



Deputy President Michael
Macnamara with Senior
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[VCAT Retail Tenancies List](#)

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WHAT IS THE RETAIL TENANCIES LIST?

As from 1 July 1998 the Victorian Civil and Administrative Tribunal (VCAT) has been established amalgamating a range of Tribunals within the Attorney-General's portfolio. One new element of VCAT which is not reflected in any pre-existing Tribunal is the Retail Tenancies List.

The Retail Tenancies List provides for the resolution by the Tribunal of "*disputes between a landlord and tenant arising under or in relation to a retail premises lease*". The Tribunal does

not have jurisdiction to hear disputes involving claims by landlords solely for arrears of rent or in relation to the statutory rent reviews referred to in Sections 12 and 14 of the [Retail Tenancies Reform Act 1998](#).

The List also exercises a supplementary jurisdiction over disputes relative to rental premises under the [Fair Trading Act 1999](#).

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WHAT ARE RETAIL PREMISES?

The Tribunal gains its jurisdiction under the [Retail Tenancies Reform Act 1998](#). This statute defines "*retail premises*" as including any premises that are used wholly or predominantly for a business involving the sale or hire of goods by retail or the retail provision of services. The Act also applies to retail shopping centres. A "*retail shopping centre*" is a cluster of premises of which at least five are "*retail premises*" and all of which have a common landlord.

A number of classes of premises are excluded from the operation of the Act and therefore from the Tribunal's jurisdiction, including premises with a "*floor area*" exceeding 1,000 square metres; premises that are used wholly or predominantly for carrying on a business by a tenant on behalf of the landlord under a name or mark commonly associated with the landlord (eg. franchised business where the landlord is the franchisor) and premises where the tenant is a public company.

If the Tribunal has jurisdiction (under the [Retail Tenancies Reform Act 1998](#)) over a dispute it cannot be heard by any other tribunal or any court. The Tribunal's jurisdiction under the Fair Trading Act is non-exclusive.

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HOW DO I BRING A DISPUTE TO THE TRIBUNAL?

To bring a retail tenancies dispute to the Tribunal, the landlord or tenant must file an application form in triplicate with the Tribunal. Forms are obtainable from the Registry of the Retail Tenancies List, Victorian Civil and Administrative Tribunal, 7th Floor, 55 King Street, Melbourne; or

[Click here to access an application form which can be lodged with the Retail Tenancies List](#)
(For tips on downloading this document please click here)

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HOW WILL DISPUTES BE DEALT WITH?

Where the amount of a claim is \$15,000 or less, a small claims procedure will be adopted. The dispute will be referred to a one and a half hour mediation which may be extended to two hours. If the dispute has not resolved in the course of the mediation, it will be referred to immediate hearing on the same day conducted by a Tribunal member.

Claims for more than \$100,000 will be the subject of a preliminary hearing where the filing of points of claim, statement of evidence, etc. will be considered and a hearing date will be fixed for the determination of the dispute. The Registrar may refer these larger matters to mediation at any stage either before or after the preliminary hearing.

Claims ranging from \$15,000 to \$100,000 are referred first to mediation. If they do not resolve, a preliminary hearing will be conducted to give directions for the final hearing.

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WHAT ORDERS CAN THE TRIBUNAL MAKE IN RETAIL TENANCY MATTERS?

Section 38 of the [Retail Tenancies Reform Act 1998](#) empowers the Tribunal to give a range of remedies including orders requiring parties to do or refrain from doing various things, to pay money, surrender possession of leased premises or to grant injunctions.

Similar powers are exercisable under the [Fair Trading Act 1999](#) including power to vary or rescind leases and other contracts.

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WHAT PROCEDURE WILL THE TRIBUNAL ADOPT?

The Tribunal will adopt as informal a procedure as possible consistent with ensuring that each party has a proper opportunity to be heard and to challenge any evidence brought against that party. Each party will be given the opportunity to call witnesses, cross examine the other party's witnesses and make submissions.

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WHERE WILL THE TRIBUNAL SIT?

Most of the Tribunal's hearings will be conducted at its headquarters at 55 King Street, Melbourne. Where it is appropriate to do so however, the Tribunal will sit in regional locations around the State.

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CAN THE PARTIES HAVE PROFESSIONAL REPRESENTATION?

In the Retail Tenancies List the Tribunal will permit parties to be represented by lawyers and (subject to the leave of the Tribunal) by other professionals.

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HOW CAN THE TRIBUNAL'S ORDERS BE ENFORCED?

Provision is made in the [Victorian Civil and Administrative Act 1998](#) for the Tribunal's orders to be registered in the Magistrates' Court, the County court or the Supreme Court as may be appropriate and enforced as orders of those Courts.

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WHAT HAPPENS TO THE COSTS OF THE PARTIES IN RETAIL TENANCIES MATTERS?

The Tribunal has a wide discretion in the award of costs. As a matter of policy it will seek to minimise the incidence of party-party costs. In general however, a party which is successful in a dispute in the Tribunal which has proceeded to a full scale defended hearing could expect to have a costs order made in that party's favour against the losing party.

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WHAT ASSISTANCE IS AVAILABLE TO UNREPRESENTED PARTIES?

It is the duty of the presiding member at any hearing to give whatever guidance is necessary to an unrepresented party, acquainting that party with any procedural rules which may be necessary. Nevertheless, since the Tribunal member's primary duty is to be an impartial adjudicator he or she cannot take on the role of arguing the case for an unrepresented party.

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WHAT IS THE ROLE OF MEDIATION IN THE TRIBUNAL?

The Tribunal would encourage any landlord and tenant in dispute to explore all possibilities of mediation or conciliation before approaching the Tribunal. Once an application is filed with the Tribunal, the Registrar has the power and is likely to refer the matter to mediation at some point prior to a full scale hearing.

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ANY FURTHER INFORMATION?

Any questions concerning your rights as a landlord or tenant to a retail premises lease should be directed to Small Business Victoria on 9651 9888 or toll free on 1800 13 6034.

If you have any further questions or require any further information as to the Retail Tenancies List of the Victorian Civil and Administrative Tribunal you should telephone the Registry of the Retail Tenancies List on 9628 9960.

[Click here for the best view of the Retail Tenancies Reform Act 1998 and Rules "on-line" at www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au)

(Follow the directions that are given as part of the Victorian Legislation and Parliamentary Documents Home Page.)

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HOW DO I APPLY FOR AN INJUNCTION (INTERLOCUTORY RELIEF) TO THE RETAIL TENANCIES LIST?

A party seeking an Injunction pursuant to Section 123 of the [Victorian Civil and Administrative Tribunal Act 1998](#) or Section 38 of the [Retail Tenancies Reform Act 1998](#) is required to take the following steps:

1. give, in accordance with Section 140 of the [Victorian Civil and Administrative Tribunal Act 1998](#), written notice of the relief sought (i.e. the Application) both to the Tribunal and to every other party; and
2. upon service on the other parties, an affidavit providing proof of service for each of the other parties ought to be filed immediately; and
3. give a copy of the lease to the Tribunal at the time of lodging the Application or where reasonably unable to do so, no later than midday the day prior to the date fixed for the Directions Hearing; and
4. give written notice to the Tribunal and every other party by the filing and service of an affidavit or witness statement of any evidence upon which the party will rely in support of the application a reasonable time prior to the Directions Hearing and in any event no later than midday the day prior to the date fixed for the Directions Hearing; and

5. ensure the Applicant is present at the Directions Hearing as the Tribunal may require evidence to be given on oath and any witness whose evidence is relied upon may be required to be available for cross-examination should this be requested by any other party or by the Tribunal Member presiding at the Directions Hearing; and
6. ensure the Applicant is prepared to give an undertaking pursuant to Section 123(5) of the [Victorian Civil and Administrative Tribunal Act 1998](#) as to costs or damages. If the Applicant is not to be present counsel should have prior instructions.

Please note that:

- in addition to the lodgement fee, a \$100 hearing fee is required to be paid prior to the commencement of the Directions Hearing;
- any further information concerning the legislation, rules and practice notes may be obtained from the Victorian Civil and Administrative Tribunal Internet site as listed below; and
- the information contained in this brochure is only intended to provide a brief outline of the minimum requirements for an injunctive Application to the Tribunal. Anyone intending to make such an Application should seek professional advice from an experienced solicitor and, in addition to the above, refer to the:
 - [Retail Tenancies Reform Act 1998, Act No.14/1998;](#)
 - [Victorian Civil and Administrative Tribunal Act 1998, Act No. 53/1998;](#)
 - [Tribunals and Licensing Authorities \(Miscellaneous Amendments\) Act 1998, Act No. 52/1998;](#)
 - [Victorian Civil and Administrative Tribunal Rules 1998, S.R. No. 87/1998; and](#)
 - [Victorian Civil and Administrative Tribunal Practice Notes 1998.](#)

(The above legislation can be seen at the Victorian Legislation and Parliamentary Documents website <http://www.dms.dpc.vic.gov.au> We have provided direct links to the legislation in most instances.)

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