# VCAT’s 25th anniversary: From a hardcopy past to the future of AI in decision making

**Video transcript**

Good morning I’m Member Claire Bennett.

I’ve been a member of the Planning and Environment division at VCAT for 5 years and during that time I have come to appreciate how the Tribunal operates and responds to changes in its environment…and some of those changes have been particularly prominent recently.

## VCAT’s 25th Anniversary

As VCAT celebrates its 25th Anniversary this year, it’s a good time to reflect on our journey so far and what might be next.

I’ll start by discussing the some of the recent changes that have impacted the Tribunal, including:

* the transition in the Planning and Environment division from paper-based files to electronic filing…and how the other divisions will be following suit in the near future
* how we’ve moved to become an online Tribunal; and
* for a legislative perspective, the changes brought in by the new Environmental Protection Act of 2017, which supplanted the last Act that dated back to 1970.

I’ll also discuss more broadly what might be next for VCAT:

* the role of artificial intelligence in our jurisdiction:
  + things it can help us with like case management and legal analytics; and
  + what we still want to see as human decisions, like gauging the morality of an action.

Next few minutes should give you an insight into how we’ve evolved over the last quarter century.

## Hard copy to electronic filing

For most of its life, VCAT has been predominantly a paper-based organisation.

The tens of thousands of matters resolved every year were received, managed, and finalised in hard copy, with case management systems that were around two decades old.

The pandemic, whilst an enormous disruption to our services, presented an opportunity for change. A digital pilot was quickly developed and was successful in securing an additional funding injection from the Victorian Government to digitise our Planning and Environment Division in mid-2020.

What this funding allowed the Tribunal to do was to digitise our paper case management files in its entirety – transferring all planning matters online with the support of new smart application forms, and launching a digital online platform that supports virtual and in-person hearings.

The upgrade to online filing and electronic case management has been welcomed by parties at VCAT for its improved access and efficiency.

Soon, these improvements will be experienced by all users at VCAT. The digitally-enabled Service Transformation Program will deliver a single case management

System, including a self-service portal for our users, and end-to-end digital workflows for our members and staff.

## Online hearings

Another major change in our operating environment has stemmed from the transition to remote hearings. Like our change to a digital case management system, the case for online Tribunal hearings was sped up by the effects of the pandemic, and it’s been an equally profound change considering that, until 2020, nearly all hearings were conducted in person.

Whilst most parties initially struggled with the transition to online hearings, the continued access to justice that the change in format enabled was positively received. In some lists, like the Planning and Environment Division, we were able to transition to online hearings so seamlessly that we have emerged from the pandemic with no greater backlog than when we started – a credit to the flexibility and perseverance of both members conducting the hearing and parties participating in hearings.

Online hearings at VCAT had initial teething problems - similar to those that anyone moving to online meetings and working from home during the pandemic may have experienced – barking dogs, kids interrupting, and the ubiquitous call of “you are still on mute”.

## I’m not a cat

Fortunately, none of our parties suffered anything quite as embarrassing as the attorney in Texas who was unable to figure out how to turn off the cat filter on his Zoom call during a hearing in court.

There were some benefits to online hearings that can be taken with us into the future - for example the efficiency of online practice day hearings for urgent procedural matters or the access to justice that can be afforded to those who may be unable to attend in person.

However, as we transition back to in person hearings, the benefits of being in the same room with the parties will be welcomed once again. Issues like courtroom control, witness credibility, witness tampering, access to technology, privacy concerns (particularly in sensitive or confidential cases involving human rights), as well as catering to special needs and literacy concerns, are all very real reasons why in person hearings will remain best practice for access to justice.

## Legislative changes

VCAT is continually dealing with legislative changes, including amendments to acts.

Whenever these legislative changes occur there are administrative impacts (such as updating the applications forms and case management systems) but also more substantive impacts like changes to jurisdictional powers.

One of the main legislative changes that has occurred at VCAT in recent history is introduction of the new the Environment Protection Act.

On 1 July 2021 the *Environment Protection Act 1970* was repealed and replaced by new powers and a new statutory framework for environment protection under the amended *Environment Protection Act 2017*.

The new act introduced a swathe of new laws designed to protect the environment and public from pollution and waste. The EPA now has greater powers in enforcing measures to protect the environment…and VCAT is now assigned additional powers to review those decisions made by the EPA.

The new powers under the amended Act enable VCAT to review a much greater number and types of decisions made by the EPA or local councils under the *Environment Protection Act 2017*.

In response to this overhaul of environmental legislation, VCAT significantly changed the way it deals with applications about protecting the environment. These changes respond to the higher number of cases before VCAT for review and also the higher level of case management required for these more complex cases, which are often:

* more urgent, including stay applications;
* have multiple hearings (preliminary hearings, practice days, compulsory conferences and main hearings);
* involve multiple experts giving evidence; and
* are longer in duration.

So, we have talked about some of the more recent changes that have impacted the Tribunal…and now we can take a look, more broadly, at what might be next for VCAT.

## The future of AI in decision making

Artificial Intelligence is certainly having it’s glow up at the moment and the potential advantages it could bring to the delivery of justice are just one of the many applications currently capturing the fascination of the public discourse.

There seems to be agreement that there are certainly things that AI can help with in the legal system. Indeed, increased efficiency in administrative tasks like case management and legal analytics are expected to be widely welcomed. Whilst ChatGTP with its powerful predictive text, may be getting the lions share of attention right now, there are many other predictive analytics which can enable a legal practitioner to “mine” massive quantities of data that in earlier times would simply have been impossible.

The application of these business tools for high-volume low-value work might be fertile ground for AI.

However, there is a clear division between tasks like that and the things that we still want to see as human decisions - like gauging the morality of an action.

## Moral Machine

By now we have all seen and used demonstrations like this.

The Moral Machine, from the Max Planck Institute, collects anonymous data about human perspectives on moral decisions made by machine intelligence, such as self-driving cars.

The platform shows you a series of moral decisions, each getting more complex, where a driverless car must choose the lesser of two evils, such as killing two passengers or five pedestrians. As an outside observer, you judge which outcome you think is more acceptable. You can then see how your responses compare with those of other people.

The dominant train of thought in the literature seems to be that human decision making will always be critical in the legal space. This is based on the understanding that human intelligence involves intuitive scenario selection, creativity, imagination and insight – and computers are a long way from being able to exercise discretion or judgement in this way.

This kind of work cannot currently be mapped and therefore cannot be replicated by artificial intelligence. Currently, computer algorithms essentially work on predetermined pathways to an outcome, and while they can learn by trial and error (discarding pathways that are less efficient or don’t work), they are not – or not yet – capable of exercising judgement the way a human brain can.

At VCAT this human decision making is practiced every day.

Some of the most overt examples are in our human rights list where we see siblings fighting over whether their father still has decision making capacity and who should be appointed as his power of attorney.

## The future of AI in decision making

These are the obvious decisions that we want to maintain as human based decisions – things like gauging the morality of an action.

But there are also some less obvious examples – like decisions that would be difficult for AI to provide assistance with, simply because of the nature of the legislation that the decisions are made under.

Some examples of this are decisions in the Planning and Environment Division.

The *Planning and Environment Act 1987* itself is quite unique.

Section 60 of the *Planning and Environment Act 1987* provides a long number of matters that must be taken into account without actually specifying any standards or requirements about how that assessment might take place.

One example of that is the requirement to consider “any significant social effects and economic effects” without actually specifying what they are.

The *Planning and Environment Act 1987* sets a broad framework and under it sits a collection of documents like the planning schemes - they have to be tied together to make a decision based on all the relevant considerations.

There are certain parts of the planning scheme that are prescriptive, such as mandatory requirements for building heights, but these are far outnumbered by the discretionary provisions.

This makes for complex but interesting decision making based on the interpretation of policy – often conflicting policy – like net community benefit.

The nature of this exercise is one that would be difficult to replicate with an algorithm.

So, whilst AI might be useful at for things like analysing the consistency of the application of damages or penalties, it’s not yet considered appropriate for establishing facts, balancing opinions, or determining credibility.

Whilst AI might have a future in Tribunals, care needs to be taken to ensure that we strike a balance between efficiency and justice.

## More information

For more information, please visit our website.

[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

## Citations

And speaking of AI, you may have noticed some pleasant, and perhaps also some disconcerting, artwork throughout this presentation – many of which were generated by AI.

The citation for which (based on guidance from the Modern Language Association (MLA) and Bond University), is impractically long at this stage in its evolution.

Thank you for your time.