



2000-01 ANNUAL REPORT

Achieving a solid foundation... together



VCAT

VICTORIAN CIVIL AND
ADMINISTRATIVE TRIBUNAL

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Letter to the Attorney-General

The Hon Rob Hulls MP
Attorney-General
55 St Andrews Place
Melbourne 3002

Dear Attorney-General

We are pleased to present our annual report of the performance and operations of the Victorian Civil and Administrative Tribunal (VCAT) from 1 July 2000 to 30 June 2001 pursuant to Section 37 of the *Victorian Civil and Administrative Tribunal Act 1998*.

The report contains:

- a review of the operation of VCAT and of the Rules Committee during the 12 months ended 30 June 2001; and
- proposals for improving the operation of VCAT and forecasts of VCAT's workload in the subsequent 12-month period.

Sincerely



Murray B Kellam

President

30 September 2001



John Ardlie

Chief Executive Officer

30 September 2001

Background to the VCAT Act

The 1996 Department of Justice Report *Tribunals in the Department of Justice: A Principled Approach* acknowledged that tribunals "are now considered to be an integral part of the justice system". On 1 July 1998, the Victorian Civil and Administrative Tribunal (VCAT) was established under the *Victorian Civil and Administrative Tribunal Act 1998* (the VCAT Act). VCAT is led by a Supreme Court judge as President and is divided into two divisions (Civil and Administrative). Two County Court judges each supervise one division as Vice President. These divisions comprise various Lists, each headed by a Deputy President. A Rules Committee appointed under the VCAT Act develops rules of practice and procedure, and Practice Notes for VCAT. VCAT provides accessible justice in the State of Victoria in respect of both administrative review matters and civil disputes.

About this Annual Report

The annual report is the major publication produced by VCAT each year. It complies with the *Victorian Civil and Administrative Tribunal Act 1998* and is used to inform government employees, students, VCAT users and other interested parties about VCAT's activities and achievements.

Our Theme

In our third year of operation, we chose the theme 'Achieving a solid foundation... together' for our 2000–01 annual report to symbolise our ongoing commitment to a unified approach to dispute resolution and our efforts in achieving a year of consolidation at VCAT.

Cover Photo

From left, members of the newly formed VCAT Mediation Services Greg Lyons, Regan Cupples and George Adgemis meet with mediator Julie Dawson and Deputy President Anne Coghlan to discuss upcoming mediation needs in the Anti-Discrimination List.

Vision

Our vision is to set the standard for dispute resolution by achieving a high level of quality decision-making, timeliness and service excellence.

Purpose

Our purpose is to deliver a modern, accessible, informal, efficient and cost-effective tribunal justice service to all Victorians, while making quality decisions.

Aims and Objectives

List Users

Achieve excellence in our service to List users by being:

- Cost-effective
- Accessible and informal
- Timely
- Fair and impartial
- Consistent
- Quality decision-makers

Our Role

Effectively anticipate and meet the demands for dispute resolution by being:

- Independent
- Responsible
- Responsive

Our People

Encourage the development of flexible, satisfied and skilled members and staff by providing:

- A safe, challenging and team-oriented work environment
- Training and development
- Appropriate use of specialised expertise

The Community

Ensure that VCAT continues to raise awareness of its services and to improve its service delivery to the community through:

- User feedback
- Education

Who We Are

The Victorian Civil and Administrative Tribunal (VCAT) began operations on 1 July 1998 as part of an initiative to improve the operation of the tribunal justice system in Victoria by:

- streamlining administrative structures;
- increasing flexibility; and
- improving the operation of tribunals.

VCAT amalgamated all or part of 14 former boards and tribunals and comprises two divisions, Civil and Administrative. Each division has a number of Lists that specialise in particular types of cases.

VCAT has a five-tiered hierarchy of members:

- the President of VCAT who is a Supreme Court judge;
- two Vice Presidents who are County Court judges and are appointed to head each division;
- Deputy Presidents who are appointed to manage one or more Lists; and
- Senior Members and other members who serve on the Lists on a full-time, part-time or sessional basis.

Members are assigned to specific Lists by the President according to their expertise and experience. If a member has appropriate qualifications, he or she may be assigned to hear cases in more than one List. This allows for the most efficient use of members' time, as well as flexible and appropriate use of members' expertise. Of the 38 full-time members, 29 are allocated to more than one List. The remaining full-time members are specialist planners or planning lawyers who work exclusively in the Planning List.

What We Do

In our Civil Division, we assist Victorians in resolving a range of civil disputes that involve:

- consumer matters;
- credit;
- discrimination;
- domestic building works;



Two of the key people responsible for the successful launch in August 2000 of VCAT Online Janet Street and Jim Nems review the VCAT Online brochure. The brochure was part of a presentation package designed to introduce VCAT Online to users of the Residential Tenancies List. The new service enables registered users of this high volume List to complete application forms, and to generate and print notices of dispute under the Residential Tenancies Act 1997 via the Internet.

- guardianship and administration;
- residential tenancies; and
- retail tenancies.

In our Administrative Division, VCAT deals with disputes between people and government about:

- land valuation;
- licences to carry on business, involving such business enterprises as travel agencies and motor traders;
- planning;
- state taxation; and
- other administrative decisions such as Transport Accident Commission decisions and Freedom of Information issues.

We also review decisions made by a number of statutory professional bodies such as the Medical Practice Board of Victoria.

VCAT aims to provide a timely, efficient and cost-effective dispute resolution service. Its members have a broad range of specialised skills to hear and determine cases. Experienced members, including judges, legal practitioners and members with specialised qualifications, enable VCAT to hear the widest range of complex matters.

Highlights

List Users

- Received 92,446 applications (87,768 in 1999–2000), representing a 5% rise.
- Resolved 91,482 cases (87,262 in 1999–2000) representing an increase of 5%.
- Matters pending totalled 10,780 (9,816 in 1999–2000) representing an increase of 10%.
- Improved VCAT web site functionality and launched VCAT Online to enable registered users of the Residential Tenancies List to lodge applications and prepare and print notices electronically across Victoria.
- Received 5,438 applications for the Residential Tenancies List via VCAT Online (17% of the total applications that could be lodged electronically).
- Visitors to VCAT web site rose dramatically from around 50,000 in 1999–2000 to more than 122,000 in 2000–01.

Our Role

- VCAT operating expenditure decreased by 1%, from \$19.96 million in 1999–2000 to \$19.73 million in 2000–01.
- Introduced VCAT Mediation Services to strengthen mediation throughout VCAT.
- Hosted mediation development program for Magistrates from Papua New Guinea.

Our People

- Provided all staff access to a wide variety of in-house training and training programs offered by the Department of Justice.
- Decreased VCAT membership from 185 in 1999–2000 to 179 in 2000–01.
- Achieved significant improvements in training and development for VCAT members.
- Assisted eight members to participate in a pilot course at Monash University entitled *Decision Making for Tribunal Members*.

The Community

- Conducted regular user group meetings across Lists aimed at improving service delivery by encouraging feedback from the community that uses VCAT's services.
- Judicial Members, Deputy Presidents, members and senior staff presented a number of information sessions to raise awareness about VCAT's services.
- Further improved awareness of VCAT's services in rural areas and accessibility to VCAT by country users via VCAT Online and increased country visits.
- Introduced payment options for VCAT fees.

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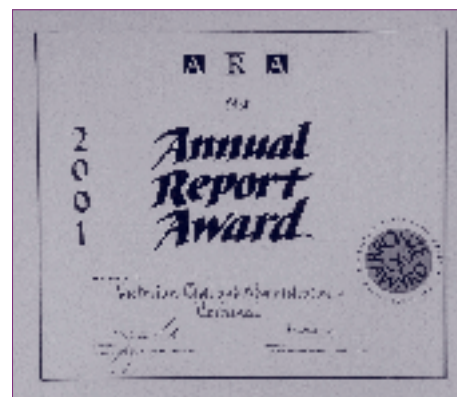
12 From left, Horsham Court Registrar Tim Nihill, Magistrate Tim McDonald and Sessional Member of VCAT Ted McCabe discuss VCAT hearings scheduled in Horsham. VCAT's informal approach has assisted in improving its relationships with country court officials and achieving greater awareness of the services VCAT offers for the benefit of country users.

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VCAT received a Bronze Award for its 1999–2000 annual report from Annual Report Awards Inc (ARA) in June 2001. The ARA sets strict standards and criteria that reflect national and international best practice in annual reporting.



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(Top left) Attorney-General Rob Hulls enjoys morning tea with members on his visit to VCAT in March 2001. The visit provided an opportunity for Mr Hulls to introduce himself to members and conduct an informal discussion about issues relevant to members.

Year at a Glance

Item	2000-01	1999-2000	% Change
List Users			
Applications received	92,446	87,768	5
Cases resolved	91,482	87,262	5
Cases pending	10,780	9,816	10
Percentage of cases settled by mediation	60	n/a	n/a
Unique visitors to VCAT web site	122,000	50,000	144
Hearing venues used	91	114	(20)

Our Role

Number of applications received per List:

■ Residential Tenancies List	71,541	68,588	4
■ Planning List	3,138	3,092	1
■ Guardianship List	9,036	8,953	.09
■ General List and Taxation List	1,372	1,429	(.04)
■ Domestic Building List	1,036	855	21
■ Anti-Discrimination List	497	519	(4)
■ Civil Claims List	5,243	3,835	37
■ Real Property List	31	23	35
■ Retail Tenancies List	203	199	0
■ Occupational and Business Regulation List	106	139	(24)
■ Land Valuation List	145	26	458
■ Credit List	94	110	(15)

Our People

Total employees	149	141	.06
Full-time membership	43	38	13
Sessional membership	136	147	(.07)

The Community

User group meetings conducted	16	22	(27)
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	2000-01	1999-2000	1998-99
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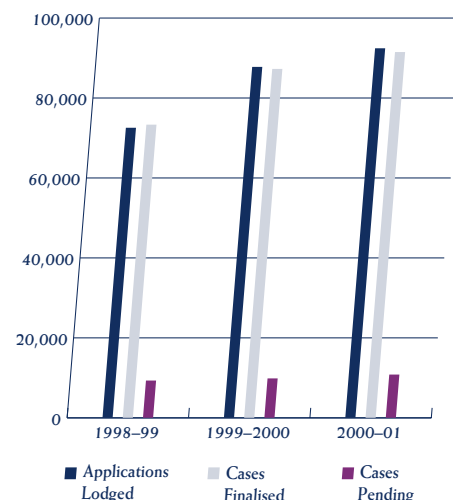
Financial Summary — 1998-99 to 2000-01

VCAT funding sources (budget):	(\$M)	(\$M)	(\$M)
■ Appropriations (VCAT)	11.24	11.63	10.85
■ Residential Tenancies Trust Fund	6.31	6.02	5.17
■ Domestic Building Trust Fund	1.35	1.41	1.46
■ Guardianship and Administration Trust Fund	0.83	0.90	0.80
Total:	19.73	19.96	18.27
VCAT operational expenditure:			
■ Salaries to staff	5.62	5.42	4.58
■ Salaries to full-time members	4.25	4.54	3.95
■ Sessional members	2.59	2.62	2.40
■ Salary related on-costs	1.50	1.82	2.16
■ Operating costs	5.77	5.55	5.19
Total:	19.73	19.96	18.27

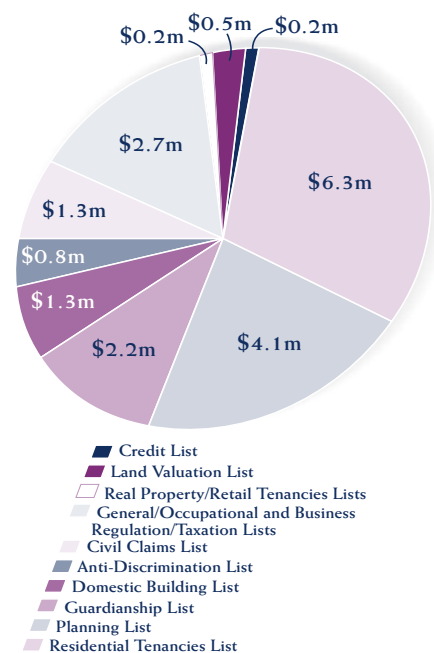
Note: The statistics quoted in this annual report in some instances vary from those given in VCAT's 1999-2000 annual report. These variances are mainly due to improvements in statistical reporting, which have occurred during 2000-01 or changes in classification of cases over that time.

n/a— data not available.

All VCAT Cases—1998-2001



VCAT Expenditure by List 2000-01 Total Expenditure \$19.7 Million



One fundamental indicator of VCAT's performance is whether cases finalised in a year equal the number of applications received, with cases pending staying at an acceptable level. This was achieved during 2000-01. VCAT expenditure totalled \$19.7 million, which was divided among the Lists as shown.

Objectives and Results 2000–01

Aims and Objectives	Strategies
<p>List Users</p> <p>Deliver excellence in service by being:</p> <ul style="list-style-type: none"> • Cost-effective • Accessible and informal • Timely • Fair and impartial • Consistent • Quality decision-makers 	<ul style="list-style-type: none"> • Provide a structure that minimises legal costs to the user. • Provide easy access for users so that their cases may be resolved quickly and conveniently. • Ensure cases are dealt with and resolved as quickly and effectively as possible. • Resolve cases with fairness and objectivity. • Provide a sufficient number of members with specialised skills to make consistent, quality decisions.
<p>Our Role</p> <p>Effectively anticipate and meet the demands for alternative dispute resolution by being:</p> <ul style="list-style-type: none"> • Independent • Responsible • Responsive 	<ul style="list-style-type: none"> • Make effective use of our role as a quasi-judicial and administrative review body in managing our affairs independently of government. • Use our resources to resolve disputes efficiently.
<p>Our People</p> <p>Encourage the development of flexible, satisfied and skilled members and staff by providing:</p> <ul style="list-style-type: none"> • A safe, challenging and team oriented work environment • Training and development • Appropriate use of specialised expertise 	<ul style="list-style-type: none"> • Ensure Registry staff have the skills necessary to perform their roles efficiently. • Enhance the specialised skills and expertise of members to enable them to manage the dispute resolution process fairly and effectively, and to make quality decisions.
<p>The Community</p> <p>Ensure that VCAT continues to raise awareness of its services and to improve its service delivery to the community through:</p> <ul style="list-style-type: none"> • User feedback • Education 	<ul style="list-style-type: none"> • Monitor the quality of the dispute resolution process through community feedback. • Raise community awareness of the services VCAT provides. • Provide a state-wide service to users.

Results	Future
<ul style="list-style-type: none"> Established VCAT Mediation Services to strengthen our approach to applying mediation standards across VCAT. Achieved a mediation settlement rate of approximately 60%. Maintained the focus on efficient case management by completing the full implementation of the Caseworks case management system. 	<ul style="list-style-type: none"> Arrange training opportunities for mediators, such as co-mediators and observing other mediators at work. Improve success rate of mediations by identifying a core group of mediators that can be offered regular mediations. Improve case flow statistical reporting to more closely monitor the status of cases.
<ul style="list-style-type: none"> Received 5,438 applications for the Residential Tenancies List via VCAT Online (17% of the total applications that could be lodged electronically). Significantly reduced operating costs and the time taken to produce and post Residential Tenancies List orders to parties at hearings using the Order Entry System (OES). 	<ul style="list-style-type: none"> Further develop and promote the use of VCAT Online to enable 35% of the total applications that can be lodged electronically to be lodged via the Internet. Expand OES to suburban and country venues, and develop OES to enable Guardianship List orders to be generated.
<ul style="list-style-type: none"> VCAT faced challenges in providing a timely service due to budget constraints, which were resolved by mid 2000–01. Published the User Service Charter on the VCAT web site. 	<ul style="list-style-type: none"> Finalise 80% of cases within target times, as far as the budget allows. Publish the User Service Charter for hard copy distribution.
<ul style="list-style-type: none"> Our efforts to secure adequate resources resulted in an additional \$3.6 million over four years to meet rising demand. 	<ul style="list-style-type: none"> Monitor and anticipate workload to give accurate advice to government about future membership and resource needs.
<ul style="list-style-type: none"> Monitored community perception through user groups, user feedback and by monitoring the media. 	<ul style="list-style-type: none"> Continue to monitor community perception through user groups, user feedback and by monitoring the media.
<ul style="list-style-type: none"> Resolved 91,482 cases at a cost of \$19.73 million (4% more cases than the projected total of 87,828). 	<ul style="list-style-type: none"> Resolve 96,000 cases within the resourcing provided by the Victorian Government to VCAT.
<ul style="list-style-type: none"> Gave staff access to internal training and the wide range of training programs conducted by the Department of Justice (DOJ). Provided training to improve skills in computer software. 	<ul style="list-style-type: none"> Maintain staff access to DOJ training programs and hold an interactive, in-house staff conference in September 2001. Participate with other courts and tribunals in developing a comprehensive tertiary course for court and VCAT staff.
<ul style="list-style-type: none"> Increased expenditure for training and development at VCAT by 75%. Assisted eight members to participate in a Monash University pilot course entitled <i>Decision Making for Tribunal Members</i>. 	<ul style="list-style-type: none"> Work with the Judicial College of Victoria to enhance member training and development.
<ul style="list-style-type: none"> Held user group meetings in most Lists on a regular basis to enable a valuable exchange of information. Monitored user complaints to identify areas needing improvement, such as the format and content of standard letters. 	<ul style="list-style-type: none"> Continue to conduct regular user group meetings in most Lists to gather feedback from the community. Continue to monitor user complaints to ensure the quality of our services to users.
<ul style="list-style-type: none"> Improved the VCAT web site to include more information about VCAT and to provide all forms online. 	<ul style="list-style-type: none"> Refine navigation and functionality of the VCAT web site.
<ul style="list-style-type: none"> Improved access for country users via VCAT Online and increased hearings, and introduced extra payment options. 	<ul style="list-style-type: none"> Roll out OES to suburban and country venues starting with a pilot at Sunshine and Ballarat Magistrates' Courts.

President's Report

We achieved a unified approach to dispute resolution with great energy and resolve.

During our third year of operation at the Victorian Civil and Administrative Tribunal (VCAT), we continued our ongoing commitment to achieving a unified approach to dispute resolution with great energy and resolve. This has enabled us not only to begin to set the benchmark for ADR but to reach a stage of consolidation at VCAT. We have worked together to achieve a solid foundation for future growth. It has been a very exciting period for all of us at VCAT.

Managing a Rising Case Load

Despite another rise in case load and a mounting backlog early in 2000–01 due to budget restrictions, we managed our resources effectively to secure the additional funding needed to clear the backlog, while achieving a satisfactory level of timeliness overall.

In 2000–01, VCAT dealt effectively with 91,482 applications, reviews and referrals—5% more than we handled in 1999–2000 (87,762) and 4% greater than our anticipated case load. VCAT operating expenditure decreased by 1%, from \$19.96 million in 1999–2000 to \$19.73 million in 2000–01. We resolved 91,482 cases in 2000–01, an increase of 5% on the 87,262 cases resolved in 1999–2000. At the end of 2000–01, there were 10,780 cases pending, an increase of 10% on the 9,816 cases pending in 1999–2000.

Alleviating Budgetary Concerns

Budgetary concerns at the start of the financial year had a significant impact on the capacity of VCAT to list a sufficient number of sessional members to hear cases. This was particularly so in the Civil Claims List and Planning List. For the first three months of the financial year, substantial delays in those two Lists occurred. Fortunately, extra funding of \$350,000 was provided to the Department of Justice (DOJ) by the Minister for Planning to enable early intervention in the delays, which became established in the Planning List in July and August 2000. Through the assiduous work of VCAT members and staff, the delays were significantly reduced by March 2001 in the Planning List. Regrettably, substantial delays developed in the Civil Claims List until an extra \$370,000 in funding was supplied by the DOJ in February 2001.

These problems underscore the need for establishing an appropriate strategic plan in respect of the budgetary process and the provision of funding to VCAT. If we are to meet our statutory obligations with maximum efficiency, the allocation of funding to support our operations must be established earlier than is presently the case.

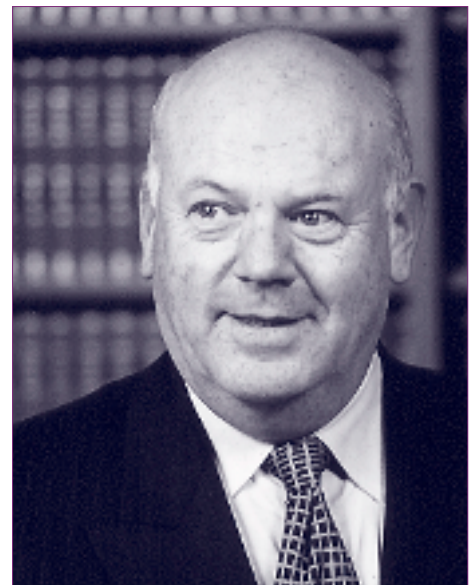
Public Criticism of Planning List

The Planning List has been the subject of considerable media publicity expressing dissatisfaction by some councils about some planning decisions. It has been suggested by such councils in newspaper reports that the operation of the Planning List at VCAT is "undemocratic".

I believe the criticism of the planning members of VCAT and the Planning List to be most unfair. Such criticism in circumstances where the members are required to make decisions in a context of great change and fluidity of planning policy and reform has been both ill-informed and unfair. VCAT planning members are required to decide cases according to the law. If planning laws are perceived as requiring reform or are inadequate in meeting the needs of the community, then that is a matter for Parliament. I am satisfied that all members of the Planning List hear and determine the cases before them with fairness, objectivity and in accordance with the law in what are often difficult circumstances. I am confident that they will continue to do so.

Member Remuneration Concerns

In January 2001, the Judicial Remuneration Tribunal (JRT) handed down its report in relation to the remuneration of tribunal members. Regrettably, neither the majority decision nor the minority decision of the JRT was accepted by the Government. The issue of VCAT members' remuneration is a matter of significant concern. All members of the JRT clearly recognised in their report that the issue of adequate remuneration for tribunal members has been neglected for more than a decade. This neglect has had, and will continue to have, unless rectified soon, a deleterious and insidious consequence upon the capacity of VCAT to meet its statutory obligations. The attraction to VCAT and retention of highly skilled lawyers, planners and others with relevant expert qualifications is of



President of VCAT Justice Murray B Kellam.

utmost importance to the community acceptance of, and respect for, VCAT and its decisions. The interests of VCAT require the past neglect in relation to member remuneration to be rectified without further delay.

Strengthening Mediation at VCAT

Mediation is already an integral part of VCAT's work and we have taken steps to strengthen its role at VCAT. We are determined to provide high level mediation opportunities for VCAT users. To achieve this goal, we have:

1. Established VCAT Mediation Services

I appointed Senior Member Dr Gregory Lyons to the new position of Principal Mediator to head a new section of VCAT called VCAT Mediation Services. Responsibilities of this new area include listing mediations, professional development for mediators and collecting statistics that reflect the extent of VCAT's mediation work. I assigned Listings Manager George Adgemis and Regan Cupples also from the Listings area to work with Dr Lyons.

2. Initiated a Process to Identify a Core Group of Mediators

We plan to undertake a process that will enable us to identify a core group of mediators for each List to chair mediation sessions. VCAT Mediation Services will offer these mediators regular VCAT mediation engagements. I anticipate that

these mediators will enhance their skills significantly, thereby maximising the opportunities for successful outcomes.

These measures have one key objective—to ensure that when people come to VCAT for a mediation, it will be of the highest possible standard, resulting in the most successful and acceptable outcome. We provide more information about mediation on pages 16–18.

Monash University Pilot Program

As part of our plan to improve the quality of decision-making at VCAT, we participated in a pilot program conducted by the Faculty of Law at Monash University. The program was designed specifically for tribunal members and called *Decision Making for Tribunal Members*. We sponsored eight members to undertake the six-month pilot program. The course is available electronically throughout Australia and Asia via the Internet. Following the successful pilot, Monash University will offer a Graduate Diploma in tribunal procedures.

Increased Accessibility to VCAT

VCAT users, particularly those who reside in rural areas, enjoyed increased accessibility to VCAT during the year in review with the introduction of VCAT Online and an increased number of country visits. In particular, VCAT Online enables registered users of the Residential Tenancies List to lodge applications and generate and print notices of dispute under the *Residential Tenancies Act 1997* via the Internet. Since its introduction, we received a total of 5,438 applications through VCAT Online, representing 17% of applications that could be lodged electronically in the Residential Tenancies List. More information about VCAT Online is on page 12.

Setting the Standard

Our vision is to set the standard for tribunals in Australia. I believe we have begun to achieve this vision as evidenced by the high level of interest in VCAT from overseas and interstate. The Western Australian Law Reform Commission reviewed our operations and, as a result, recommended that a similar organisation be established in Western Australia. In addition, we had enquiries from as far away as the United Kingdom asking for information about VCAT, as well as a visit

from Magistrates in Papua New Guinea who reviewed our approach to mediation.

Training and Development

The year in review saw significant improvements in training and development for members. For the first time since VCAT began, we were able to significantly increase our expenditure for training and development of VCAT members by 75%. We conducted several training and development programs, including:

- individual List training;
- a full-day seminar for General List and Planning List members;
- participation of 80 members in the Australian Institute of Judicial Administration (AIJA) Tribunals' Conference; and
- participation of eight members in the Monash University tribunals' studies pilot program.

A significant future development will be the formation of the Judicial College during the next financial year. The *Judicial College of Victoria Bill* received Royal Assent on 29 May 2001. At the time of writing, the college has been provided with \$2.7 million to fund education programs over the next four years. I believe this is a significant step for VCAT members in terms of wider opportunities for professional education.

Changes in Membership

His Honour Judge Wood's term as Vice President of VCAT expired on 31 January 2001. He returned to the County Court to sit full-time. I wish to record my personal gratitude to Judge Wood for the major contribution that he made to the establishment of VCAT. His drive, enthusiasm and common sense contributed greatly to the Administrative Division and to its success. He was replaced by His Honour Judge Strong on 1 February 2001. Judge Strong's contribution in terms of leadership as head of the Administrative Division has been obvious and significant already.

The term of His Honour Judge Davey expired on 28 June 2001 and he has returned to full-time duties as a judge of the County Court. Judge Davey's input into the creation and establishment of VCAT cannot be overstated. In addition to the leadership he provided to the Civil Division, his knowledge of building matters and computer technology were of great

importance in the renovation of 55 King Street and in the establishment of the VCAT Registry. His Honour Judge Duggan was appointed on 29 June 2001. Both Judge Wood and Judge Davey were re-appointed on 29 June 2001 as Vice Presidents of VCAT to assist on an occasional basis.

VCAT's membership decreased during 2000–01. We provided opportunities for members to build upon their skills and experience. We rotated five Deputy Presidents to different Lists to spread their skills, enabling them to apply a different approach to their respective Lists. Significantly, former Senior Member Mary Urquhart was appointed Deputy President of the Civil Claims List on 1 June 2001. I am pleased to announce that Jane Monk has been appointed as a Senior Member. Her appointment marks the first time in the history of tribunals in Victoria that a planner has been appointed to a senior position.

Acknowledgments

I wish to acknowledge the valuable contributions of our Rules Committee, Heads of List Committee, Professional Development Coordinating Committee and sub-committees, including the important contribution of the Mediation Sub-Committee. I express my deepest gratitude to Deputy Presidents, members, management and staff for their dedication and commitment in achieving a year of consolidation for VCAT. I particularly wish to thank Chief Executive Officer John Ardlie, Principal Registrar Ian Proctor, Listings Manager George Adgemis and the Registry staff who performed admirably under intense pressure. I acknowledge the great debt I owe to my associate, secretary and tipstaff. I acknowledge also the significant contribution to VCAT made by our new librarian Clare O'Dwyer.

During the year in review, we succeeded in building upon the solid foundations we have established, achieving a year of consolidation at VCAT. I have no doubt that, together, we will continue to achieve a high level of quality decision-making, member flexibility, timeliness and service excellence for the benefit of all Victorians.



Murray B Kellam
President

Vice Presidents' Divisional Review

We met our objectives and handled our respective workloads in a timely manner

The Lists in the Civil Division and Administrative Division of VCAT performed well during 2000–01, meeting set objectives and handling their respective workloads in a timely manner. Although we report on the performance of individual Lists starting on page 18, the following divisional overview summarises the key highlights of each division.

Civil Division

In the Civil Division, the volume of applications received increased by 6%. The Lists most affected by the increase in case load are detailed as follows:

- The case load of the Residential Tenancies List, which is by far the largest List in VCAT, increased by 4% to 71,541 applications.
- The introduction last financial year of the *Fair Trading Act 1999* continued to have an impact, resulting in a higher volume of applications being reviewed in the Civil Claims List (a 37% increase) and a wider range of disputes in Retail Tenancies List, although the number of applications received remained steady.
- The Domestic Building List experienced an increase of 21%.

These results were somewhat offset by decreases in other Lists, including a:

- 4% decrease in the Anti-Discrimination List; and
- 15% decrease in the Credit List.

Settlement rates obtained at mediation continued to be maintained at approximately 65% of cases in the Domestic Building, Retail Tenancies and Anti-Discrimination Lists. It is interesting to note that a proportion of those 35% of cases that do not settle at mediation go on to settle without the need for a hearing, probably as a consequence of the parties starting to communicate at mediation.

Early in 2001, we further upgraded the Tribunal Management System (TM) to support the Guardianship List. The

upgrade has substantially improved automated reporting that tracks compliance with VCAT orders made in the Guardianship List.

Two other important components of TM for the Residential Tenancies List—VCAT Online and the Order Entry System—also reaped substantial benefits for the division. More information about these two systems can be found on pages 12 to 13 of this annual report.

Administrative Division

In the Administrative Division, the volume of applications received increased by 2%. The List that contributed most to the increase in case load was the Land Valuation List with 119 additional cases. This substantial increase was attributed to the completion of the new general municipal valuations.

Offsetting this result were decreases of:

- 4% in the General and Taxation List; and
- 24% in the Occupational and Business Regulation List.

The use of mediation throughout the division was adopted where appropriate by the Lists that made use of mediation. Settlement rates obtained at mediation varied between 55% and 65% for individual Lists.

A significant development in the Administrative Division has been the completion of the Caseworks case management system. In May 2001, we completed the roll-out of Caseworks to the General List, Land Valuation List, Planning List and Taxation List. Caseworks showed immediate benefits that included a significant improvement in the content and presentation of notices sent out by VCAT. More information can be found on page 12.

We wish to thank all the Deputy Presidents and members of the Civil



Vice President, Civil Division, Judge Fred Davey.



Vice President, Administrative Division, Judge Michael Strong.

Division and Administrative Division for their substantial contribution during another successful financial year at VCAT.


Fred Davey

Vice President, Civil Division



Michael Strong

Vice President, Administrative Division

Chief Executive Officer's Message

The year in review has been an exciting one, with the realisation of a number of major initiatives.

The year in review has been an exciting one, with the realisation of a number of major initiatives. This has enabled VCAT to consolidate its operations within the Registry and the Lists at VCAT to serve users efficiently across Victoria.

One indicator of this achievement is that, as detailed elsewhere in this report, VCAT's recurrent expenditure of \$19.73 million in 2000–01 was 1% lower than the \$19.96 million VCAT expended in 1999–2000. In contrast, matters finalised rose 5% from 87,762 in 1999–2000 to 91,482 in 2000–01. I recognise the significant contribution made by administrators and secretarial staff, who provide support services to the many members of VCAT, and thank them for helping to achieve this result.

While overall case numbers have increased, staff continued to provide high levels of support to the judges, members and users of VCAT. We established a number of major technological initiatives, which have improved public access significantly and enabled VCAT to maintain current hearing time frames in the high volume Lists.

We installed the Order Entry System at 55 King Street to provide VCAT users in the Residential Tenancies List with a copy of the VCAT order at the conclusion of the hearing. This system will be rolled out across the State from August 2001.

Since its introduction in August 2000, VCAT Online has performed beyond our predictions with the number of registered users increasing significantly. We expect that up to 35% of this List's lodgements will be via the Internet, with obvious efficiency gains to VCAT and benefits to VCAT users.

We introduced the new computer system *Caseworks* to enable us to accurately measure and assess the progress of files at various stages. Previously, case management was performed manually and, by reason of the large volume, the analysis of small numbers of files was based on assumptions concerning case flow patterns. *Caseworks* enables us to accurately report on the status of each List's case inventory. These reports accompany individual List performance starting on page 18.

In support of the President's strong desire that all VCAT proceedings be recorded and following a successful evaluation program, digital recording was extended to 22 hearing rooms in July 2001. The remaining rooms will continue to use 'tape' technology. We will examine and evaluate the provision of recording technology for circuit hearings in 2001–02.

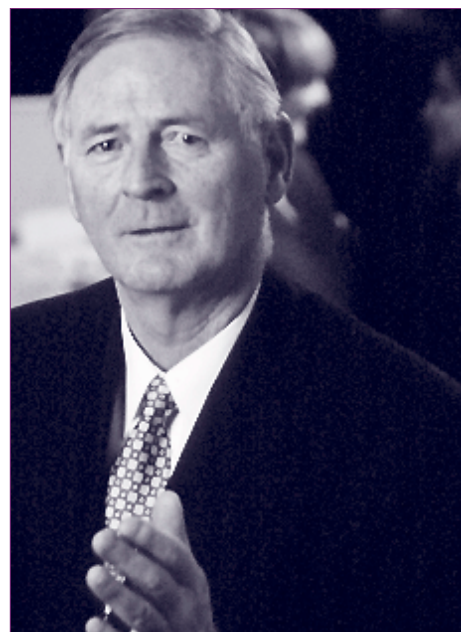
I congratulate Peter Anderson, David Freeman and Lucille DeKraan on their work with the VCAT web site, which receives an average of 15,000 'page hits' weekly. The interactive site provides access to all VCAT forms and has links to related sites for the convenience of users.

During the financial year, I appeared before the Law Reform Committee during their deliberations about *Legal services in rural and regional Victoria*. The Committee's report, dated May 2001, commended VCAT for its use of technology in improving access and services. We agree with the Committee's comments and recommendations to use rurally-based court registrars to provide VCAT related services in their respective areas. Additionally, we will consult with rural communities where there may be a need to establish VCAT hearings to meet a particular need.

This year, we realised the significant benefits that have flowed from our Central Listing Directorate. In that regard, I thank George Adgemis and his dedicated team for establishing efficient listing techniques to support the members at VCAT. They are more efficiently scheduled to resolve disputes at venues across Victoria.

I recognise the work of the Judges' Tipstaves who work directly with our Hearing Room Coordinators to assist the parties, their witnesses and VCAT members, particularly in the high volume Lists. I thank our own 'outposted' personnel at suburban and regional courts and thank all the court registrars and their colleagues who assist our members and VCAT users at courts across the State.

I thank the Secretary of the Department of Justice Mr Peter Harmsworth. I am grateful to him and his colleagues who were partic-



Chief Executive Officer John Ardlie

ularly helpful during the Department of Justice Economic Review discussions.

I thank VCAT President Justice Kellam for his strong support to me and to the administrators, including the court staff who assist VCAT around Victoria.

I wish to record my personal appreciation for the work of the Vice Presidents and members. Their contributions do much to nurture the excellent working environment that exists at VCAT.

I recognise the considerable efforts of the Principal Registrar, Senior Registrars and their colleagues who are all entitled to be proud of their individual efforts during a year of consolidation at VCAT.

I acknowledge with gratitude the efforts of my personal staff Mirella Scaramuzzino, Lorraine Renouf, Alan Karfut, John Ruberto, Sam Kenny and our newest team member Rupali Varma, with particular thanks to Jo Lawson for her valuable assistance. They have worked tirelessly to assist in enabling VCAT to operate as an efficient component of Victoria's justice system.

A handwritten signature in dark ink, appearing to read 'John Ardlie'. The signature is fluid and cursive, written over a light background.

John Ardlie
Chief Executive Officer

User and Community Relationships

We develop relationships to ensure we continue to meet the demand for VCAT's services.

We develop relationships with key user groups and the community to ensure that we continue to meet the demand for VCAT's services in an easily accessible, timely and effective manner.

Hearing Locations

During 2000–01, the number of hearing venues decreased. However, we increased the frequency of visits to rural Victoria. VCAT members conducted hearings at 55 King Street, Melbourne, and at 91 suburban and rural locations throughout Victoria (114 in 1999–2000). This report includes a full list of hearing venues on pages 61–62. In addition, the map of Victoria on the inside back cover provides information at a glance.

In addition to established hearing venues, VCAT members hear cases at locations convenient to the user. During the financial year, these included hospitals, private nursing homes and special accommodation houses.

The Benefit of Magistrates as Sessional Members

Magistrates are appointed as sessional members for the benefit of users. Our Magistrate sessional members include three Deputy Chief Magistrates in Melbourne and Magistrates located in Dandenong, Horsham, Shepparton, Bendigo, Sale and Geelong. Our use of Magistrates continued to increase the strength of our presence in rural Victoria and maximised our ability to handle urgent applications.

Conferences by Video and Telephone

We offer users the convenience of having their hearings conducted by video or telephone if they are unable to attend designated hearing locations. For a nominal fee, we can arrange video links with locations around Australia and overseas.

During 2000–01, VCAT members conducted approximately 47 video conferences (38 in 1999–2000). These

included links throughout Australia with Albury, Ballarat, Barwon Prison, Brisbane, Bendigo, Darwin, Geelong, Hamilton, Hobart, Horsham, Lismore, Mildura, Portland, Shepparton, Swan Hill, Sydney, Wangaratta, Warnambool and Wodonga.

Telephone conferences occurred regularly at VCAT, with members conducting on average 12 to 15 hearings by telephone each week.

Front Counter Service

The VCAT front counter is located on the ground floor of 55 King Street. A total of five front counter service staff members assist users with general advice about VCAT operations and hearing procedures. They are responsible for helping users applying to VCAT, arriving for hearings, requesting certified copies of orders and asking for warrants to be prepared for orders involving residential tenancies matters.

Two important tasks for front counter staff involve processing warrants and certified copies of orders as efficiently as possible.

During 2000–01, waiting times for the high volume task of preparing warrants continued to be minimal, taking an average of 15 minutes to process. Staff prepared between 25 and 30 warrants per day. In October 2000, we extended the service to enable users to pay for warrants by credit card without having to come to VCAT and pay over the counter. This represented a beneficial improvement, providing added convenience for users and more timely processing of warrants by enabling us to send warrants by facsimile directly to real estate agents, landlords or police stations.

Service staff continued to achieve a quick turnaround time of 24 hours in preparing certified copies of orders, which are used in enforcement proceedings. Staff prepared an average of 15 certified copies of orders per day and processed as many as 40 per day during busy periods.



From left, Customer Service Manager Tony Jacobs and front counter staff Linda Barbera and Jessica Patenan assist users with general advice about VCAT operations and hearing procedures.

VCAT Web Site

The number of visitors to the VCAT web site at www.vcat.vic.gov.au continued to rise significantly, attracting more than 122,000 unique visitors, compared with 50,000 visitors in 1999–2000, representing an outstanding 144% rise.

The site features information about VCAT legislation, Practice Notes and Rules, a list of scheduled hearings, the daily law list and key decisions. In addition, it provides details about each List, including information about how to apply and application forms that can be downloaded and printed. It also offers links to a variety of government, judicial and legal web sites. The site enjoys an average of 15,000 'page hits' each week with the most popular pages being the daily law list, VCAT decisions and application forms.

During 2000–01, we further improved the site by:

- establishing a more accessible flat page structure where virtually all information on the site is available within three clicks of the home page;
- making all forms used at VCAT available for downloading;



(Above and opposite)—Members of the Planning List User Group meet with Deputy President Richard Horsfall (left) to discuss issues of relevance to users.

- featuring a new frequently asked questions (FAQ's) function;
- providing more detailed information about every List at VCAT; and
- incorporating an online question and answer service via email with a next business day turnaround in acknowledging requests.

On 28 August 2000, we launched the new interactive service VCAT Online for the high volume Residential Tenancies List, enabling registered users to lodge application forms and to generate and print notices of dispute under the *Residential Tenancies Act 1997* electronically. We describe VCAT Online in more detail on page 12.



Tipstaff Graham Christensen and Administration Officer Kate Walker welcome parties to a hearing on the 5th floor at VCAT. Graham and Kate assist parties and VCAT members arriving for hearings.

Our User Service Charter

We feature the VCAT User Service Charter on page 60 of this annual report. The Charter assists us to build a more focused approach toward improving services to our users. It outlines a number of service guarantees aimed at informing VCAT users of both the level of service they should expect and the steps they should take if they have a complaint.

Gathering User Feedback

Gathering user feedback is an important method of finding ways to serve our users more effectively. Any user complaints we receive are acknowledged immediately and redirected to the Executive Office. We lodge the details of the complaint in a database and pass this information on to the Chief Executive Officer. We initiate follow up action within seven to 14 days of receiving the complaint. During 2000–01, we logged 105 complaints into the system, compared with 40 complaints logged from March to June 2000. As a result of monitoring such complaints, we identified areas needing improvement, such as improving the format and content of standard letters to make them clearer.

User Groups

User groups play an essential role in our ongoing improvement process. They offer an excellent forum where a range of issues affecting users of VCAT's services may be discussed. Selected members from each List conduct regular user group meetings, usually on a quarterly basis. The user groups comprise a broad spectrum of representatives from community and industry groups, and the legal profession, who are given the opportunity to provide valuable feedback with the aim of improving the service that VCAT offers. The achievements of user groups are detailed in the review of individual List performance, starting on page 18.

Community Information Sessions

Information sessions are an important link to the community in which VCAT



operates and serves. These sessions help to raise community awareness about the services that VCAT offers.

VCAT regularly hosts visits by legal studies students to learn about the way VCAT operates. During such visits, they attend a introductory seminar and a variety of hearings.

Judicial members conducted a total of 12 information sessions during 2000–01 (22 sessions in 1999–2000). The sessions included presenting papers on subjects such as:

- relationship of VCAT to the Dental Practices Board of Victoria;
- VCAT Online at a conference held for more than 1,000 users of the Residential Tenancies List;
- alternative dispute resolution to local mediators and visiting Magistrates from Papua New Guinea;
- success and challenges facing VCAT to the Administrative Review Council;
- *Tribunals—They Need to be Different* to the Australian Institute of Judicial Administration; and
- VCAT policies and procedures to the Planet Program for planners.

In addition, Deputy Presidents and Senior Members conducted information sessions regarding subjects specific to Lists. For more information, refer to individual List performance, starting on page 18.

Information Technology

We deliver VCAT's services in a timely and efficient manner.

Information technology ensures we deliver VCAT's services in a timely and efficient manner. During 2000–01, we established a number of initiatives that significantly improved our ability to meet the ever increasing demands of users.

Case Management

In May 2001, we succeeded in our plan to amalgamate four previously independent computer systems into two streamlined and modern computer systems. Since then, we have seen significant improvement in case management throughout VCAT.

The Case Management System (Caseworks) and the Tribunals Management System (TM) enable members and staff to handle VCAT's workload quickly and efficiently, from the time an application is received until its final resolution.

We use Caseworks and TM to:

- record applications received;
- create correspondence and notices;
- schedule hearings across Victoria;
- quickly find information with which to answer telephone enquires;
- record case outcomes; and
- generate performance statistics.

Caseworks

Caseworks provides a flexible and efficient computer database that supports all Lists of VCAT other than Residential Tenancies List and Guardianship List. Staff use Caseworks to manage the progress of cases at VCAT from application to final decision.

In May 2001, we completed the roll-out of Caseworks with its final expansion to support the General List, Land Valuation List, Planning List and Taxation List. An immediate benefit offered by Caseworks includes a significant improvement in the content and presentation of notices sent out by VCAT and in the ability to change such documents easily. We plan to upgrade Caseworks in 2001–02.

Tribunals Management System (TM)

TM supports the high volume Residential Tenancies and Guardianship Lists, and continues to benefit VCAT in terms of increased efficiency.

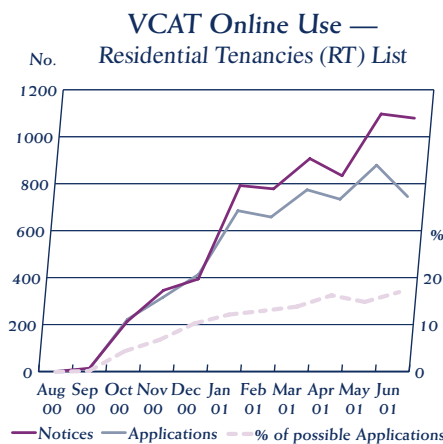
During the first half of 2001, we further upgraded TM's ability to support the Guardianship List. While this represents work in progress, we have already seen substantial improvement in automated reporting designed to track compliance with VCAT orders made in the Guardianship List.

The following information describes developments relating to two important components of TM for the Residential Tenancies List, VCAT Online and the Order Entry System.

VCAT Online

On 28 August 2000, we launched the new interactive, electronic service VCAT Online. It enables registered users of the high volume Residential Tenancies List to complete application forms, and to generate and print notices of dispute under the *Residential Tenancies Act 1997* via the Internet.

VCAT Online provides an easy way for users to lodge their applications, followed by immediate confirmation of lodgement and, in most cases, a hearing date.



VCAT Online Use shows the number of applications and notices generated via VCAT Online since its introduction in August 2000. Technical problems encountered in June 2001 made VCAT Online unavailable at times while the problems were being rectified.



From left, Justin McHenry and Peter Anderson discuss the next upgrade of Caseworks planned for 2001–02.

It allows VCAT staff to streamline administrative tasks and production costs because it minimises data entry and automatically schedules the majority of hearings, while reducing the need for data checking. Since its introduction, we received a total of 5,438 applications through VCAT Online, representing 17% of all applications that could have been lodged using VCAT Online during 2000–01.

As more users become aware of VCAT Online, we expect:

- continued growth in use;
- increased timeliness in processing applications due to more accurate and complete applications; and
- a reduction in telephone enquiries since users are able to enquire about their cases electronically.

A major user of VCAT the Office of Housing plans to use VCAT Online on a trial basis. If successful, we anticipate that use of VCAT Online will rise dramatically to at least 35% in 2001–02. We plan to continue promoting VCAT Online and encouraging its use by other major users.

Further improvements to VCAT Online are planned for 2001–02, such as enabling users to withdraw applications as well as to lodge them.

Order Entry System (OES)

OES enables members of the Residential Tenancies List to produce orders using personal computers installed in hearing rooms. This allows orders to be produced, printed, signed and given to the parties immediately after hearings.

The system enabled us to achieve substantial efficiency gains in the Residential Tenancies List in reducing administrative tasks and turnaround time for generating orders.

In the majority of cases listed in Melbourne, all ancillary orders such as adjournments, withdrawals and dismissals were produced using OES. By June 2001, approximately 70 orders per day were being completed using the system.

The benefits of OES that can be measured in terms of improved service delivery to our clients are:

- a significant decrease in the time taken to provide orders to parties who attend hearings (from approximately seven working days to being available immediately after the hearing has concluded); and
- a reduction in operating costs in the postage and handling of orders of approximately \$3.50 per hearing.

Our plan to roll out OES to suburban and rural locations will begin with a pilot of OES at Sunshine and Ballarat Magistrates' Courts early in the next financial year.

Our goal during the next 12 months is to enable Residential Tenancies List orders involving applications for rental arrears, bonds and compensation to be produced using OES at the majority of the venues where VCAT conducts its hearings.

In addition, we intend to develop OES so that it may be used to generate orders made by the Guardianship List.

We anticipate this expansion of OES capability to be completed by the end of 2001.

Telecommunications

Providing a quality telephone service to users plays an important role in handling an increasing workload. The system allows allocated staff to track and monitor incoming calls so that enquiries may be dealt with as efficiently as possible.

During 2000–01, VCAT received more than 150,000 telephone enquiries from the community. The List attracting the majority of these calls was the Residential Tenancies List, which received more than 50,000 calls.

While we aim to answer calls promptly, allocating adequate resources to handle the demand continued to be a challenge. Early in 2001–02, we plan to consult with our telephone service provider to find improved ways to manage the demand in the most efficient manner possible.

Digital Recording

In early 2000, we successfully conducted a trial of the digital recording system in 10 hearing rooms located at VCAT's Melbourne premises. The system records proceedings in multiple hearing rooms and stores the recordings onto a central computer hard disk. It provides an efficient and cost-effective method of recording hearings and enables us to keep a record of proceedings. This helps to protect the interests of both users and members participating in hearings. In addition, it effectively monitors and improves the standard of conduct of all participants during proceedings.

Although further expansion of the system was delayed during the year in review due to a lack of funding, we plan to equip an additional 12 hearing rooms at 55 King Street with the system early in the next financial year to enable the Planning List to record its hearings for the first time.

Installation of Lotus Notes

As part of a Victorian Government strategy, we installed Lotus Notes at VCAT in December 2000 to enable a collaborative approach to computerised work flow. We primarily use Lotus Notes as an email and personal diary management system. The Department of Justice plans to develop increased functionality by improving various aspects of administration, such as recording leave to more efficiently manage employee time and resources. As with any new system, a range of issues arose that took substantial time to address. We managed to resolve these issues and by the end of the financial year, the system was operating satisfactorily.

The Future

Future initiatives planned for 2001–02 include the following:

- The majority of our desktop computers will be upgraded as the current three-year leases expire. The upgrade will substantially improve the speed of operation and, therefore, our efficiency.
- The speed of publication of VCAT decisions on the VCAT web site, including the reasons for the decisions, will be improved, as well as the electronic storage of, and access to, orders at VCAT.



From left, Dee Williamson and David Freeman discuss staff training needs. They use their knowledge of VCAT and its systems to provide ongoing in-house training.

How We Resolve Cases

The VCAT Act governs the general operation of each List. However, the functions of VCAT under enabling acts are allocated to Lists (see pages 52–54). For this reason, the process often varies between Lists.

Variations in how we resolve cases may occur due to the nature of the cases brought to each List. Many cases may take 15 minutes to resolve, while others may take a day. In exceptional circumstances, it may take several weeks to hear a case due to the complex nature of the issues involved.

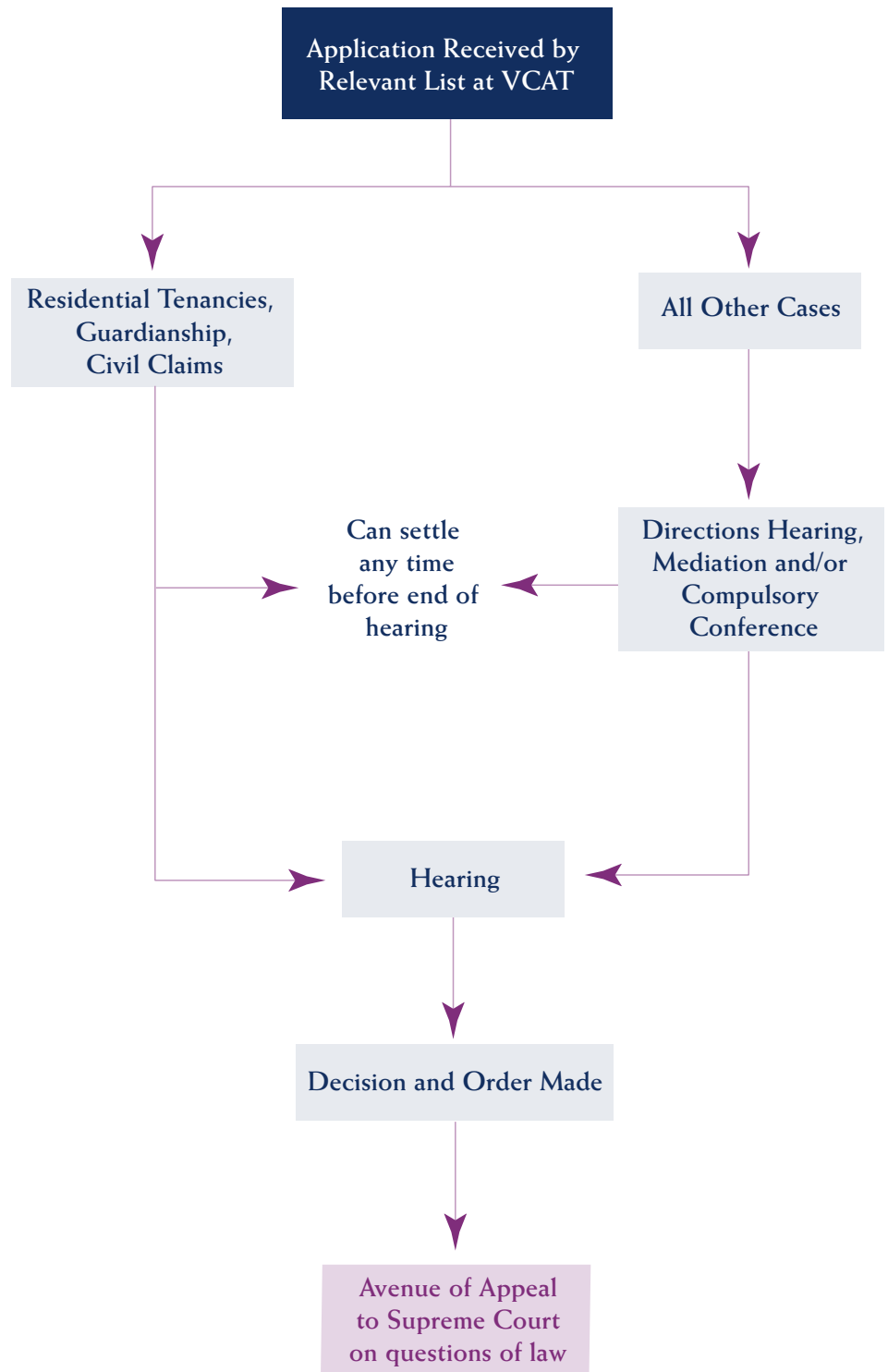
As a general guide, the flow chart opposite shows a simplified approach to the mechanisms established to resolve cases.

The process begins when a user of VCAT's services files an application with the relevant List. To help settle a dispute, a mediation, directions hearing or compulsory conference may take place depending on the case. However, many cases proceed to a hearing. Hearings give parties the opportunity to call or give evidence, ask questions of witnesses and make submissions.

At the end of the hearing, a member of VCAT either gives a decision on-the-spot, or writes a decision after the hearing and delivers the decision as soon as possible.

The people involved in a dispute may at any time agree to resolve their differences without the need for a mediation, directions hearing, compulsory conference or a hearing. If the case does proceed to a hearing, there is still an opportunity to settle prior to delivery of the decision.

Decisions of VCAT can be appealed to the Supreme Court of Victoria but only on questions of law.



An important part of our role at VCAT is to anticipate user demands and to secure the resources necessary to meet those demands. In fulfilling this aim, we identify the major influences that may have an impact on case volume and prepare our forecasts of VCAT's workload.

New Jurisdictions

One of VCAT's strengths is its ability to accept and efficiently integrate new jurisdictions granted to it at a relatively low cost to government and VCAT users. We provide a complete list of jurisdictions on pages 52–54 of this report. New jurisdictions that we anticipate will add to the workload of VCAT during 2001–02 are described as follows.

Changes to Racing Act 1958

As of 1 July 2001, changes to the *Racing Act 1958* will introduce a right of appeal to VCAT for persons involved in the racing industry who are aggrieved by occupational licensing decisions of the controlling bodies, or the Bookmakers and Bookmakers' Clerks Registration Committee. Such matters will be allocated to the Occupational and Business Regulation List of VCAT. We anticipate that the additional workload will be managed within existing resources.

Health Records Act 2001

By 1 July 2002, Parliament will confer jurisdiction on VCAT under the *Health Records Act 2001*. The Act will establish a regime for the protection of health information held by health service providers and other organisations. It creates an enforceable right of access to, and establishes privacy standards for, health information. These matters will be allocated to the General List of VCAT. We anticipate that the additional workload will be managed within existing resources.

Information Privacy Act 2000

On 1 September 2001, the *Information Privacy Act 2000* will confer review jurisdiction on VCAT in relation to a variety of matters regarding privacy and the release

of personal information, such as providing individuals with the right to access and correct information about themselves. The Act will regulate the collection and handling of personal information in the Victorian public sector, including information held by contracted service providers. Initially, matters will be directed to the Privacy Commissioner for resolution. However, if conciliation is unsuccessful, such matters will be referred to the General List of VCAT. We expect that the additional workload will be managed within existing resources.

Land Surveying Bill

The Land Surveying Bill was introduced in Parliament on 2 May 2001. If the bill passes, persons may apply to VCAT to review decisions concerning registration to conduct certain types of surveying. Such matters will be handled by the Occupational and Business Regulation List.

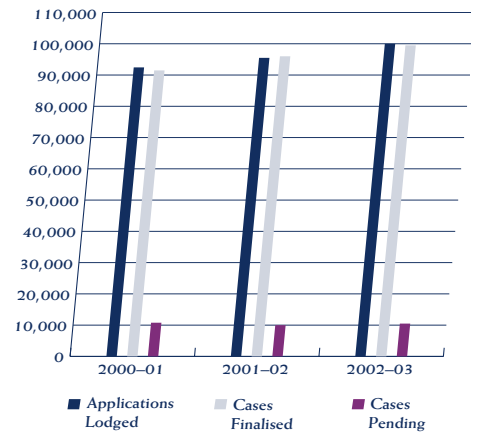
Forecasting Case Workload

Under the VCAT Act, we are required to prepare forecasts of the workload of VCAT. We review forecasts in conjunction with the Department of Justice and the Victorian Government. In addition, we take into consideration the feedback we receive from the Lists' user groups.

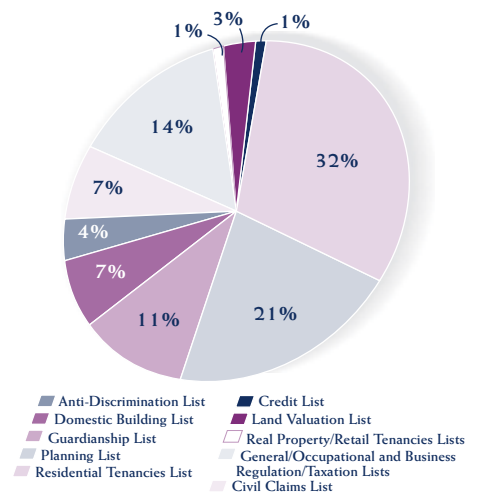
In 2000–01, we further improved this process to better align our budget projections with our workload forecast projections. Our efforts contributed to securing an additional \$3.6 million allocated over the next four years to meet rising demand in the Civil Claims List, and sustained demand in the Guardianship List and the Planning List.

We project that cases finalised in 2001–02 will increase by 4% to approximately 96,000 cases finalised, compared with 91,482 in 2000–01. However, underlying these figures, we predict significant upward and downward shifts in cases finalised in individual Lists during 2001–02. Details regarding the performance of each individual List begin on page 18.

All VCAT Cases—2000–03



VCAT Expenditure by List—2001–02



In 2000–02, we predict that the most significant upward shifts will occur in the Civil Claims List (up 14% or 757 cases) and the Residential Tenancies List (up 4% or 2,861 cases). Balancing those rises, we predict that cases finalised will drop in the Guardianship List (down 6% or 536 cases) and the Domestic Building List (down 13% or 1,036 cases).

Such fluctuations in demand for VCAT's services are quite common from year to year. VCAT's overall effectiveness relies on its ability to shift resources among Lists to meet changes in demand.

We anticipate our budget for VCAT expenditure for 2001–02 will total approximately \$19.5 million.

Mediation is an integral part of VCAT's work. A form of alternative dispute resolution, mediation offers an efficient and cost-effective way to settle disputes.

VCAT Mediation Services

During 2000–01, two significant decisions were made to enhance the practice of mediation at VCAT. In November 2000, Senior Member Dr Gregory Lyons was appointed Principal Mediator to coordinate mediation activities at VCAT. In early June 2001, Justice Kellam announced the establishment of VCAT Mediation Services, which comprises Dr Lyons as Principal Mediator, Listings Manager George Adgemis and Regan Cupples of the Listings area.

VCAT Mediation Services' role is to:

- list mediations and assign mediators to particular mediations, depending on their individual expertise;
- arrange appropriate professional development activities for VCAT's mediators; and
- collect statistics that reflect the extent of VCAT's mediation work.

Historically, there have been 68 mediators available at VCAT comprising full-time members, sessional members and private mediators. We identified that VCAT's present mediation needs could be met by about 20 to 25 mediators. As a result, the Principal Mediator began a process to identify a core group of mediators for each List that makes use of mediation, in consultation with the relevant Deputy President. The process involved asking mediators to complete a Statement of Interest regarding future mediation opportunities at VCAT. Once we identify the core groups of mediators, VCAT Mediation Services will offer these mediators regular VCAT mediations with the purpose of enhancing their skills and, thereby, increasing the likelihood of successful mediation outcomes.

Strengthening Mediation

During 2000–01, the establishment of VCAT Mediation Services effectively strengthened mediation throughout

VCAT. Many of the Lists at VCAT use mediation in resolving disputes. In the Domestic Building and Anti-Discrimination Lists, mediation is established as a way of resolving disputes. The Planning List placed greater emphasis on mediation and it is now becoming an established means for the resolution of planning disputes. In the Real Property and Retail Tenancies Lists, matters are regularly referred to mediation, and in the General and Credit Lists, some matters are referred to mediation. During 2000–01, between 55% and 65% of mediations conducted resulted in settlement. Results vary between Lists.

An important part of our role in VCAT Mediation Services is to collect statistics that reflect the extent to which the relevant Lists at VCAT use mediation. During June 2001, the first full month in which we collected mediation statistics, 138 matters proceeded to mediation, with 82 of these matters settling at mediation (a 59% success rate). A significant proportion of the remaining matters settled prior to hearing, often as a result of discussions begun at mediation. Where matters proceeded to hearing, the mediation process had helped to identify and narrow the contentious issues. We plan to provide more information about mediation statistics in future annual reports.

VCAT Mediation Committee

During 2000–01, the VCAT Mediation Committee took a number of steps to strengthen the practice of mediation. The Mediation Committee comprised 11 members who met on six occasions during the year in review. Members undertook a range of activities, including the following key initiatives:

Survey of VCAT Mediators

To consult VCAT's mediators about measures that could enhance the practice of mediation at VCAT, the Committee sent questionnaires to VCAT's 68 mediators. Members analysed the results and drew the following conclusions:

- Mediators consistently stated that they considered opportunities for



Mediator Hani Greenberg discusses a VCAT Mediation Newsletter article with Principal Mediator Greg Lyons.

professional development a high priority. Such opportunities include observing other mediators' styles and gaining experience through co-mediating with experienced mediators.

- Mediators suggested more active promotion of mediation by VCAT by providing parties with straightforward written information or a video about mediation prior to attending a mediation.
- Mediators suggested that cases suitable for mediation be identified earlier in the process.

Other major activities conducted by the Committee included:

- producing a Mediation Newsletter to help keep VCAT's mediators informed of developments;
- reviewing and preparing a written response to the March 2001 discussion paper *The Development of Standards for ADR* produced by the National Alternative Dispute Resolution Advisory Council (NADRAC);
- expressing support for producing a video, as long as funding can be arranged, that explains mediation and how a party should prepare for, and participate in, a mediation;
- arranging a seminar in October 2000 given by Professor John Wade of Bond University Law School on how

to identify cases that are *not* suitable for mediation;

- in conjunction with the VCAT Seminars Committee, co-sponsoring a seminar in February 2001 on the implications of the GST for VCAT proceedings;
- reviewing the VCAT library's holdings regarding mediation and recommending a number of acquisitions;
- preparing content for brochures explaining how mediation works in practice in the Anti-Discrimination, Domestic Building and Planning Lists;
- identifying several pay issues affecting sessional and private mediators that need attention; and
- supporting the view that VCAT should identify a core group of mediators for each List that offers mediation, and that these mediators should regularly conduct mediations.

A Fictional Case Study Based on Circumstances that Might Arise in an Anti-Discrimination List Mediation

Ms T had worked in a supermarket for two years when she left work suddenly, saying she could no longer handle the stress caused by her manager. Ms T complained to the Equal Opportunity Commission that her male manager had made numerous objectionable sexist comments to her over the course of her employment, but that the comments had become more frequent and more offensive when she told the manager that she was pregnant and would be applying for leave. Ms T's complaint of unlawful discrimination on the basis of her sex and pregnancy was brought against the manager and against the supermarket (on the basis of vicarious liability). When the complaint was not resolved through conciliation at the Equal Opportunity Commission, Ms T exercised her right to have the matter referred to VCAT. Shortly after receiving the complaint, VCAT referred the matter to mediation. Ms T attended the mediation with her mother. Ms T's manager at the supermarket attended the mediation, along with the supermarket's human resources manager and the supermarket's solicitor. Initially, Ms T said she would not go ahead with the mediation because she felt "outnumbered". The mediator took some time to explain the process to both sides, saying that the mediator's role was to ensure a fair process. Ms T agreed to participate in the process on the understanding that she (or anyone else) could call a halt to the mediation if they felt it was not being conducted fairly. The mediation reached a practical solution after four hours. In a confidential written agreement, Ms T agreed to withdraw her complaint and to pursue no other legal action regarding the matter. In return, her manager at the supermarket agreed to undertake a short course in equal opportunity matters and apologised to Ms T for any distress he had caused her. The supermarket agreed to pay Ms T a sum of money as compensation and offered her a position, with a commencement date to be nominated by Ms T, at a supermarket closer to her home. Ms T accepted this offer. Had the matter gone to a hearing, it would have taken two or three days to resolve.

Visit by PNG Magistrates

In May 2001, VCAT hosted a visit for four Magistrates from Papua New Guinea, Deputy Chief Magistrate John Numapo, Jack August, Iova Geita and David Maliku. The Magistrates were keen to observe the practice of mediation in a variety of settings and to hold discussions with mediators. VCAT hosted the Magistrates' visit, in association with the Australian Institute of Judicial Administration. The Magistrates spent a week at VCAT observing a range of mediations. In addition, the Magistrates participated in a seminar arranged by VCAT. At the conclusion of the seminar, Mr Nupamo spoke on behalf of the Magistrates and thanked the many people at VCAT who had contributed to the success of their visit.

The Future

Our objectives for 2001–02 include:

- identifying a core group of mediators for each List that makes use of medi-



From left, Magistrates from Papua New Guinea Jack August, Iova Geita and John Numapo discuss mediation techniques at a seminar held by VCAT in May 2001.

ation and offering the mediators in the core groups regular mediations;

- collecting statistics that reflect VCAT's mediation work;
- producing brochures that explain how mediation works in each List that makes use of mediation, as well as a general brochure about mediation;
- improving the information on VCAT's web site regarding mediation;
- arranging professional development and training opportunities for VCAT's mediators, including opportunities to observe other mediators at work and to conduct co-mediations;
- establishing a user group to provide valuable feedback on VCAT's mediation services;
- continuing to produce the VCAT Mediation Newsletter;
- identifying any issues in the NADRAC report *A Framework for ADR Standards* released in June 2001 that VCAT should address;
- resolving several pay issues affecting sessional and private mediators;
- considering establishing an intern program for tertiary students studying Alternative Dispute Resolution (ADR); and
- producing a video about mediation, if funding allows.

Anti-Discrimination List

We determine applications for exemption and complaints of discrimination.

List Snap Shot

Purpose

A List in the Civil Division of VCAT, the purpose of the Anti-Discrimination List is to hear and determine complaints of contravention of the *Equal Opportunity Act 1995* (EO Act). Such complaints claim discrimination on the basis of various attributes, such as sex, race, impairment, or religious belief or activity, in various areas of activity such as employment, education, sport and the supply of goods and services. The claims also relate to sexual harassment and victimisation.

Objectives

- Hear 50% of cases within four months of application.
- Maintain settlement in at least 65% of cases referred to mediation.

Key Results

- Resolved 60% of cases within 14 weeks of application and 80% within 28 weeks.
- Settled 65% of cases at mediation (65% in 1999–2000).

Future

- Maintain waiting times from application to resolution.
- Maintain the 65% settlement rate for mediations.

Statistical Profile

- Applications received: 497
- Cases resolved: 483
- Cases pending: 220
- Application fee: n/a
- Number of members: 39

Deputy President Profile

Anne Coghlan, BA, LLB, was appointed head of the Anti-Discrimination List on 1 September 2000. Anne brings to her position a strong background in administrative law and tribunal management. Previously, she was Deputy President of the Credit List and Deputy President of the Anti-Discrimination Tribunal. She was appointed member of the Administrative Appeals Tribunal (AAT) in 1994, and became the first National Convener of the Social Security Appeals Tribunal in 1988. In addition to Anti-Discrimination List matters, Anne regularly sits in other Lists.

Case Profile

List members deal with two main types of applications—complaints and exemptions. Complaints are first lodged with the Equal Opportunity Commission. If the Commission declines to handle a complaint, or determines that the complaint is not conciliable or if attempts to conciliate it are unsuccessful, the complainant may require the Commission to refer the complaint to VCAT.

List members determine applications for exemption from the provisions of the EO Act and hear applications made to strike out complaints on the basis that they are frivolous, vexatious, misconceived, lacking in substance or an abuse of process. In addition, the List receives a small, although significant, number of applications for interim orders to prevent a party to a complaint from acting prejudicially to conciliation or negotiation, or to VCAT's ultimate decision.

In 2000–01, the number of complaints referred to VCAT totalled 413, compared with 417 in 1999–2000. The number of exemption applications received during 2000–01 decreased by 18%, totalling 84, compared with 102 applications in 1999–2000. A significant proportion of applications were for renewals of exemptions previously granted, which have a three-year expiration period in which they can be granted.

Applications made to strike out complaints rose from 46 in 1999–2000 to 56 in 2000–01. This represents a 22% increase.

Application Types

The greatest number of complaints referred to the List continued to be employment-related. These involved claims such as gender discrimination and sexual harassment, but with a significant number of discrimination claims based on victimisation, race and impairment.

Employment-related complaints rose 8% from 70% in 1999–2000 to 78% in 2000–01. The next highest number of complaint referrals related to the provision of goods and services (approximately 17%) and education (approximately 4%). The attribute profile of complaints referred to the List in 2000–01 compared with 1999–2000 in that there was a decrease in education-related disputes and a rise in disputes relating to the provision of goods and services.

In 2000–01, complaints referred to the List were comprised as follows:

- 30% sex discrimination and sexual harassment (31% in 1999–2000)
- 21% impairment (22% in 1999–2000)
- 11% victimisation (13% in 1999–2000)
- 11% race (7% in 1999–2000)
- 27% other (27% in 1999–2000)

How We Dealt with Cases

We experienced a major shift in the way we dealt with cases, with mediation playing a more significant role. Generally, those complaints referred to the List where no attempt was made for conciliation by the Equal Opportunity

Case Study: Epilepsy Sufferer Passed Over for Employment

Ms M was employed part-time working with people with disabilities. She suffers from epilepsy and was recently given a clearance by her doctor to apply for a driver's licence. Her workplace was being restructured and her position was abolished. She was not short listed for any of the new positions, all of which require a current driver's licence. Ms M lodged a complaint of indirect discrimination with the Commission and applied to VCAT for an interim order in respect of her complaint to protect her interests. A member from the Anti-Discrimination List heard her application and granted an interim order so that the interviews for one of the positions advertised were put on hold. In granting it, VCAT was satisfied that there was a *prima facie* case to answer, that to do so created no prejudice to the public interest and that unless it were granted, Mary's bargaining position or the possible orders VCAT could eventually make, would be compromised.

Commission were listed immediately for mediation. Complaints that were the subject of a conciliation before being referred were listed for a directions hearing. The successful resolution of complaints at mediation remained high. Statistics showed no appreciable difference in outcome between those cases that were listed immediately for mediation and those cases that were initially listed for a directions hearing. In 2000–01, we settled 65% of cases referred to the List by mediation, compared with 65% in 1999–2000.

Timeliness

As discussed elsewhere in this report, improvements made to our computer system during 2000–01 have enabled more accurate reporting. In 2000–01, we resolved 60% of cases within 14 weeks of application and 80% of cases within 28 weeks. This compares with 60% of cases being resolved within 10 weeks of application and 80% of cases within 24 weeks in the second half of 1999–2000. (Data from the new computer system is only available for that period.)

Changes to the EO Act

The *Equal Opportunity (Gender Identity and Sexual Orientation) Act 2000* was introduced on 9 October 2000. This amended the EO Act to add new attributes that prohibit discrimination on the basis of gender identity or sexual orientation. At the end of 2000–01, the List had received no referrals relating specifically to either of these attributes.

The *Racial and Religious Tolerance Act 2001 No 47* was assented to on 27 June 2001. The Act is intended to promote racial and religious tolerance by prohibiting certain conduct involving the vilification of persons on the ground of race or religious belief or activity, and to provide a means of redress for the victims of racial and religious vilification.

The *Statute Law Amendment (Relationships) Act 2001* was assented to on 12 June 2001. It amends the EO Act to include non-heterosexual domestic partners. It expands the range of people who can claim discrimination on the basis of marital status and who may be considered to be a relative for the purpose of claiming an exemption. The expansion of the

definition of *marital status* will also affect the exemption in relation to superannuation schemes.

Community Awareness

To further raise community awareness about the List, previous Deputy President Cate McKenzie published two papers — an overview of the EO Act in October 2000 and a report on Impairment Discrimination in November 2000. We continued to update information available to the public, including a pamphlet and information sheets relating to mediation and List practices and procedures. We update this material regularly and it is available on the VCAT web site.

User Group Activities

The List's user group comprises 13 participants, including legal practitioners who regularly represent complainants and respondents. The user group met on three occasions during 2000–01 to discuss matters of relevance to users. Subjects included a discussion about how the List could best accommodate any special needs of users at hearings, and canvassing the views of users on the effect of changes in the way matters are listed for mediation. In October 2000, members of the List and staff of the Equal Opportunity Commission met to discuss a range of matters, including different approaches to conciliation and mediation.

Training and Development

During 2000–01, List members participated in various seminars conducted by VCAT and external organisations. The List was well represented at the annual Australian Institute of Judicial Administration (AIJA) Tribunal's Conference with eight List members attending and Deputy President Anne Coghlan giving a commentary on the leading paper.

The Future

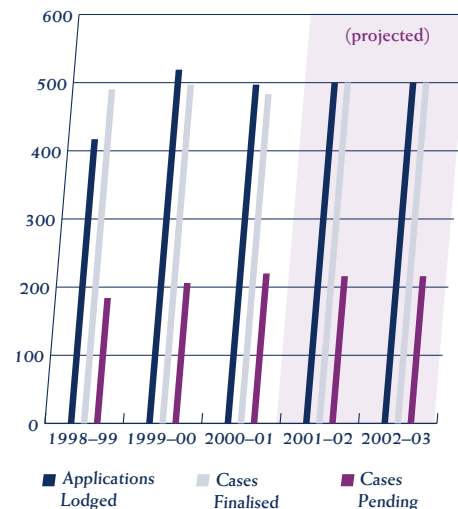
Our objectives for 2001–02 include the following:

- Maintain waiting times so that 60% of cases are finalised within 14 weeks of application and a further 20% within 28 weeks.
- Maintain the 65% settlement rate for mediations.

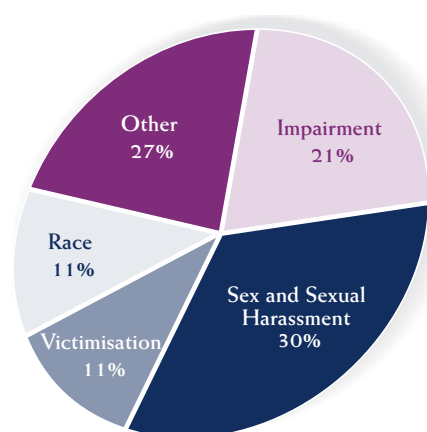


Having checked directions made online, Deputy President Anne Coghlan (left) signs off a printed copy for List Clerk Nicole Margenberg (centre) to hand directly to the parties attending the directions hearing.

Case Flow 1998–2003



Complaints by Type 2000–01



List Snap Shot

Purpose

A List in the Civil Division of VCAT, the purpose of the Civil Claims List is to hear applications under the *Fair Trading Act 1999*, *Small Claims Act 1973*, and matters under the *Motor Car Traders Act 1986*, as well as the *Credit Act 1984* and *Consumer Credit Act 1995*.

Objectives

- Complete all cases within eight to 10 weeks of application despite substantial increase in the number of cases.
- Resolve higher value and complex cases by compulsory conference.

Key Results

- Due partly to the impact of *Fair Trading Act 1999*, the number of applications received rose 37% from 3,835 in 1999–2000 to 5,243 in 2000–01.
- Funding restrictions in the first half of 2000–01 resulted in 60% of cases being resolved within 15 weeks of application and 80% within 19 weeks.
- Improved waiting times once funding was provided. In June 2001, 60% of cases were resolved within 10 weeks of application and 80% within 14 weeks.
- Settled more than 70% of claims exceeding \$10,000 by compulsory conference.

Future

- Reduce waiting times so that we resolve 60% of cases within eight weeks of application and 80% of cases within 10 weeks.
- Continue to resolve higher value and complex cases by compulsory conference.

Statistical Profile

- Applications received: 5,243
- Cases resolved: 5,007
- Cases pending: 1,064
- Application fee under the *Fair Trading Act 1999*: \$0 All others: \$25
- Number of members: 59

Deputy President Profile

Mary Urquhart, BEd (Art) Dip Law BAB, MAICD, was appointed Deputy President of the Civil Claims List on 1 June 2001. Mary was appointed to VCAT as a Senior Member in February 1999 and frequently sat in the Occupational and Business Regulation and Guardianship Lists of VCAT. Mary has a strong background in licensing matters. Prior to joining VCAT, she was the Deputy Commissioner of the Liquor Licensing Commission. Mary practised law as a Barrister in both New South Wales and Victoria. Mary was appointed to the Board of Directors, Dental Health Services Victoria in 1997 and served as the legal member of the Ethics in Clinical Research Committee of the Royal Dental Hospital from 1997 to 2000.

Case Profile

In 2000–01, the number of applications received rose substantially by 37%, from 3,835 in 1999–2000 to 5,243 in 2000–01. This result may be attributed partly to the introduction of fair trading disputes in 1999. The number of cases resolved increased by 55% from 3,223 in 1999–2000 to 5,007. Cases pending totalled 1,064, compared with 827 in 1999–2000. Most cases continued to arise from disputes between the purchasers and suppliers of goods and services. However, the proportion of business applicants to the List rose from 17% in 1999–2000 to 24% in 2000–01. The number of respondents who were private individuals rose from 3% in 1999–2000 to 13% in 2000–01. In most cases, the parties involved did not have legal representation, thereby achieving considerable savings in legal costs.

Claims under \$10,000 still dominated total applications received at 92%.

Claims above \$10,000 included a number exceeding \$100,000. The number of applications made under the *Small Claims Act 1973* remained low.

Application Types

The type of applications lodged comprised:

- 25% building (26% in 1999–2000);
- 20% services (not separately counted in 1999–2000);
- 15% motor vehicles (24% in 1999–2000)
- 15% household goods (21% in 1999–2000); and
- 25% other (29% in 1999–2000).

Other' application types included more than 50 separate categories.

How We Dealt with Cases

While dealing with most fair trading disputes in a similar way to matters brought under the *Small Claims Act 1973*, the List dealt with most large value and complex claims exceeding \$10,000 at an early stage by compulsory conference. The List settled more than 70% of these cases in this manner, resulting in minimal costs to the parties, and avoiding the need for a full hearing of the matter. Most claims under \$10,000 were resolved by way of a hearing.

Timeliness

As discussed elsewhere in this report, improvements made to our computer system during 2000–01 have enabled more accurate reporting. Due to backlogs caused by funding shortages in 2000–01, we resolved 60% of cases within 15

Case Study: Manufacturer and Provider of Warehouse and Storage Facilities Brings Action under *Fair Trading Act 1999*

Mr M, a manufacturer and provider of warehouse and storage facilities, brought an action under the *Fair Trading Act 1999* against a number of persons (the Respondents) who provided various services from Mr M's premises. The claims made by Mr M against the Respondents were for the alleged failure by the Respondents to:

- return goods to the Applicant;
- conduct mechanical works for the Applicant in a professional manner; and
- pay rental monies owed to the Applicant.

In addition, the Respondents had allowed Mr M's premises to become contaminated.

Mr M sought orders for the payment of money, damages, exemplary damages and damages in the nature of interest, an order for payment by way of restitution and injunctive relief. The value of the claims exceeded \$40,000. The matter was listed for a compulsory conference. The five parties were legally represented. After listening to the parties' respective positions in relation to the various claims, the member conducting the compulsory conference held discussions with the parties jointly and also separately. During the course of the conference, various offers of settlement were made. The matter was resolved between the parties without the need for a full hearing, which may well have taken some days.

weeks of application and 80% of applications within 19 weeks. This compares with 60% of cases being resolved within five weeks of application and 80% of cases within eight weeks in the second half of 1999–2000. (Data from the new computer system is only available for that period.)

The funding issue was remedied during the year in review with additional financial support from Government to enable the assistance of an increased number of sessional members to hear cases. Since then, waiting times have improved. In June 2001, we resolved 60% of cases within 10 weeks of application and 80% of cases within 14 weeks.

In the 1999–2000 Annual Report, we aimed to have all of the List's matters heard and determined within six weeks of the user lodging the application. Upon reviewing this objective, we now aim to and hear and determine 80% of claims within eight weeks. We consider this period from lodgment to determination to be an appropriate balance between the desire to have matters dealt with as quickly as possible and ensuring that the parties have sufficient time to prepare for the hearing. This avoids, as far as possible, the need for adjournments of hearings.

Significant Changes Brought by New Legislation

The *Fair Trading Act 1999* continued to generate the substantial amount of work in the List. It provided increased jurisdiction to deal with disputes between

purchasers and suppliers of goods and services, and damages arising out of breaches of the Fair Trading Act.

User Group Activities

The user group of the Civil Claims List comprised a total of eight participants representing three business groups, three consumer groups and two public service organisations. Some of those organisations included the Consumer and Tenant Resource Centre, the Australian Retailers' Association and Small Business Victoria.

The user group met on three occasions during 2000–01. As promised in the 1999–2000 annual report, we introduced a simplified application form and guide to the List's jurisdiction in September 2000. This material is available to users on the VCAT web site and in printed form. The feedback we received about the new material from consumer groups and the public in general has been extremely positive.

The Future

Our objectives for 2001–02 include:

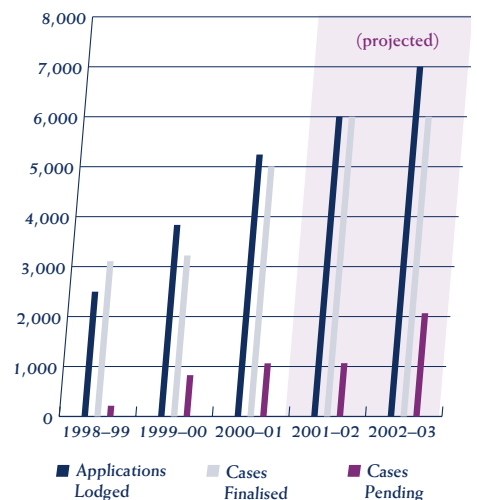
- improving waiting times by resolving 80% of cases within 10 weeks of application; and
- continuing to resolve higher value and complex cases by compulsory conference.

However, if demand continues to rise as projected, the List will once again face funding issues in 2002–03.



Sessional Member Michael Walsh (right) explains to Deputy President Mary Urquhart the technical aspects surrounding a dispute under the Fair Trading Act 1999 involving a motor car trader. In many instances, VCAT relies on the technical expertise of members to assist in determining a case.

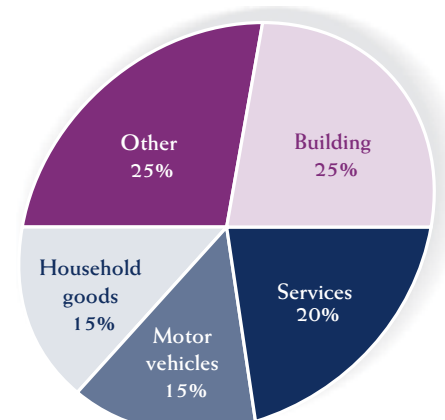
Case Flow 1998–2003



Case Study: Designer of Display Unit Dissatisfied with Manufacturer

Mr A designed a display unit and contracted Mr E to manufacture it. Mr A supplied drawings and held discussions with Mr E who agreed to make a prototype. They agreed on a price for work that included plastic coating. The coating was delayed and Mr A was unable to meet photo shoot obligations. In addition, the plastic coating, when completed, cost more than agreed. Mr A was unhappy with the finished product and Mr E agreed to repair it. Mr E invoiced Mr A for additions to the prototype and insisted on retaining it until he received payment in full. Mr A insisted on the return of the prototype and would pay nothing. All orders for the product were cancelled. Mr A arranged for the unit to be manufactured elsewhere. Mr A claimed reimbursement for initial outlay and time. Mr E claimed for alleged consequential loss. In determining the case, VCAT found the parties had not envisaged the consequences of the prototype failure nor had they considered the possibility that the contract depended on the success of the prototype. Each party did not spell out their obvious intent. VCAT ordered the prototype be returned forthwith without further payment and dismissed Mr E's claim.

Applications by Type 2000–01



List Snap Shot

Purpose

A List in the Civil Division of VCAT, the Credit List has jurisdiction under the *Credit Act 1984* and the *Consumer Credit (Victoria) Act 1995*, which incorporates into the law of Victoria the Consumer Credit (Victoria) Code (the Code) and the *Chattel Securities Act 1987*. The Code is part of a uniform Credit Code that operates Australia wide.

Objectives

- Hear and determine repossession cases within 12 days of proof that the application has been served on the debtor.
- Resolve 50% of cases by settlement through mediation, directions hearing or compulsory conference.

Key Results

- Resolved 60% of cases within six weeks of application and 80% within eight weeks.
- Resolved repossession cases within 14 days of proof that the application had been served on the debtor.
- Settled approximately 50% of all cases prior to hearing.

Future

- Maintain waiting times from application to resolution.
- Maintain settlement rate at approximately 50% of all cases.
- Implement streamlined procedures and user guidance measures.

Statistical Profile

- Applications received: 94
- Cases resolved: 134
- Cases pending: 15
- Application fee: \$25–\$1,000
- Number of members: 4

Deputy President Profile

Cate McKenzie, BA, LLB (Hons), was appointed Deputy President of the Credit List on 1 October 2000. Previously, Cate was appointed Deputy President of the Anti-Discrimination List on 1 July 1998 and was appointed President of the former Anti-Discrimination Tribunal/Equal Opportunity Board in 1994. She began her career as a legal officer of the Parliamentary Counsel's Office in 1975 and was appointed Assistant Chief Parliamentary Counsel in 1986. As well as hearing matters in the Credit List, Cate continues to sit regularly in the Anti-Discrimination List.

Case Profile

In 2000–01, the number of applications received by the Credit List continued a downward trend, totalling 94, compared with 110 in 1999–2000. This result represents a decrease of 15%. The number of cases finalised for 2000–01 also fell significantly, totalling 134, compared with 182 in 1999–2000—a 26% decrease. This result is due to the fact that 77 cases were finalised late in the previous financial year as part of a settlement that followed a decision handed down by the Court of Appeal. A similar situation did not occur in 2000–01. Nevertheless, the List continued to finalise more cases than it received.

The number of pending cases at the end of 2000–01 totalled 15, a substantially lower figure than in 1999–2000 when 55 matters were outstanding. This figure does not include 24 cases pending at the beginning of the financial year that concerned applications made by financial institutions in respect of possible breaches of the *Credit Act 1984* filed before the commencement of the VCAT Act. Identifying the possible breaches involved a lengthy and wide ranging sampling process of the credit contracts written by those institutions. We established a mechanism to monitor compliance with the timetable, so that the applications could be finalised as promptly as possible. During 2000–01, four of the applications settled successfully. We anticipate that the rest of these cases will be finalised before the end of the next financial year.

Application Types

The majority of cases coming to the List relate to requests for repossession orders. A credit provider must not enter residen-

tial premises to recover mortgaged goods without an order from VCAT or a court. Other cases concern breaches by a credit provider of requirements of the Code or the Credit Act, where a civil penalty may be imposed on the credit provider. Other cases concern applications by debtors who, because they are suffering hardship, want to be able to change their obligations under a credit contract or to have enforcement proceedings against them postponed.

Of the 94 applications received in 2000–01, 70 (73%) were repossession applications. This compares with 93 repossession applications out of a total of 110 applications in 1999–2000—roughly the same proportion of repossession applications. The proportion of non-repossession applications to the total applications in both years also remained constant.

How We Dealt with Cases

Since many people who applied to the Credit List were experiencing financial difficulty and hardship, we aimed to resolve these applications as quickly as possible. Depending on their complexity, applications were either given a hearing date as soon as they were served on the other parties, or were listed for a directions hearing at which a timetable was set for future steps in the proceeding. At all stages in the process, List members encouraged parties to settle matters by agreement between themselves. About 50% of matters were resolved in this way, without the need for parties to provide extensive written material or to go to a hearing.

Where appropriate, we referred cases to compulsory conferences at which a member of the List helped the parties to try to

Case Study: Credit Contract Changed Due to Hardship

Mr X bought a car using money he borrowed from a credit provider. Some months later, Mr X lost his job and began to experience increasing difficulty in meeting his loan repayments. The credit provider applied to VCAT for an order authorising entry to the property where Mr X lived in order to repossess the car. Shortly before the hearing, Mr X started a new job. At the start of the hearing, VCAT encouraged the parties to discuss the matter to see whether they could resolve it between themselves and allowed sufficient time for this to occur. The parties negotiated a new repayment schedule that would allow Mr X to bring the loan repayments up to date. It also allowed a slightly longer period for repayment of the whole loan. At the parties' request, VCAT made an order giving effect to these terms of settlement.

reach a settlement of the case. During this financial year, the List began to use mediation as an alternative form of dispute resolution. We expect that use of mediation will increase during 2001–02.

Timeliness

As discussed elsewhere in this report, improvements made to our computer system during 2000–01 have enabled more accurate reporting. In 2000–01, we resolved 60% of cases within six weeks of application and 80% of cases within eight weeks. This compares with 60% of cases being resolved within six weeks of application and 80% of cases within eight weeks in the second half of 1999–2000. (Data from the new computer system is only available for that period.)

The majority of the cases were repossession applications, which were finalised, on average, within 14 days of proof that the application had been served by the applicant on the debtor.

Review of Procedures

During the financial year, the List reviewed its procedures and took the first in a range of steps that will lead to those procedures being streamlined and clarified. The measures include proposals for:

- updating the VCAT Rules relating to the List (currently under consideration by the VCAT Rules Committee); and
- simplifying application forms and procedure guides for users of the List.

We expect that these measures will be fully implemented during the next financial year. During 2000–01, we changed the List's procedures so that, except in urgent cases (where applications are served by the Principal Registrar), applicants are required to serve copies of their applications on the other parties to the proceeding. This procedure is consistent with VCAT legislation and ensures that applicants themselves are responsible for pursuing the applications.

User Group Activities

We broadened representation on the List's user group. At the invitation of the

President of VCAT, the Law Institute Victoria and the Victorian Bar nominated user group representatives. The group comprises nine people representing consumers, credit providers, government and the legal profession.

During 2000–01, user group representatives did not raise any issues with the List for discussion, and there were no major matters that required the List to call a meeting of the user group. However, as soon as possible after the Rules Committee has completed its consideration of the proposed updated Rules for the Credit List, the List will schedule a meeting of the user group so that the proposed new application forms and user guides can be discussed. After any comments of the user group are taken into account, Deputy President Cate McKenzie will offer seminars on the new procedures to Registry staff, List members, credit providers and consumers.

Training and Development

List members attended general VCAT seminars on matters such as mediation, decision writing and the implications of the GST for VCAT proceedings. During the financial year, no major developments occurred in credit law requiring additional specific training for members of the List.

The Future

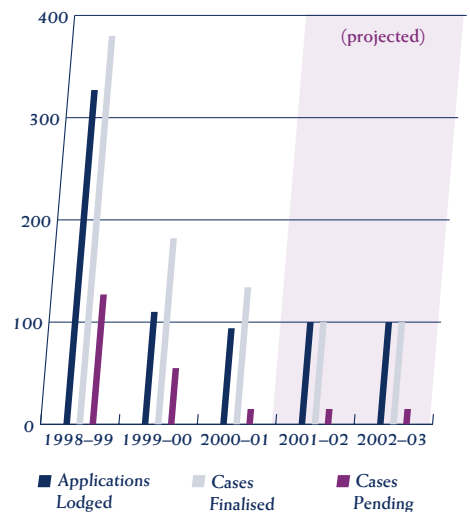
Our objectives for 2001–02 include:

- continuing to maintain waiting times from application to resolution;
- increasing the percentage of cases that are resolved by settlement, and increasing the use of mediation for that purpose;
- implementing updated VCAT Rules for the List, guides for users of the List and streamlined application forms; and
- conducting seminars and making User Guides to the List available to the public to raise awareness of the work of the List and how it provides a simple, cost effective and prompt way of resolving credit disputes.

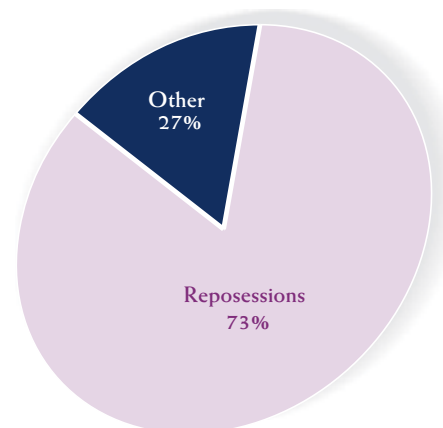


From left, Louise Johnston and Billie-Jean Williams discuss preparation of new forms, applications and guidance notes developed during the financial year with Deputy President Cate McKenzie.

Case Flow 1998–2003



Applications by Type 2000–01



Domestic Building List

We resolve disputes relating to domestic building.

List Snap Shot

Purpose

A List in the Civil Division of VCAT, the purpose of the Domestic Building List is to resolve disputes between home owners, builders, insurers, architects and others.

List members hear and determine:

- domestic building disputes;
- disputes relating to insurance claims concerning domestic building work;
- matters referred under the *House Contracts Guarantee Act 1987*; and
- injunctions sought in relation to domestic building.

Objectives

- Achieve a median time of 12 weeks from application to resolution for all cases.
- Increase the settlement rate by way of mediation and compulsory conference.
- Improve procedures for preparing cases for hearing.

Key Results

- Resolved 60% of cases within 22 weeks of application and 80% of cases within 38 weeks.
- Achieved a settlement rate of approximately 65% of all cases.
- Further refined standard directions and made them available to litigants in preparing for directions hearings.

Future

- Reduce waiting times so that, at the longest, 60% of cases are resolved within 20 weeks of application and 80% within 35 weeks.
- Maintain the settlement ratio through mediations and compulsory conferences.
- Continue to examine ways to streamline procedures conducted prior to hearing.
- Establish performance benchmarks.

Statistical Profile

- Applications received: 1,036
- Cases resolved: 829
- Cases pending: 596
- Application fee: \$250–\$500
- Number of members: 18

Deputy President profile

Damien Cremean, PhD Law, LLB (Hons), BA (Phil), was appointed Deputy President of the Domestic Building List on 1 July 1998. Damien is also an Associate Professor at Deakin University. Previously, he was appointed Deputy Chair of the Domestic Building Tribunal in 1996, was a senior lecturer in law and practised as a barrister for 20 years specialising in maritime law.

Case Profile

The total number of applications received increased by 21% from 855 in 1999–2000 to 1,036 in 2000–01. The increase was probably caused by a surge in building before the goods and services tax (GST) was introduced. Cases finalised increased by 2% from 817 in 1999–2000 to 829 in 2000–01. Cases pending totalled 596, compared with 389 in 1999–2000, representing a substantial increase of 53%.

The increase in cases pending was due primarily to difficulties caused by the failure of two substantial insurers HIIH and FAI, which caused many cases to be adjourned indefinitely while awaiting the outcome of government initiatives.

Application Types

The types of applications lodged involved:

- 67% disputes between owners and builders; and
- 33% appeals against decisions of insurance companies.

Most cases brought to the List involved claims over work delays, defective workmanship, and builders going out of business or abandoning work in progress.

How We Dealt with Cases

Domestic Building cases are potentially very expensive and time consuming for the parties. Such cases often involved numerous claims and a large number of parties with many issues in dispute. List members aimed to resolve cases quickly and at a minimum cost to users. The process we used in resolving disputes allowed parties adequate opportunities to settle. Members applied intensive case flow management procedures, and referred matters to mediation or compulsory conference where appropriate. Compulsory conferences are conducted by members who are qualified mediators.

Small Claims Cases

Small claims cases involved disputed amounts of less than \$10,000. We referred the majority of these cases to mediation within 10 weeks of application. Mediation lasted a maximum of one and a half hours for small claims matters.

Normally, this was followed by a hearing if settlement was not achieved. We held the hearing immediately after the mediation, if required, to minimise costs to the parties. This gave the parties certainty that they would achieve resolution of their claim either through mediation or by hearing on the same day.

Standard Cases

Standard cases involved disputed amounts of more than \$10,000 and up to \$100,000. Standard cases, which comprised the majority of the List's workload, usually took up to nine months to resolve, unless settled at mediation or compulsory conference.

Complex Cases

Complex cases involved disputed amounts exceeding \$100,000. Generally, such cases involved complex matters of fact or law and generally took more than nine months to resolve, unless settled at mediation or compulsory conference. These cases constituted a small but significant proportion of the List's case load. During 2000–01, many of the complex cases involved inner city apartments.

Expert Opinions and Special Referees

While parties in a dispute often appointed their own experts, List members appointed experts to advise on specific issues of a case. Members often appointed experts in situations where experts engaged by parties were in disagreement. List members also used special referees where the issues involved were technical in nature or were vast in number.

Case Study: Cabinet Maker Recovers Agreed Price of Work from a Builder at a Hearing Held in a Country Town

A cabinet maker carried out work as a sub-contractor on new houses built by the respondent builder in a country town a day's drive from Melbourne. The cabinet maker lodged an application with VCAT to recover the agreed price of the work. It was apparent from the file there were a number of witnesses to be called, all of whom resided in the country town. Rather than require these persons to come to Melbourne for the two-day hearing, VCAT sent a Senior Member to hear the case in the local court house. Hearing the case near where the work was performed also allowed an inspection of the work to take place with a minimum loss of time. After considering the evidence of the parties, a decision was made in favour of the cabinet maker.

Timeliness

Timeliness was reported in previous annual reports in terms of "median times". As discussed elsewhere in this report, improvements made to our computer system during 2000–01 have enabled more accurate reporting.

In 2000–01, 60% of cases were resolved within 22 weeks of application and 80% of cases within 38 weeks. This compares with 60% of cases being resolved within 21 weeks of application and 80% of cases within 36 weeks in 1999–2000. Demand for the List's services rose 21% due to disputes arising from increased building activity prior to the introduction of the GST. This slowed our resolution times marginally.

We plan to improve our timeliness in 2001–02. However, while demand due to the GST appears to be decreasing, cases involving HIH and FAI, as described below, are yet to be resolved. These cases may have an adverse impact on overall waiting times for 2001–02.

Membership Changes

During 2000–01, three additional full-time members were assigned to the List. This provided a greater capacity to deal with the increased case load and a bigger pool of members with expertise in hearing domestic building cases.

Collapse of HIH and FAI

During 2000–01, two principal insurers in domestic building collapsed, HIH and FAI, which was wholly owned by HIH. Their collapse had a profound impact on the operation of the Domestic Building List, affecting up to 90 cases where those insurers were parties. We took immediate steps to stay the progress of such cases through the List until government intentions became clear. In May 2001, a rescue package for affected persons was provided for with the enactment of the *House Contracts Guarantee (HIH) Act 2001*. The List resumed processing those cases in July 2001.

Impact of Fair Trading Act

During 2000–01, an increasing number of applications relating to domestic building disputes were lodged in the Civil Claims List instead of the Domestic Building List. This was due to greater public awareness about the extensive jurisdiction of the *Fair Trading Act 1999*, which was conferred upon

the Civil Claims List. These cases will be transferred to the Domestic Building List if it is proper to do so, after taking into account the circumstances of each case.

User Group and Practitioner Group Activities

The user group of the Domestic Building List, which met during 2000–01, comprised participants who represented insurers, building consultants and legal professionals. In addition, we established a practitioner group, which met on two occasions during 2000–01. The group provided input from legal practitioners specialising in the List's jurisdiction. Both groups provided important feedback and useful practical suggestions regarding the operation of the List.

New Standard Directions

Following consultation with user representatives, we further refined the new standard directions introduced in 1999–2000. In accordance with existing practice, we made these directions available to the public to assist litigants in preparing for directions hearings.

Training and Development

We initiated special meetings during the year in review with the members of other Lists on the topics of mediation and compulsory conferences. This forum provided an opportunity to exchange and debate settlement techniques. In addition, we attended a series of regular lunch time meetings for members that provided an opportunity for exchanging views and discussing common problems.

The Future

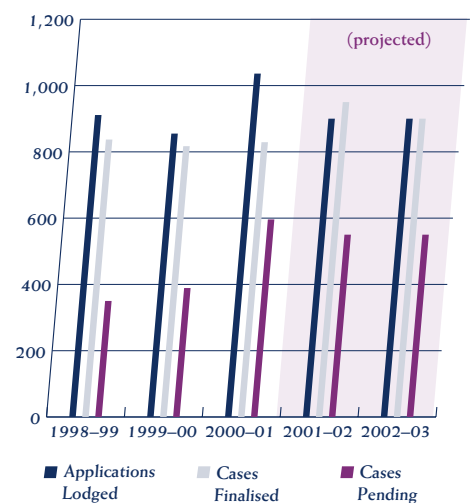
Our objectives for 2001–02 include the following initiatives:

- Maintain the settlement ratio by further improving the quality of mediations and compulsory conferences.
- Continue using compulsory conferences for all complex cases that would otherwise have to proceed to hearing.
- Seek further improvements to procedures conducted prior to hearing, such as reducing interlocutory steps.
- Establish performance benchmarks, such as conducting no more than an average of two directions hearings for all cases and reducing the average turnaround time of nine months for complex cases.

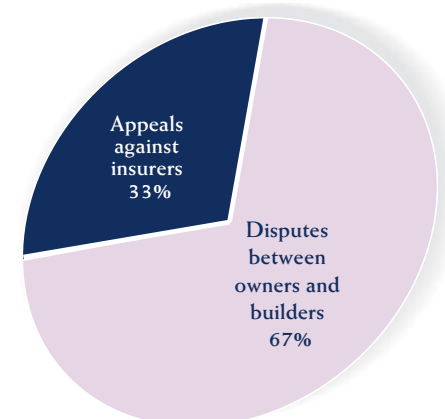


From left, Registry staff member Justin Molik, Deputy President Damien Crenean and staff member Hden Cotronis discuss issues that arose with regard to the collapse of HIH and FAI. Progress of these cases was delayed until the Victorian Government provided a rescue package for those affected by the crisis in May 2001.

Case Flow 1998–2003



Applications by Type 2000–01



Guardianship List

We hear applications for guardianship and administration, and consent to medical treatment and research.

List Snap Shot

Purpose

A List in the Civil Division of VCAT, the purpose of the Guardianship List is to protect adults who, as result of a disability, are unable to make reasonable decisions regarding their personal wellbeing or financial or legal affairs. The List hears and determines applications to:

- appoint guardians to make personal lifestyle decisions;
- revoke financial Enduring Powers of Attorney (EPA) under section 118 of the *Instruments Act 1958*;
- appoint administrators to manage financial and legal affairs;
- revoke or suspend EPAs relating to medical treatment under section 5 of the *Medical Treatment Act 1988*;
- consent to major medical procedures such as sterilisation, termination of pregnancy, donation of non-regenerative tissue; and
- consent to procedures carried out for the purpose of medical research.

Objectives

- Reduce the average waiting time from application to resolution.
- Conduct training and introduce new procedures to deal with new legislation.
- Bring case load up-to-date.
- Revise standard letters and forms.
- Improve the documents to be used with the Order Entry System (OES) when implemented.

Key Results

- Resolved most cases within 29 days of application (32 days in 1999–2000).
- Conducted training in relation to new legislation.
- Resolved outstanding cases requiring re-assessment.
- Refined documents and prepared reporting and follow-up systems in readiness for OES implementation.

Future

- Revise time standards for certain categories of applications with a view to further reducing waiting times.
- Implement OES with new enhancements, including automated follow-up systems.

Statistical Profile

- Applications received and re-assessments initiated: 9,036
- Cases resolved: 8,357
- Cases pending: 1,195
- Administration fee: \$0–\$100 per year
- Number of members: 63

Case Profile

The total number of originating applications received and re-assessments (formerly *reviews*) initiated increased slightly by 1% from 8,953 in 1999–2000 to 9,036 in 2000–01. Cases resolved decreased by 8% from 9,036 in 1999–2000 to 8,357 in 2000–01. This reduction is attributable to the fewer number of cases due for re-assessment in 2000–01, compared with the recurring peak previously experienced.

Although it appears as though cases pending increased dramatically from 516 in 1999–2000 to 1,195 in 2000–01, this figure included approximately 800 cases not due for re-assessment until 2001–02. These cases were listed early to help ensure that we remained on schedule. Therefore, the adjusted figure of 391 for cases pending in 2000–01 represents a decrease of 24%.

Application Types

The types of matters processed were, with the exception of rehearings (see Changes to Legislation on next page) similar to those lodged in 1999–2000 and included:

- 12% guardianship applications;
- 7% guardianship re-assessments;
- 22% administration applications;
- 48% administration re-assessments;
- 2% revocation of enduring powers of attorney; and
- 9% other.

Deputy President Profile

John Billings, BA, LLB (Melb), LLM (Lond), was appointed Deputy President of the Guardianship List on 1 September 2000. Previously, he was Deputy President of the Residential Tenancies List. John was admitted to practice in 1980. He worked as a solicitor at Phillips Fox until 1985 when he began post-graduate study in Law at University College London. After lecturing in Law in London for two years, he returned to Melbourne in 1989 to join the Victorian Bar. As a barrister, he practised civil litigation and administrative law. In 1993, John was appointed to the Refugee Review Tribunal. In March 1997, he was appointed Chairman of the former Residential Tenancies Tribunal and Senior Referee of the former Small Claims Tribunal.

How We Dealt with Cases

List members conducted hearings in Melbourne and at suburban and country venues throughout Victoria. Users were able to access the List 24 hours per day, seven days per week. The Office of the Public Advocate played a vital role in providing services outside normal business hours. In urgent cases, List members conducted hearings by telephone. Video link was also available. In addition, they heard cases at locations convenient for the represented person, such as hospitals or aged care facilities. During 2000–01, 27% of cases originated in the country. List members conducted hearings for these cases at locations closest to where the represented people resided.

The List played a continuing role in supervising decisions made and actions taken by guardians and administrators. In the case of administration orders, VCAT may give advice to administrators and regularly gave or withheld approval for action proposed to be taken by administrators. We examined financial statements lodged with VCAT by administrators and consider examination reports prepared by State Trustees Limited. In appropriate cases, we called for administrators to respond to examination reports and, where necessary, conducted hearings at which administration orders could be re-assessed.

Timeliness

The List performed in a timely manner, resolving most cases within 29 days of application, compared with 32 days in 1999–2000. In addition, we implemented mechanisms to ensure that outstanding cases requiring cyclical re-assessment were re-assessed within the time specified in previous orders.

Improved Services to Rural Users

We made efforts to secure venues throughout Victoria well in advance, enabling long-term planning of hearings. An important part of this planning included assigning members to hearings. This allowed List members to share

resources with other Lists, which in turn promoted more frequent and economical delivery of services to rural Victoria. In addition, long-term planning enabled hearing dates to be published in the Law Calendar for the benefit of parties and their representatives, so that they too could plan ahead.

Changes to Legislation

In November 2000, amendments were made to the *Guardianship and Administration Act 1986* and *Victorian Civil and Administrative Tribunal Act 1998* (VCAT Act).

The main changes were to:

- provide a right of rehearing in certain cases; and
- replace the term *review* with *re-assessment*, thereby avoiding confusion with reviews as defined in the VCAT Act.

Applications for rehearing must be made within 28 days after the day the order is made (or the day on which requested written reasons for the decision are given).

We introduced administrative procedures to deal with the new legislation, and revised and updated the List's Application Form and Guide for Applications. As at 30 June 2001, we had conducted 20 re-hearings as a result of the new legislation.

New Initiatives

We achieved several new initiatives during 2000–01 as follows.

Improved Documentation and Information Flow

We revised standard letters and forms, including the the List's Application Form and Guide for Applications, with a view to making them clearer, simpler to use, and more sensitive to the needs of the List's users and their families. In addition, we updated the information provided to users on the VCAT web site.

In consultation with the Public Advocate, documentation affecting proposed guardians was revised to make it more helpful and informative.

To achieve greater efficiencies, we began work to enable the exchange of reports and other material electronically with the Office of the Public Advocate and other heavy users of the List.

Promoting Legislative Reform

The List was represented on a number of committees and working parties aimed at recommending legislative reform and improving service delivery. As a Member of the Australian Guardianship and Administration Committee, VCAT has participated in initiatives designed to improve the system for mutual recognition of interstate guardianship and administration orders.

National Guardianship and Administration Conference

In conjunction with the Office of the Public Advocate and with the support of State Trustees Limited, we began preparations for a National Guardianship and Administration Conference to be held in Melbourne in October 2001. An important feature of the conference will be a workshop designed to assist those who apply to VCAT in preparing applications and presenting their cases at hearings effectively.

Order Entry System (OES)

The new Order Entry System (OES) did not proceed in March 2001 as previously anticipated. Drawing from the experience of implementing the OES for the Residential Tenancies List in April 2000, we reconsidered the general approach to the system. As a result, the documentation for the system was revised by the immediate past and present Deputy Presidents.

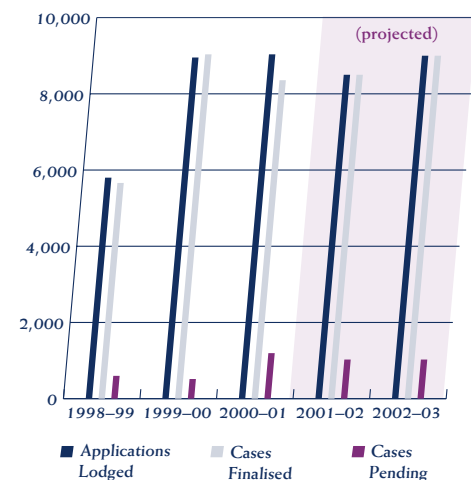
In partnership with the Registry, we began to implement a more sophisticated system. We anticipate that the system will not only enable List members to complete orders in hearings for immediate distribution to parties but will also enable other important functions, such as:

- automatic finalisation of cases;

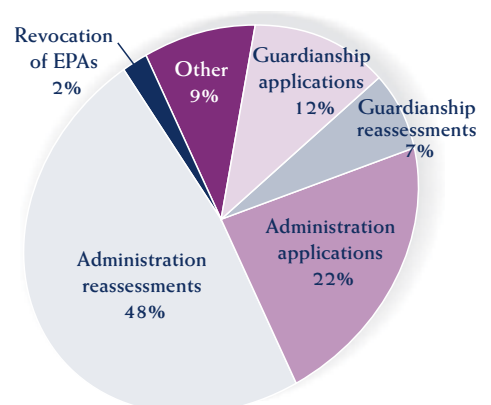


Deputy President John Billings (centre) discusses improvements made to accounting forms for administrators with sessional Member Terry Barton and Registry staff member Maria Guarisco. The revised forms enable VCAT to more closely monitor the activities of administrators.

Case Flow 1998–2003



Applications by Type 2000–01



- refined statistical reporting; and
- a computerised diary system enabling VCAT to follow up steps to be taken by guardians and administrators after their appointment and to ensure the timely scheduling of re-assessment hearings.

During this process, we encountered some problems in matching data captured by the pre-existing system. At the time of writing, we were in the process of addressing these obstacles.

We expect at least the essential order entry features of the OES to be implemented in the Guardianship List during the first half of 2001–02.

Review of Fee Collection Process

We undertook a review of the fee collection process. Although a necessary aspect of the List's operations, the process places

a significant demand on the List's resources. The review will result in a simpler, more cost-effective mechanism being implemented. Related to this issue, submissions were sought and received from major administrators and the Public Advocate to enable guidelines to be published concerning applications for fee waiver or fee reduction. We expect this to benefit all List users.

Submissions to Government

The List commented on submissions to government by the Public Advocate concerning Enduring Powers of Attorney. In addition, the List prepared submissions to government for broader reform of the *Guardianship and Administration Act 1986* designed to remove certain anomalies in the legislation but also to facilitate List operations, which are more efficient, responsive and secure.

Case Study: Elderly Inmate Applies for a Guardian and Administrator to be Appointed for His Elderly Cell Mate

Mr D, an elderly inmate of a medium-security prison, made an application for a guardian and an administrator to be appointed for his cell mate, an elderly man who, according to the application, suffered dementia. Medical evidence before VCAT stated that Mr D's cell mate had subtle, if any, cognitive impairment. VCAT referred the proceeding to the Office of the Public Advocate for investigation. Mr D submitted at hearing that his cell mate needed an administrator to deal with funds held in trust by his solicitor, his appeal against sentence and issues in relation to his immigration status. In addition, Mr D submitted that his cell mate needed a guardian to make decisions about contact with his family, assistance on his release from prison and some medical issues. Evidence disclosed that although Mr D's cell mate availed himself of Mr D's help, such as writing letters on his behalf to his solicitor, he effectively made the decisions about what he wanted to occur. The Public Advocate investigated the matter and, noting the State's duty of care and responsibility for the health, safety and welfare of prisoners, reported there was no need for an administrator or guardian. However, the Public Advocate wrote to the Office of the Correctional Services Commissioner concerning certain systemic issues for elderly persons in the prison system that Mr D had raised. Evidence was given at hearing by prison management, supported by a representative of the Office of the Correctional Services Commissioner, that the needs of elderly prisoners were being addressed, not only at the prison (in the form of staff training, fitness programs, regular health checks and special accommodation) but also within the Commissioner's Office in the development of policy and procedures. VCAT found that the medical evidence did not establish a disability and that there was no current need for an administrator or guardian. Mr D's cell mate was able to make decisions and give instructions in relation to his financial and legal affairs, and medical and other personal issues. Therefore, VCAT dismissed the application.

User Group Activities

We expanded membership of the List's user group to 12 members. Members included representatives from the Public Advocate and legal aid and advice organisations, as well as professional administrators. The user group met in June 2001 to provide a forum, among other things, for the group's members to offer feedback and suggest further improvements to the List's operations.

Training and Development

The List's members received training at the time that amendments to the legislation were enacted around November 2001. New members who were assigned to the List during 2000–01 were encouraged to observe hearings and attend a public seminar in which VCAT, the Office of the Public Advocate and others participated. They will begin formal training early in the next financial year.

The Future

Our objectives for 2001–02 include the following initiatives:

- We will continue our efforts to improve the List's case management system, including the introduction of OES.
- Although well underway, we plan to complete updating our forms and standard letters. We will give special attention to updating forms required to be completed by administrators, along with the materials that give administrators advice concerning their role.
- We plan to revise the List's guidelines available to those appointed to examine accounts lodged by administrators to make them consistent with current legislation and improve their practical value.

Real Property and Retail Tenancies Lists

We resolve matters relating to real property and retail tenancies.

List Snap Shot

Purpose

Both the Real Property and the Retail Tenancies Lists are part of the Civil Division of VCAT.

The Real Property List settles claims under Part 1 of the *Water Act 1989* with respect to damages and disputes relating to unreasonable flows of water. The List also resolves claims for acquisition of easements under Section 36 of the *Subdivision Act 1998*, as well as matters referred by the Office of Fair Trading relating to estate agents' commissions in accordance with the *Estate Agents Act 1980*.

The Retail Tenancies List resolves disputes in relation to leases of retail premises as defined in the *Retail Tenancies Reform Act 1998* (RTR Act). Several classes of premises are excluded from the jurisdiction, such as premises with a floor area exceeding 1,000 square metres, franchised businesses where the landlord is the franchisor and premises where the tenant is a public company. The RTR Act excludes disputes involving claims by landlords solely for rent arrears or in relation to statutory rent reviews. However, the *Fair Trading Act 1999* (FT Act) grants the Retail Tenancies List a wider jurisdiction that allows the List to deal with disputes between former landlords and tenants.

Objectives

- Resolve real property cases within 17 weeks of application.
- Resolve most retail tenancies cases within 17 weeks of application.

Key Results

- Resolved 60% of real property cases within 40 weeks of application and 80% within 53 weeks.
- Resolved 60% of retail tenancies cases within 13 weeks of application and 80% within 22 weeks.

Future

- Reduce waiting times for real property cases.
- Maintain waiting times for retail tenancies cases.

Statistical Profile

Real Property List

- Applications received: 31
- Cases resolved: 22
- Cases pending: 26
- Application fee \$170
- Number of members: 13

Retail Tenancies List

- Applications received: 203
- Cases resolved: 202
- Cases pending: 76
- Application fee \$250–\$500
- Number of members: 11

Case Profile

The Real Property List received a total of 31 applications in 2000–01, compared with 23 in 1999–2000, representing an increase of 35%. Cases resolved fell 19% from 27 in 1999–2000 to 22 in 2000–01. Cases pending rose 53% from 17 in 1999–2000 to 26 in 2000–01. The persistence of dry conditions in Victoria meant that the number of applications filed remained relatively low.

Applications in the Retail Tenancies List rose slightly, totalling 203 applications, compared with 199 in 1999–2000. Cases resolved rose 29%, totalling 202, compared with 157 in 1999–2000. Cases pending remained steady, totalling 76, compared with 75 in 1999–2000.

Application Types

During 2000–01, all cases heard in the Real Property List, excluding one case heard under the *Subdivision Act 1998*, involved claims under the *Water Act 1989* for damages relating to flooding incidents.

The types of applications lodged in the Retail Tenancies List involved disputes arising between landlord and tenant in relation to leases of retail premises.

How We Dealt With Cases

In resolving real property cases, we undertook the full set of interlocutory steps. Once those steps were completed, the parties exchanged their expert reports and attended a compulsory conference held by an engineering member. If the case remained unresolved, a hearing was conducted, usually before a legal and engineering member.

In an attempt to achieve a more cost effective disposition of Water Act claims

for modest sums, we adopted an alternative procedure to achieve resolution. As appropriate, such matters were referred directly to mediation, without having to comply with the usual interlocutory steps. We experienced some success with this process in achieving a speedier and more economical disposition of small matters.

To streamline proceedings with respect to retail tenancies matters, we ensured that:

- claims of \$15,000 or less were dealt with by mediation or, if necessary, fixed for hearing and determined on the same day;
- claims exceeding \$15,000, but less than \$100,000, were referred to mediation or, if unresolved, the standard interlocutory steps were applied and a hearing was scheduled; and
- claims exceeding \$100,000 were referred first for a directions hearing.

Alternatively, List users were able to apply for urgent interim injunctive relief. Such applications were heard immediately, often on the day that they were made.

Timeliness

Timeliness was reported in previous annual reports in terms of "most cases" being resolved within specified times. As discussed elsewhere in this report, improvements made to our computer system during 2000–01 have enabled more accurate reporting.

In 2000–01, we resolved 60% of cases in the Retail Tenancies List within 13 weeks of application and 80% of applications within 22 weeks. In 1999–2000, we resolved 60% of cases within 10 weeks of application and 80% of cases within 16 weeks.

Due to the difficulties described in this report, in 2000–01, we resolved 60% of cases in the Real Property List within 40 weeks of application and 80% within 53 weeks. In 1999–2000, we resolved 60% of cases within 28 weeks of application and 80% of cases within 40 weeks. The case load of the Real Property List is very small and a small number of lengthy cases can greatly effect the result.

In both Lists, timeliness was largely the result of accommodating the desire of parties to negotiate for substantial periods before a case is listed for hearing. In both Lists, we are able to accommodate requests for urgent hearings.

Deputy President Profile

Michael Macnamara, BA (Hons), LLB (Hons), was appointed Deputy President of the Real Property and Retail Tenancies Lists of VCAT on 1 July 1998. Previously, he was appointed Deputy President of the Administrative Appeals Tribunal (AAT) in 1994 and, on two occasions, Acting Chairman of the Credit Tribunal until those tribunals were abolished on 30 June 1998. He was admitted to practice as a barrister and solicitor of the Supreme Court of Victoria in 1977. He was a member of the Victorian Bar from 1978 to 1979 and a partner in the firm Corrs Chambers Westgarth from 1981 to 1994. During that time Michael specialised in banking and finance litigation and real property law.

Proceedings under the Water Act, although mainly involving modest amounts in dispute, proved to be lengthy and difficult to resolve. Proof of relevant facts frequently required expert engineering advice and consultants' reports that were expensive to obtain and frequently resulted in lengthy delays. We experienced a further complication in that many of the claims under the Water Act involved insurers who had paid out for water damage, exercising rights of subrogation under their insurance policies. A number of these proceedings were controlled by companies in the HIH Group. That group's insolvency led to difficulties for the legal practitioners involved in progressing matters or obtaining instructions.

Impact of the Fair Trading Act

The *Fair Trading Act 1999* (FT Act) grants the Retail Tenancies List a wider jurisdiction than exists under the *Retail Tenancies Reform Act 1998* (RTR Act). Under the RTR Act, only disputes between landlords and tenants arising in relation to retail tenancies leases can be brought to VCAT. However, if the lease is already terminated, there is no jurisdiction. The FT Act grants jurisdiction in far more general terms. Therefore, disputes between former landlords and tenants may be dealt with. In addition, the Supreme Court decision in the matter of *Vamot Pty Ltd v Tempacoe Pty Ltd (2000)* (ConvR 54-633) showed, contrary to previous opinion, that the FT Act jurisdiction may be exercised with respect to events that occurred before the Act's commencement date of 1 September 1999.

As a result, the Retail Tenancies List dealt with a wider range of disputes in 2000-01 than in the previous financial year, although the number of proceedings commenced had increased only slightly.

Case Study: Entire House Flooded by Sewage Erupting From Toilets

As Ms G entered her house one evening on her return from work, she heard a gurgling sound from the toilet. She investigated and found sewage erupting from the toilet bowl. An attempt to stem the flow by pressing towels at the base of the toilet door was unsuccessful. The sewage was also erupting from the toilet bowl of the en suite at the other end of the house. Within minutes, the entire house was flooded with sewage. Before entering her house, Ms G had noticed the presence of a contractor's jet truck a few doors away. The contractor was cleaning a blockage in the main sewer. She rushed out and told the contractor what had happened. He ceased operations and came to investigate, finding the entire house flooded with sewage. Ms G brought proceedings under the Water Act against the sewerage authority and its contractor. Both respondents argued that since the flow was one of sewage rather than water the claim under Part 1 of the Water Act was inappropriate. That submission was rejected. The sewerage authority was not liable for the actions of its independent contractor. The contractor was found to have caused the flood and was held liable in damages.

Amendment to the VCAT Act

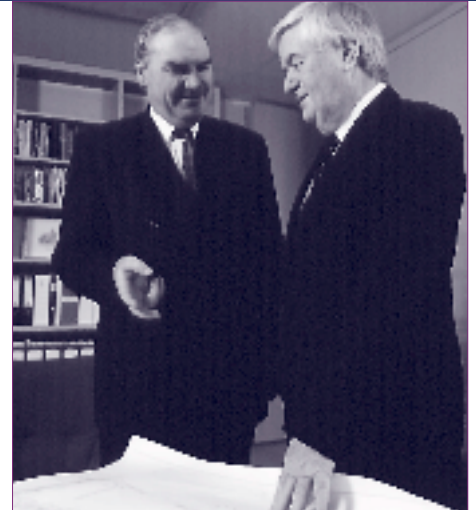
Previously, only the Judicial Members of VCAT were able to make orders relating to declarations in the Retail Tenancies List. As a result of the *Courts and Tribunals Legislation (Further Amendment) Act 2000*, Section 124 of the *Victorian Civil and Administrative Tribunal Act 1998* was amended to enable the Deputy President to make declarations. As a result, a larger percentage of hearings in the List were conducted by the Deputy President rather than the Vice President of the Civil Division Judge Davey.

Law Reform

The Minister for State and Regional Development, The Honourable Marsha Thomson, initiated a review of the State's retail tenancies legislation, resulting in an Issues Paper being published in January 2001. The Issues Paper comprised nine chapters, eight of which dealt with the substantive law of landlord and tenant with respect to retail tenancies in Victoria, and canvassed various issues and options for reform. Chapter nine dealt with dispute resolutions. It posed the following questions:

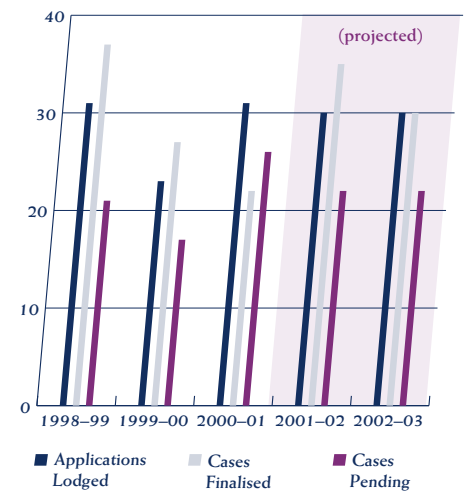
- Is VCAT the most appropriate forum for resolving retail tenancies disputes?
- Is there a case for a separate body to handle grievances that a party is not inclined to take to VCAT?
- Is it fair that a losing party may be liable for the costs of the successful party through VCAT?

The Department and Minister have conducted a series of consultative meetings across the State. We await the conclusions reached by the Review.

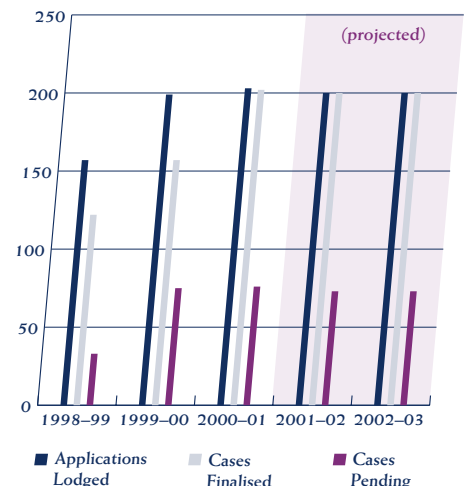


From left, Deputy President Michael Macnamara studies a contour map with Senior Member and engineer Ron Gould who offers his technical expertise in reviewing the facts surrounding a Real Property case involving a flooded property.

Real Property Case Flow 1998-2003



Retail Tenancies Case Flow 1998-2003



Residential Tenancies List

We resolve disputes relating to residential tenancies.

List Snap Shot

Purpose

A List in the Civil Division of VCAT, the Residential Tenancies List receives, hears and determines applications made under the *Residential Tenancies Act 1997* (RT Act). Applications arise from disputes between landlords and tenants, rooming house owners and residents, caravan park or caravan owners and residents, and others. The List may hear and determine applications for amounts up to \$10,000, although parties may authorise the List in writing to hear and determine claims for a higher amount.

Objectives

- Introduce electronic lodgement of applications via VCAT Online.
- Reduce the average waiting time from application to resolution.
- Increase printed orders produced at hearings via Order Entry System (OES).

Key Results

- A total of 5,438 applications were lodged using VCAT Online, representing 17% of all applications that could be lodged electronically.
- The average waiting time from application to resolution for all cases was 23 days (26 days in 1999–2000).
- In the majority of cases listed in Melbourne, all ancillary orders such as adjournments, withdrawals and dismissals were produced using OES. By June 2001, approximately 70 orders per day were being completed using the system.

Future

- Increase the number of applications made via VCAT Online to 35%.
- Produce at least 60% of all orders via OES.

Statistical Profile

- Applications received: 71,541
- Cases resolved: 71,621
- Cases pending: 5,020
- Application fee: \$25
- Typical number of cases resolved per day, per member: 20
- Number of members: 52
- Number of venues visited: 32

Deputy President Profile

Michael Levine, LLB and Churchill fellow, was appointed Deputy President of the Residential Tenancies List on 1 September 2000. Previously appointed Deputy President of the Civil Claims List on 1 July 1998. For the last 25 years, Michael has held positions as the first senior referee of the Small Claims Tribunal, first chairman of the Residential Tenancies Tribunal and the first chairman of the Credit Tribunal. Michael worked as a solicitor in private practice specialising in company liquidation and bankruptcy from 1968 to 1975. Michael sits on many Lists in VCAT.

Case Profile

The total number of applications received rose by 4% in 2000–01, totalling 71,541, compared with 68,588 in 1999–2000.

Cases finalised increased by 5% from 67,978 in 1999–2000 to 71,621 in 2000–01. Cases pending totalled 5,020 in 2000–01, compared with 5,099 in 1999–2000, representing a decrease of 2%.

Application Types

The types of applications lodged were made by:

- landlords represented by an estate agent or property manager (63.7%);
- private landlords (7.8%);
- the Director of Housing (22.8%);
- tenants or residents (4.6%); and
- other parties (1.1%).

Of all applications received, 59.7% related to possession orders, 22.4% payment of bond, 12.4% compensation or compliance orders (alleging breach of duty) and 5.5% other.

How We Dealt with Cases

Members resolved most applications made to the List by hearing. In some cases, they used default procedures to finalise cases. These included an alternative procedure for possession. As a result of these procedures, the Principal

Registrar was able to make orders without the need for parties to attend a hearing.

The complexity of the cases varied depending on such factors as:

- whether the proceedings were defended;
- the number of parties; and
- the number and nature of claims involved.

Legal and factual controversy and conflicting evidence also contributed to the complexity of cases.

Timeliness

The List performed in a timely manner, as demonstrated by the decrease in cases pending. We reduced the average waiting time from application to resolution from 26 days in 1999–2000 to 23 days in 2000–01. This reduction in waiting time was due to more efficient scheduling of venues and increased member productivity.

Ongoing Review of RT Act

The Deputy President participated in the continuing Government review of the RT Act by providing advice on the effect that any proposed changes may have on the case flow and conduct of cases at VCAT. The review focused on proposed changes at both the general and technical amendments level and in special areas relating to caravan parks and rooming houses.

Case Study: Landlords Seek Painting Costs After Noticing Black Soot-Like Film on Walls and Ceilings of their Rental Property

At final inspection, landlords Mr and Mrs X were concerned when they noticed a black soot-like film on the walls and ceilings of the lounge and kitchen of their rental property. The landlords believed that the tenants did not operate the heater correctly. They obtained a painting quotation for \$1,000 and sought the cost of repainting as compensation.

VCAT heard evidence from both parties as to the age and condition of the heater and its use during the tenancy. The parties provided reports from service technicians. The issues before VCAT were whether the tenants had misused the heater or, alternatively, whether they were aware it was malfunctioning and had failed to report this to the managing estate agent. VCAT found that the tenants had failed to report the malfunctioning heater and awarded the landlords the cost of repainting.

Benefits of Order Entry System and VCAT Online

The expansion in 1999–2000 of the Tribunals Case Management System to include the Order Entry System (OES) and VCAT Online has benefited the List greatly by making procedures more streamlined and efficient. Both these systems are described in greater detail on pages 12–13 of this annual report.

The use of VCAT Online increased substantially since its introduction on 28 August 2000. Since then, 5,438 applications were lodged using VCAT Online. This represented 17% of all applications that could be lodged electronically. We began to make considerable progress toward greater access for users in preparing notices and applications through VCAT Online. We anticipate use to rise to at least 35% in 2001–02.

In the majority of cases listed in Melbourne, all ancillary orders such as adjournments, withdrawals and dismissals were produced using OES. By June 2001, approximately 70 orders per day were being completed using the system.

Our plan to extend OES to suburban and rural hearing locations began with a pilot of OES at Sunshine and Ballarat Magistrates' Courts in June 2001. If successful, we will extend OES to all venues with compatible computer systems. With the introduction of new templates for use by members, we hope to produce at least 60% of all orders using OES.

Community Awareness

At the launch of VCAT Online held on 28 August 2000, members took the opportunity to conduct seminars for List users. Members led discussions on a range of hypothetical residential tenancies problems, which they devised and made available to participants prior to the day. Members distributed materials addressing

the problems, which adverted to the relevant sections of the *Residential Tenancies Act 1997*. The problems and supplementary materials were later posted on VCAT's web site for the benefit of those who were unable to attend the seminars.

Issue and Remittance of Changes to Warrants

In November 2000, following negotiations with the Office of the Chief Commissioner of Police, Principal Registrar Ian Proctor introduced the more efficient process of faxing warrants of possession directly to the relevant police station.

User Group Activities

The List's user group comprised participants representing the Office of Housing, Real Estate Institute of Victoria, Tenants Union of Victoria and Rooming House Issues Group. The user group met on four occasions during 2000–01 and provided an excellent forum for discussing issues of relevance to List users.

Training and Development

During the financial year, we reinstated full-day conferences for all the List's members to enhance the consistency of their approach and interpretation of the relevant legislation affecting the List. We expect to hold the conferences up to three times per year.

The Future

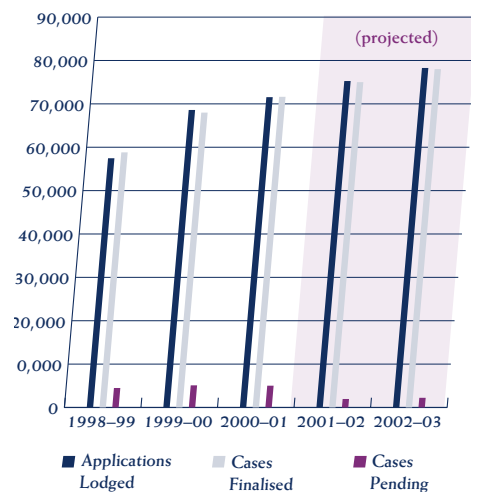
Our objectives for 2001–02 include the following initiatives:

- Further promote the use of VCAT Online to increase use to at least 35%.
- Produce at least 60% of orders using OES.
- Expand OES to users in suburban and country venues.

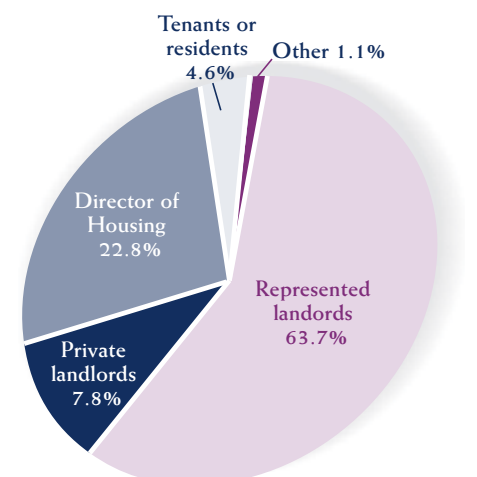


From left, Deputy President Michael Levine discusses the features of the Order Entry System with Customer Service Officer Rita Torelli and Registrar Jan Szuba.

Case Flow 1998–2003



Applications by Type 2000–01



General and Taxation Lists

We resolve disputes relating to general and taxation matters.

List Snap Shot

Purpose

Both the General List and the Taxation List are part of the Administrative Division of VCAT. The General List hears and determines a large variety of matters, including those falling under the *State Superannuation Act 1988*, *Transport Accident Act 1986*, *Freedom of Information Act 1982* and *Victims of Crime Assistance Act 1996*. The Taxation List hears disputes about assessments made by State Government Departments in the imposition of State levies and taxes.

Objectives

- Reduce the average waiting time from application to resolution.

Key Results

- Resolved 60% of transport accident cases within 37 weeks of application and 80% within 60 weeks.
- Of all other cases within the General List, resolved 60% within 23 weeks and 80% within 28 weeks.
- Resolved 60% of taxation cases within nine weeks of application and 80% within 12 weeks.

Future

- Reduce waiting times for transport accident cases and maintain waiting times for all other cases.
- Further develop the use of mediation.

Statistical Profile

- Applications received: 1,372
- Cases resolved: 1,596
- Cases pending: 1,024
- Application fee: \$0–\$170
- Number of members: 46

Deputy President Profile

John Galvin, BA, LL.M., was appointed Deputy President of the General List and Taxation List on 1 July 1998. He was admitted to practice as a barrister and solicitor of the Supreme Court of Victoria in 1960. In 1988, he was appointed a deputy president of the Administrative Appeals Tribunal (AAT) after serving one year as sessional member. John was formerly a partner in the law firm then known as Mahony & Galvin.

Case Profile

In 2000–01, the number of applications received in the General and Taxation Lists totalled 1,372, compared with 1,429 in 1999–2000, representing a decrease of 4%. Cases finalised totalled 1,596, compared with 2,064 in 1999–2000, representing a 23% decrease. Cases pending reduced by 18%, totalling 1,024, compared with 1,248 in 1999–2000.

Application Types

Although the jurisdiction of the General List is broad and varied, transport accident cases continued to dominate. Applications in the Taxation List related primarily to State levies and taxes.

In percentage terms, application types dealt with included:

- 77% transport accident cases;
- 10% freedom of information;
- 7% false fire alarm fee cases; and
- 6% other (including superannuation, criminal injuries compensation and taxation).

How We Dealt with Cases

In most matters, before a hearing took place, we scheduled a compulsory conference at which the issues were canvassed with a view to resolution or partial resolution. Consequently, this process reduced the time in which it took to hear matters and, in many cases, avoided a hearing altogether.

In some cases where the parties agreed, we used mediation. Many matters resolved prior to hearing either due to informal private conferences, compulsory conferences, mediation or a combination of these processes. Applications were over listed for hearing based on the experience that the majority of matters settle prior to hearing.

Timeliness

Timeliness was reported in previous annual reports in terms of "most cases" being resolved with specified times. As discussed elsewhere in this report, improvements made to our computer system during 2000–01 have enabled more accurate

Case Study: Psychiatric Injury Suffered by Passenger Injured in Transport Accident Ruled to be a Direct Consequence of Accident

Mr A was injured in a transport accident when the car in which he was a passenger collided with another vehicle at a suburban intersection. He was admitted to hospital for a period of six days during which time a number of medical examinations were made and tests conducted. It was discovered that, as a result of the accident, he sustained injury to his cervical spine and that he also suffered some psychological impairment. The Transport Accident Commission (TAC) accepted his claim. Mr A's treating orthopaedic surgeon assessed impairment of his cervical spine at 12%, according to the *AMA Guides to the Evaluation of Permanent Impairment*. The TAC's assessing orthopaedic medical expert arrived at an assessment of 8%. The TAC, being of the view that any psychiatric impairment was secondary to physical injuries and therefore not subject to compensation, arrived at a total impairment assessment of 8%. This did not entitle Mr A to payment of benefits, since Mr A was required to demonstrate a related permanent impairment in excess of 10% in order to derive such benefits. The matter was scheduled for hearing and a compulsory conference was held three weeks prior to the hearing. At the conference, supplemental medical reports were re-assessed and it became apparent to the parties that there was a serious likelihood that some part of Mr A's psychiatric impairment was, in fact, a primary consequence of the accident and not merely secondary to physical injury. That became more apparent from a further examination and comparison of medical reports and supplemental medical reports, as well as an exchange of views across the table during the compulsory conference. As a result, the TAC agreed to make an offer to settle at a level of impairment in excess of 10%, thereby entitling Mr A to benefits. The matter was resolved and a three-day hearing avoided.

reporting. In 2000–01, we resolved 60% of transport accident cases within 37 weeks of application and 80% within 60 weeks. We resolved 60% of all other cases within the General List within 23 weeks and 80% within 28 weeks. These times were a significant improvement when compared with the 1999–2000 result of 60% of transport accident cases being resolved within 53 weeks of application and 80% within 80 weeks. In that same financial year, we resolved 60% of all other cases within the General List within 26 weeks and 80% within 48 weeks.

Timeliness was affected by allowing the parties substantial time to negotiate and obtain expert evidence before a case was listed for hearing.

In the Taxation List, we resolved 60% of cases within nine weeks of application and 80% within 12 weeks in 2000–01. In 1999–2000, we resolved 60% of cases within seven weeks and 80% within nine weeks.

Training and Development

On 23 March 2001, the majority of List members, including the List's sessional members, attended an educational conference conducted in Melbourne. The content of the conference was devoted to upgrading previous instructions in relation to understanding and applying the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment (4th Edition)*. This publication is prescribed for assessing permanent impairment in transport accident cases. Dr Dwight Dowda, an expert in the area, attended and led the conference.

User Group Activities

As a result of meetings between the Transport Accident user group and the Freedom of Information (FOI) user group, it was decided to combine all three of the List's user groups, including the General user group, into a single user group, with the possibility of including the Occupational and Business Regulation List user group in future meetings.

We took this approach after finding all of these user groups shared common interests. This will enable the user groups to operate more efficiently as a single group which recognises the common interests of all groups.

User group meetings have proven to be a valuable source of information from practitioners and have greatly assisted the List in improving, refining and modifying procedures and practices.

The Future

List members will continue to review the operation of the List from time to time and express their ideas at members' meetings. These meetings provide an excellent forum for discussing and debating information gleaned from practitioners and, in particular, from user group meetings. Examples of the kind of issues having a future impact on the List include:

- uniformity of practice in relation to forms of costs orders;
- questions relating to legal and medical privilege;
- the manner in which members conduct directions hearings, their usefulness, frequency of use and their importance in the quest for early resolution of matters;
- increased use of mediation; and
- the requirement for good reasons for adjournments as a matter of general practice in the interests of efficiency and orderly conduct of the List.

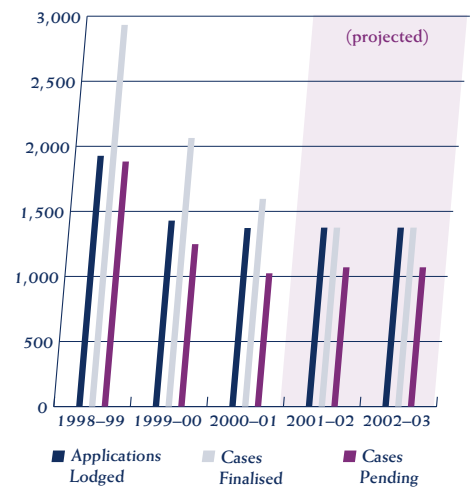
We plan to make a concerted effort to encourage parties to resort to mediation at an early stage in proceedings. In this way, we may achieve earlier resolution and further reduce the number of matters going to hearing.

In addition, we will endeavour to reduce the average waiting time from application to resolution by discouraging unwarranted adjournments of proceedings.

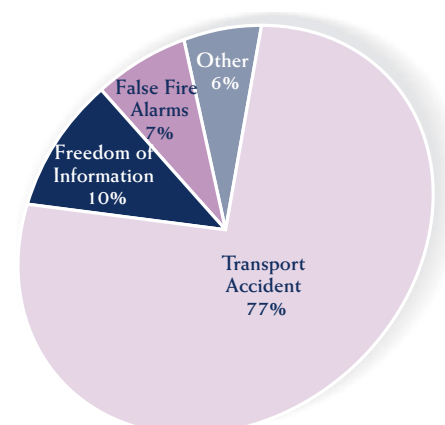


Deputy President John Galvin (far right) discusses a draft change to a practice note relating to listing matters for submission to the Heads of List Committee with (from left) Registry staff members Andrea Lobo and Julie Childs.

Case Flow 1998–2003



Applications by Type 2000–01



List Snap Shot

Purpose

A List in the Administrative Division of VCAT, the Land Valuation List covers areas of jurisdiction that arise from 15 different statutes (refer to page 52).

Objectives

- Keep the average waiting time from application to resolution to a minimum.
- Streamline procedures to prepare for expected increase in case load.

Key Results

- Resolved 60% of cases within 18 weeks of application and 80% of cases within 53 weeks of application.
- Maximised the use of directions to streamline proceedings prior to hearing.

Future

- Resolve cases as quickly as possible.
- Continue to achieve settlement of cases by maximising use of alternative dispute resolution techniques.

Statistical Profile

- Applications received: 145
- Cases resolved: 51
- Cases pending: 117
- Application fee: \$55
- Number of members: 26

Deputy President Profile

John Baker-Smith, LLB, was appointed Deputy President in charge of the Land Valuation List on 1 June 2001 after former Deputy President Julia Bruce retired. Previously, John was appointed Deputy President of the Occupational and Business Regulation List on 1 January 1999, followed by his appointment to the Civil Claims List on 1 September 2000. Prior to VCAT, John held various positions in the public sector, including the Criminal Law Branch of the Crown Solicitor's Office and the Policy and Research Division of the Law Department. He served as chairman for a period of time on the Credit Authority, Estate Agents Disciplinary and Licensing Appeals Tribunal, Motor Car Traders Licensing Authority, Travel Agents Licensing Authority, Prostitution Control Board, and Motor Car Traders' Guarantee Fund Claims Committee. Immediately prior to joining VCAT, John chaired the Business Licensing Authority from July to December 1998.

Case Profile

The number of applications received totalled 145 in 2000–01, compared with 26 in 1999–2000, representing a considerable increase of 308%. Cases finalised also increased substantially by 113%, totalling 51 cases, compared with 24 in 1999–2000. Cases pending followed the rising trend with an increase of 409%, totalling 117 cases, compared with 23 in 1999–2000.

Much of the List's work depends on the timing of municipal valuations of land for rating purposes. During the latter half of 2000–01, we experienced a substantial increase in the volume of applications following the completion of the new general municipal valuations.

Application Types

The types of applications lodged included:

- 92% involving the review of land valuations made for rating and taxing purposes; and
- 8% other.

How We Dealt with Cases

Generally, cases brought to the List were settled rather than contested. To promote early settlement, alternative dispute resolution (ADR) techniques, such as compulsory conferences and mediations, were offered to the parties. If settlement proved unsuccessful, the case was

scheduled for a hearing. We plan to use ADR techniques in appropriate cases.

Timeliness

Timeliness was reported in previous annual reports in terms of "most cases" being resolved with specified times. As discussed elsewhere in this report, improvements made to our computer system during 2000–01 have enabled more accurate reporting. In 2000–01, 60% of cases were resolved within 18 weeks of application and 80% within 53 weeks. This compares with 60% of cases being resolved within 43 weeks of application and 80% within 62 weeks in 1999–2000.

We encouraged the settlement of proceedings between parties without the need for a full hearing. Delays in hearing cases generally arose from a request of the parties to allow detailed preparation or further negotiation to take place.

Handling a Substantial Increase in Workload

The principal challenge during the latter half of the year in review has been to keep the List operating effectively, while dealing with a significantly increased workload, following the new municipal valuations. In dealing with the increase in a timely manner, we maximised the use of directions to streamline proceedings prior to hearing.

Case Study: Ratepayer Takes Issue with Assessment of Land Valuation Made for Rating Purposes

Mr L applied for a review of the values assigned by the Council for rating purposes to his property. He contended the values put forward by the Council were too high. The material before VCAT included submissions from both Mr L and an officer of the Council. To assist in assessing the values assigned by the Council, VCAT was provided with information of sales evidence of other properties in the area. The member hearing the matter inspected the subject property and the other properties. On the basis of the evidence and material before it, and the inspections conducted, VCAT determined that the values placed by the Council on the property should be confirmed. Therefore, the application was dismissed.

The List has a number of sessional members who are valuers who give part time attention to the List. In addition, the List's senior registrar and officers dealt with the administration of the List as needed. Registry staff member Mark O'Reilly continued to be available as the first point of contact for members or parties. This gave the List some continuity and the benefit of a person who has familiarity and experience with land valuation issues.

While the number of applications lodged was substantial, it was well short of the figure of 200 projected in the 1999–2000 Annual Report.

We record our thanks for the substantial contribution to the work of the List by former Deputy President Julia Bruce who retired from VCAT at the end of May 2001.

Community Awareness

Changes to procedures introduced since the start of VCAT for referring objections to valuations are not well understood by the community. For this reason, we continued to give latitude on procedural

matters, using the powers available under the VCAT Act, so that an objector's rights to a hearing were not defeated by such procedural changes.

The Future

Administration of the case load in a manner appropriate to the type of cases and the experience of the parties remains a continuing aim. The List has a variety of specialised jurisdictions and, as in other Lists, the parties do not always choose to obtain professional representation. For this reason, we plan to continue our practice of giving guidance to unrepresented parties.

With the increased case load in 2000–01 due to the timing of municipal valuations of land for rating purposes, we will strive to maximise the use of our resources to deal with this cyclical peak in demand. This includes using alternative dispute resolution techniques to assist in early settlement of cases.

We will further explore the possibility of using video conference facilities for proceedings in rural Victoria.

Case Study: Compulsory Acquisition of Land—Owners Take Issue with Compensation Offered by Council

Mr and Mrs A were the owners of land that had been compulsorily acquired by the local Council. The land was in a remote location, had no structural improvements and vehicle access was not available along the street. The consolidation of the land with other land was required before a planning permit could be issued for construction of a single dwelling.

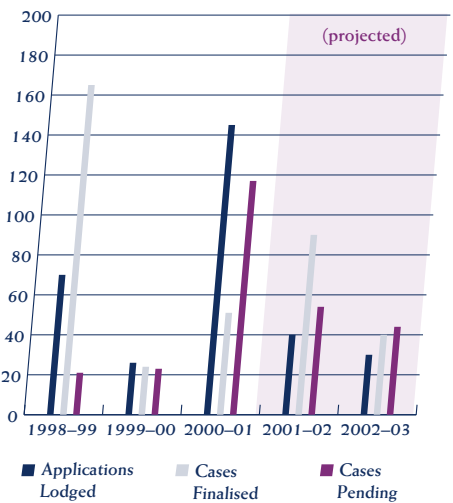
Mr and Mrs A claimed an amount in addition to the amount offered to them by the Council as compensation. It was in these circumstances that the matter came before VCAT. A member of the Land Valuation List heard from one of the owners and a representative of the Council, and inspected the property and other properties referred to.

On the basis of the material before it, VCAT ordered that the value placed by the Council on Mr and Mrs A's interest as owners of the land should be confirmed. However, VCAT determined that the amount of compensation should be increased by a small amount for "intangible and non-pecuniary disadvantages resulting from the acquisition", being an amount less than the maximum of 10% allowed under the VCAT Act for such matters.



From left, Deputy President John Baker-Smith discusses the source of land valuation cases throughout Victoria with Registry staff member Scott Vaughan to assist in listing cases for hearing.

Case Flow 1998–2003



Applications by Type 2000–01



Occupational and Business Regulation List

We resolve matters relating to occupational and business regulation.

List Snap Shot

Purpose

A List in the Administrative Division of VCAT, the purpose of the Occupational and Business Regulation List is principally to hear and determine cases under the *Liquor Control Reform Act 1998*, *Medical Practice Act 1994*, *Private Agents Act 1966*, *Prostitution Control Act 1994*, *Transport Act 1983* and *Estate Agents Act 1980*. The List has a combination of both original jurisdiction and jurisdiction to hear matters on review.

Examples of the original jurisdiction involve the conduct of disciplinary proceedings in relation to a number of occupational groups. Examples of the review jurisdiction are conducting reviews of licensing decisions of the Business Licensing Authority regarding estate agents, motor car traders, prostitution service providers and others.

Objectives

- Hear and determine 80% of cases within 20 weeks of application.

Key Results

- Resolved 60% of cases within 24 weeks of application and 80% of cases within 36 weeks.
- Established a combined user group for the various jurisdictions of the List.
- Further refined the computer case management system.

Future

- Maintain waiting times from application to resolution.

Statistical Profile

- Applications received: 106
- Cases resolved: 161
- Cases pending: 102
- Review application fee: \$170
- Number of members: 52

Deputy President Profile

Sandra Davis, BA Hons, M Sc (Econ), MA, (LLB Hons) was appointed Deputy President of the Occupational and Business Regulation List of VCAT in September 2000. Previously, Sandra was appointed Deputy President of the Guardianship List in May 1999. Prior to VCAT, Sandra was appointed Deputy President of the Administrative Appeals Tribunal in May 1998. Prior to 1998, she practised administrative law, human rights and equal opportunity law, and industrial and commercial law at the Victorian Bar. In addition to Occupational and Business Regulation List matters, Sandra regularly sits in the General, Anti-Discrimination and Guardianship Lists.

Case Profile

The number of applications received decreased by 24% in 2000–01, totalling 106 compared with 139 in 1999–2000. A substantial increase of 56% was achieved in the number of cases finalised, totalling 161, compared with 103 in 1999–2000. The number of cases pending fell 24%, totalling 102, compared with 82 in 1999–2000.

Application Types

The types of applications resolved comprised:

- 32% liquor licensing;
- 19% Victorian Taxi Directorate;
- 14% prostitution service providers;
- 8% private agents;
- 11% estate agents; and
- 16% other

Most cases involved applications to review licensing decisions and disciplinary proceedings relating to a range of occupations and professions.

How We Dealt with Cases

To deal with cases as efficiently as possible, List members conducted directions hearings prior to listing cases for hearing. This enabled an early exchange between the parties and filing of documents, together with statements of witnesses to be called at the hearing, thereby streamlining the hearing process.

Timeliness

Timeliness was reported in previous annual reports in terms of "most cases" being resolved with specified times. As discussed elsewhere in this report, improvements made to our computer system during 2000–01 have enabled more accurate reporting. In 2000–01, we resolved 60% of cases within 24 weeks of application and 80% of cases within 36 weeks. In 1999–2000, we resolved 60% of cases within 24 weeks of application and 80% of cases within 35 weeks.

Timeliness was largely the result of accommodating the desire of parties to negotiate for substantial periods before a case is listed for hearing, particularly in liquor licensing cases. The List is able to accommodate requests for urgent hearings.

Improved Computer Case Management

The introduction of an improved computer system referred to as Caseworks has enabled us to streamline case management within the List. The new system assisted List members to better track cases and to access information regarding the status of cases for the benefit of List users. More information about the benefits of Caseworks can be found on page 12.

User Group Activities

At the start of the financial year, there were two user groups for the List, one for the liquor jurisdiction and one for the non-

Case Study: Holder of Metropolitan Hire Licence Denied a Further Licence by Victorian Taxi Directorate

Mr L, a holder of a metropolitan hire licence, applied to the Victorian Taxi Directorate for a licence to operate an additional hire car. His application was refused on the basis that Mr L had not provided sufficient evidence of unmet demand so as to warrant the granting of a further licence. Dissatisfied with the Directorate's decision, Mr L took the matter to VCAT. At the hearing, Mr L appeared in person and presented additional material, which supported the existence of unmet demand in the particular market he wished to service. A representative of the Directorate called general evidence as to the level of demand for hire car services from other hire car operators to prove that there was sufficient hire cars servicing the market. VCAT determined that the additional evidence did not establish unmet demand sufficient to warrant issuing the additional licence and affirmed the Directorate's decision.

liquor jurisdictions. Those groups were amalgamated into one user group, which met in May 2001. President Justice Kellam attended the meeting, along with Vice President Judge Strong, Deputy President Sandra Davis and approximately 17 stakeholders representing the jurisdictions of the List. The meeting provided an excellent opportunity to exchange ideas with the objective of improving VCAT service delivery within the List.

Since that meeting, the List has acquired new jurisdiction under the *Racing and Betting Acts (Amendment) Act 2000*. In anticipation of this new jurisdiction, a meeting was held in June 2001 with stakeholders in the racing industry to allow an exchange of information regarding the racing industry appeals process and VCAT procedures. Stakeholders from the new racing jurisdiction and from any other new jurisdiction acquired in the next 12 months will be invited to participate in the List's user group.

Training and Development

Full-time members of the List sit in a number of VCAT's Lists. A number of them, as well as some of the List's sessional members, attended the Australian Institute of Judicial Administration (AIJA) Tribunals Conference in Sydney in June 2001.

A number of the List's members will attend the forthcoming Liquor Conference in Sydney in September 2001. In addition, we plan to prepare a program of training and development sessions specific to the List. We anticipate there will be at least one professional development day in the next financial year.

The Future

The *Racing and Betting Acts (Amendment) Act 2000* commenced on 1 July 2001 and provides another review jurisdiction for the List. VCAT will have jurisdiction to hear appeals by persons aggrieved against occupational licensing decisions of the various controlling bodies or the Bookmakers and Bookmakers' Clerks Registration Committee. In the case of the latter, VCAT will also have jurisdiction to hear appeals against suspensions, disqualifications, warnings off and fine impositions. We do not expect this new legislation to have a major impact on the workload of the List.

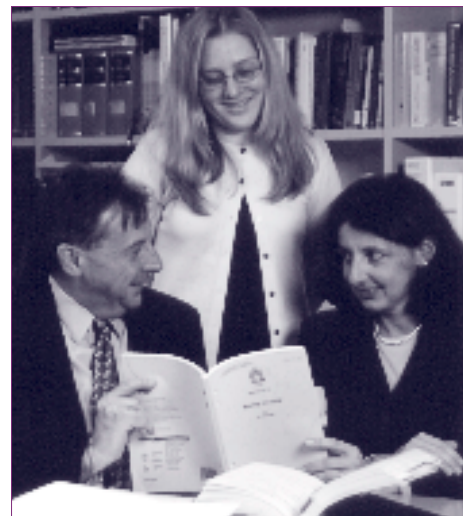
In addition, the List will acquire further jurisdiction in early 2002 under the Land Surveying Bill to review certain decisions of the Surveyors Registration Board. It is proposed to hold joint information sessions with stakeholders in relation to newly acquired areas of jurisdiction.

Case Study: Request for Prostitution Service Provider Licence Refused

Ms N applied to the Business Licensing Authority for a prostitution service provider's licence. The Authority refused to grant Ms N the licence on the basis that she was not a suitable person to be licensed as a prostitution service provider. Ms N brought the matter to VCAT. During the hearing, the applicant gave compelling evidence, which clarified a number of matters that had originally caused concern to the decision-maker. There was also corroborative evidence of Ms N's skills and business ability. VCAT gave oral reasons for its decision at the conclusion of the hearing, setting aside the decision of the Authority and granting the licence sought by Ms N.

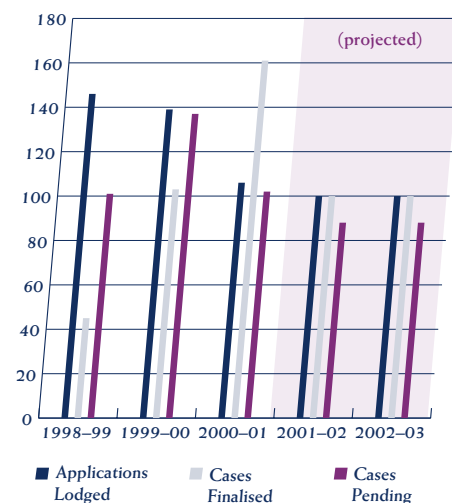
Case Study: Liquor Licensee Refused Request for Extension of Opening Hours

Mr S, a liquor licensee, appealed to VCAT against a decision by the Director of Liquor Licensing refusing to grant his request for an extension of opening hours. The objectors to the original application appeared at VCAT, along with legal representatives of the licensee and the Director of Liquor Licensing. The matter proceeded by way of re-hearing. VCAT considered that the extension of hours would cause detriment to the amenity of the area in which the licensed premises is situated and affirmed the decision made by the Director of Liquor Licensing.



From left, full-time member Robert Davis and Registry staff member Leonie Walker discuss the listing requirements of the first case under the *Racing and Betting Acts (Amendment) Act 2000* with Deputy President Sandra Davis.

Case Flow 1998–2003



Applications by Type 2000–01



Planning List

We decide planning disputes and give leadership regarding planning policy.

List Snap Shot

Purpose

A List in the Administrative Division of VCAT, the Planning List deals with:

- review jurisdiction—reviewing the decisions of Councils and other responsible authorities on applications made to them, including Council decisions to determine applications for planning permits; and
- original jurisdiction—exercising powers conferred directly on it by the enabling legislation. Applications are made directly to VCAT, rather than to responsible authorities, for amendment and cancellation of permits, injunctions and declarations on matters such as the validity of permits or existing land use rights, and enforcement orders for breaches of planning schemes and permits.

There are 15 enabling acts in the List's jurisdiction, including the *Planning and Environment Act 1987*, the *Water Act 1989*, the *Subdivision Act 1988*, the *Heritage Act 1995*, the *Environment Protection Act 1970* and the *Flora and Fauna Guarantee Act 1988*.

Objectives

- Achieve an average waiting time of 14 weeks from application to resolution.
- Prepare for and manage the transition to the new *ResCode 2000* provisions.
- Review the List's procedures to streamline case management.

Key Results

- Resolved 60% of cases within 22 weeks of application and 80% within 30 weeks.
- Substantially increased use of mediation.
- Revised the List's Practice Notes.

Future

- Reduce waiting times so that, at the longest, 60% of cases are resolved within 20 weeks of application and 80% within 28 weeks.
- Further increase the use of mediation.
- Extend digital recording for planning cases.

Statistical Profile

- Applications received: 3,138
- Cases resolved: 3,056
- Cases pending: 1,335
- Application fee: \$23–\$170
- Number of members: 47

Deputy President Profile

Richard Horsfall, LLB (Hons), was appointed Deputy President of the Planning List on 18 October 1999. Previously, Richard was appointed Deputy President of the Land Valuation List in February 1999. Prior to joining VCAT and after leaving private legal practice, Richard was Commissioner of the Liquor Licensing Commission from 1993 to 1999. Since 1963, he has worked in a wide range of areas, including planning, liquor, hotels, property, banking and finance, commercial law, waste disposal, and environmental law.

Case Profile

The number of applications received in 2000–01 totalled 3,138, compared with 3,092 in 1999–2000, representing an increase of 1%. This small rise in applications was unexpected, since we anticipated that the number of applications would fall after the introduction of the Goods and Services Tax (GST). The rise reflects continuing strength in the building industry. Cases finalised totalled 3,056, compared with 3,154 in 1999–2000, representing a decrease of 3%. Cases pending rose 7%, totalling 1,335, compared with 1,253 in 1999–2000.

Application Types

The types of applications lodged mainly involved:

- 85% review of council decisions to grant or refuse permits and other council decisions;
- 6% enforcement orders;
- 6% cancelling or amending permits;
- 1% declarations; and
- 2% other.

How We Dealt with Cases

Most cases dealt with in the List proceeded to hearing without preliminary directions hearings. However, due to the complexity of many planning cases, directions hearings were held at the request of parties or ordered by VCAT to resolve procedural and technical problems and preliminary points, such as joining additional parties, adjournments or urgent hearings. In addition, preliminary hearings assisted in resolving issues, such as whether an application to the List or granting a permit for a development is prohibited by law or the relevant planning scheme.

In April 2001, we began to use mediation and compulsory conferences to resolve planning disputes. By June 2001, the resources available for mediation enabled about 15% of applications to be referred to mediation with the aim of listing three matters every sitting day. As a result, the success rate at that time exceeded 60%. We intend to review the program's progress with the objective of further increasing the use of mediation and compulsory conferences in 2001–02.

Case Study: Nearby Land Owners Object to Permit for the Development of a Wind Farm

VCAT's Planning List upheld a decision by South Gippsland Shire Council to grant a permit for the development of a wind farm. Nearby land owners, who had objected to the application for permit, sought the review.

The wind farm would comprise 12 wind powered turbines on 70 metre high towers, generating 22 megawatts of electricity. The site was identified in the Shire's Planning Scheme as suitable for a wind farm. Issues discussed included state and local planning policy support for renewable energy, visual impact, impacts on migratory and shore birds, and the control of noise emissions. Shadow flicker from turbine blades, electromagnetic interference and the impacts of a large construction project were also considered.

Although the Council's decision was upheld, VCAT considered that a number of the landowner's concerns were highly relevant and varied the permit conditions, especially in relation to ongoing monitoring of bird and bat impacts, noise emissions and shadow flicker, to reflect those concerns.

Timeliness

Timeliness was reported in previous annual reports in terms of "most cases" being resolved with specified times. As discussed elsewhere in this report, improvements made to our computer system during 2000–01 have enabled more accurate reporting. In 2000–01, VCAT experienced funding shortages that resulted in delays in resolving planning disputes. As a result of the Victorian Government responding to the shortage by providing supplementary funding during 2000–01, our resolution times only slowed marginally. We resolved 60% of cases within 22 weeks of application and 80% of applications within 30 weeks. This result compares with 60% of cases being resolved within 20 weeks of application and 80% within 30 weeks in 1999–2000.

It should be noted that in a significant number of cases, hearings were adjourned at the request of, and with the agreement of, all parties. Of course, this lengthened the time taken to resolve cases.

Applications involving developments valued at more than \$5 million were placed by VCAT in a fast track *Commercial List* so that the process could be tightly managed and time frames kept to a minimum.

VPP Format Planning Schemes

By 2000–01, all municipalities had completed the process of converting their planning schemes to the Victoria Planning Provision (VPP) format. In hearing applications, List members applied the new schemes in all instances. Their implementation will continue to be an evolving process.

Through the List's professional development program, we plan to promote consistency. Cases such as Deakin University v Whitehorse (decision dated 5 July 2001, Application 2001/22279) and The Club

Cape Schanck Resort Co Ltd v

Mornington Peninsula (decision dated 21 June 2001, Applications 1999/65927 and 19322) provide instances of unexpected results in the transition to the VPP format planning schemes. For example, in the Deakin decision, VCAT found that not only did the university not need a planning permit to use its land zoned *Public Use Zone 2—Education* for educational purposes but also no permit was needed for developing the land for those purposes.

Introduction of ResCode 2000

An important change to planning schemes will be the introduction of the *ResCode 2000* to replace the *Good Design Guide* and a number of provisions controlling residential development. These changes will affect permit applications and building developments after August 2001.

The transition will be complex with the *Good Design Guide* continuing to apply to permit applications during a transitional period. Through our professional development program and in consultation with the Department of Infrastructure, Planning List members began the process of studying the new *ResCode 2000* in order to be well prepared in time for its introduction.

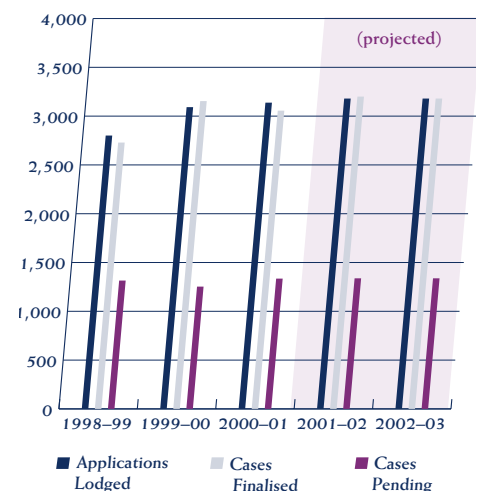
Changes to Practice Notes and Review of Procedures

The process of revising the List's Practice Notes was completed during the financial year with the revision of Planning List Practice Notes Three and Four. In addition, we introduced new application forms dealing with enforcement order applications and requests to cancel or amend planning permits. These new Practice Notes inform parties about the law and procedure of these quite difficult and complex applications, while assisting them to keep in mind the requirement that VCAT hearings be informal and expeditious.

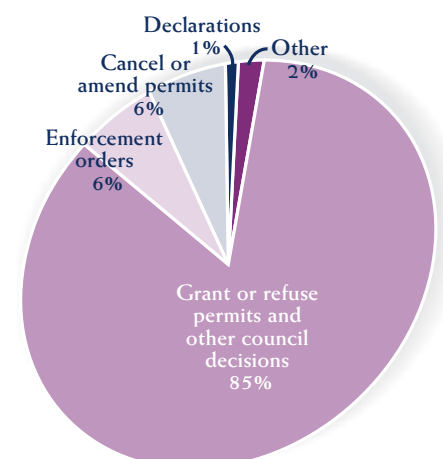


From left, Deputy President Richard Horsfall conducts a directions working group to review methods of streamlining List procedures with Registry staff member Jenny Phillips and Senior Member Jane Monk.

Case Flow 1998–2003



Applications by Type 2000–01



We established a working group, which includes Registry staff, to review consistency in practice directions and procedural matters. We anticipate that the work of the group will be ongoing.

Community Awareness

To raise community awareness of the List's activities during the year in review, members participated in industry seminars and working groups and were members of industry professional associations. List members participated in the *Planet* training program promoted by the Department of Infrastructure, which helped to enhance the List's profile and strengthen its public presence. Members presented topics such as *Preparing Your Submissions to VCAT*, *The Importance of Strategy in Preparing Submissions* and *Enforcement Order Applications*.

User Group Activities

The user group of the Planning List comprised a variety of participants representing municipal, industry and

professional groups. The user group met on two occasions during 2000–01, which provided the opportunity for obtaining valuable feedback and advising users of developments within the List. The user group offered constructive feedback on issues such as consistency of decision-making, proposed Practice Notes and procedures, and mediation.

Training and Development

During 2000–01, we continued our participation in the in-house professional development program for List members introduced last financial year. This program promoted vigorous discussion about a wide range of issues among List members with the aim of greater consistency and improved quality in decisions.

Members attended a variety of industry and external conferences and seminars, including the Australian Institute of Judicial Administration Tribunals' Conference, the Victorian Planning and Environmental Lawyers Association

Conference and the Australasian Conference of Planning and Environment Courts and Tribunals 2000.

We plan to hold a conference specific to the List in September 2001.

With the assistance of VCAT, a total of seven List members participated in the Monash University Diploma in Law course *Decision Making for Tribunal Members*, which included online segments.

The Future

We intend to address the following key issues during 2001–02:

- Reduce waiting times and achieve savings through the increased use of mediation and compulsory conferences. In this way, we hope to achieve early resolution of disputes without the parties having their hearing date delayed if settlement does not occur.
- Continue to study *ResCode 2000* and the transitional legislation to ensure that List members are prepared for its introduction. Its impact on the List, at this stage, is difficult to predict, although an increase in workload is expected.
- Continue to review and update the List's practices and procedures in consultation with Registry personnel, and assist Registry to give clear information and directions on List practices and procedures.
- Further improve the in-house professional development program.
- Extend the digital recording system to Planning List hearing rooms to provide an efficient and cost-effective means of recording hearings, and monitoring and improving the quality of conduct of all participants during proceedings.

Case Study: Council Refuses Planning Permit Due to Potential Impact of Construction on Native Vegetation

A Council refused a planning permit for constructing three dwellings, one of which would have impacted on the root system of a *Eucalyptus Melliodora* (Yellow Box Tree). The site was located in a *Bush Garden Area—Precinct 1* as described under Council Local Policy.

The principal question to be answered in the case was whether the proposed development represented an acceptable balance between the clear policy support for increased residential densities in established urban areas and the equally clear policy of encouraging new development to respect, and make a positive contribution to, the identified bush garden character of the neighbourhood, thereby avoiding a detrimental effect on remnant native vegetation and its habitat values.

In this case, it was intended to place one of the dwellings in close proximity to an existing tree. While the tree was to be retained, buildings and works near the tree compromised the appearance of the development and the long-term life expectancy of the tree.

VCAT found the tree made a significant contribution to the landscape character and habitat values of the area. It also found the design of the development had a built form that was inconsistent with the objective of the Overlay Controls and of the Local Planning Policy Framework. VCAT upheld the decision of the Council to refuse the planning permit.

Governance Policies

We aim to achieve high standards of leadership.

The Victorian Civil and Administrative Tribunal (VCAT) was created by the *Victorian Civil and Administrative Tribunal Act 1998* (the VCAT Act). This statement describes key details about VCAT's governance policies.

Appointment of Members

Members of VCAT are appointed in accordance with the VCAT Act and include Judicial Members in the role of President and Vice President and Non-Judicial Members acting as Deputy Presidents, Senior Members and Ordinary Members.

Judicial Members

The VCAT Act provides that the President must be a Supreme Court Judge and a Vice President must be a Judge of the County Court. Judicial members are recommended for appointment by the Minister after consultation with the Chief Justice and Chief Judge.

Subject to the VCAT Act, they hold five-year terms and are eligible for re-appointment. They may resign their office as member by delivering to the Governor a signed letter of resignation.

Non-Judicial Members

Deputy Presidents, Senior Members and Members of VCAT are appointed by the Governor in Council. Subject to the VCAT Act, they hold five-year terms and are eligible for re-appointment. They may resign their office as member by delivering to the Governor a signed letter of resignation.

Directing VCAT

The President and Vice Presidents of VCAT are:

- to direct the business of VCAT;
- responsible for the management of the administrative affairs of VCAT;
- responsible for directing the professional development and training of members of VCAT; and
- to determine the places and times of sittings of VCAT.

In carrying out these functions, the Vice Presidents are subject to the direction of the President.

The President is to advise the Minister about any action that he, the President, considers would lead to the:

- more convenient, economic and efficient disposal of the business of VCAT;
- avoidance of delay in the hearing of proceedings; and
- VCAT Act or any enabling enactment being rendered more effective.

In carrying out these functions, the President and Vice Presidents consult with VCAT's Deputy Presidents, the Chief Executive Officer and Principal Registrar through monthly Heads of Lists Meetings, meetings of other committees and, on a daily basis, with individuals.

Remuneration of Members

Members are entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council. Remuneration and allowances in 2000–01 totalled \$6.84 million, compared with \$7.2 million in 1999–2000.

Rules Committee Members

The members of the Rules Committee are:

- the President;
- each Vice President;
- a full-time member of VCAT who is not a Judicial Member or legal practitioner, and is nominated by the Attorney-General after consultation with the President;
- a current practitioner or interstate practitioner (within the meaning of the *Legal Practice Act 1996*), nominated by the Attorney-General after consultation with the Legal Practice Board; and
- two persons nominated by the Attorney-General.

Functions

The functions of the Rules Committee are:

- to develop rules of practice and procedure, and Practice Notes for VCAT;
- to direct the education of members of VCAT in relation to those rules of practice and procedure and Practice Notes; and
- any other functions conferred on it by the President.

Quorum and Meeting Procedure

The quorum of the Rules Committee is four members. A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote. The Rules Committee must ensure that accurate minutes are kept of its meetings. In all other respects the Rules Committee may regulate its own proceedings.

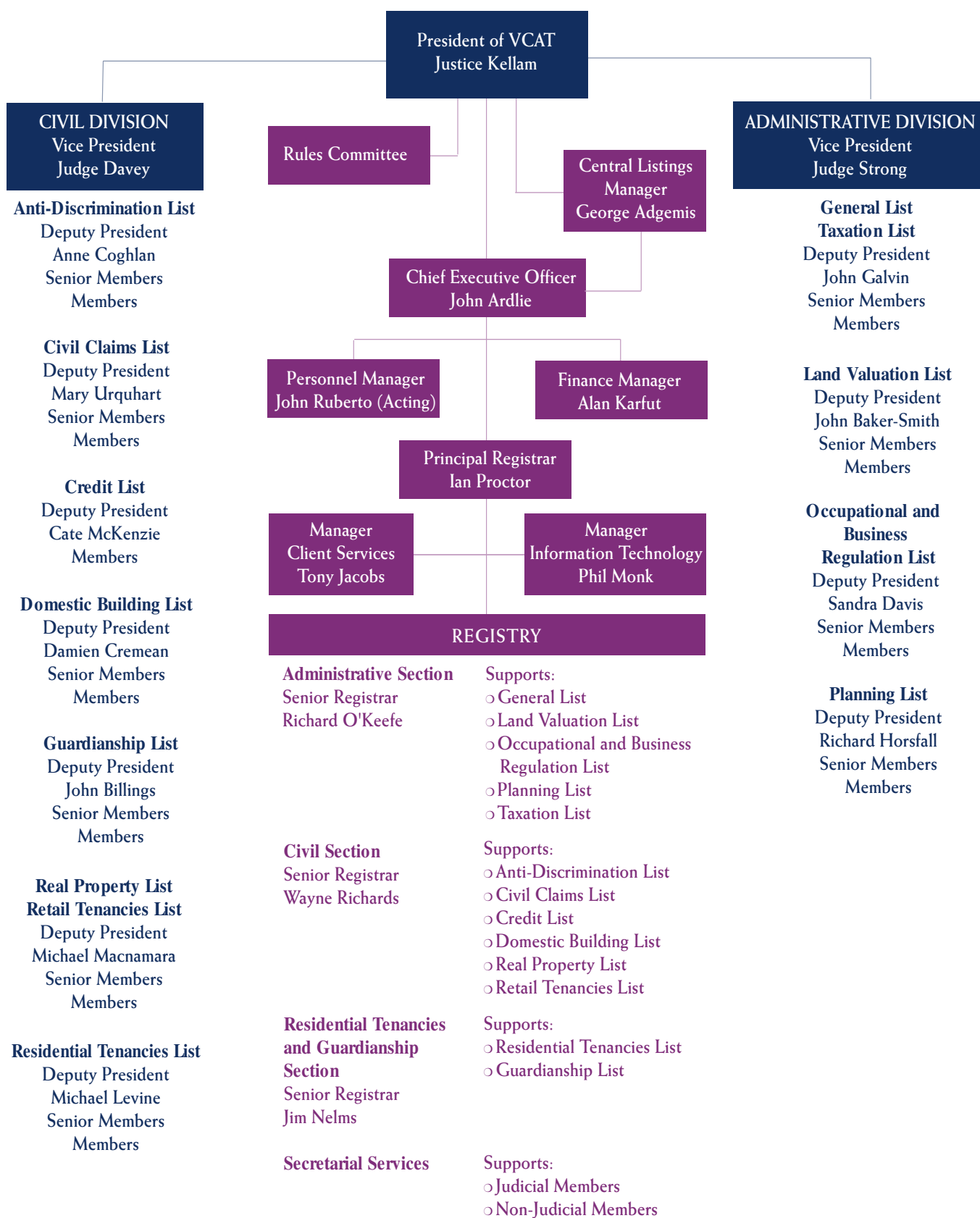
Ethical Standards

The Presidential members have taken steps to increase the knowledge and understanding of members and staff as to their ethical responsibilities.

The VCAT Mediation Code of Conduct provides a guide for mediators and a way to inform parties of their rights at mediation. The Mediation Code of Conduct is detailed on page 59.

Member	No. of Rules Committee Meetings	
	Held	Attended
Justice Kellam	7	6
Judge Davey	7	6
Judge Strong	7	3
Judge Holt	7	3
Louise Jenkins	7	6
Jane Monk	7	6
Prof. Sallmann	7	7

Organisational Structure



Rules Committee Report

We develop rules of practice and procedure that ensure quality decision-making.

VCAT's primary objective is to ensure access to justice for all Victorians.

The Rules Committee is responsible for making VCAT's legislation and Practice Notes readily accessible to VCAT users.

Members of the Rules Committee are appointed under the VCAT Act and carry out a number of important functions with regard to the leadership of VCAT. These functions include:

- developing rules of practice and procedure and Practice Notes for VCAT;
- directing the education of VCAT members in relation to those rules of practice and procedure and Practice Notes; and
- any other functions conferred on it by the President of VCAT.

Rules Committee Members

The Rules Committee comprises VCAT's Judicial Members, a full-time member who is not a legal practitioner, a current legal practitioner and two persons nominated by the Attorney-General.

As at the final Rules Committee meeting for the reporting period on 2 May 2001, Rules Committee Members were as follows:

Justice Kellam

LLB BJuris (Mon) LLM (Melb).

Appointed on 1 July 1998. Signed the Roll of Counsel of the Victorian Bar in 1977. Appointed Queen's Counsel in 1991. Appointed a Judge of the County Court of Victoria in 1993. Appointed Justice of the Supreme Court of Victoria in January 1998. President of the Australian Institute of Judicial Administration (AIJA).

Judge Davey

LLB (Hons) (Melb), BComm. Appointed on 1 July 1998. Signed the Roll of Counsel of the Victorian Bar in 1963. Appointed Queen's Counsel in 1992.

Appointed a Judge of the County Court of Victoria in 1994. Appointed Chairperson of the Domestic Building Tribunal of Victoria in 1996.

Judge Strong

Appointed on 1 February 2001. Judge of the County Court. Admitted to legal practice in 1972. A solicitor until signing the roll of counsel in 1975. Prosecutor for the Queen from 1981 to 1984. Appointed a Judge of the County Court in 1988. Appointed a Deputy President of the Administrative Appeals Tribunal in 1990 and from 1994 to 1998.

Judge Holt

LLB (Melb). Appointed on 1 July 1998. Judge of the County Court. Prior to his appointment to the County Court in 1997, Judge Holt was Chairperson of a number of Boards and Authorities, including the Estate Agents Disciplinary and Licensing Appeals Tribunal.

Louise Jenkins *Solicitor*

BA LLB (Melb). Appointed on 1 July 1998. Barrister and Solicitor of the Supreme Court of Victoria. Partner, Arthur Robinson, Hedderwicks. Member of the Legal Profession Tribunal since 1988. She practises extensively in the litigation area. Her clients include major Australian companies as well as a range of international insurers. She is a member of the Legal Profession Tribunal and a Trustee of Law Aid.

Jane Monk

Bachelor of Town and Regional Planning. Appointed on 1 July 1998. A qualified urban and regional planner, Jane is a full-time senior member of VCAT assigned to the Planning List. She is also a sessional member of Planning Panels Victoria and is a qualified mediator. She has practised in town and regional planning for 24 years mainly working as a planner in local



From left, Prof Peter Sallmann with President of VCAT Justice Murray B Kellam.



From left, Judge Michael Strong with Judge Tim Holt.

government. She spent time as a lecturer in town planning and was a member of the team, within the then Department of Planning, which drafted the Planning and Environment Act 1987. She is a past president and life member of the Local Planners Association (now subsumed into The Royal Australian Planning Institute) and formerly a member of the Standing Advisory Committee that reviewed the *Good Design Guide* and *Vic Code 1*.

Prof Peter Sallmann *Crown Counsel*

LLB (Melb), M Phil (Melb). Appointed on 1 July 1998. Crown Counsel for the State of Victoria. Admitted as a barrister and solicitor of the Supreme Court of Victoria in 1973. Previously, Commissioner of the Law Reform Commission of Victoria, inaugural Executive Director of the Australian Institute of Judicial Administration



From left, Jane Monk and Louise Jenkins.



From left, Judge Fred Davey with Rules Committee secretary Joanna Lawson.

(AIJA), a member of the Victorian Premier's Drug Advisory Council, and Chairman of the Ethics Committee of the Victorian Institute of Forensic Medicine. Appointed Director of the Civil Justice Review Project in 1997. Professorial Associate of the Law Faculty at the University of Melbourne.

Activities and Achievements

The following summarises the activities and achievements of the Rules Committee in the 12 months to 30 June 2001.

During 2000–01, Rules Committee Members met on seven occasions. Their principal achievements included:

- further refining Practice Notes across VCAT's various Lists;
- developing new rules to address anomalies, new jurisdictions and new technology;

- maintaining an interest in the professional development of VCAT's members;
- overseeing budget allocations for professional development and training; and
- supporting a pilot course conducted by the Monash Law Faculty entitled *Decision-Making for Tribunal Members*.

Changes to Practice Notes and Guidelines

The Committee finalised Practice Notes and guidelines for the following Lists:

Credit List

Guidelines were issued for VCAT staff and users in relation to mediations and compulsory conferences in the Credit List. A users' guide to the List was also finalised.

Planning List

Practice Notes were made in relation to cancelling and amending planning permits under Section 87 of the *Planning and Environment Act 1987* and in relation to applications for enforcement orders under Section 114 of that Act.

Amendments to VCAT Rules

Following the introduction of VCAT Online in the Residential Tenancies List and in response to new legislation and issues raised by VCAT members, staff and users, the Committee amended the rules of VCAT to:

- include the *Dental Practice Act 1999* within VCAT's jurisdiction;
- provide the President with the discretion to determine the composition of VCAT in proceedings relating to consumer credit, estate agents, motor car traders, travel agents and prostitution control;

- enable registered users of the Residential Tenancies List to lodge applications electronically; and
- provide for the inspection of files and to clarify procedure in relation to lodging and giving notice of applications in the Credit List.

Future Initiatives

As required, the Rules Committee will continue to amend the rules of VCAT as changes in jurisdiction occur, and allocate new legislation to the Lists as appropriate.

The work of producing consistent and easily understood Practice Notes and explanatory guides will continue. So too will the Committee's interest in, and attention to, the training needs of members.

VCAT members will be among those who will benefit from participating in the Judicial College of Victoria, which is due to commence operation in early 2002. President Justice Kellam will be appointed as a board member of the college and the Rules Committee will advise college administrators about member training and development issues.

In 2001–02, most of VCAT's rules will have been in effect for three years. For this reason, we will review the overall performance of these rules and determine, in the light of experience and in response to new technology, whether changes or different approaches are warranted.

Registry Management

In Registry, we aim to create an administrative system that serves the increasing demands of VCAT's users effectively, while maintaining an efficient, streamlined approach to Registry management.

Registry Activities

Registry management and staff work with members to manage and track cases throughout each stage of the process from application to resolution. Some of these tasks include generating standard letters such as hearing notices and schedules, allocating members to deal with the extensive daily case load, and recording actions taken and orders made by members.

Registry Management

The following senior managers made up Registry management as at 30 June 2001:

John Ardlie

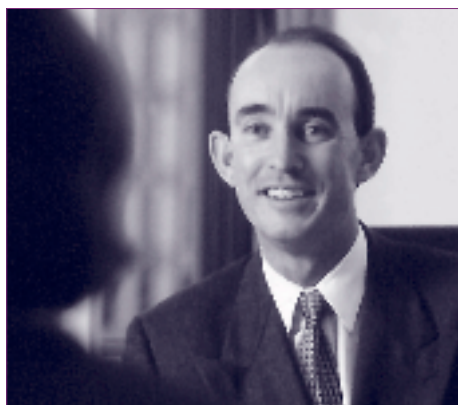
Appointed Chief Executive Officer in July 1998. Formerly career Clerk of Courts. Joined Courts Management Division of the former Attorney-General's Department in 1984. Held various management roles within the administration of the State's justice system, including Deputy Director, Court Operations, and Manager of Courts and Tribunal Services.

Ian Proctor

BA, LLB (ANU). Appointed Principal Registrar in November 1998. Previously a solicitor and administrator for the Federal Government, community legal centres, the former Legal Aid Commission of Victoria and the Victorian Government. Project Manager of the VCAT Project responsible for coordinating the work of creating VCAT.

Jim Nelms

Appointed Senior Registrar, Residential Tenancies and Guardianship Section of the Registry in April 1999. Joined the former Ministry of Consumer Affairs in 1989. Appointed Registrar of the Small Claims Tribunal and Residential Tenancies Tribunal in 1991.



Principal Registrar Ian Proctor.



From left, Senior Registrars Richard O'Keefe and Jim Nelms.

Wayne Richards

Appointed Senior Registrar, Civil Section of the Registry in April 1999. Formerly Registrar of the Civil Claims List from July 1998. Joined the public service in 1966 and worked in the Finance Department of the Ministry of Housing. Appointed as an inspector in the Consumer Affairs Bureau in 1976. Appointed Assistant Registrar of both the Residential Tenancies and Small Claims Tribunals in 1987.

Richard O'Keefe

LLB (Deakin). Appointed Senior Registrar, Administrative Section of the Registry in April 1999. Previously a public servant with the Department of Justice (the then Law Department) since 1973. Qualified as a Clerk of Courts in 1975. Worked in a variety of suburban Magistrates' Courts over the past 25 years. Appointed to the registry of the Administrative Appeals Tribunal in 1996.

George Adgemis

Appointed Listings Manager in July 1999. Previously held roles as the Principal Registrar of the State Coroner's Office and Director of Criminal Trial Listings, qualified as a Clerk of Courts in 1983 and worked in a number of suburban Magistrates' Courts.



From left, Senior Registrar Wayne Richards and Listings Manager George Adgemis.

Committee and Member Profile

Committee Profile

Heads of List Committee

VCAT's committee structure is managed by the Heads of List Committee, which comprises President Justice Kellam, Vice Presidents Judge Strong and Judge Davey, and the Deputy Presidents of each List. The Heads of List Committee met on eight occasions during 2000–01 to discuss key issues regarding the day-to-day work of List members, such as case load, finance, training and upcoming changes in legislation.

Professional Development Coordinating Committee

The Professional Development Coordinating Committee comprises six members who manage a number of sub-committees that oversee specific areas of professional development within VCAT:

- mediation
- seminars and new members
- publications
- library
- home page

The following information details the activities and achievements of these sub-committees.

Mediation

Members of the Mediation Sub-Committee are responsible for promoting the use of mediation at VCAT. Committee members held six meetings during 2000–01. Members undertook a range of activities, which can be found in more detail on page 16.

Seminars and New Members

Members of the Seminars and New Members Sub-Committee are responsible for arranging seminars on the conduct of hearings, decision writing, costs and damages, and developments in the area of administrative law. Committee members held three meetings during 2000–01 and

organised for seminars to be held on the conduct of hearings, and the implications of the GST on agreements reached through mediation and VCAT orders. The seminar topics were chosen from a list of preferred topics developed as a result of a member survey conducted by the Committee in 1999–2000.

Committee members plan to achieve the following future initiatives for 2001–02:

- Organise a seminar to be held on 12 July 2001 concerning transcultural and disability awareness issues, and how these may impact on the conduct of hearings and mediations.
- Arrange for a second seminar on the above topic to be held on 7 September 2001.
- Conduct the committee's seminar program using the list of preferred topics developed from the member survey conducted in 1999–2000.
- Conduct a member survey in 2001–02 to assist in planning future seminars.

Publications

Members of the Publications Sub-Committee are responsible for producing the periodic VCAT Newsletter, which is distributed to members and staff. The newsletter provides important information such as selected Court and VCAT decisions, relevant legal information and items of general interest, including social activities. Committee members held four meetings during 2000–01.

Library

In association with VCAT's librarian, members of the Library Sub-Committee are responsible for ensuring that the VCAT library provides an efficient service to VCAT members. Responsibilities include:

- assessing priorities with regard to acquiring books and electronic services;



From left, newly appointed librarian Clare O'Dwyer discusses a law report with Chairman of the Library Sub-Committee Russell Byard.

- liaising with members to ascertain needs; and
- allocating the resources required to ensure that the library runs smoothly.

Committee members held bi-monthly meetings during 2000–01 and achieved several initiatives, including:

- orientating and supporting the new librarian;
- revising holdings, assessing shortcomings and allocating priorities for acquisitions;
- devising a plan to revise the layout of and facilities provided by the library;
- reorganising electronic services so that subscriptions may be accessed online rather than by CD Rom; and
- planning and arranging training for members to enable better use of electronic services.

Home Page

Members of the Home Page Sub-Committee are responsible for publishing information about VCAT and its various Lists on the VCAT web site www.vcat.vic.gov.au.

Committee members select and publish important VCAT decisions often within minutes of them being handed down.

During the financial year, the web site became increasingly popular with the number of unique visitors rising to more than 122,000.

To ensure effective integration of the site with general information technology development at VCAT, the head of the Committee is part of the overall VCAT Information Technology Group.

Member Profile

The members of VCAT comprise the President and two Vice Presidents who are Judicial Members, and non-judicial members comprising Deputy Presidents, Senior Members and members. As at 30 June 2001, VCAT non-judicial membership totalled 43 full-time members (38 in 1999–2000) and 136 sessional members (147 in 1999–2000).

VCAT members include legal practitioners and members of other professions such as planners, engineers, architects, medical practitioners, land valuers and real estate agents who have specialised knowledge or expertise to assist VCAT in exercising its wide range of jurisdictions.

Benefits of Cross-Membership

The fact that many members are qualified to sit in a number of jurisdictions that were previously managed by separate boards and tribunals, enables VCAT to function more efficiently. The flexibility that comes with cross-membership means that members can serve on a variety of

Lists where needed, increasing VCAT's overall effectiveness. This enables members to acquire broader experience, as well as to accumulate new perspectives and knowledge from exposure to a variety of jurisdictions. In addition, this offers greater career flexibility and satisfaction.

List Specific Training

Individual List specific training for members was conducted throughout the year in review. (Refer to individual List performance for more information, starting on page 18.)

AIJA Tribunals Conference

The Australian Institute of Judicial Administration (AIJA) is the foremost Australasian judicial administration body. The members of its council are composed of judges, magistrates and tribunal members of all jurisdictions, together with senior court administrators, academics and senior public servants. The AIJA conducts conferences on an annual basis, providing a forum to identify common concerns of tribunals in Australia.

A total of 38 VCAT members attended the AIJA Tribunals Conference in Sydney on 8 June 2001. The theme of the conference was *Tribunals—They Need to be Different*. The conference provided information on such topics as applying rules of evidence in tribunals and working with the community.

Monash University Pilot Program

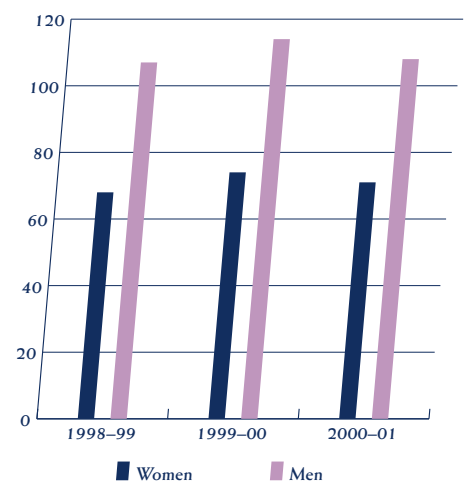
A total of eight VCAT members undertook a six-month pilot program conducted by the Faculty of Law at Monash University specially designed for tribunal members called *Decision Making for Tribunal Members*. The course was available electronically throughout Australia and Asia via the Internet. It covered such topics as ethics, writing a decision, conducting a hearing, applying law and policy, and planning the decision-making process. Monash University will offer a Graduate Diploma in tribunal procedures upon successful completion of the now established course.

Restructure of Remuneration

During 1999–2000, the Governor in Council declared that the Judicial Remuneration Tribunal (JRT) is to enquire into and report on the salary and allowances of VCAT members. As a result, the JRT conducted a review of remuneration at VCAT.

In January 2001, the JRT handed down its report in relation to the remuneration of members. Although we had expected there would be adjustments to VCAT remuneration levels as a result, unfortunately, this did not occur. Neither the majority decision nor the minority decision of the JRT was accepted by the Government.

Members by Gender—1998–2001



Type of Member	2000–01		1999–2000	
	Women	Men	Women	Men
Judicial Member	-	5	-	3
Deputy President	4	7	4	7
Senior Member	3	5	3	4
Sessional Senior Member	1	3	1	3
Full-Time Member	10	9	11	9
Sessional Member	53	79	54	87
Total	71	108	74	114

Staff Profile

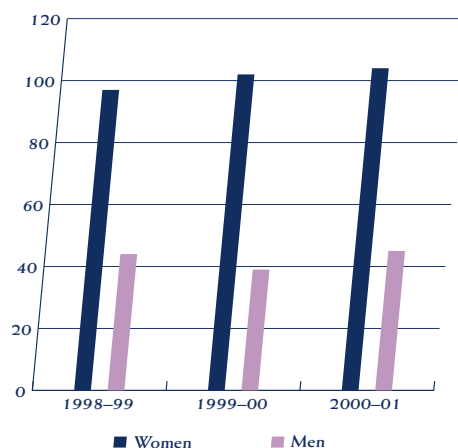
The number of full-time employees increased from 141 in 1999–2000 to 149 in 2000–01. This total comprises six senior managers, 29 managers and supervisors, and 114 administration staff. Staff numbers include staff on maternity leave, leave without pay and secondments, as well as casual staff, and two staff members from the Appeal Costs Board and the Justices of the Peace Registry.

Wages and Superannuation

Salaries are performance based and staff receive performance evaluations every six months. All staff rated average or above average in terms of performance and the average annual salary increase was 4%. Wages for all staff totalled \$5.6 million for 2000–01. All staff are eligible for superannuation benefits provided through various funds, including the Government Superannuation Office and VicSuper.

With the certification of the MX Award on 31 March 2000, made under sub section 170 MX (3) of the *Workplace Relations Act 1996*, staff who had not signed an employment agreement received a 9.5% wage increase backdated to 31 March 1999. As a flow on effect, the government extended a 2% wage increase to staff who had signed individual and collective employment agreements. This brought all staff into line with the same level of increases.

Full-Time Equivalent Comparison



Staff Full-Time Equivalent numbers include staff on maternity leave, leave without pay, secondments and casual roles (12 as at 30 June 2001). This number fluctuates from time to time.

A number of new terms and conditions emerged under the 170 MX Award but it largely adopted the provisions contained in the Australian Workplace Agreements and Collective Agreements.

Equal Employment Opportunity

We are an equal employment opportunity employer. Appointments and promotions are based on merit and staff members receive the training and experience required to enhance their skills and abilities. We update staff on current issues and developments with regard to sexual harassment and broader harassment and discrimination issues within the workplace by conducting seminars, workshops and circulating relevant literature.

Occupational Health and Safety

We aim to provide and maintain a working environment that is safe and without risk to the health and well being of all staff, members and visitors to VCAT. To help reinforce the importance of emergency procedures, we reviewed building security and evacuation procedures.

A total of five WorkCover claims were made to VCAT during 2000–01 involving three standard claims and two minor claims, which resulted in a total of 85 lost work days. All claimants returned to their respective duties, and one required the assistance of a return to work plan.

A total of 52 staff members took advantage of the flu vaccination program conducted across the Department of Justice.

Employee Relations

On 1 July 2000, the Enterprise Partnership Agreement came into effect. One of the objectives was to establish a partnership between the Victorian Government, its



From left, Lorraine Renouf, John Ruberto and Joanna Lawson discuss upcoming training opportunities for VCAT staff conducted by the Department of Justice.

employees and the Community and Public Service Union. This 12-month agreement establishes the principles for the subsequent three-year partnership agreement.

Training and Development

The Department of Justice (DOJ) provides a Corporate Training Program that is accessible to all employees of VCAT. Through the DOJ, we provide all staff with competency-based training, self management programs, customer awareness programs, Occupational Health and Safety programs and computer training. A total of 11 training courses were attended by 16 staff members, providing for 33 days of training. Courses covered a range of subjects including presentation and writing skills, time management, supervision and guidance, and managing stress.

VCAT also took part in the Youth Employment Training Scheme and employed four trainees. We plan to conduct a VCAT-wide staff performance development seminar in September 2001.

Staff Numbers and Composition by Victorian Public Service (VPS) Band

VPS Band	2000–01		1999–2000	
	Women	Men	Women	Men
VPS-5 (Senior Management)	-	6	-	5
VPS-4 (Management)	3	5	2	5
VPS-3 (Supervisors)	12	9	15	11
VPS-2 (Administration)	72	20	53	10
VPS-1 (Administration)	17	5	32	8
Total	104	45	102	39

Operating Statement

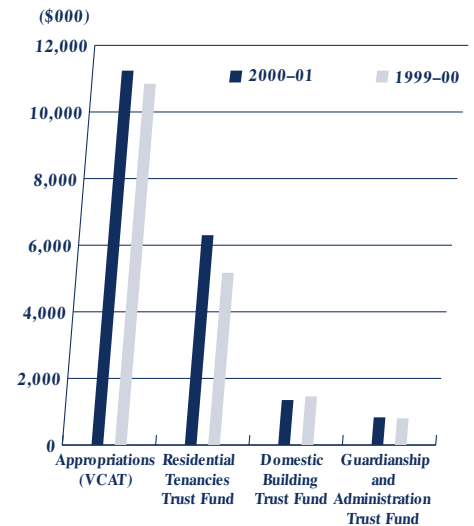
for the Year Ended 30 June 2001.

The Minister for Finance has determined under the *Financial Management Act 1994* that the financial statements of the Victorian Civil and Administrative Tribunal (VCAT) be consolidated and included in the annual report of the Department of Justice. The following information summarises VCAT funding sources and expenditure for 1999–2001.

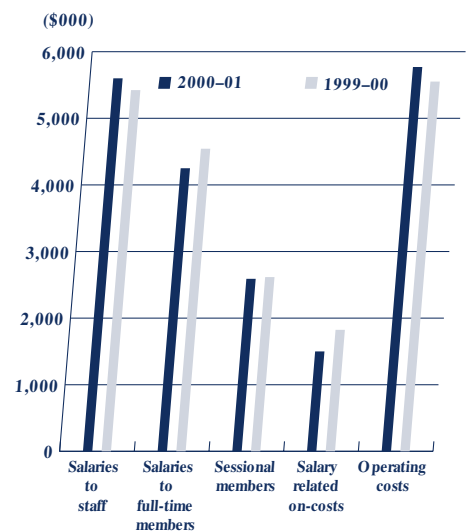
	2000–01	1999–2000
	(\$M)	(\$M)
FUNDING		
VCAT funding sources (budget):		
Appropriations (VCAT)	11.24	11.63
Residential Tenancies Trust Fund	6.31	6.02
Domestic Building Trust Fund	1.35	1.41
Guardianship and Administration Trust Fund	0.83	0.9
Total:	19.73	19.96
EXPENDITURE		
VCAT operational expenditure:		
Salaries to staff	5.62	5.42
Salaries to full-time members	4.25	4.54
Sessional members	2.59	2.62
Salary related on-costs	1.50	1.82
Operating costs	5.77	5.55
Total:	19.73	19.96
VCAT expenditure allocated by List*:		
Residential Tenancies List	6.31	6.02
Planning List	4.10	4.38
Guardianship List	2.17	2.10
General List, Occupational and Business Regulation List, and Taxation List	2.74	3.00
Domestic Building List	1.35	1.41
Anti-Discrimination List	0.83	0.89
Civil Claims List	1.29	1.27
Real Property List and Retail Tenancies List	0.21	0.14
Land Valuation List	0.52	0.53
Credit List	0.24	0.22
Total:	19.73	19.96

*Note: Expenditure by List figures shown above are approximate only. They are intended to give an impression of the relative expenditure among Lists. An accurate comparison of these costs between years is not possible due to the extent of the sharing of resources among Lists.

VCAT Funding Sources (budget)—1999–2001



VCAT Operational Expenditure—1999–2001



Understanding our Operating Statement

Performance

In 2000–01, VCAT's recurrent expenditure of \$19.73 million divided among expenditure on salaries to full-time and sessional members (\$6.84 million), staff salaries (\$5.62 million), salary related on-costs (\$1.50 million) and operating expenses (\$5.77 million) was 1.2% lower than the \$19.96 million expended by VCAT in 1999–2000.

The expenditure decreased in spite of an increase in demand for VCAT's services in 2000–01. VCAT received 92,482 applications, reviews and referrals—5% more than VCAT handled in 1999–2000 (87,762) and 4% greater than the projection for 2000–01 of 87,800 published in the 1999–2000 annual report.

As described in this annual report, VCAT experienced the majority of the rises in the Civil Claims List (up 37% or 1,408 cases), Domestic Building List (up 21% or 181 cases) and Residential Tenancies List (up 4% or 2,954 cases).

VCAT resolved 91,482 cases in 2000–01, an increase of 5% on the 87,262 cases resolved in 1999–2000. In achieving this result, VCAT received support from the Department of Justice, the Department of Infrastructure and the Department of State Development in terms of budget supplementation.

VCAT Funding Sources

VCAT's funding in 2000–01 was provided from the following sources:

Victorian Government appropriations (\$11.24 million) either directly from the Department of Justice or by way of other departments that make contributions to VCAT. These sources fund all but those Lists funded by trust funds as described below. This funding includes revenue of \$0.73 million generated by those Lists through the receipt of application fees.

- The Residential Tenancies Trust Fund established under the *Residential Tenancies Act 1997*, which wholly funds the Residential Tenancies List (\$6.31 million).
- The Domestic Building Fund established under the *Domestic Building Contracts Act 1995*, which wholly funds the Domestic Building List (\$1.35 million).
- The Guardianship and Administration Trust Fund established under the *Guardianship and Administration Act 1986*, which partially funds the Guardianship List (\$0.83 million).

Our budget strategy for 2001–02 is to maximise our productivity while operating within our budget.

VCAT Audited Accounts

VCAT's accounts are audited and published as part of the accounts of the Department of Justice, which are published in the annual report of the Department of Justice. Figures published in the annual report of the Department of Justice may vary from the information published in VCAT's annual report due to adjustments made after the publication of this annual report.

Legislation Defining VCAT Jurisdiction

The following legislation gives jurisdiction to VCAT as at 30 June 2001:

Administrative Division

1. General List

The functions of VCAT under the following enabling acts are allocated to the General List of the Administrative Division:

- *Accident Compensation Act 1985*;
- *Adoption Act 1984* section 129A(1)(a) (decisions regarding fitness to adopt and approval to adopt);
- *Births, Deaths and Marriages Registration Act 1996*;
- *Children and Young Persons Act 1989*;
- *Community Services Act 1970*;
- *Country Fire Authority Act 1958*;
- *Dangerous Goods Act 1985*;
- *Domestic (Feral and Nuisance) Animals Act 1994* section 98(2) (declaration and registration of dangerous dogs);
- *Drugs, Poisons and Controlled Substances (Amendment) Act 1997*;
- *Emergency Management Act 1986*;
- *Emergency Services Superannuation Act 1986*;
- *Equipment (Public Safety) Act 1994*;
- *Estate Agents Act 1980* section 81(5A) (claims against guarantee fund);
- *Freedom of Information Act 1982*;
- *Gaming No. 2 Act 1997*;
- *Health Act 1958* section 125 (compensation for seizure of property);
- *Hospitals Superannuation Act 1988*;
- *Industrial and Provident Societies Act 1958*;
- *Infertility Treatment Act 1995*;
- *Livestock Disease Control Act 1994*;
- *Local Authorities Superannuation Act 1988*;
- *Local Government Act 1989* sections 38(2A) and 48 (decisions of Municipal Electoral Tribunal), section 133 (decision of the Minister imposing a surcharge) and clause 7 of Schedule 5 (decisions of returning officers concerning how-to-vote cards);

- *Lotteries Gaming and Betting Act 1966* section 7A (decisions of Victorian Casino and Gaming Authority under Part 1);
- *Mental Health Act 1986* sections 79 (decision of Chief General Manager), 120 (decisions of Mental Health Review Board);
- *Metropolitan Fire Brigades Act 1958*;
- *Motor Car Traders Act 1986* section 79 (claims against guarantee fund);
- *Occupational Health and Safety Act 1985*;
- *Parliamentary Salaries and Superannuation Act 1968*;
- *Road Transport (Dangerous Goods) Act 1995*;
- *State Employees Retirement Benefits Act 1979*;
- *State Superannuation Act 1988*;
- *Superannuation (Portability) Act 1989*;
- *Tertiary Education Act 1993*;
- *The Constitution Act Amendment Act 1958*;
- *Transport Accident Act 1986*;
- *Transport Superannuation Act 1988*;
- *Travel Agents Act 1986* section 46 (claims against approved compensation schemes);
- *Victims of Crime Assistance Act 1996*;
- *Victoria State Emergency Service Act 1987*;
- *Victorian Plantations Corporation Act 1993*;
- *Vocational Education and Training Act 1990*.

2. Land Valuation List

The functions of VCAT under the following enabling acts are allocated to the Land Valuation List of the Administrative Division:

- *Flora and Fauna Guarantee Act 1988* section 43(12) (claims for compensation);
- *Gift Duty Act 1971* section 36(1)(a) (so much of the decision of the Commissioner as relates to the value of land);

- *Health Services Act 1988* section 67 (compulsory acquisition of land);
- *Land Acquisition and Compensation Act 1986*;
- *Land Tax Act 1958* section 25(1)(a) (so much of decision of the Commissioner as relates to the value of land);
- *Local Government Act 1989* section 183 (differential rating);
- *Mildura College Lands Act 1916* section 2(e) (decision of Valuer-General on value of land);
- *Mineral Resources Development Act 1990* section 88 (compensation for loss caused by work under a licence);
- *Pipelines Act 1967* section 22B (objections to compulsory acquisition of native title rights and interests);
- *Planning and Environment Act 1987* sections 94(5) (compensation as a result of order to stop development or cancellation or amendment of permit) and 105 (compensation for loss caused by reservation of land, restriction of access or road closure);
- *Probate Duty Act 1962* section 19A(1)(a) (so much of the decision of the Commissioner as relates to the value of land);
- *Stamps Act 1958* section 33B(1)(a) (so much of decision of the Commissioner as relates to the value of land);
- *Subdivision Act 1988* section 19 (valuation of land for public open space);
- *Valuation of Land Act 1960* Part III (disputes on the value of land);
- *Water Act 1989* section 266(6) (setting tariffs, fees under tariffs, valuation equalisation factors and valuations).

3. Occupational and Business Regulation List

The functions of VCAT under the following enabling acts are allocated to the Occupational and Business Regulation List of the Administrative Division:

- *Adoption Act 1984* section 129A(1)(b) (decisions regarding approval of adoption agencies);
- *Agricultural and Veterinary Chemicals (Control of Use) Act 1992*;
- *Architects Act 1991*; Sch. 1, Part 1 cl. 2(ha)
- *Barley Marketing Act 1993*;
- *Biological Control Act 1986*;
- *Children's Services Act 1996*;
- *Chiropractors Registration Act 1996*;
- *Consumer Credit (Victoria) Act 1995* Part 4 (registration of credit providers) and section 37I(1) (permission, including conditions, to a disqualified person to engage or be involved in finance broking);
- *Dairy Industry Act 1992*;
- *Dangerous Goods Act 1985*;
- *Domestic (Feral and Nuisance) Animals Act 1994* section 98(1) (registration of premises to conduct a domestic animal business);
- *Education Act 1958* section 55 (endorsement of school to accept overseas students);
- *Estate Agents Act 1980* except sections 56B(1) (see Real Property List) and 81(5A) (see General List);
- *Extractive Industries Development Act 1995* sections 39 (quarry manager's certificates) and 40 (panel inquiry into quarry manager's fitness);
- *Farm Produce Wholesale Act 1990* section 20 (licensing of wholesalers);
- *Finance Brokers Act 1969*;
- *Firearms Act 1996* section 182 (decisions of Firearms Appeals Committee);
- *First Home Owner Grant Act 2000*;
- *Health Services Act 1988* section 110 (decisions of Minister or Chief General Manager under Part 4);
- *Liquor Control Reform Act 1998*;
- *Lotteries Gaming and Betting Act 1966* section 10D (licensing of amusement machine operators);
- *Marine Act 1988* section 85 (cancellation and suspension of certificates and licences);
- *Meat Industry Act 1993* section 24 (licences to operate meat processing facilities, alteration of buildings);
- *Medical Practice Act 1994* section 60 (registration and discipline of medical practitioners);
- *Mineral Resources Development Act 1990* sections 94 (mine manager's certificates) and 95 (panel inquiries into fitness of mine managers);
- *Motor Car Traders Act 1986* except sections 45 (see Civil Claims List) and 79 (see General List);
- *Nurses Act 1993* section 58 (registration and discipline of nurses);
- *Occupational Health and Safety Act 1985* section 59(6) Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 1994 regulation 28 (certificates of competency, authorisation of certificate assessors);
- *Optometrists Registration Act 1996* section 58 (registration and discipline of optometrists);
- *Osteopaths Registration Act 1996* section 56 (registration and discipline of optometrists);
- *Physiotherapists Regulation Act 1998*;
- *Podiatrists Registration Act 1997* section 56 (registration and discipline of optometrists);
- *Prevention of Cruelty to Animals Act 1986* section 33 (licensing of scientific establishments and breeding establishments);
- *Private Agents Act 1966*;
- *Professional Boxing and Martial Arts Act 1985* (licences, permits and registration);
- *Prostitution Control Act 1994*;
- *Public Transport Competition Act 1995*;
- *Second-Hand Dealers and Pawnbrokers Act 1989* sections 9B and 14 (correction of register);
- *Therapeutic Goods (Victoria) Act 1994* section 71 (licensing of wholesale supply);
- *Trade Measurement Act 1995* section 59 (licensing and discipline);
- *Transport Act 1983* except section 56 (see Land Valuation List);
- *Travel Agents Act 1986* except section 46 (see General List);
- *Veterinary Practice Act 1997* section 55 (registration and discipline);
- *Victoria State Emergency Service Act 1987* section 31(2)(d); Victoria State Emergency Service Regulations 1995 regulation 12 (discipline of members);
- *Vocational Education and Training Act 1990* section 81 (registration of non-college providers);
- *Wildlife Act 1975*.

4. Planning List

The functions of VCAT under the following enabling acts are allocated to the Planning List of the Administrative Division:

- *Catchment and Land Protection Act 1994* section 48 (land use conditions and land management notices);
- *Conservation, Forests and Lands Act 1987* section 76 (variation and termination of land management cooperative agreements);
- *Environment Protection Act 1970*;
- *Extractive Industries Development Act 1995* except sections 39 and 40 (see Occupational and Business Licensing List);
- *Flora and Fauna Guarantee Act 1988* sections 34(3), 41 and 41A (interim conservation orders);
- *Heritage Act 1995*;
- *Litter Act 1987* section 8G (litter abatement notices);
- *Local Government Act 1989* sections 185 (imposition of special rate or charge) and 185AA (imposition of special rate or charge);

- *Mineral Resources Development Act 1990* except sections 88 (see Land Valuation List), 94 and 95 (see Occupational and Business Regulation List);
- *Planning and Environment Act 1987* except sections 94(5) and 105 (see Land Valuation List);
- *Plant Health and Plant Products Act 1995* section 39 (costs and expenses of inspectors);
- *Subdivision Act 1988* except sections 19 (see Land Valuation List), 36 and 39 (see Real Property List);
- *Transport Act 1983* section 56 (decisions of the Public Transport Corporation or Roads Corporation): Transport (Roads and Property) Regulations 1993 regulation 18;
- *Water Act 1989* except sections 19 (see Real Property List) and 266(6) (see Land Valuation List);
- *Water Industry Act 1994* except section 74 (see Real Property List).

5. Taxation List

The functions of VCAT under the following enabling acts are allocated to the Taxation List of the Administrative Division:

- Business Franchise Acts;
- *Debits Tax Act 1990*;
- *Financial Institutions Duty Act 1982*;
- *Gift Duty Act 1971* with the exception of section 36(1)(a) to the extent that the decision of the Commissioner relates to the value of land;
- *Land Tax Act 1958* with the exception of section 25(1)(a) to the extent that the decision of the Commissioner relates to the value of land;
- *Pay-Roll Tax Act 1971*;
- *Probate Duty Act 1962* with the exception of section 19A(1)(a) to the extent that the decision of the Commissioner relates to the value of land;

- *Stamps Act 1958* with the exception of section 33B(1)(a) to the extent that the decision of the Commissioner relates to the value of land;
- *Taxation Administration Act 1997*.

Civil Division

1. Anti-Discrimination List

The functions of VCAT under the following enabling acts are allocated to the Anti-Discrimination List of the Civil Division:

- *Equal Opportunity Act 1995*.

2. Civil Claims List

The functions of VCAT under the following enabling acts are allocated to the Civil Claims List of the Civil Division:

- *Fair Trading Act 1999*;
- *Motor Car Traders Act 1986* section 45 (rescission of agreement of sale of motor car);
- *Small Claims Act 1973*.

3. Credit List

The functions of VCAT under the following enabling acts are allocated to the Credit List of the Civil Division:

- *Chattel Securities Act 1987* sections 25 (compensation for extinguishment of security interest) and 26 (compensation in relation to registrable goods);
- *Credit Act 1984*;
- *Credit (Administration) Act 1984*;
- *Consumer Credit (Victoria) Act 1995* except Part 4 and section 37I(1) (see Occupational and Business Regulation List).

4. Domestic Building List

The functions of VCAT under the following enabling acts are allocated to the Domestic Building List of the Civil Division:

- *Building Act 1993*;
- *Domestic Building Contracts Act 1995*;
- *Fair Trading Act 1999*;
- *House Contracts Guarantee Act 1987*.

5. Guardianship List

The functions of VCAT under the following enabling acts are allocated to the Guardianship List of the Civil Division:

- *Guardianship and Administration Act 1986*;
- *Instruments Act 1958* section 118;
- *Medical Treatment Act 1988* section 5C (enduring powers of attorney);
- *Mental health Act 1986* section 86 (decisions for major medical procedures);
- *Trustee Companies Act 1984*.

6. Real Property List

The functions of VCAT under the following enabling acts are allocated to the Real Property List of the Civil Division:

- *Estate Agents Act 1980* section 56B(1) (disputes about commission and outgoings);
- *Fair Trading Act 1999*;
- *Subdivision Act 1988* sections 36 and 39 (other disputes);
- *Water Act 1989* section 19 (civil liability arising from various causes);
- *Water Industry Act 1994* section 74 (liability of licensee).

7. Residential Tenancies List

The functions of VCAT under the following enabling acts are allocated to the Residential Tenancies List of the Civil Division:

- *Residential Tenancies Act 1997*.

8. Retail Tenancies List

The functions of VCAT under the following enabling acts are allocated to the Retail Tenancies List of the Civil Division:

- *Fair Trading Act 1999*;
- *Retail Tenancies Reform Act 1998*.

List(s) Assigned

Judicial Members

President

The Honourable Justice M B Kellam

Vice Presidents

His Honour Judge F Davey

His Honour Judge M Strong, Administrative Division

His Honour Judge T D Wood

His Honour Judge JDuggan, Civil Division

Total Judicial Members: 5

Deputy Presidents

Baker-Smith, John

OBR, DB, Res T, CC, LV

Billings, John

Res T, G, CC

Coghlan, Anne

C, AD, Gen, OBR, Res T, CC, G

Cremean, Dr Damien

DB, CC, OBR, Ret T, Real P, G, Gen

Davis, Sandra

G, Gen, AD, OBR

Galvin, John

Gen, OBR, Tax, G

Horsfall, Richard

P, LV, OBR, DB

Levine, Michael

CC, C, DB, OBR, Gen, G, Real P, Res T, LV

Macnamara, Michael

Ret T, C, DB, OBR, Gen, Real P, P, AD, CC, LV

McKenzie, Cate

AD, Gen, C

Urquhart, Mary

P, OBR, Res T, G, Gen, CC

Total Deputy Presidents: 11

Senior Members

Ball, Rowland

Gen, DB, C

Byard, Russell

P, Real P

Lyons, Dr Gregory

AD, Gen, G

Megay, Noreen

Gen, G, OBR

Monk, Jane

P

Preuss, Jacqueline

Gen, AD, P, OBR, G

Walker, Rohan

Gen, Res T, CC, AD, P, DB, G, Ret T

Young, Roger

DB, Real P, Ret T, CC, Res T, P, LV

Total Senior Members: 8

Senior Sessional Members

Barr, Max

P

Cooney, Lillian

Gen, AD

Marsden, Ian

P

Gould, Ron

P, Real P, DB, Ret T, OBR

Total Senior Sessional Members: 4

Full-Time Members

Baird, Margaret

P

Barker, Heather

Res T, CC

Carruthers, Maureen

G, AD

Cimino, Sam

P, OBR

Davis, Robert

Gen, Ret T, Real P, DB, OBR, P, CC

Gibson, Helen

P

Hewet, Laurie

P

Holloway, William

Res T, CC, P, DB, G, Gen

Kefford, Jacquelyn

Res T, CC

Komesaroff, Tonia

P

Lambrick, Heather

Res T, CC, G, OBR

Liston, Anthony

P

	List(s) Assigned
Moles, Jennifer (Arup)	P
O'Dwyer, Daniel	Res T, CC, AD, DB, G, OBR
O'Leary, Peter	P, OBR
Rickards, Jeanette	P
Scott, Robert	Res T, CC, Gen, G
Tilley, Annemarie	Res T, CC, AD, Gen, G
Wajcman, Jack	Res T, CC

Total Full Time Members: 19

Sessional Members

Adams, John	P, CC, Res T
Aird, Catherine	DB, CC, Ret T, G
Akehurst, Jeffrey	P
Anagnostou, Chryssa	Gen, G, AD
Angell, Sally	CC, Res T, OBR, Real P, Ret T
Armitage, Roderic	OBR
Avery, Peter	P
*Barrow, Brian	G, CC, Res T, Gen, OBR
Barton, Terence	G
Baxter, Pauline	OBR
Bodey, Roger	LV
*Bolster, John Douglas	G, CC, Res T, Gen, OBR
Borg, Susan	Res T, CC, AD, G
Bourke, Gavan	LV
Brown, Vicki	LV
Bryant, Tannetje	P
Burdon-Smith, Susan	Res T, CC, G
Burgess, Zena	AD, G
Callaghan, Edward (Kris)	LV
Caris, Sharon	G
Carleton, Glenn	AD, OBR
Carr, John	LV
Castran, John Howard	LV
Cleary, Peter	LV
Clements, Jim	OBR
Clothier, Bryan	Res T, CC
Colbran, QC Michael	G
Coldbeck, Peter	Gen, G, CC, OBR
Cremean, Bernadette	AD, CC, Res T
D'Arcy, James Alan	LV
Davies, Hugh	CC, Res T
Davies, Vicki	P
Davis, Dr Julian	G, OBR
Dawson, Julie	AD, G
Delves, John	Res T, CC
Dickman, Sharron Dr	OBR
Dillon, John	Gen, OBR
Dudakov, Brian	LV
Dudycz, Dr. Maria	AD, G, OBR
*Dugdale, John Phillip	G, CC, Res T, Gen, OBR
Duggan, Anne	AD, G
Dunlop, John	OBR
Eccles, Desmond (Assoc Prof)	P

	List(s) Assigned
Eggleston, Peter	Res T, CC
Ferres, Dr. Beverley	AD, G, OBR
Forsyth, Jhn	LV
Fox, Peter	Gen, C, OBR, Real P, Ret T
Gibson, Geoffrey	T
Gilfillan, Struan	P
Glover, Dr. Jhn	Gen, T
Good, June	Res T, CC, G
Gordon, Michelle	AD, CC, Gen, G, OBR
Gorman, Lois	G, OBR
Graves, Phillip	G
Gray, Malcolm	OBR
Greenberger, Graham	OBR
Hamilton, Dr Catherine	OBR, AD
Hancock, Elizabeth	LV
Harvey, Margaret	G, AD, CC, RT
Jackson, Maureen	P
Kaufman, QC Jhn	AD
Keaney, Jhn	P
King, Janice	G, AD
Kirmos, Kay	Res T, CC
Klempfner, Yolanda	AD
Kominos, Angela	Res T, CC, AD, G
Krstic, Peter	P
Kullen, Gwenda	P
*Lambden, Elizabeth Anne	G, CC, Res T, Gen, OBR
Langton, Robert	CC, Res T, DB
Lee, Christopher	LV
Leigh, Jhn	LV
Liden, Susanne	Res T, CC, G, AD
Lothian, Margaret	DB, Ret T, CC, Res T, G, P
Louden, David	OBR
Lulham, Ian	DB, Res T
Lush, Jennifer	Gen, G, AD, OBR
Mainwaring, Dr Sylvia	P, AD, Real P
Marles, Victoria	G
McBride, Sue	Res T, CC
McCabe, Edmund	Res T, CC, G
*McDonald, Timothy Jhn	G, CC, Res T, Gen, OBR
McFarlane, Timothy	G
McLeod, Fiona	G, AD
Millane, Frances	G
Mitchell, Kathryn	P
Moraitis, Stella	Gen, CC, G
Mulcahy, Peter	P, Real P
*Muling, Daniel Jhn	G, CC, Res T, Gen, OBR
Nedovic, Peter	Gen
Nettle, QC Geoffrey	Gen, T
Norman, Kathryn	Res T, CC, G
Oliver, Kenneth	Res T, CC
Osborn, Jane	P

	List(s) Assigned
Ozanne-Smith, Eleanor (Prof)	OBR
Paton, Frank	Gen
Pelman, Ashley	P
Perlman, Janine	Res T, CC, AD
Pitt, Margaret	P
*Popovic, Jelena	G, CC, Res T, Gen, OBR
Preston, Diane	AD
Price, Roland	Res T, CC
Quirk, Anthony John	P, Real P
*Raleigh, Steven	G, CC, Res T, Gen, OBR
Ramsay, Peter	P
Read, Michael	P
Reilly, Daniel	OBR
Robinson, Ian Carlisle	LV
Robinson, Ian Duncan	LV
Rowland, Linda	Gen, Res T, CC, G, AD
Russell, Suzanne	OBR
Rust, Ian	LV
Scholes, Dr. Ronald	G, AD
Sharkey, Gerard	P, Real P
Shnookal, Toby	DB, Ret T
Snow, Jbcelyn	OBR
Soldani, Angela	Res T, CC, G
Sully, Michael	LV
Sutherland, Geoffrey	LV
Teasdale, Warwick	G, Gen, OBR
Teh, Gim	Res T, CC, AD
Terrill, Howard	P, Real P
Treseder, Bernard Murray	LV
Vassie, Alan	Res T, CC, LV
*Von Einem, Ian Maxwell	G, CC, Res T, Gen, OBR
Walsh, Michael	DB, CC, Res T
Walter, Richard	P
West, Lynda	Gen, CC, G, Res T, AD
Williams, Charles	Gen, OBR, AD, G
Withers, Meredith	P
Zala, Peter	LV
Zemljak, Francis	AD

Total Sessional Members: 132

Overall Total: 179 (108 Males, 71 Females)

List of Abbreviations

AD (Anti Discrimination) C (Credit) CC (Civil Claims) DB (Domestic Building) G (Guardianship) Gen (General) LV (Land Valuation) OBR (Occupational and Business Regulations) P (Planning) Real P (Real Property) Res T (Residential Tenancies) Ret T (Retail Tenancies) * (Magistrate)

Mediation Code of Conduct

1. The mediator's role

1.1 The mediator must attempt to assist the parties to resolve their dispute.

1.2 The mediator must give each party the opportunity to speak and, as far as possible, ensure that the other party (or parties) listen.

1.3 The mediator may meet with the parties together (joint sessions) or with one or more parties in the absence of others (private sessions).

1.4 The mediator may ask questions of the parties in joint or private sessions to assist them to gain a better understanding of their chances of success or failure if the matter were to go to a hearing, but should not insist on an answer.

1.5 The mediator may assist the parties to develop options and approaches for settling disputes and is not limited to the types of orders that would be made if the matter were to proceed to a hearing.

2. The mediator must be (and must be seen to be) impartial.

2.1 The mediator must withdraw from the mediation if he or she has a conflict of interest.

2.2 The mediator must inform the parties if he or she has any connection with the parties or the dispute, which falls short of a conflict of interest, and withdraw if requested to do so by a party.

2.3 The mediator must avoid conduct that gives any appearance of partiality or prejudice.

3. The mediator must not give advice.

3.1 If the parties require legal or other advice, they must obtain it themselves, even though the mediator might be an experienced professional.

4. The mediator must inform participants that there is no obligation to settle.

4.1 Although the parties might have been ordered to attend the mediation by VCAT pursuant to s88(2) of the Victorian

Civil and Administrative Tribunal Act 1998 (VCAT Act), any party or the mediator may terminate it at any time.

4.2 If the dispute fails to settle at mediation, the parties might be required to attend a hearing or a directions hearing shortly thereafter.

5. The mediation must be fair.

5.1 The mediator must do everything in his or her power to ensure that the mediation is conducted fairly.

5.2 If the mediator believes that a party is abusing the mediation process, or that there is a substantial power imbalance which will prevent a mutually acceptable resolution, the mediator may inform the parties of this.

5.3 Advocates, professional advisers and/or 'support people' may attend unless the mediator believes that their presence would make the mediation unfair. An unrepresented party will generally be considered to be acting reasonably in refusing to continue with a mediation where another party is represented, just as a represented party will generally be considered to be acting reasonably in refusing to continue with a mediation if another party is insisting that all parties should be unrepresented. However, a party who does not give the mediator the opportunity to resolve the issue of representation is acting unfairly. It is noted that under s62 of the VCAT Act, parties to a 'proceeding' (which term includes a mediation) generally do not have an automatic right to representation.

5.4 The mediator must ensure that parties have reasonable opportunities to consult their professional advisers if they wish to do so.

5.5 The mediator must avoid any conduct which could place a party under duress to reach a settlement.

6. A mediator must not hear and determine the matter (if the mediation is unsuccessful).

6.1 Section 88(6) of the VCAT Act provides that if a member of VCAT is a

mediator in a proceeding, he or she cannot constitute VCAT for the purpose of hearing the proceeding.

7. Confidentiality

7.1 Section 92 of the VCAT Act provides: 'Evidence of anything said or done in the course of mediation is not admissible in any hearing or before VCAT in the proceeding, unless all parties agree to the giving of the evidence.' (Section 92 does not apply in the equal opportunity jurisdiction; see Clause 26 of Schedule 1 to the VCAT Act.)

7.2 The mediator must not reveal anything discussed in a private session to another party unless he or she has the express permission of the party who was present in the private session.

7.3 In accordance with s34(2) of the VCAT Act, a mediator must not directly disclose information about the affairs of a person acquired in the performance of functions under or in connection with the VCAT Act. (There are limited exceptions in s34(3)(b) and s34(4).)

7.4 At the end of the mediation, the mediator must notify VCAT if the parties have agreed to settle (s90, VCAT Act) or if the mediation has been unsuccessful (s91, VCAT Act).

8. Settlement

8.1 The mediator should encourage parties to make a written record of any settlement they reach and may make precedent agreements available to assist the parties in drafting their settlement terms.

8.2 In accordance with s93 of the VCAT Act, VCAT members may make orders necessary to give effect to a settlement reached by the parties. If the mediator is a member of VCAT, the mediator may make the orders.

9. Immunity of mediators

9.1 Under s143(1) of the VCAT Act, a mediator has, in the performance of his or her functions as a mediator, the same protection and immunity as a member of VCAT. Under s143(1), a VCAT member's immunity equates to that of a Judge of the Supreme Court.

This User Service Charter tells you about the Victorian Civil and Administrative Tribunal (VCAT) and the service you can expect from us.

Our Purpose

To provide Victorians with a tribunal that delivers a modern, accessible, informal, efficient and cost-effective civil justice service.

What We do

We assist Victorians in resolving a range of private disputes that involve:

- Consumer purchases (whether privately or for business);
- Credit;
- Discrimination;
- Domestic building;
- Guardianship and administration;
- Residential tenancies; and
- Retail tenancies.

In addition, VCAT deals with disputes between people and government or bodies created by government about:

- Freedom of information;
- Licences to work in professions including working as doctors, travel agents and motor car traders;
- Building planning;
- Transport accident injury compensation; and
- A large variety of other administrative decisions such as rates charged by councils, state taxation issues and fire brigade charges for false alarms.

Many disputes brought to us are resolved after a legal hearing. However, in many cases the people agree to a solution either between themselves or through mediation held by us.

We provide services throughout Victoria including holding mediations and hearings at our main premises at 55 King Street Melbourne, in many magistrates' courts and at other locations as required.

We deal with a wide range of people including litigants, witnesses, lawyers, government and other tribunals and courts.

Who We Are

VCAT is made up of a judge of the Supreme Court of Victoria (its president), judges of the County Court of Victoria (its vice presidents), members of VCAT and mediators who conduct mediations and hearings.

VCAT has a Registry (its office) at 55 King Street, Melbourne. The Registry has an information counter on the ground floor and also provides advice by telephone. Registry staff attend hearings conducted by VCAT at suburban Magistrates' Courts. Information about VCAT is available through magistrates' courts.

Our User Service Standards

We aim to abide by the following user service standards:

- Assist people in dispute to resolve their differences within published times. For example, at the time of writing, 90% of consumer disputes were resolved within six weeks of coming to VCAT.
- Serve you promptly and courteously (whether at VCAT's main offices or at other venues such as Magistrates' Courts).
- Answer your telephone calls promptly and aim to answer your question during that call.
- Provide you with an accurate explanation of VCAT procedures.
- Make Information on VCAT processes and procedures available by means of explanatory brochures, through the VCAT web site and advice from staff.
- Ensure all VCAT facilities are safe, accessible and convenient to use.
- Ensure all VCAT staff wear name badges.

You have a right to:

- fair and helpful assistance including appropriate arrangements to cater for special access or cultural requirements;
- be provided with an interpreter where necessary;

- have your privacy respected and keep your information confidential unless disclosure is authorised by the law;
- a fair and just mediation and/or hearing in a safe environment; and
- receive timely decisions by VCAT.

You have a responsibility to:

- give us complete and accurate information as is appropriate in your situation;
- comply with any directions or orders of VCAT; and
- behave courteously and peaceably in and around VCAT venues.

If You are Satisfied

Our aim is to ensure that all VCAT users are greeted by courteous staff who will provide clear and accurate information about VCAT.

If we have pleased you with our level of service, then please let us know. We value your feedback, either in person, by mail, telephone, fax or e-mail. (Refer to the contact details provided on the back cover of this annual report.)

If You are not Satisfied

We take your complaints seriously and will respond quickly. If necessary, we will also use the information you provide to improve our service to all of VCAT's users by changing the way we work. To make a complaint, please contact us either in person, by mail, telephone, fax or e-mail.

If You Need More Information

Further information about our services is contained in a series of informative brochures that are available free from VCAT. Information is also available on our Internet site www.vcat.vic.gov.au.

Written feedback about:

- members of VCAT (the people who hear and decide disputes) may be addressed to the President of VCAT; and
- the administrative services provided by VCAT may be addressed to the Principal Registrar of VCAT.

Hearing Venues

Apollo Bay	Meeting Room, Nelson Street	Daylesford	Community Health Centre, 13 Hospital Street Town Hall, 76 Vincent Street
Avoca	Shire Offices, Rutherford Street	Dromana	Magistrates' Court, Codrington Street
Bairnsdale	Bairnsdale Court House, Nicholson Street	Echuca	Campaspe Shire Council, Heygarth Street Court House, Heygarth Street
Ballarat	State Public Offices, corner Mair and Doveton Streets Court House, Grenville Street South Ballarat Health Services, Queen Elizabeth Centre, 102 Ascot Street South Ballarat Town Hall, Town Hall, Sturt Street	Frankston	Magistrates' Court Complex, Fletcher Road
Beechworth	Beechworth Hospital, Extended Care Centre, Warner Road	Geelong	Geelong Court House, Railway Terrace
Benalla	Benalla Court House, Bridge Street Benalla and District Memorial Hospital, Coster Street (residents only) Department of Human Services, 26 Church Street (clients only)	Geelong North	Grace McKellar Centre, 45–95 Ballarat Road
Bendigo	Anne Caudle Centre, 100-104 Barnard Street Reception Room, 195–229 Littleton Tce Bendigo Court House, 71 Pall Mall	Hamilton	Shire of Southern Grampians, Dundas Administration Centre, Market Place Court House, Martin Street
Bright	Alpine Health, Bright Campus, Cobden Street	Hastings	Shire Offices, Marine Parade
Castlemaine	Mt. Alexander Hospital, Cornish Street	Heatherton	Heatherton Hospital, Kingston Road
Caulfield	Caulfield General Medical Centre, 260-294 Kooyong Road	Horsham	Horsham Court House, 20 Roberts Ave.
Cheltenham	Kingston Centre, Warrigal Road	Kerang	Magistrates' Court, Victoria Street Kerang and District Hospital, Burgoyne St.
Cobram	Magistrates' Court, Cnr. Punt Road and High Street	Kew	Normanby House, St George's Health Service, 283 Cotham Road, Kew
Colac	Colac Community Health Services, Connor Street Colanda Centre, Forest Street Colac Court House, Queen Street	Korumburra	Korumburra Court House, Bridge Street
Cowes	Civic Centre, 91–97 Thompson Avenue Heritage Centre, 81–89 Thompson Ave.	Kyneton	Macedon Ranges Shire Council, 129 Mollison Street Oliver House, 2 Bodkin Street
Dandenong	Community Services Building, 145-151 Cleeland Street Dandenong Court, corner Foster and Langhorne Streets	Leongatha	Leongatha Memorial Hospital, Koonwarra Road 6 Smith Street 9 Smith Street
		Lillydale	Shire Offices, Anderson Street
		Mansfield	Council Chambers, 33 Highett Street
		Maryborough	Maryborough and District Hospital, Clarendon Street Court House, Clarendon Street
		Mildura	Mildura Base Hospital, 13th Street Civic Building, 74–84 Deakin Avenue Mildura Law Courts, 62 Deakin Avenue

Moe	Court House, Lloyd Street	Sunshine	Magistrates' Court, 10 Foundry Road
Morwell	Latrobe City Offices, corner Ann Street and Hazelwood Road	Swan Hill	Swan Hill Hospital, Splatt Street Court House, Curlewis Street
Mount Eliza	Mount Eliza Aged Care and Rehabilitation Service, Jacksons Road	Traralgon	Civic Centre, Kay Street
Myrtleford	Court House, Myrtle Street	Traralgon West	Latrobe Regional Hospital, Princes Highway
Port Fairy	Council Chambers, Cox Street	Wangaratta	Wangaratta Court House, Faithfull Street Municipal Offices, Oven Street
Portland	Portland District Hospital, Bentinck Street Court House, Cliff Street	Warracknabeal	Warracknabeal District Hospital, Dimboola Road
Ringwood	Ringwood Magistrates' Court, 39 Ringwood Street	Warragul	Shire Offices, Civic Place
Rosedale	Shire Offices, Cansick Street	Warrnambool	Glenelg Centre, Bohan Place, 174–178 Lava Street Municipal Offices, 25 Liebig Street Warrnambool Magistrates' Court, corner Timor and Gillies Streets
Rutherglen	Glenview Community Centre, 168 High Street	Werribee	Court House, Duncans Road
Sale	Sale Court House, Foster Street	Wodonga	Wodonga District Hospital, Wilson Street City Offices, Hovell Street Wodonga Court, Elgin Street
Seymour	Court House, Tallarook Street	Wonthaggi	Wonthaggi Hospital, Graham Street
Shepparton	Shepparton Magistrates' Court, 18 High Street Cnr Nixon and Welsford Streets		
St. Albans	Sunshine Hospital, 176 Furlong Road		
St. Arnaud	Ground Floor, St Arnaud Hospital, North Western Road		
Stawell	Department of Human Services, 54 Main Street Pleasant Creek Centre, Horsham Road Stawell Hospital, Sloane Street Court House, Patrick Street		

Access to Files

Under section 146 of the VCAT Act, the Principal Registrar must keep a file of all documents lodged in a proceeding until the expiration of the period of five years after the final determination of the proceeding.

Section 144 of the VCAT Act provides that, subject to any condition specified in the Rules, a party in a proceeding may inspect the file of that proceeding without charge. Any other person may, subject to any conditions specified in the Rules and on paying the prescribed fee (at the time of writing there was no fee):

- inspect the file in that proceeding; and
- obtain a copy of any part of the file.

The rights conferred are subject to:

- any conditions specified in the Rules;
- any direction of VCAT to the contrary;
- any order of VCAT under section 101 of the VCAT Act;
- any certificate under section 53 or 54 of the VCAT Act.

Further information about accessing proceeding files may be obtained by contacting VCAT using the telephone numbers listed on the back cover of this annual report.

Freedom of Information

Access to proceeding files is governed by the VCAT Act as described above. VCAT is not subject to the *Freedom of Information Act 1982*.

Publications and Information

The following publications and information about VCAT are available to the public:

- Annual Report
- VCAT Act
- VCAT Information Booklet

In conjunction with ANSTAT Pty Ltd, other VCAT related publications include:

- VCAT Freedom of Information
- VCAT Domestic Building
- VCAT Residential Tenancies
- VCAT Laws and Procedure

Other relevant publications include:

- Kyrou Victorian Administrative Law
- Victorian Planning Reports
- Administrative Appeal Reports

In addition, the VCAT web site contains links to the VCAT legislation, Practice Notes and Rules, as well as guides to each List and application forms that may be downloaded. Many VCAT decisions can be found on the Australasian Legal Information Institute (AustLII) database at www.austlii.edu.au/au/cases/vic/VCAT/.

Publication of Determinations and Orders

For the guidance of those who may wish to bring proceedings, VCAT publishes many decisions that relate to important issues. These are available on request by contacting the individual Lists using the telephone numbers provided on the back cover of this annual report, or by visiting the VCAT web site at www.vcat.vic.gov.au or the AustLII database referred to above.

Glossary of Terms

AAT

The former Administrative Appeals Tribunal, which was disbanded on 30 June 1998 and absorbed into the General, Land Valuation and Planning Lists of VCAT.

Compulsory Conference

A List member conducts a compulsory conference to hear submissions from all parties. The compulsory conference proceeds in a similar way to a mediation but with the members being able to make definitive comments rather than merely acting as 'devil's advocate' in an attempt to resolve the matter. Members conduct the entire process on a confidential and without prejudice basis.

Directions Hearing

A directions hearing outlines the steps that the parties must take in order to get their case ready to be heard. This may include establishing the points of claim or responsible authority.

Expert Opinion

List members use the powers under section 94 of the VCAT Act relating to appointment of experts to advise VCAT members. A single expert saves time and resources for the parties, although it is common in conventional claims, and almost universal in complex claims, that the parties will appoint their own experts. Often VCAT members use this practice in cases where experts for the parties are themselves in dispute.

Hearing

Hearings take place before a member of VCAT. Hearings are conducted in a relatively informal atmosphere where the parties have the opportunity to call or give evidence, ask questions of witnesses and make submissions.

Interlocutory Steps

Steps taken in between the time an application is received and a hearing. Any dispute that occurs along the way is called an interlocutory matter, such as a dispute before the hearing about producing privileged information.

Mediation

Mediation is an efficient and cost effective way to settle various types of disputes. A mediator brings the parties together and guides them to reach an agreement.

Responsible Authorities

Responsible Authorities are persons or bodies who are responsible for the administration or enforcement of a planning scheme. The most common Responsible Authority is a municipal council.

Rules and Practice Notes

Rules and Practice Notes govern the operations and activities conducted by VCAT members. Rules Committee members may make Rules and issue Practice Notes regulating the practice and procedures of VCAT members. Rules may be made for any matter listed under Schedule 2 of the VCAT Act.

Special Referee

VCAT members frequently use the special referee provision in section 95 of the VCAT Act. This initiative is particularly useful where the issues in a matter are overwhelmingly technical in nature.

User Group

User groups provide an effective forum to discuss a range of issues affecting users of VCAT's services. Selected members from each List conduct regular user group meetings, usually on a quarterly basis. The user groups involve a broad spectrum of representatives from community groups, and industry and legal professionals who are given the opportunity to provide valuable feedback with the aim of improving the service VCAT offers.

VCAT

The Victorian Civil and Administrative Tribunal (VCAT). On 1 July 1998, VCAT was established as a judicially assisted umbrella tribunal under the *Victorian Civil and Administrative Tribunal Act 1998*.

VCAT Act

The *Victorian Civil and Administrative Tribunal Act 1998*. A full copy of the VCAT Act is available for viewing on VCAT's web site located at www.vcat.vic.gov.au.

How to Apply, Hearing Locations

How to Apply

Contact VCAT and ask for an application form. Alternatively, you can pick up an application form from VCAT at 55 King Street, Melbourne, Victoria 3000.

VCAT Online

Our new interactive service VCAT Online for the high volume Residential Tenancies List, enables registered users to lodge their applications electronically, as well as to create and print notices of dispute. Simply visit the VCAT web site at www.vcat.vic.gov.au for more details about this service.

We plan to introduce this new technology progressively to other Lists within VCAT to enable Victorians to complete application forms via the Internet.

VCAT Web Site

You can find out everything you need to know about VCAT by visiting the VCAT web site at www.vcat.vic.gov.au

The site features information about VCAT legislation, Practice Notes and Rules, a list of scheduled hearings, the daily law list and a selection of key decisions. In addition, it provides details about each list, including information about how to apply and application forms that can be downloaded and printed. It also offers links to a variety of government, judicial and related web sites.

Main Office

Victorian Civil and Administrative Tribunal (VCAT)
55 King Street
Melbourne 3000
E-mail: vcat@vcat.vic.gov.au
Web Site: www.vcat.vic.gov.au

See back cover for contact numbers for each list.

Hearing Locations

We conduct hearings at 55 King Street Melbourne as well as at Carlton, Caulfield, Cheltenham, Dandenong, Frankston, Heatherton, Kew, Macleod, Ringwood, Sunshine and Werribee.

In addition, we visit the rural locations listed below. Details concerning country sittings are contained in the Law Calendar produced by the Legal Policy and Court Services section of the Department of Justice.



A quick, easy and low cost way to have your case heard



VCAT

Victorian Civil and Administrative Tribunal

55 King Street

Melbourne 3000

Email: vcat@vcat.vic.gov.au

Web Site: www.vcat.vic.gov.au



Residential Tenancies List

www.vcat.vic.gov.au

Visit our web site above or contact the individual Lists below:

Anti-Discrimination List
Tel: 9628 9900
Fax: 9628 9988

Civil Claims List
Tel: 9628 9830
Fax: 9628 9988
1800 133 055
(within Victoria)

Credit List
Tel: 9628 9790
Fax: 9628 9988

Domestic Building List
Tel: 9628 9999
Fax: 9628 9988

General List
Tel: 9628 9755
Fax: 9628 9788

Guardianship List
Tel: 9628 9911
Fax: 9628 9822
1800 136 829
(within Victoria)

Land Valuation List
Tel: 9628 9766
Fax: 9628 9788

Occupational and Business Regulation List
Tel: 9628 9755
Fax: 9628 9788

Planning List
Tel: 9628 9777
Fax: 9628 9788

Real Property List
Tel: 9628 9960
Fax: 9628 9988

Residential Tenancies List
Tel: 9628 9800
Fax: 9628 9822
1800 133 055
(within Victoria)
Registered users can access VCAT Online through the web site.

Retail Tenancies List
Tel: 9628 9960
Fax: 9628 9988

Taxation List
Tel: 9628 9770
Fax: 9628 9788