in doing so, apply the relevant provisions of the CYFA.

### Best interest principles of the CYFA

Section 8(2) of the CYFA provides that the Secretary (and therefore the tribunal in review) must have regard to the principles as set out in Part 1.2, which includes the mandatory considerations featured in section 10, sub section (1), (2) and where applicable, any matters referred to in (3).

Section 10 of the CYFA sets out the best interest principles that must be paramount to any decision made or reviewed under the CYFA. In determining the best interests of the child, it is necessary to take into account the need to protect the child from harm, protect his or her rights and promote his or her development.

In determining what decision to make or action to take in the best interests of the child, the tribunal must also consider, where relevant:

* the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child
* the need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child
* the need, in relation to an Aboriginal child, to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to their Aboriginal family and community
* the child's views and wishes, if they can be reasonably ascertained, and they should be given such weight as is appropriate in the circumstances
* the effects of cumulative patterns of harm on a child's safety and development
* the desirability of continuity and permanency in the child's care
* the desirability of making decisions as expeditiously as possible and the possible harmful effect of delay in making a decision or taking an action
* that a child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child
* if the child is to be removed from the care of his or her parent, that consideration is to be given first to the child being placed with an appropriate family member or other appropriate person significant to the child, before any other placement option is considered
* the desirability, when a child is removed from the care of his or her parent, to plan the reunification of the child with his or her parent
* the capacity of each parent or other adult relative or potential care giver to provide for the child's needs and any action taken by the parent to give effect to the goals set out in the case plan relating to the child
* contact arrangements between the child and the child's parents, siblings, family members and other persons significant to the child
* the child's social, individual and cultural identity and religious faith (if any) and the child's age, maturity, sex and sexual identity
* where a child with a particular cultural identity is placed in out of home care with a care giver who is not a member of that cultural community, the desirability of the child retaining a connection with their culture
* the desirability of the child being supported to gain access to appropriate educational services, health services and accommodation and to participate in appropriate social opportunities
* the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance
* the desirability of siblings being placed together when they are placed in out of home care
* any other relevant consideration.

### Decision making principles of the CYFA

Section 11 of the CYFA sets out principles for the way a decision is to be made. It provides that the making of a decision by the Secretary (and tribunal in review) must be:

* supportive of parents, in terms of assisting them to reach decisions and take actions to promote a child’s safety and wellbeing
* consultative of care givers when children are placed in out of home care
* fair and transparent
* participatory in terms of the child involved and any relevant family members
* collaborative
* understandable
* culturally responsive and inclusive.

Among other considerations, decisions are to be reached by consensus wherever possible and persons involved in the decision making process should be provided with sufficient information and by a method that they can understand to allow them to participate fully in the process.

Clearly, there are some principles that are unable to be practically applied by the tribunal, such as the requirement that decisions are to be reached by collaboration and consensus. In addressing this issue, Senior Member Steele in *AT v Department of Human Services* [2014] VCAT 301 observed at 12:

… [S]ome of the principles in section 11 could not be practically applied by this Tribunal in making the decision standing in the shoes of the Secretary. For example, the requirement in paragraph (e) that “decisions are to be reached by collaboration and consensus, wherever practicable” is not easily applied in the Tribunal during a contested hearing. As the provision allows, collaboration was not practicable.

Section 12 of the CYFA provides additional decision making principles for Aboriginal children, which involves the Secretary (and tribunal in review) giving consideration to the following:

* the views of relevant Aboriginal community members
* consultation with an Aboriginal agency or organisation on matters concerning placement of an Aboriginal child
* the Aboriginal Child Placement Principle.

Section 13 of the CYFA is the Aboriginal Child Placement Principle.

### Fair hearing obligations

Pursuant to the VCATA, the tribunal has a general duty to ensure a fair hearing for all parties. Such a duty also arises under s. 24 of the *Charter of Human Rights and Responsibilities Act 2006*.

A fair hearing involves the provision of a reasonable opportunity to put your case, the right to be heard and to have your case determined according to law by a competent, independent and impartial tribunal.

The provision of a fair hearing is at the heart of the tribunal’s obligations to the parties who appear before it. Sections 97, 98, 100, 101 and 102 of the Act set out some of the tribunal’s obligations regarding the conduct of hearings.

In particular, the tribunal:

* must act fairly and according to the substantial merits of the case in all proceedings (s. 97)
* is bound by the rules of natural justice (s. 98(1)(a))
* must conduct each proceeding with as little formality and technicality, and determine each proceeding with as much speed, as the requirements of the Act and the enabling enactment and a proper consideration of the matters before it permits (s. 98(1)(d))
* may conduct all or part of a proceeding by teleconference, video links or any other system of telecommunications (s.100(1))
* must hold all hearings in public unless it directs that a hearing or any part of it be held in private (s. 101)
* must allow a party a reasonable opportunity to call or give evidence, question witnesses and to make submissions to the tribunal (s. 102(1)).

### Interpreters

The tribunal provides a free interpreter service as part of its obligation to provide a fair hearing. Requests by a party for the provision of an interpreter can be made either in writing or by telephoning the tribunal.

Such requests should be made when lodging an application with the tribunal or as soon as practicable after being notified of the hearing date.

### Evidence

Section 102 of the VCATA details how evidence may be presented to the tribunal.

If a witness will not appear without a summons it is possible to apply for a summons to appear. The form is available on the [VCAT website](https://www.vcat.vic.gov.au/resources/summons-to-appear-form-and-affidavit-of-service) (https://www.vcat.vic.gov.au/resources/summons-to-appear-form-and-affidavit-of-service).

### Joinder of parties (young persons and litigation guardians)

Section 60 of the VCATA provides that the tribunal may order that a person be joined as a party to a proceeding if the tribunal considers that:

* the person ought to be bound by, or have the benefit of, an order of the tribunal
* the person’s interests are affected by the proceeding
* there is any other reason it is desirable that the person be joined as a party.

Section 62(2)(a) allows a professional advocate to appear on behalf of a child in proceedings.

Section 62(5) enables the tribunal to appoint a litigation guardian to conduct proceedings on behalf of a child.

Rule 4.02 of the VCATR provide that an application by a person to be appointed as litigation guardian of a child must be in writing and must contain a certificate of the person applying to be appointed as litigation guardian or of the solicitor for the child that:

* he or she knows or believes that the person to whom the certificate relates is a child
* the person applying to be appointed as litigation guardian has no interest in the proceeding adverse to the person to whom the certificate relates.

If an application for review is initiated by a parent in circumstances where a child or young person was formerly appointed a best interests’ representative in the Children’s Court, it may be appropriate for that same representative to apply for appointment as a litigation guardian in the VCAT proceedings.

### Rules against self-incrimination do not apply

Section 105 of the VCATA provides that a person is not excused from answering a question or producing a document in a proceeding on the ground that the answer or document might tend to incriminate the person.

If the person claims that the answer or document may incriminate them, the answer or document is not admissible in any criminal proceedings other than in respect of proceedings in respect of the falsity of the answer.

### Adjournment applications

If you are seeking to apply to adjourn a hearing, you must file an adjournment application, available on the [VCAT website](https://www.vcat.vic.gov.au/resources/application-for-adjournment) (https://www.vcat.vic.gov.au/resources/application-for-adjournment). It is also possible to serve a request for consent to an adjournment, available on the [VCAT website](https://www.vcat.vic.gov.au/resources/adjournment-application-request-for-consent-to-an-adjournment) (https://www.vcat.vic.gov.au/resources/adjournment-application-request-for-consent-to-an-adjournment).

Practice Note 1 [PNVCAT1], cl. 40–47 outline the tribunal’s general views on adjournments: ‘that they are not encouraged and there should be no expectation an adjournment will be granted even if all parties consent’. It also indicates the timelines for making applications for adjournments and the processes for doing so.

### Withdrawal of application

If the applicant decides that they wish to withdraw their application, then they are encouraged to lodge an application for leave to withdraw a proceeding form, available on the [VCAT website](https://www.vcat.vic.gov.au/resources/application-for-leave-to-withdraw-a-proceeding) (https://www.vcat.vic.gov.au/resources/application-for-leave-to-withdraw-a-proceeding).

### Costs

Section 109(1)of the VCATA establishes the general principle that each party is to bear their own costs of a proceeding. Section 109(3) sets out the exception that the tribunal may make an order that a party pay all or a part of the costs in certain circumstances. The overriding principle is that such an order must be fair.

The legal principles applicable to a successful costs application in VCAT have been helpfully distilled in the judgment of Senior Member Negay in *JG v Department of Human Services* (General) [2010] VCAT 22 (8 January 2010).