



VCAT. ANNUAL REPORT
2008 / 2009
**HUMAN RIGHTS
& EQUAL ACCESS
TO JUSTICE.**

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

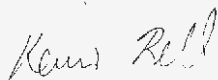
Dear Attorney-General

We are pleased to present our Annual Report on the performance and operations of the Victorian Civil and Administrative Tribunal (VCAT) from 1 July 2008 to 30 June 2009.

In accordance with the requirements of section 37 of the *Victorian Civil and Administrative Tribunal Act 1998*, the report includes:

- A review of the operations of VCAT and of the rules committee during the 12 months ended 30 June 2008; and
- Proposals for improving the operation of VCAT and forecasts of VCAT's workload in the subsequent 12-month period.

Sincerely



Justice Kevin Bell
President



Terry O'Donoghue
Chief Executive Officer



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**THE VICTORIAN CIVIL
& ADMINISTRATIVE
TRIBUNAL (VCAT)
IS MAKING JUSTICE
ACCESSIBLE TO
EVERY VICTORIAN.**

VCAT IN 2009

Who we are

The Victorian Civil and Administrative Tribunal (VCAT) was established under the *Victorian Civil and Administrative Tribunal Act 1998* (the VCAT Act) and began operations on 1 July 1998, amalgamating 15 boards and tribunals to offer a “one-stop shop” dealing with a range of disputes.

A Supreme Court Judge heads VCAT as president and County Court Judges serve as vice-presidents. Deputy presidents are appointed to manage one or more lists, and a rules committee develops rules of practice and procedure.

Senior members and members serve on the lists on a full-time or sessional basis. They have a broad range of specialised skills and qualifications, which enables VCAT to hear and determine cases of varying complexity and subject matter.

What we do

Our purpose is to provide Victorians with a modern, low cost, accessible and efficient independent civil justice system, delivering high quality, expert decisions.

VCAT addresses issues of importance to the community. Its decisions range from those that critically affect people needing assistance to manage their personal or financial affairs, through to those that impact the Victorian environment and economy in the areas of planning and development, liquor licensing, and business regulation.

More than one million Victorians are directly affected by VCAT decisions in any given year. For each of the approximately 225,000 parties attending VCAT, at least four other people will have an interest in the outcome, including family members, business associates, company employees and local residents.

In our **civil division**, we assist Victorians to resolve a range of civil disputes involving:

- consumer matters;
- credit;
- domestic building works;
- legal practice matters;

- owners corporation matters;
- residential tenancies; and
- retail tenancies.

Our **administrative division** deals with disputes between citizens and Government about:

- land valuation;
- licences to carry on business, such as motor trading, travel agencies, clubs and bars;
- planning and environment;
- state taxation; and
- decisions made by government bodies, such as the Transport Accident Commission.

Our **Human Rights division** deals with matters relating to:

- guardianship and administration;
- discrimination; and
- racial and religious vilification.

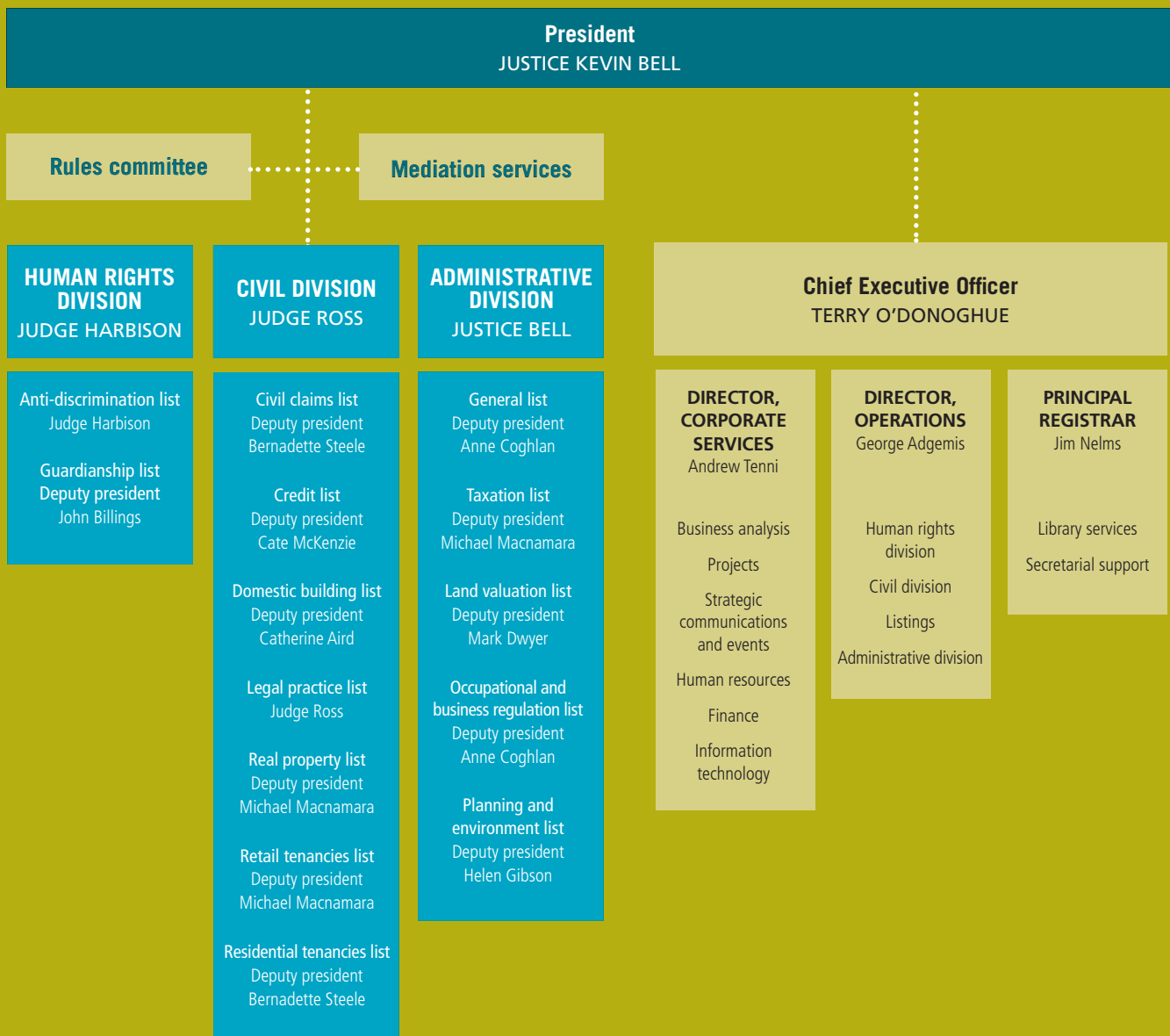
**MORE THAN ONE
MILLION VICTORIANS
ARE DIRECTLY
AFFECTED BY VCAT
DECISIONS IN ANY
GIVEN YEAR.**

Our objectives

1. To achieve excellence in our service to users and the public by being:
 - cost-effective
 - accessible and informal
 - timely
 - fair and impartial
 - consistent
 - quality decision-makers
2. Effectively anticipate and meet the demands for dispute resolution by being:
 - independent
 - responsible
 - responsive
3. Invest in 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
4. Continue to raise awareness of our services and improve service delivery through:
 - user feedback
 - community engagement
 - education

VCAT ORGANISATIONAL STRUCTURE

As at 30 June 2009

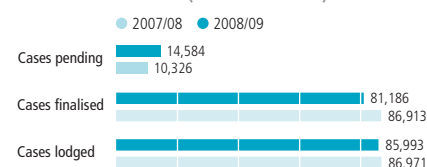


YEAR AT A GLANCE

OVERVIEW

	2007-08	2008-09	% change
Cases lodged	86,971	85,993	-1%
Cases finalised	86,913	81,186	-7%
Cases pending	10,326	14,584	41%
Overall mediation success rate %	70	69	-1%
Visits to VCAT website	650,265	711,108	9%
Hearing venues used	101	99	-2%

VCAT caseload (no. of cases)



OUR PEOPLE

	2007-08	2008-09	%change
VCAT staff	187	196	5%
Judicial members	6	6	0%
Full-time members	41	41	0%
Sessional members	193	180	-7%

LISTS

	Cases received per list			Timeliness per list		
	2007-08	2008-09	%change	Median	80thPtle	Target
HUMAN RIGHTS DIVISION						
Guardianship	9,698	10,778	11%	4	11	13
Anti-discrimination	340	303	-11%	7	23	23
CIVIL DIVISION						
Civil claims	8,975	11,545	29%	11	22	14
Credit	379	552	46%	3	6	16
Residential tenancies	61,089	56,010	-8%	2	3	6
Domestic building	756	898	19%	14	36	35
Legal practice	329	200	-39%	16	45	40
Retail tenancies	205	264	29%	12	26	18
Real property	173	154	-11%	21	51	35
ADMINISTRATIVE DIVISION						
Planning & environment	3,640	3,643	0%	20	30	26
Land valuation	99	289	192%	15	28	40
General list	921	1,047	14%	27	50	56
Occupation & business reg.	341	302	-11%	14	22	25
Taxation	26	8	-69%	23	40	23

TWO-YEAR FINANCIAL SUMMARY

FUNDING	2007-08	2008-09	%change
VCAT funding sources	\$m	\$m	
Output appropriations	16.94	17.64	4%
Residential tenancies fund	9.23	10.15	10%
Domestic building fund	2.23	2.45	10%
Guardianship & administration trust fund	1.70	1.80	6%
Retail tenancies list	0.30	0.34	13%
Legal practice list	1.44	1.35	-6%
Victorian property fund (Owners corporation)	–	1.19	–
Total	31.84	34.92	10%
EXPENDITURE	2007-08	2008-09	%change
VCAT operational expenditure	\$m	\$m	
Salaries to staff	8.43	8.51	1%
Salaries to full-time members	7.64	6.77	-11%
Sessional members	4.29	5.20	21%
Salary related on-costs	3.44	4.16	21%
Operating costs	8.04	10.28	28%
Total	31.84	34.92	10%

PRESIDENT'S MESSAGE

WHILE UNDERTAKING MY REVIEW I HAVE LEARNT THAT THE COMMUNITY WANTS THE TRIBUNAL TO RETURN TO ITS ROOTS AS THE TRIBUNAL OF THE PEOPLE.

The tribunal is experiencing a period of change driven by the president's review. There is an ongoing process of reform and improvement to ensure the tribunal is well placed to meet the challenges of the next decade. My review report is due to be presented to the government on 30 November 2009, but I can deal with some of the issues in this message.

In mid-2009, I undertook an extensive community consultation, accompanied by our executive staff. We visited about 20 locations in country and metropolitan Victoria. About 2,000 people in total attended community meetings. In addition, I met with a large number of councils, community organisations and professional groups.

I learnt many things from this process. One thing stands out among all others. It is that the community wants the tribunal to return to its roots as the tribunal of the people. There is a perception that the tribunal has become too legalistic and complex for ordinary members of the community. That is a perception which we must address.

This annual report shows that the tribunal resolves about 90,000 cases every year in a wide range of jurisdictions. Every case in the tribunal is important to the parties. Some cases affect large numbers of people. Some cases are very complicated and really need legal representation. The vast majority do not.

Despite the huge challenges involved in dealing with a large number of disparate cases, the tribunal has established itself as the pre-eminent institution for resolving civil and administrative disputes. It is time to reflect on how well we carry out this function and what we need to do to prepare for the next era. Human rights and equal access to justice will be the fundamental motivating values.

As part of the review and also in my own time, in 2009 I visited tribunals in France, Canada and the United Kingdom. I learnt many things of value to the tribunal. In particular, I learnt that VCAT is the largest civil and administrative tribunal in the world. Our super-tribunal model is being copied in Canada and the United Kingdom, as it has been in Western Australia and now Queensland. Victoria should be proud of this achievement, but we do need to address the challenges that lay ahead.

As part of the process of renewal which I have explained, the tribunal is thinking deeply about a number of important issues. How accessible are our services to ordinary people? Should we regionalise so the tribunal is better engaged with local communities? Is there too much inconsistency in the decisions made and processes followed by the tribunal? Do we deal effectively with self-represented parties? Should there be an appeals system so parties can challenge decisions more readily and our jurisprudence can become



more certain? How can we focus more effectively on appropriate dispute resolution? In the review, and in the coming year, these and similar issues will be addressed.

The tribunal is already developing the tools for building a modern VCAT. I could name many initiatives but will confine myself to just two.

The tribunal aims to be a centre of excellence for Alternative Dispute Resolution (ADR). To take the tribunal in that direction, I have appointed his Honour judge Iain Ross AO, a vice-president of the tribunal, to be our first ADR judge. He will be assisted by our principal mediator, Margaret Lothian. Judge Ross has underway a substantial upgrading of ADR in the tribunal. I thank him for his commitment and support.

Professional development for members (including sessional members and mediators) and staff will be an essential component of the tribunal's future. The tribunal has established an in-house learning centre. It is a modern facility with all the necessary communications, technology and teaching resources. I am proud to say it is internationally unique in a justice institution. The learning centre will be of immense value to the tribunal, and will work closely in hand with the Judicial College of Victoria. I am especially pleased that, consistently with my policy of *ONE VCAT*, it will provide professional development, training, and support for both members and staff.

Under s 37(1)(b) of the *Victorian Civil and Administrative Tribunal Act 1998*, the proposal I make in the annual report for improving the operation of the tribunal in the coming year is making the learning centre fully operational.

I conclude by thanking the members and staff for their support during the past year, especially our hard-working and dedicated chief executive officer, Mr Terry O'Donoghue.

Justice Kevin Bell
President

CHIEF EXECUTIVE OFFICER'S MESSAGE

IT WAS A TESTAMENT TO ALL VCAT STAFF THAT WE WERE ABLE TO RESPOND SWIFTLY TO THE 'BLACK SATURDAY' BUSHFIRE CRISIS.

2008/09 has been extremely hectic. Specifically, this year has involved:

- the president's review of VCAT;
- the implementation of a new registry structure; and
- the establishment of the VCAT Learning Centre.

The theme common to all these activities has been a strengthening of our commitment to support the community, members and staff.

The president's review has included an extensive public consultation. The VCAT management team has accompanied the president on these consultations. We have heard first-hand the views and opinions of people across both regional and suburban Victoria in respect of the administrative services provided by VCAT staff. We heard many positive examples of the assistance provided by staff to alleviate some of the stress and anxiety of parties and provide helpful advice and assistance. We also heard some not so positive stories which we will use to improve our services. Hearing these accounts first-hand was invaluable and reaffirmed the impact we have on people using VCAT and the responsibility we have to make any contact with us as positive and professional as possible. We have also identified some key areas in which we can improve and to start to develop initiatives to better respond to the needs of the community, in particular, the use of technology.

The move to a team based structure that is supported by end-to-end file processing will provide better services to all parties. The new structure is a major shift in how VCAT's registry has previously operated. This has meant a significant change for staff with end-to-end processing and the creation of new teams, all of which has been done in a very professional and efficient manner in very trying circumstances. These changes support the *ONE VCAT* concept which we are all striving to achieve.

Special mention should be made to our human resources team and registry management who implemented these changes and included a major recruitment campaign to fill over 40 vacancies. Fortunately, as a consequence of this hard work, VCAT is now back to full staff complement; something we have not had for nearly two years. Human resources and the VCAT project manager also introduced an induction program for staff, managers and new starters to complement the new structures and make integration to the organisation easier.

I wish to put on record my thanks and appreciation to everyone involved in this major exercise.

It also needs to be recognised that, notwithstanding all these changes, staff and managers had to make sure our business continued to operate during a period when the caseload in most lists was rising. In the area of civil claims in particular there was a big



increase. This has been primarily driven by a large number of applications being filed under the newly enacted *Owners Corporations Act 2006*. Other lists also experienced increased demands during the year. Land valuation and the domestic building lists experienced growth with more applications being filed. The planning list has been in the public and media spotlight as it is seen as vital to assist in stimulating Victoria's economy by efficiently facilitating the determination of matters.

Throughout the year, VCAT's ability to respond swiftly and effectively to changing conditions was tested during the intense period that followed the horrific events of the 'Black Saturday' bushfires. Both the members and the registry were able to come together and quickly implement strategies to support and assist those affected in our community. It was a testament to all VCAT staff, managers and members that we were able to react quickly and in a supportive way at a time of such crisis.

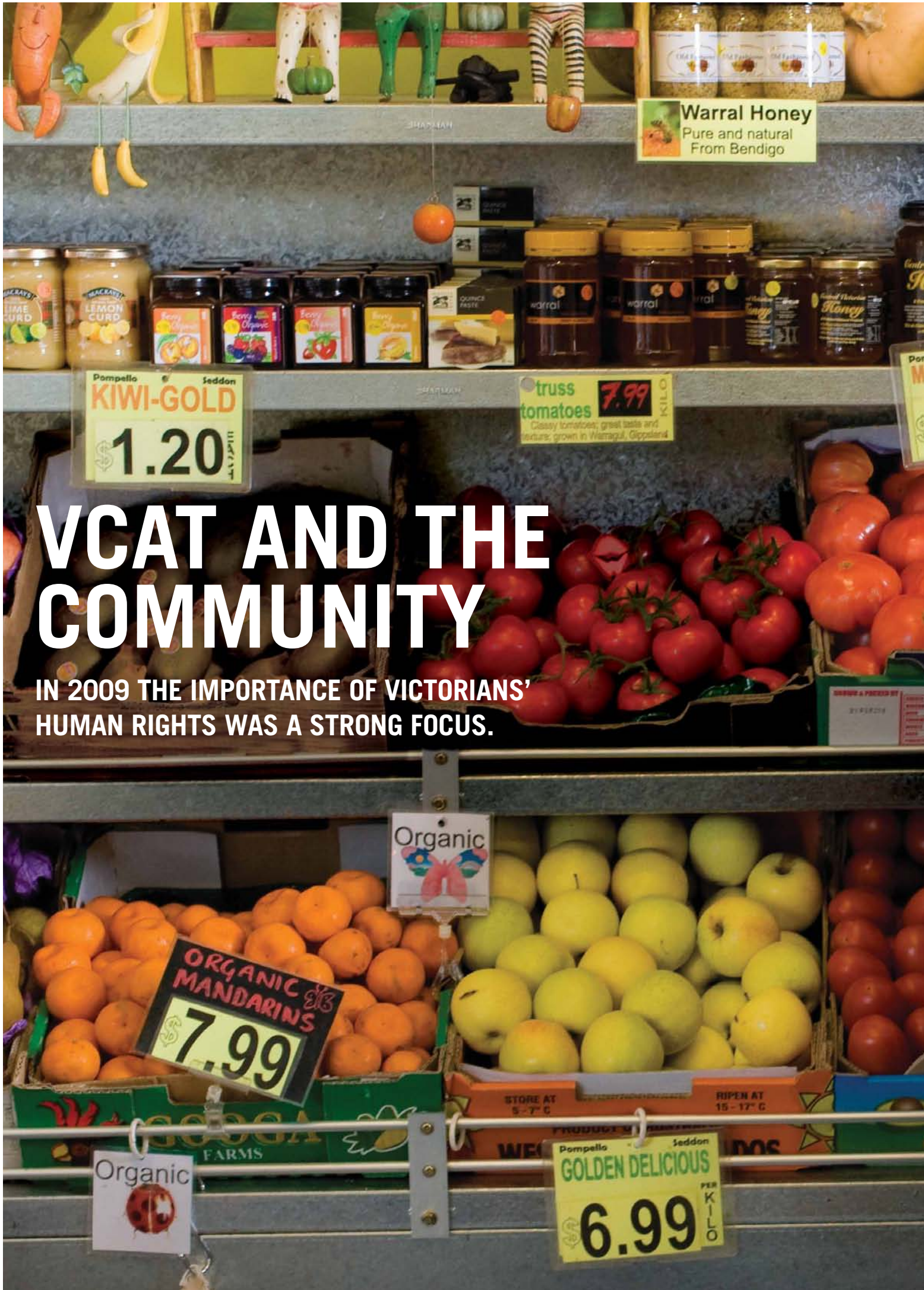
To further strengthen VCAT's commitment to the provision of high quality services, the customer service centre on the ground floor at 55 King Street was reorganised to be more user-friendly and opened in January 2009. Works included alteration to the counter to enable better interaction between VCAT staff and customers, provision of disabled access and improved document viewing facilities. The customer service centre now offers a one-stop-shop approach,

so customers can get all their queries and needs attended to in the one area.

Looking forward, we intend to build on the hard work already started. As the new structure continues to consolidate it is expected we will be able to provide more effective and responsive registry services to members and combined with the use of new and emerging technologies we will look to:

- continually improve service delivery to the community;
- expand services in suburban and regional locations;
- promote the use of alternate dispute resolution to resolve disputes prior to formal hearing;
- consider implementing a case management model;
- ensure our workforce is supported and trained to improve their skills and knowledge across all jurisdictions; and
- ensure the appropriate utilisation of technology to provide improved management information and tools for staff and users of the tribunal.

Terry O'Donoghue
Chief Executive Officer



VCAT AND THE COMMUNITY

IN 2009 THE IMPORTANCE OF VICTORIANS' HUMAN RIGHTS WAS A STRONG FOCUS.



ASTLEMAIN
'RED BOX' HONEY
\$5.50
\$12.99

Seddon
MURRAY BRIDGE
TOMATOES
\$5.99 PER KILO

Pompello Seddon
SUNDOWNER
\$4.99 PER KILO

New Season
TANGELO
\$3.99

Pompello
ROMA TOMATOES
\$4.99

Seddon
GIGES
PER KILO

Pompello Seddon
GOURMET TOMATOES
LARGE
\$1.99

THE TRIBUNAL AND HUMAN RIGHTS

THE TRIBUNAL WILL PLAY A CENTRAL ROLE IN ENSURING THAT THE HUMAN RIGHTS OF EVERY VICTORIAN ARE RESPECTED AND PROTECTED.

The *Charter of Human Rights and Responsibilities Act 2006* is historic legislation. Victoria is the first state in Australia with a Charter. The tribunal has important responsibilities under the Charter. It will play a central role in ensuring that the human rights of every Victorian are respected and protected. If a national charter is adopted, the work of the tribunal in the area of human rights may come to have wider implications.

The Charter affects the tribunal in two key respects. First, as regards most of its work, the tribunal is a 'public authority' under and therefore directly bound by the Charter. Secondly, it is required to apply the Charter when interpreting legislation and exercising certain discretions. In both of these respects, the tribunal must act compatibly with human rights, subject only to contrary legislation.

To ensure the administration of the tribunal operates compatibly with human rights, a number of programs have been developed and provided to staff. This process is ongoing and assisted by our human rights ambassador, Ms Nyah Donaldson. The values of the Charter are also driving a number of initiatives aimed at making the tribunal more equally accessible to ordinary Victorians. These include SMS reminder messaging for tenants in residential tenancy hearings, telephone mediations so people do not have to come to the tribunal's CBD offices for mediations and

the establishment of a concierge service during peak periods in the foyer of the tribunal.

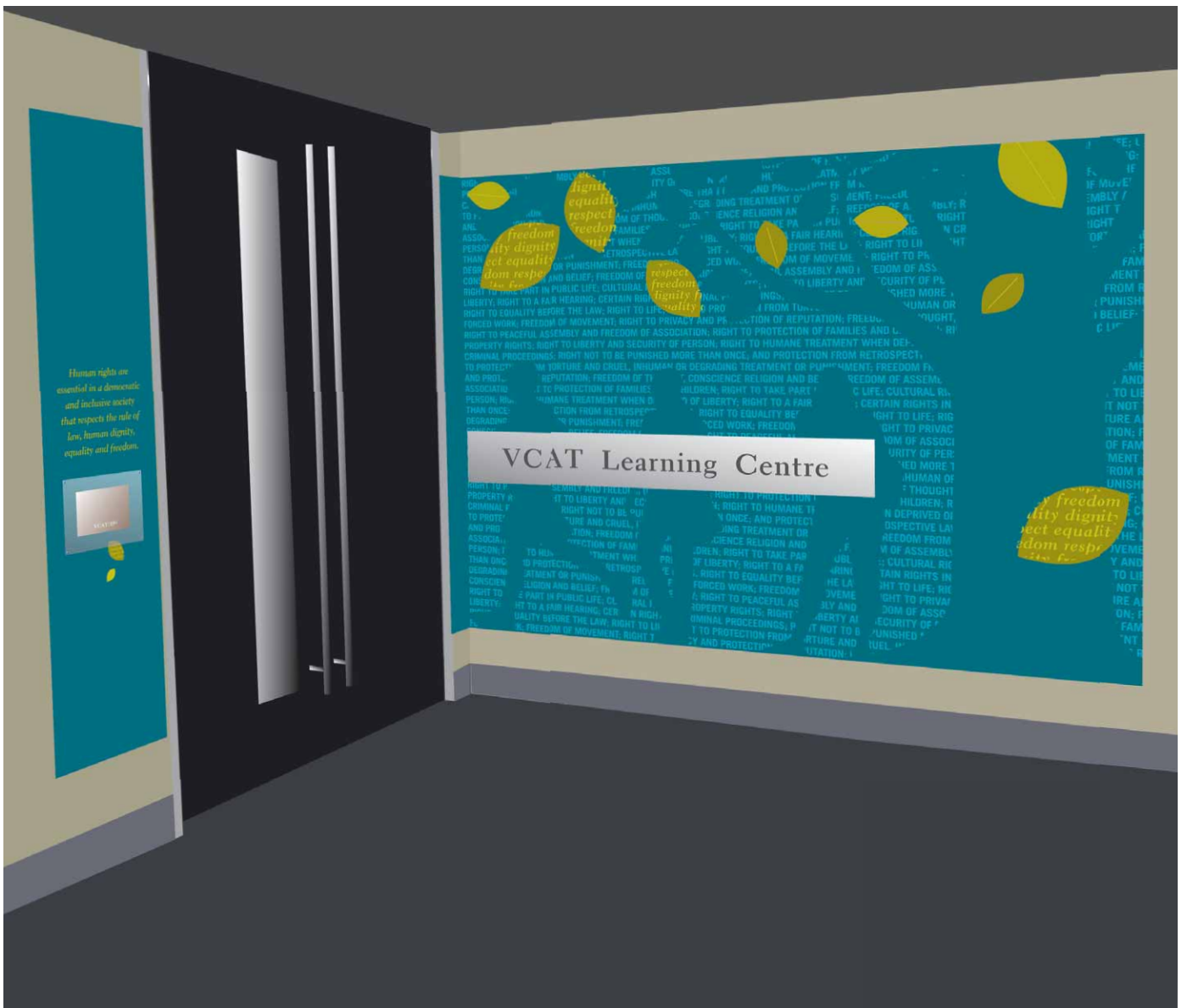
The tribunal has a very important role to play in laying the foundation for the development of Victoria's human rights jurisprudence. The early landmark decisions under the Charter were made in cases in the tribunal decided in 2009 by the president, Justice Bell. These include *Kracke v Mental Health Review Board*¹, a decision in the mental health jurisdiction, *Lifestyle Communities Ltd (No 3)*², a decision in the anti-discrimination jurisdiction, and *Metro West v Sudi*³, a decision in the residential tenancies jurisdiction. These and other decisions have helped to explain the principles behind the Charter and how human rights should be applied. In this way the tribunal has started a process which will end when the Supreme Court of Victoria finally determines the law in this area.

The Charter is very much part of the tribunal's future. To capture that idea, the tribunal has developed some communications imaging based on the human rights language in the Charter and the concept of the 'living tree' of human rights interpretation. This imaging will be used in the entrance and throughout the new learning centre and will feature prominently in other public spaces in the tribunal.

1 [2009] VCAT 646.

2 [2009] VCAT 1869.

3 [2009] VCAT 2025.





DRINK SPECIALS

* BANANA, HONEY & NUTMEG SMOOTHIE \$7

* BLUEBERRY & MANGO SMOOTHIE \$7

* RASPBERRY, BLUEBERRY, BANANA, MANGO SMOOTHIE

* RASPBERRY, CRANBERRY & ORANGE CRUSH \$7

* TURNIP & CARROT SMOOTHIE \$7

* ASPEN & VANILLA SMOOTHIE \$7

* WITH ANY MEAL
A GLASS \$3⁰⁰ OR BEER \$3⁵⁰

SERVING OUR CUSTOMERS

THIS YEAR VCAT WORKED HARDER THAN EVER TO PROVIDE THE VICTORIAN PEOPLE WITH EASY ACCESS TO JUSTICE.



OUR CUSTOMER SERVICE CHARTER

1. When you contact VCAT, you can expect:

- Answers to queries about our jurisdictions and processes;
- Appropriate forms, brochures and information guides;
- Assistance in completing VCAT application forms; and
- Appropriate contacts for other government agencies, if required.

2. We aim to assist you, but there are certain things we cannot do:

- Provide advice about what to say in a VCAT hearing;
- Give legal advice;
- Complete a VCAT application form on your behalf; and
- Speak to VCAT members on your behalf.

3. We exist to serve the community and we aim to:

- Serve 95 percent of our customers within five minutes of them attending the front counter;
- Respond to 95 percent of our customers within five minutes of them contacting our call centre;
- Greet customers in a polite and courteous manner;
- Deal with enquiries professionally; and
- Provide clear and accurate information and advice.

4. VCAT respects your right to receive:

- Fair and helpful assistance, including appropriate arrangements for people with disabilities, those with special access needs or other cultural requirements;

- An interpreter if necessary;
- Privacy – we keep your information confidential, unless disclosure is authorised by the law (see www.vcat.vic.gov.au for our privacy policy);
- Respectful and equitable treatment in accordance with the Victorian Charter of Human Rights and Responsibilities;
- A fair and just mediation and/or hearing in a safe environment; and
- Timely decisions.

5. To allow us to deliver a high quality service, VCAT users must meet their responsibilities by:

- Providing us with complete and accurate information to the level appropriate to their situations;
- Complying with any VCAT directions or orders; and
- Behaving courteously and peaceably in and around VCAT venues.

6. We value your feedback.

We aim to continually deliver a high level of service to the community and we welcome your comments and suggestions. Contact VCAT in person or by telephone, fax, mail or email (see contact details on inside back cover).



CUSTOMER SUPPORT SERVICES

VCAT's headquarters at 55 King Street, Melbourne is segmented into three distinct service areas:

Ground floor – counter services

Here we provide general advice and information to users about VCAT operations and hearing procedures. We also assist you in completing and lodging VCAT application forms and assist when you arrive for a hearing. We provide modern and user friendly customer facilities in a modern customer service environment including a spacious file inspection room allowing multiple users at the one time to inspect tribunal files.

Our operational hours are Monday to Friday, 9.00am – 4.30pm (closed public holidays).

Mediation centre

Located on the second floor, the mediation centre provides users with comfortable amenities conducive to achieving settlements at mediation. The centre comprises dedicated hearing rooms, meeting areas, a computer and a suite of mediation breakout rooms.

Fifth floor

Here we welcome parties arriving for hearings. Hearings involve up to 300 people per day and VCAT staff record their arrival and direct them to hearing rooms.

Other services located at VCAT:

Victoria Legal Aid duty lawyer

Located on the ground floor, the duty lawyer provides unrepresented parties with free and confidential legal advice. In addition, the duty lawyer provides a valuable legal resource for VCAT staff in day-to-day dealings with users, particularly in regard to complex matters.

Court network

The volunteer statewide Court Network offers a valuable service for users. Located on the fifth floor, specially trained volunteers are in attendance most days. They offer friendly support, information and referral for people attending mediations and hearings.

Video and telephone links

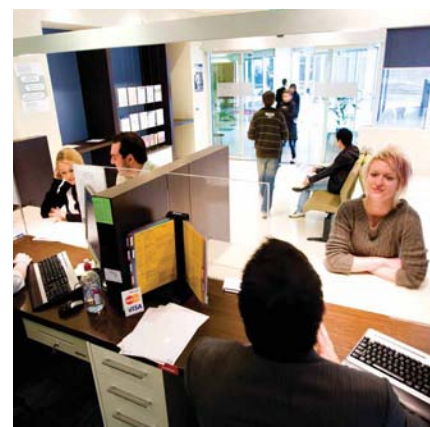
If you are unable to physically attend a hearing, for a small fee you may link in via video or telephone (we can arrange video links to locations around Australia and overseas). In addition to providing added convenience for users, these hearings help manage members' time more efficiently, especially when hearing urgent matters in rural areas.

Access for the hearing impaired

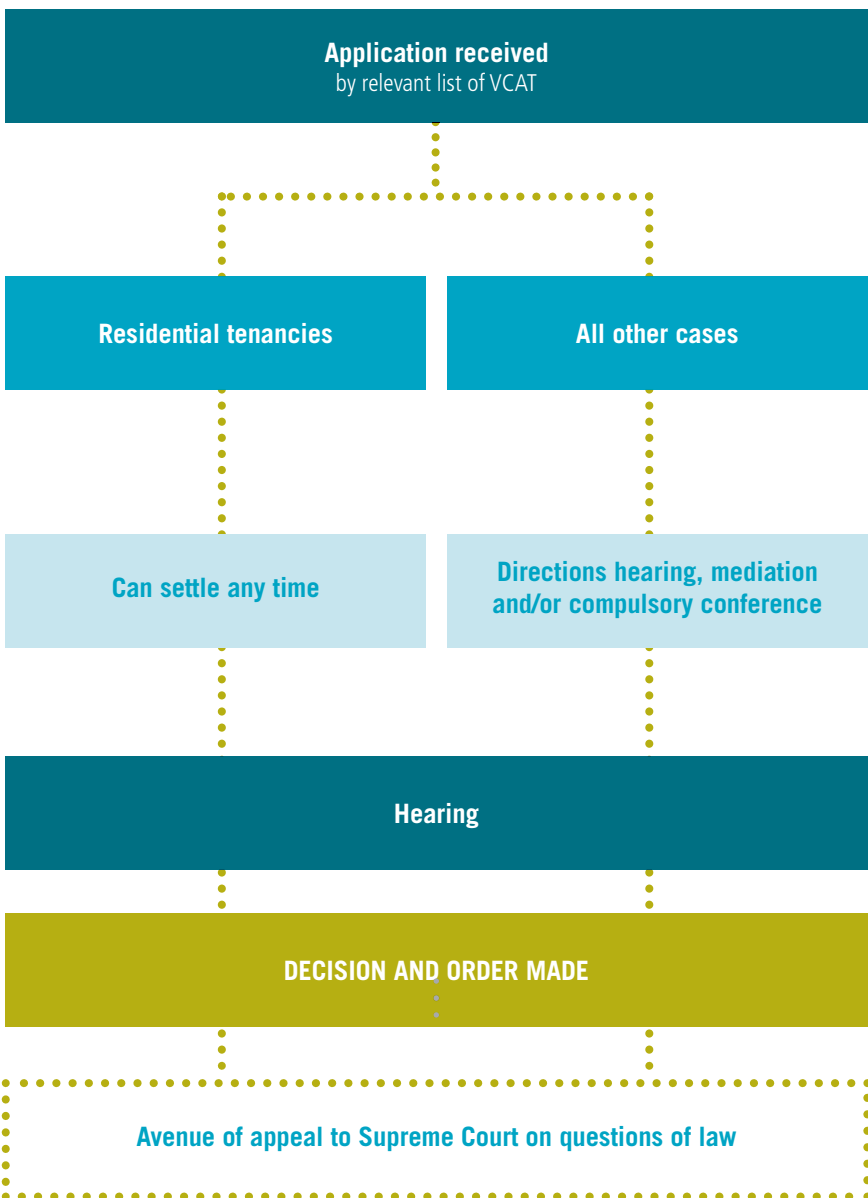
We offer hearing loop access in all of our 55 King Street hearing rooms. In addition, a DVD player is available for use by parties upon request, allowing users to present cases in a format designed to assist them and members. Four hearing rooms at VCAT have permanent audiovisual equipment.

Publications

Further information about our services is contained in a series of informative publications available free at 55 King Street. More information is also available at www.vcat.vic.gov.au



HOW WE RESOLVE CASES



This flow chart illustrates our usual approach to resolving cases.

Every case brought to VCAT is different. Cases may take from 15 minutes to as much as a day or more to resolve. Others may take several weeks due to the complex issues involved.

The process of resolving cases begins when a person files an application with one of our lists. To help settle a dispute, a mediation, directions hearing or compulsory conference may occur, depending on the case. Many cases, however, proceed directly to a hearing.

Hearings give parties the opportunity to call for or give evidence, ask questions of witnesses, and make submissions. At the end of a hearing, a member of VCAT either delivers a decision on-the-spot, or writes a decision after the hearing and delivers it as soon as possible.

In a civil dispute, the people involved may agree at any time to resolve their differences without a mediation, directions hearing, compulsory conference or a hearing. If the case proceeds to a hearing, there is still an opportunity to settle prior to the tribunal hearing and determining the case.

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

VCAT WEBSITE

The VCAT website at www.vcat.vic.gov.au contains useful information such as:

- How to make an application or bring a claim to the various lists at VCAT;
- Links to workshops for parties to represent themselves at hearings;
- A link to a step by step guide to dispute resolution for small business operators;
- A video 'Working It Out Through Mediation' to help parties prepare for mediation;
- Application forms, legislation, practice notes and rules applicable to VCAT;
- The daily law list;
- Links to VCAT decisions, and a variety of government, judicial and legal websites; and
- Information on how to access files, publications and information held by VCAT.

Site visits

During the 2008–09 financial year, the number of visits to our website increased by nine percent, totalling 711,108 visits compared to 650,265 in 2007–08. Popular web pages included:

- VCAT online;
- Daily law list;
- Decisions;
- Contact us;
- Application forms and brochures;
- Residential tenancies;
- Civil claims; and
- Planning and environment.

These statistics have been obtained via the WebTrends Reporting tool which has been our method of reporting for the past several years. From the next financial year VCAT will adopt the Nielsen Net Ratings reporting tool which is now the Department of Justice's preferred reporting method and is used by the whole of Victorian Government.

E-mails

The vcat@vcat.vic.gov.au e-mail address received 9,601 e-mails in the 2008–09 financial year, an increase of **49 percent** from the previous financial year. The reason for this large increase might be that a greater number of people are using e-mail as their preferred method of communication.



HOW TO APPLY

Applying to VCAT is easy.

You can request an application form by:

> **Phoning or writing to VCAT**
(details on inside back cover);

> **Visiting us at 55 King Street, Melbourne, Victoria; or**

> **Logging on to www.vcat.vic.gov.au**

We conduct hearings at 55 King Street, Melbourne, as well as at Cheltenham, Collingwood, Dandenong, Fairfield, Frankston, Heidelberg, Kew, Parkville, Ringwood, Sunshine and Werribee.

In addition, we visit the rural locations listed on the map on the inside back cover. Details concerning regional sittings are contained in the law calendar, which is produced by the court services section of the Department of Justice.



WHAT WE DID THIS YEAR

THE NUMBER OF APPLICATIONS RECEIVED
UNDER EACH OF VCAT'S DIVISIONS CONTINUED
TO GROW IN THE 2008/09 FINANCIAL YEAR.



HUMAN RIGHTS DIVISION: GUARDIANSHIP LIST

The guardianship list is one of the lists within VCAT's human rights division. The list makes protective orders under the *Guardianship and Administration Act 1986* and other legislation. The most common – guardianship and administration orders – involve appointing a substitute decision-maker when that is in the best interests of an adult who has a disability that impairs their cognitive capacity. The list also makes orders about enduring powers of attorney, enduring power of guardianship and enduring powers of attorney (medical treatment). VCAT also has jurisdiction under the *Disability Act 2006* including power to make orders for the compulsory treatment of persons with an intellectual disability who pose a significant risk of serious harm to other persons.

Year in review

Registry

A new registrar, a new deputy registrar and a new team leader have been appointed to the human rights division. We have also welcomed a number of new staff members to the division. This has presented the opportunity to take a fresh look at some internal processes and to engage in up to date training for new and existing staff.

Cases

We were able to build on gains achieved in the previous year by finalising significantly

more cases while experiencing an 11 percent increase in applications. This was largely due to the successful implementation of the new process for reassessing suitable administration orders. Although numerous cases were able to be reassessed on the papers, we scheduled hearings wherever requested by the person with a disability or another party, including the administrator. In other cases hearings were directed by the member reassessing the order.

Accessibility

Wherever possible, we schedule hearings close to the place where the person with a disability resides. This has included hospitals, nursing homes and community health care centres, as well as court and tribunal complexes in metropolitan Melbourne and regional Victoria. We continued to hold regular sittings at the Parkville campus of the Royal Melbourne Hospital. We also began to investigate the possibility of making similar arrangements at other suitable metropolitan hospitals.

Efficiency

We have continued to make orders in most cases using the order entry system. This enables members to produce and sign written orders in the hearing room which can then be handed directly to persons attending. We are exploring ways of using this technology at a greater number of hearing venues.

Annual administration fees

In late 2008 the government made new regulations providing for an annual administration fee payable to VCAT out of the estates of represented persons. We kept administrators informed of developments via the VCAT website and a special newsletter. We also provided an updated information sheet to accompany the fee notice sent to administrators.

VCAT invited submissions from the Public Advocate and other interested parties concerning the application of the regulations. VCAT made a guideline decision about when the fee could cause undue hardship to a represented person so that it should be waived or reduced.

Our users

The list's user group comprises professional administrators (State Trustees Limited and FTL Judge and Papaleo Pty. Ltd.), legal and advice organisations, and representatives of the Office of the Public Advocate. The group met in October.

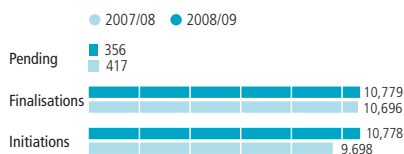
We continued to offer regular information sessions, for newly appointed guardians and administrators, in Melbourne and regional centres.

Our community

Speaking engagements were frequent, and included ones for Public Interest Law Clearing House and Seniors Rights Victoria and the LIV Elder Law Forum. Seminars and talks covered topics such as the jurisdiction of the



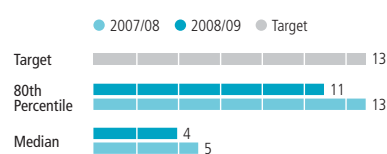
Caseflow



Applications by initiation type



Timeliness of finalised cases (weeks)



list, elder abuse, medical treatment laws, and new legislation. Together with the Office of the Public Advocate and State Trustees Limited we planned regular metropolitan and regional information sessions for health care and other professionals who work with persons who are cognitively impaired.

The future

We expect the demands on the list will grow in the future as a natural result of an ageing population and the increasing proportion within that population of persons with cognitive impairment. Our aim continues to be to respond to applications regarding persons with a disability in the most timely way and to conduct hearings at the most suitable venue.

Applications by type

	2007/08	2008/09	Variance
Guardianship orders	19%	20%	1%
Guardianship reassessments	8%	2%	-6%
Administration orders	25%	26%	1%
Administration reassessments	40%	45%	5%
Advice to administrators	2%	2%	0%
Orders about enduring powers of attorney	3%	4%	1%
Other	3%	1%	-2%

CASE STUDY: DOMESTIC BUILDING AND GUARDIANSHIP LISTS COMBINE TO RESOLVE LITIGATION ON BEST TERMS

In two separate cases VCAT appointed State Trustees Limited as administrator for persons. Each of them, by reason of a mental illness, had become unable to make reasonable decisions about litigation before the tribunal's domestic building list. In each case the litigation was complex and demanding and posed a substantial financial risk to the person. There was evidence, too, that to pursue the litigation would be detrimental to the person's health and well being.

Cooperation between the domestic building and the guardianship lists enabled orders to be made that benefited the persons by resolving the litigation on the best terms. A process was established enabling an application to be made for the appointment of an administrator. It was subsequently arranged for there to be scheduled, on the

same day, both a domestic building list compulsory conference and a guardianship list hearing.

The compulsory conference was to explore the possibility of a negotiated settlement of the domestic building list proceeding. The guardianship list hearing was to enable the administrator immediately to seek VCAT's approval of any settlement achieved. In one of the cases the person was able to obtain legal representation, but in both cases the administrator participated in negotiations facilitated by a member assigned to the domestic building list. The proceedings were settled. Then, following a hearing before the guardianship list, at which the persons' best interests were separately considered, VCAT approved the settlements.

HUMAN RIGHTS DIVISION: ANTI-DISCRIMINATION LIST

Members of the anti-discrimination list determine complaints made under the *Equal Opportunity Act 1995* (EO Act) that are referred from the Victorian Equal Opportunity and Human Rights Commission (VEOHRC). Complaints are referred at the request of the complainant if the VEOHRC declines a complaint, determines that a complaint is not conciliable, or if conciliation is unsuccessful.

The list also determines applications for exemptions from the EO Act, which are made directly to the list. An exemption is sought, for example, if an applicant needs to discriminate between persons to achieve a just outcome overall.

Occasionally, the list receives applications to strike out complaints on the basis that they are frivolous or vexatious, and hears applications for interim orders to prevent parties from acting prejudicially to outcomes being reached in relation to complaints.

Additionally, the list hears complaints brought under the *Racial and Religious Tolerance Act 2001*.

Cases

Complaints referred from the VEOHRC decreased by nine percent to 203 compared to the previous reporting period while 94 exemption applications, most for renewal of existing exemptions, were made.

Discrimination on the basis of impairment continues to be the main ground of complaint,

while sex discrimination and sexual harassment claims increased by 39 percent. This may be due to increased awareness of rights in the community, including workplaces, schools and other settings. Other grounds of complaint included race, gender identity, and status as a parent or carer.

The tribunal received one application for registered agreements, which are agreements reached at the VEOHRC between parties and registered with the tribunal, which then take effect as an order of the tribunal. Registered agreements are easier to enforce than confidential agreements between parties. One application was struck out.

Mediations

The list continued to build on its success in resolving complaints through mediation, with a settlement rate of 68 percent – the second highest in the tribunal.

Accessibility and efficiency

We endeavour to ensure unrepresented parties are not disadvantaged, particularly when they are in dispute with a legally represented party. We continued to refer parties early in proceedings if it became apparent that they were unprepared or unfamiliar with the process. The duty lawyer assists parties to understand the likely success of their case, and how to access legal assistance according

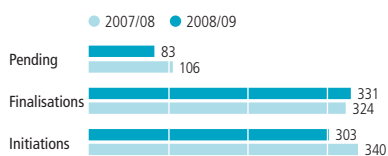
to their financial means. This leads to better case management for the list, and supports parties who might otherwise be disadvantaged due to lack of understanding of the tribunal process.

Our users

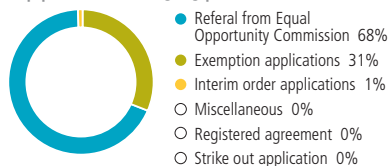
Our user group is active and vocal, and has consistent input into tribunal projects and processes. It comprises barristers and solicitors who work in anti-discrimination, and representatives from the Department of Justice and the VEOHRC.



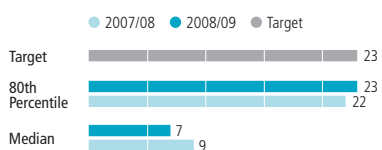
Caseflow



Applications by type



Timeliness of finalised cases (weeks)



Referrals by grounds

	2007/08	2008/09	Variance
Sex discrimination and sexual harrasment	16.51	22.9	38.7%
Impairment	27.3	25.0	-8.4%
Race	10.16	11.92	17.3%
Victimisation	11.11	9.88	-11.1%
Other*	34.92	31.24	-10.5%

*Other grounds include: gender identity, industrial activity, lawful sexual activity, marital status, personal association, physical features, political beliefs, pregnancy, religion, status as a parent or carer, racial vilification, religious vilification.

CIVIL DIVISION: CIVIL CLAIMS LIST

Fair trading disputes and owners corporations disputes are dealt with in the civil claims list. Under the *Fair Trading Act 1999 (FTA)*, we determine disputes between buyers and sellers of goods or services, and claims for damages for breach of the FTA, such as misleading and deceptive conduct. Under the *Owners Corporations Act 2006*, we deal with disputes about owners corporations in multi-unit developments. An owners corporation used to be called a body corporate. It is responsible for common property, for example shared gardens and pathways between units.

VCAT manages FTA claims differently according to their monetary value. Claims for less than \$10,000 go straight to hearing and may be mediated on the hearing day. Legal representation is generally not permitted in these cases, and orders cannot be made that one party pay the legal costs of the other. We aim to resolve these smaller claims quickly, with a single visit to the tribunal.

Claims exceeding \$10,000 are usually referred straight to compulsory conference, where the presiding member encourages the parties to settle the case and assists them to realistically assess the merits of their case, identifying key issues and advising them on how the law applies to the situation. A high proportion of larger claims are settled during compulsory conference. Otherwise they proceed to a hearing to be decided by a different member.

Year in review

Cases

We experienced another increase in applications, up from 8,975 in 2007–08, to 11,545 in 2008–09. This was the first full year of operation for the owners corporations jurisdiction, which accounts for 1698 of the cases. Even without this new jurisdiction, we have had another year of increasing demand in civil claims, with 9759 fair trading claims, an increase of 14.5 percent on the previous year.

During the year, our waiting lists in fair trading claims fell behind our targets, as resources did not meet demand. Many small claims, which increased by 26 percent this year were for debt recovery. We tried some new strategies, including a number of 'debt days' where large numbers of debt recovery cases were listed in the knowledge that debt matters could often be heard quickly, either because the respondent does not attend or because the parties simply need a tribunal member to help them develop a payment plan. On those days we offered mediation and almost half of the defended cases were settled by mediation. We managed to reduce the waiting lists considerably, while still requiring applicants to comply with all requirements, such as those in the credit code.

This year we also tried new ways of offering mediation in smaller claims. On some days, we

declared a 'mediation blitz', listed hearings for higher than usual numbers of claims, provided extra space and used extra mediators to talk with parties before their hearings. Again, almost half the defended cases were settled between the parties without the need for a hearing. For claims under \$10,000 we continued to ensure that the parties need attend the tribunal only once, as multiple fixtures only increase the cost and time for all involved.

Claims for amounts between \$10,000 and \$100,000 continue to grow in complexity and increased by 19 percent over the previous year.

A high proportion of owners corporations applications, which increased by 593 percent this year, were about recovery of fees said to be due from members to the owners corporation. These applications are listed for hearing as soon as possible.

Most other owners corporation applications are suitable for mediation as this is a way for parties to manage the dispute and to preserve their ongoing relationships as neighbours or as members of the same owners corporation. Accordingly, parties in most owners corporations applications, except disputes about fees, are offered a mediation as their first attendance at VCAT.

Accessibility

We expect soon to release new, easier to use, application forms and guides which have been



developed over this year, along with a 'Smart Form' which will allow on-line applications for fair trading claims. This year we have also developed, but not yet finalised, new materials to help people understand our jurisdiction, how to make a claim and what happens when they come to VCAT. We also continued to work on alternatives to physical attendance at hearings and conducted more hearings by telephone than ever before.

Efficiency

We finalised 575 more cases in 2008–09 than in the previous financial year, representing a 6.5 percent increase, and have continued to accommodate increased demand which saw applications rise by 2570 without a major increase in resources. The 'debt days' and mediation blitz days described above helped us avoid long delays in fair trading claims. In owners corporations claims, this was our first full year of jurisdiction. For much of the year, applications were dealt with in a timely way, but at times we had difficulty predicting demand. This year's experience will help us plan our use of resources for the future.

Our users

The users group met in December 2008 and future meetings are planned in 2009. The group comprises representatives from Consumer Affairs Victoria (CAV), Consumer Action Law Centre, Victorian Small Business Commissioner, Legal Aid Victoria, Victorian Automobile Chamber

of Commerce, the Retail Traders Association, Peninsula Community Legal Centre and Owners Corporation Victoria, as well as a solicitor and a real estate agent who work in the relevant jurisdictions. We discussed issues of interest to all, such as case management, demand and timeliness in the list. User group members who work in the owners corporations jurisdiction raised the issue of costs in fee recovery applications.

Our community

This year, we ran open forums at VCAT about the new owners corporations jurisdiction. These were well attended, particularly by frequent users such as managers of owners corporations and their lawyers. Feedback was mostly positive, but some people wanted more information and others found the presentations too complex, or too focussed on legal issues. Next year, we plan to offer alternative forums for people with different levels of expertise and experience in the area. VCAT members participated in mock hearings in regional areas for Law Week. We also continue to work closely with CAV which advises the public about civil claims issues.

The future

Members of the civil claims list made submissions to the president's review of VCAT about the need for more resources to meet demand, including better information for people who represent

themselves at VCAT and opportunities for parties in regional cases to have claims heard close to home.

Soon we expect to release new information for people coming to VCAT to use the civil claims list.

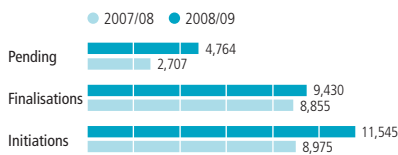
We will also build on our experience this year in mediation for civil claims and encourage parties to resolve issues before a hearing, while keeping the time involved for parties to a minimum. This is particularly important in small claims which might be suitable for mediation but do not justify asking the parties to come to the tribunal more than once.

CIVIL DIVISION: CIVIL CLAIMS LIST (continued)

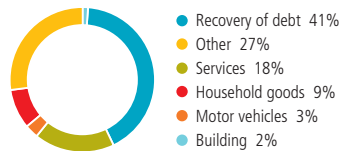
Applications by claim amount

	2007/08	2008/09	Variance
Small Claim: < \$10,000	7,766	9,808	26.3%
Standard Claim: \$10,000 - \$100,000	974	1,156	18.7%
Complex Claim: \$100,000 - \$1m	65	91	40.0%
Complex Claim: \$1m +	10	10	0.0%
No Value	160	480	200.0%

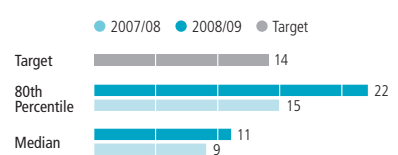
Caseflow



Applications by type



Timeliness of finalised cases (weeks)



CASE STUDY: OWNERS CORPORATIONS ACT

A subdivided property in a coastal town consisted of several residential units. An owners corporation administered the common property, which included a garage.

One of the lot owners owned a boat and kept it in the garage. Most of the other lot owners, the members of the owners corporation, agreed to his doing so, but did not pass any special resolution. Under the Owners Corporations Act, a special resolution (approved by 75 percent of lot owners) is required for the owners corporation to grant a lease or licence over part of the common property.

Another lot owner, the applicant, did not agree. He brought an application against the owners corporation, the boat-owning lot owner and other lot owners who were looking after the finances of the owners corporation. He asked for an order preventing the boat from being parked on common property and for orders about financial management.

A mediation was conducted near to the town where the parties lived, but mediation was unsuccessful. At the hearing, the tribunal dismissed the claims about financial management. The tribunal decided that the boat owner had no proper licence to use the garage because there had been no special resolution and allowed the applicant six months to renew the application, if the owners corporation did not pass one within that time. The applicant did not renew the proceeding.



CIVIL DIVISION: CREDIT LIST



The credit list hears two main types of applications: repossession applications and applications for relief from hardship.

Repossession applications are made when a loan contract is secured by a mortgage over goods, and the lender needs the consent of the tribunal to enter residential premises to seize the goods.

Hardship relief applications are made by debtors under hardship who want to change the loan contract, such as by reducing or postponing payments. The tribunal can grant no-fault hardship relief, which is a jurisdiction under the Consumer Credit (Victoria) Code (Credit Code) that is exclusive to VCAT, and an important remedy for debtors.

Year in review

Cases

There was a 45.6 percent increase in the number of applications made to the list, building on significant increases in previous years but substantially higher than any previous increase. The continued growth in application numbers reflects a growing awareness of the list, which we have been active in promoting amongst financial counsellors and credit providers. The very large increase may also be due to the effects, in Australia, of the global financial crisis on both lenders and debtors. Most applications were for repossession orders, however applications for

hardship relief, postponement of enforcement proceedings and other applications by debtors increased by 73.6 percent, albeit from a relatively small base. We attribute this increase to the growing awareness of the list and to the financial difficulties brought about by the global financial crisis. We notice that these debtor applications are becoming more complex and now often raise not only hardship issues, but issues affecting whether the contract should be reopened because it was unjust.

A notable decision during this year was the decision of the tribunal to impose a civil penalty of \$100,000 on a credit provider who failed to disclose in more than 3000 credit contracts that it had retained part of the loan for itself.

Resolving disputes

We resolved 56 percent of disputes by using VCAT's mediation services, or through settlement agreements reached at or before a hearing. Where cases proceeded to hearing, we continued to take an active approach to promoting settlement, and many matters settled during hearing as a result.

Debtor participation in hearings

We continued to encourage the participation of debtors in hearings for repossession applications, and that participation is increasing. In our experience, many debtors find it less stressful,

less intimidating, cheaper and more convenient to attend hearings by telephone rather than in person. We encourage this form of hearing. Many debtors attend this form of hearing who might otherwise not attend their hearing at all. This facility is particularly helpful to those in remote rural areas, or who because of illness or other disability are unable to attend, or whose carer responsibilities mean that they cannot attend the hearing in person.

Timeliness and alternative dispute resolution

The benefit of settlement is that parties can consider a much broader range of solutions than those the tribunal can order. Additionally, relationships are preserved and financial hardship minimised. These outcomes, which the tribunal has been active in achieving, have flow-on benefits for the wider community.

We list matters that come to us either for directions hearing, hearing or mediation within 21 days after receiving the application. We are aware that delay may adversely affect the position of debtors and lenders, and that settlements are more likely to happen if the issues are addressed quickly.

CIVIL DIVISION: CREDIT LIST (continued)

CASE STUDY: REOPENING AN UNJUST LOAN CONTRACT AND MORTGAGE

A debtor and her then husband bought a car. To buy it, they borrowed money from a lender. The debtor’s first language is Mandarin, and not English. She has only a basic knowledge of spoken and written English.

An employee of the dealer from whom the debtor and her husband bought the car spoke Mandarin and English. This employee translated some but not all of the information concerning the loan contract they were about to enter, including the loan amount, the interest rate and the amount of the monthly repayments. None of the other conditions of the loan were explained or translated – in particular, a condition that there was a final ‘balloon’ payment due at the end of the loan of approximately \$8000, and those conditions dealing with the consequences of default.

No opportunity was given to the debtor to take away the proposed contract and seek independent legal or expert advice, or have it independently translated. It was clear from the application for finance that the debtor and her husband could not afford the balloon payment without forgoing necessities, refinancing or (at the worst) selling their car or the debtor’s house.

The lender took possession of and sold the car, and sued the debtor for the shortfall. Taking into account the above matters, and on the debtor’s application, the tribunal set aside the loan contract and the mortgage as against her.



Accessibility and efficiency

We finalised 526 matters – a 38.4 percent increase on last year. This reflects the credit list’s strict time targets; we are conscious that, if someone applies for hardship relief, or if a repossession application is made, it is imperative that we expediently resolve those applications.

We have greatly increased the use of telephone hearings and mediations for both debtors and lenders, and our hearing notices remind them that they can appear by phone. Our simplified forms of application, and particularly the list of questions concerning financial hardship suffered by debtors, the relief which they seek, and their financial position, are working well in giving the information we need. That information gives debtors and lenders a better idea of what is in issue, and helps settlement discussions.

Our users

Our user group comprises representatives from credit providers, consumer advocates, government agencies and the legal profession. The group meets twice a year, and minutes are circulated to list members and our president.

We encourage our users to contribute ideas to assist in managing credit disputes. Our user group has been particularly supportive of the initiatives we have taken to make our processes more accessible, flexible and alternative dispute resolution-oriented.

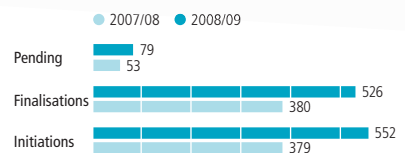
Our community

The head of the credit list, deputy president McKenzie, gave two presentations about the work of the list and about debtor hardship provisions of the code. One was at a seminar conducted by the education provider LegalWise for the mortgage industry. The other was at a debt collection and compliance seminar auspiced by GE Money. These seminars were attended by senior managers from various parts of the credit industry, as well as by those more directly responsible for debt collection.

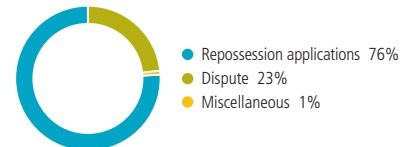
The future

A Bill has recently been introduced into the Commonwealth Parliament to provide for national regulation of consumer credit. It is anticipated that this will commence during the forthcoming financial year. The ultimate effect of the new laws will be to transfer consumer credit regulation from Victoria and the other states and territories to the Commonwealth, and to transfer adjudication responsibilities in this area from VCAT and other similar tribunals to the courts. How quickly this transfer will take place will depend on the ultimate form of the new laws, when they commence, and the final form of transitional arrangements.

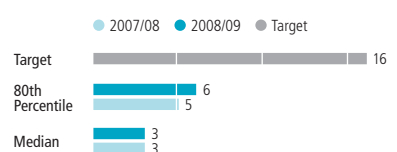
Caseflow



Applications by type



Timeliness of finalised cases (weeks)



CIVIL DIVISION: RESIDENTIAL TENANCIES LIST



The residential tenancies list determines disputes between landlords and tenants and between rooming house residents and owners and caravan park residents and owners, under the *Residential Tenancies Act 1997*. The list also hears some applications under the *Disability Act 2006* and *Fair Trading Act 1999*.

Each year in the residential tenancies list there are about 60,000 applications. That figure represents approximately 15 percent of all residential tenancies in Victoria. Applications are made by tenants, private landlords, rooming house and caravan park residents and owners and the Director of Housing. They typically relate to non-payment of rent, damage to premises, bond refunds, and the obligations of the Landlord or owner to provide and maintain premises fit for occupation.

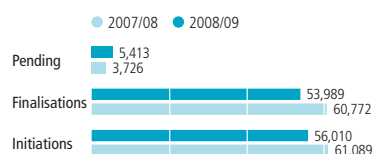
Year in review

Important amendments were made to the *Residential Tenancies Act 1997* this year by the *Family Violence Protection Act 2008* which began

operation in December 2008. The amendments enable victims of family violence and persons excluded under exclusion orders made in the Magistrates' Courts to apply to the tribunal to terminate the tenancy agreement and in some instances require the landlord to enter into a fresh tenancy agreement with the protected person. The tribunal has engaged the services of an applicant support worker to assist the protected person in these cases and the tribunal's facilities have been upgraded to enable evidence to be given via a remote witness facility.

This year we began a pilot project, sending SMS messages to remind some tenants to attend hearings. We chose to send the messages to tenants who are respondents in applications made using VCAT online, as we can use the data already entered in the system by applicants. The applicants who use VCAT online receive various forms of notice and reminders about the hearing, whereas tenants in these cases receive only one written notice of hearing. Attendance by tenant respondents in these cases is quite low, about 20

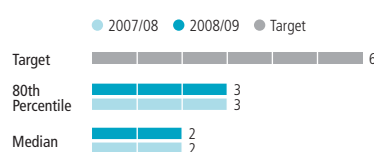
Caseflow



Applications by type



Timeliness of finalised cases (weeks)



Applications by type

	2007/08	2008/09	Variance
Possession orders	41%	47%	6%
Payment of bond	25%	21%	-4%
Compenstation or compliance orders alleging breach of duty	9%	6%	-3%
Other	25%	26%	1%

CIVIL DIVISION: RESIDENTIAL TENANCIES LIST (continued)

percent. Increasing the number of tenants who attend hearings should decrease the number of re-hearings (thereby reducing costs for all concerned) and encourage sustainable tenancies. We are measuring the effects of sending messages to tenants and if the messaging proves effective will use it more widely.

VCAT has purchased some licences to use the Community Referral Directory. The directory contains information about community agencies which can assist people in crisis. Often people who are parties in VCAT need help which we are not equipped to provide – such as emergency housing advice or financial counselling. With the directory now available for use of VCAT, we will at least be able to give to people some contact details for agencies who provide such help. Referrals are sometimes needed following residential tenancy cases, where an order is made giving possession of premises to the landlord and the tenant needs assistance to find new accommodation.

Cases

Overall, the number of applications in residential tenancies this year was slightly less (56,010) than last year (61,089). This was a reduction of 8.3 percent. Apart from speculation about the effects of economic conditions on the behaviour

of both landlords and tenants, there is no obvious reason for the decline.

Accessibility and efficiency

We heard 80 percent of cases within three weeks of application and we sat at 37 different venues across Victoria.

Throughout the year we ran a series of forums chaired by a panel of three experienced members. Four forums were conducted in Melbourne – in July, September and November 2008 and May 2009. The forums are for all users of the tribunal to enable them to better understand the processes and procedures in the residential tenancies list at VCAT outside of hearings and with the opportunity to ask questions. They are an opportunity for different users to discuss matters of common interest amongst themselves and for VCAT to explain issues of general concern.

The forums have been attended by in excess of 50 people on each occasion and the feedback has been extremely positive, with participants valuing the opportunity to discuss issues of concern.

Our users

The residential tenancies user group comprises representatives from the Office of Housing, Real Estate Institute of Victoria, Tenants Union of Victoria, Community Housing Federation of

Victoria and Victoria Legal Aid. The user group met three times and discussed issues of concern to them, such as changes to legislation and forms, as well as practical issues such as obtaining transcript of hearings and ensuring parties are informed about hearings.

The future

In the coming year, we expect to release materials to assist people representing themselves at VCAT in the residential tenancies list, so that they can better prepare applications or respond to them, settle cases before hearing where appropriate and know what to expect when they come to the tribunal.

Because we try to minimise the number of times people must attend VCAT in each application, mediation and other kinds of alternative dispute resolution are usually offered only informally on the day of the hearing. We are working on alternatives to this, so that parties may have the benefit of the tribunal's expertise in attempting settlement before the hearing date. We hope to pilot various approaches, including mediation by telephone.

Once the pilot of SMS messaging is analysed, we will consider further how best in future to notify and remind parties of their hearing dates and encourage reluctant parties to attend the hearing.

CASE STUDY: A NEW TENANCY AGREEMENT AFTER A FAMILY VIOLENCE ORDER

Since the *Family Violence Protection Act 2008* amended the *Residential Tenancies Act 1997*, VCAT has power to make orders terminating the existing tenancy agreement and requiring the landlord to enter into a new tenancy agreement with the tenant.

In one case, a male tenant was excluded from the rented premises under a final order of the Magistrates' Court. His former girlfriend who had been living at the rented premises applied to VCAT for an order terminating the existing tenancy agreement and requiring the landlord to enter into a new tenancy agreement with her. The woman had lived in the rented premises as her principal place of residence for 6 months but was not a tenant named on the lease. She did not speak English and was assisted at the hearing by an interpreter and the tribunal's applicant support worker.

The woman was extremely anxious about facing the excluded tenant at the hearing. She was able to use the remote witness facility which meant that she did not have to be seated in the same room as him and yet he could hear and respond to her evidence during the hearing.

The landlord's agent supported the creation of a new tenancy. He was confident based on the material supplied by the woman that she could meet the obligations of the tenancy agreement. The agent inspected the rented premises before the hearing and said that the property was being beautifully maintained. The agent had also spoken to the excluded tenant before the hearing and understood that he would not be contesting the application for the creation of a new tenancy agreement with the woman as tenant.

At the hearing the excluded tenant agreed the woman could take over the tenancy but was concerned about what would happen to the bond. The woman agreed that she had not contributed to the bond and that it should be repaid to the excluded tenant. The woman was in the process of making arrangements to have a Director of Housing bond.

The tribunal ordered that the first tenancy agreement be terminated upon the signing of the new tenancy agreement with the landlord and woman. There were consent directions for the payment of the bond to the excluded tenant.

CIVIL DIVISION: DOMESTIC BUILDING LIST



The domestic building list has unlimited jurisdiction to hear and determine disputes relating to domestic buildings, ranging from private dwellings to major multi-unit developments such as high-rise apartment blocks. The list also hears applications for review of decisions of warranty insurers in relation to domestic building contracts.

Applications are dealt with according to the monetary value of the claim: those less than \$15,000 (small claims) are, as a general rule, automatically listed for a one or half-day hearing. Smaller matters are often transferred to the civil claims list for determination; claims between \$15,000 and \$100,000 (standard claims) are referred to mediation; and claims exceeding \$100,000 (complex cases) are referred to a directions hearing, after which a compulsory conference is usually held.

Year in review

Cases

Matters before the list are technically and legally complex. There was an increase in the number of claims relating to multi-unit and high-rise apartment developments, many of which related to waterproofing. Many proceedings involved multiple parties due to the impact of Part IVAA of the *Wrongs Act 1958* which requires that parties be joined before responsibility can be apportioned. Although parties are encouraged to make early

applications to join others, for the purposes of Part IVAA, this does not always happen and has impacted on our timeliness targets.

There has been a 19 percent increase in applications to the domestic building list, much of it as a result of the changing economic times. There are an increasing number of applications during the course of the contract, particularly from builders seeking payment of progress claims.

The number of cases pending includes matters for where the parties have agreed on works to be carried out followed by a monitoring period, often 6-12 months but sometimes longer. Pending completion of the works and monitoring period the proceeding is held in abeyance. We also encourage parties to obtain responsive expert reports to ensure they are addressing the same issues. This assists in the preparation of a joint expert report.

Alternative dispute resolution

We continued to take a robust approach to alternative dispute resolution which, together with our technical expertise in building and construction, encourages the parties to find a workable solution. We adopt flexible processes, fitting the process to the case rather than the case to the process.

Standard matters were referred to mediation within five to six weeks of filing, complex

claims and the larger standard claims, were referred to compulsory conferences. Often parties were offered more than one compulsory conference, frequently conducted by the same member so that they are given the best opportunity to negotiate an outcome they are happy with and which they have ownership of. In complex cases, particularly where the allocated hearing time is more than ten days it is not unusual for the parties to be offered, or to request a further compulsory conference after the hearing has commenced. Consequently only a small percentage of matters proceeded to final hearing and determination.

Where matters were referred to mediation, we found a large proportion were resolved without the need for parties to obtain expert evidence or incur significant costs, even where they were legally represented.

Expert conclaves and concurrent evidence

In July 2008 we introduced 'Guidelines for Expert Evidence in the Domestic Building list' to formalise and provide information to parties, their lawyers and experts about joint expert reports, chaired conclaves and the concurrent hearing of expert evidence. Experts are generally required to meet and prepare a joint report in the form of a Scott Schedule identifying their areas of agreement and disagreement. Where cases involve complex technical issues

CIVIL DIVISION: DOMESTIC BUILDING LIST (continued)

or a large number of alleged defective and incomplete works a conclave of the experts chaired by a member or building consultant will be ordered. In preparing the joint report experts are encouraged to formulate an agreed scope of rectification and/or completion works and to provide an estimated cost of carrying out that scope. Where the experts do not agree on a scope of rectification or completion works they are encouraged to estimate the cost of carrying out the scope recommended by the other expert. The agreed scope of works, and these cost estimates frequently provide the basis of successful settlement negotiations often at a compulsory conference.

If settlement is not achieved, the joint expert report provides the basis for the concurrent hearing of expert evidence. We have found this to be an effective way of reducing hearing times and enabling the parties, their lawyers and most importantly the presiding member to obtain a greater understanding of the technical issues.

Efficiency

We continued to hold twice-weekly 'directions days' to which we allocated the bulk of directions hearings. At the first directions hearing, the presiding member discusses with the parties or their legal representatives an appropriate and realistic timetable to enable the most cost-efficient, expeditious and efficient resolution of the proceeding. Where all parties are present and a suitable mediator or member is available,

the parties will be offered an immediate mediation or compulsory conference.

Once directions are made, files are actively case managed to ensure compliance with directions in the interests of avoiding late adjournment requests. Compliance warnings are sent to parties, and if necessary a compliance directions hearing will be held. Regular meetings are held with the listings coordinator to ensure matters are allocated in a way that assists expeditious and efficient resolution. Although we do not have a formal docket system, the importance of consistency of case management particularly in complex cases is recognised and applied wherever possible.

To minimise costs and unnecessary appearances at directions hearings we encourage legally represented parties to prepare Minutes of Consent Timetable for consideration in chambers.

Our users

The user group comprises representatives from the Building Disputes Practitioners Society (BDPS), building consultants, barristers and solicitors representing diverse interests. The group met three times and discussed list trends and practices.

Our community

We recognise the importance of engaging with our users and the community. Deputy president Catherine Aird gave four presentations to: Judicial College of Victoria seminar, Judicial

Dispute Resolution, the National Mediation Conference and the AIJA/COAT Conference. Senior member Lothian addressed the Australian Society of Building Consultants and Senior member Walker addressed the Australian Institute of Building Surveyors.

The future

We will continue to proactively and flexibly manage cases, and we hope to develop more information for members of the public, to assist them in preparing and running cases in the domestic building list. Changing economic and climatic conditions may impact the building industry and lead to an increase in case numbers, however we don't yet know to what extent.

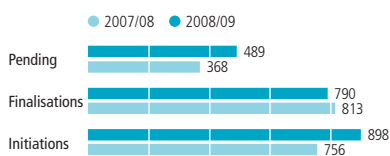


CASE STUDY: CONCLAVE OF EXPERTS FIND SOLUTION TO CONDENSATION ISSUE

The owners of a ski lodge filed a claim against a builder relating to condensation on the inside of windows, and other alleged defects. The initial claim exceeded \$1m. There was conflicting expert evidence as to the cause of the condensation and the appropriate method of rectification. In keeping with our aim to find a solution rather than simply making an award of damages, a conclave of experts chaired by a member who is also an engineer was convened. Alternative methods of rectification were proposed. Because of seasonal impacts it was necessary to build a prototype over the warmer months for testing over winter. The conclave continued to meet every few months to review progress. After 3 years, a solution was found that was significantly more cost effective and most importantly rectified the problem.



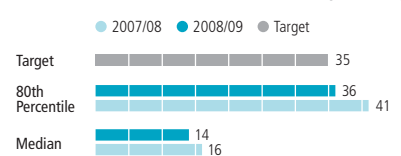
Caseflow



Applications by type



Timeliness of finalised cases (weeks)



Applications by claim amount

	2007/08	2008/09	Variance
Small Claim: < \$10,000	298	291	-2.3%
Standard Claim: \$10,000 - \$100,000	313	370	18.2%
Complex Claim: \$100,000 - \$1m	93	110	18.3%
Complex Claim: \$1m - \$5m	5	4	-20.0%
Complex Claim: \$5m +	-	-	-
No Value	47	123	161.7%
Total Cases Initiated	756	898	

CIVIL DIVISION: LEGAL PRACTICE LIST

The legal practice list is headed by Judge Ross, who commenced his role of vice president of the tribunal in April 2008. The list deals with discipline cases brought under the *Legal Profession Act 2004 (LPA)*. The LPA repealed the *Legal Practice Act 1996*, however, a small number of applications were also brought under the repealed Act in the reporting period.

Cases under the LPA include:

- disciplinary charges brought against lawyers; and
- appeals by lawyers against decisions by the Legal Services Commissioner or the Law Institute of Victoria refusing to issue a practising certificate.

Disputes between clients and their lawyers, usually about legal costs, but also about compensation for unprofessional services, are dealt with in the civil claims list.

Year in review

Case management

The number of disciplinary cases commenced this year was 129 compared to 49 in the previous year.

The past 12 months has seen a substantial improvement in the time taken to determine disciplinary cases.

The number of cases pending for more than 16 weeks has fallen dramatically in the 12 months

to June 2009 from 58 to ten. Each of these pending cases has been listed for hearing.

Community awareness

Judge Ross attended a lunch time professional development session with the staff of the Legal Services Commissioner to discuss the operation of the list and matters of mutual interest. His honour also had an article published in the June edition of the Law Institute Journal on the importance of practitioners responding promptly to requests from the Legal Services Commissioner.

Overview of cases

The past 12 months has seen a dramatic increase in the number of practitioners charged with misconduct as a result of failing to respond to a request by the Legal Services Commissioner for documents or a written explanation of their conduct in relation to a disciplinary complaint.

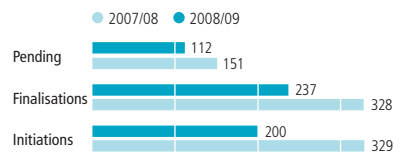
In the nine month period from 1 July 2008 to 31 March 2009 the Commissioner made 42 applications to VCAT for orders against legal practitioners. Thirty eight of those applications related to an alleged failure to respond to such requests.

Since 1 July 2008 nine out of every ten disciplinary applications by the Commissioner have concerned a practitioner's failure to respond to requests for a written explanation or other information about a disciplinary complaint.

No. of discipline cases pending for more than 16 weeks



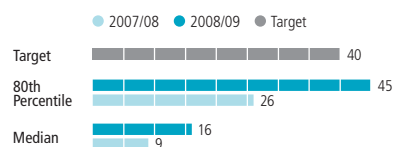
Caseflow



Applications by type



Timeliness of finalised cases (weeks)



The ability to undertake investigations into the conduct of legal practitioners is an important part of the regulatory regime established by the LPA and hence an important means of protecting the public. By failing to respond appropriately, practitioners adversely affect the Commissioner's ability to comply with her statutory obligation to conduct an expeditious investigation of these complaints.

In the past nine months some 16 practitioners have been found guilty of either misconduct or unsatisfactory conduct as a result of their failure

to respond to the Commissioner's requests. About half of these practitioners faced more than one charge. An analysis of these cases shows:

- a finding of professional misconduct is the most common result (20 such findings; as opposed to five findings of unsatisfactory professional conduct);
- a fine of between \$500 and \$1500 is usually imposed in respect of each finding of misconduct (or unsatisfactory conduct); and
- on average fines totalling about \$1650 were

imposed on each practitioner (because they often face multiple findings of misconduct)

Surprisingly a number of practitioners had **still** failed to respond to the Commissioner's requests by the time the tribunal came to deal with the charge(s) against them. Such conduct often results in the imposition of a larger fine than would have been imposed had the practitioner responded to the Commissioner's requests prior to the hearing.

A case study serves to illustrate this point.

CASE STUDY: VCAT REDUCES PRACTITIONER'S FINE AFTER CONSIDERING ALL CIRCUMSTANCES

The Commissioner received a complaint relating to a practitioner's handling of a matter. The Commissioner wrote to the practitioner advising her of the details of the complaint and that she was required to provide a full written explanation of her conduct, within 16 days.

There was no response to the Commissioner's correspondence. Nor did the practitioner respond to two subsequent letters from the Commissioner, one of which was sent by registered post. In the correspondence, the Commissioner informed the practitioner that the failure to provide a full written explanation of her conduct may constitute a breach of the *Legal Profession Act 2004* and may thereby amount to professional misconduct. The practitioner was also directed to give the matter her urgent attention and provide the Commissioner with a full written explanation of her conduct, within 16 days.

As at the date the application was made to the tribunal the practitioner had failed to provide any written explanation of her conduct and had failed to respond to any of the Commissioner's letters. However, prior to the hearing of the charge the practitioner provided the Commissioner with the required explanation.

Before the tribunal, the practitioner admitted the relevant facts and pleaded guilty to a charge of professional misconduct.

The Commissioner had sought the imposition of a \$1000 fine. The tribunal concluded that such a fine would be excessive having regard to all the circumstances, including:

- the plea; and
- the fact that the practitioner had, albeit belatedly, provided the Commissioner with a satisfactory written explanation of her conduct in relation to the disciplinary complaint.

The practitioner was fined \$500.

A practitioner's previous disciplinary findings are also relevant in the assessment of an appropriate penalty. The nature of any previous offences and how long ago they occurred are also taken into account.

For example, in one case the tribunal had regard to the fact that the practitioner had been found guilty of similar offences on five previous occasions in recent times. A fine of \$1500 was imposed and the tribunal went on to make the following observation:

"[The practitioner] did not think clearly or act competently in this matter, and I am concerned as to his ability to continue to practice ... the Commissioner did not seek the suspension of [his] practising certificate. however, if [the practitioner] continues to demonstrate an inability to think clearly and act competently, the tribunal may find itself with no option but to make an order relating to his practising certificate."

In circumstances where the tribunal has found a practitioner guilty of unsatisfactory professional conduct or professional misconduct, the VCAT Act provides that the tribunal must make an order requiring the practitioner to pay the Commissioner's costs unless satisfied that 'exceptional circumstances' exist¹.

In practice, cost orders are usually made in favour of the Commissioner in cases where the practitioner is found guilty of misconduct or unsatisfactory conduct. Costs were ordered against each of the 16 practitioners whose cases were decided in the nine month period from 1 July 2008 to 31 March 2009. The practitioners were ordered to pay costs of between \$1327.70 and \$3370.80. The average costs order was just over \$2000.

The tragedy of these cases is that they can be avoided simply by the practitioner responding to the Commissioner's requests in a timely way. The failure to do so can be expensive – both in terms of professional reputation and financially.

¹ Clause 46D, Schedule 1, *Victorian Civil & Administrative Tribunal Act 1998*

CIVIL DIVISION: REAL PROPERTY LIST

The real property list hears and determines a wide range of disputes under various pieces of legislation related to real estate, including: liability for damages caused by the taking, use or flow of water between properties; estate agent commissions; and the acquisition or removal of easements.

Two relatively new areas for which the list has been given jurisdiction to resolve disputes include:

- disputes between co-owners under Part IV of the *Property Law Act 1958*, where, for example, one co-owner wants to sell shared property and the other does not; and
- subdivision disputes affecting owners corporations under Part 5 of the *Subdivision Act 1998*.

Year in review

Cases

The list received 154 applications this year. This represents a 11 percent fall in the number of applications from the previous year. The likely explanation for this fall is that the proceedings under Part IV of the *Property Law Act 1958* have been affected by the extension of the Family Court's jurisdiction in resolving property disputes between defacto couples with that Court exercising wider discretions than the tribunal has under Part IV of the

Property Law Act 1958. The continuation of drought conditions has limited the number of applications filed under the *Water Act 1989*.

Accessibility and efficiency

We finalised 190 proceedings this year, a 23.4 percent increase in finalisations which reached 154 in the previous year. This represented a clearance rate of 81 percent.

In co-ownership disputes, no particular formal requirements were set for the filing of statements of claim, and applicants were directed to use a simple, generic form available on the VCAT website, to set out their grounds and the orders they wanted the tribunal to make. Mediations were set early to wherever possible avoid the need for parties to comply with the formal steps leading up to a final hearing and orders being made.

For water flow disputes, where claims were for small amounts, the parties were referred to mediation. For larger amounts, parties were required to obtain and exchange expert evidence reports before participating in a compulsory conference chaired by an engineer member. If matters did not settle in compulsory conference, they were referred to a hearing presided over by a legal member and sometimes also an engineer member.

Our users

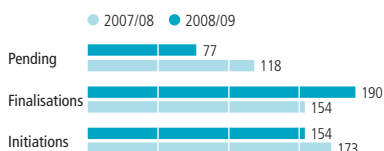
There are no consistent or regular users at this stage to justify establishing a users group for the list.

The future

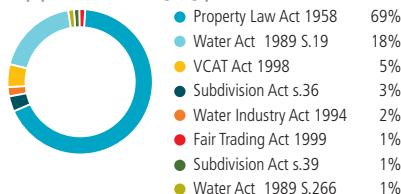
The Family Court's extended jurisdiction with respect to defacto property disputes means the growth previously experienced in applications under Part IV of the *Property Law Act 1958* has levelled off. It is anticipated that there will be a growth in applications for resolution of owners corporations disputes under the newly amended Part 5 of the *Subdivision Act 1988*.



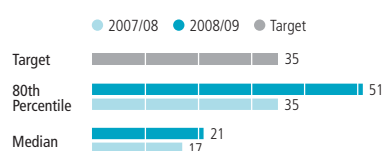
Caseflow



Applications by type



Timeliness of finalised cases (weeks)



CASE STUDY: VCAT ORDERS SALE OF PROPERTY IN FAMILY DISPUTE

Mrs X and her parents Mr and Mrs A were registered as equal one-third share owners of a house in Caroline Springs. According to Mr and Mrs A they paid the deposit on the house and Mrs X was to make the mortgage repayments as 'rent' to them with the result that they owned the entire equity in the house. They sought an order for its sale because Mrs X, following problems with a de facto partner, had ceased making the mortgage payments and the bank was threatening to take possession and sell.

Mrs X initially opposed any sale although her failure to make the mortgage repayments ensured that the bank would come in and sell her up in the near future. Ultimately Mrs X dropped her opposition to an order for sale of the property; nevertheless she said she should be entitled to one-third of the sale proceeds after payment of the costs of sale and the mortgage.

The tribunal rejected as implausible the evidence of Mr and Mrs A that the house was an investment for them in which their daughter was to be tenant. Their contribution exceeded the one-third interest which they appeared to have on title, nevertheless the tribunal thought the likely interpretation was that their over-contribution to the cost of acquiring the house was intended as a gift to 'advance' their daughter. It was not competent for them now to take that gift back. The tribunal ordered the sale of the property with proceeds after deduction of costs of sale and mortgage debt to be divided equally amongst Mrs X and Mr and Mrs A.



CIVIL DIVISION: RETAIL TENANCIES LIST

The retail tenancies list resolves disputes between landlords and tenants arising under or with respect to leases for retail premises, as defined in the *Retail Leases Act 2003*. The list also hears a small number of disputes in relation to tenancies under the *Fair Trading Act 1999*.

Disputes are generally referred from the Office of the Small Business Commissioner in the event that the Commissioner's dispute resolution processes do not result in settlement. Where urgent injunctions are required, applications are made directly to the tribunal.

Year in review

Cases

We received 264 applications this year representing a 29 percent increase on filings in the previous year.

Generally, proceedings coming to the list are the subject of mediations arranged by the Small Business Commissioner. That being the case tribunal mediations are not ordered as a matter of course. Straight forward applications including monetary claims up to \$30,000 were set down for summary half day or one day hearings, more complex matters were listed initially for directions to consider the completion of any necessary interlocutory steps.

Where applicants sought urgent, temporary injunctive relief, for example, if an applicant needed access to locked premises to conduct business, applications were heard on the same day or soon after.

Accessibility and efficiency

In accordance with the VCAT Act, our procedures are kept as informal as possible. Where complex issues of fact and law arise directions are given for the completion of interlocutory steps similar to those in Court.

Our users

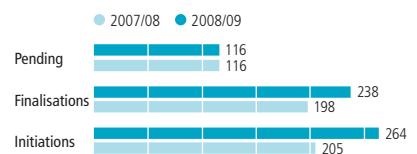
The user group comprised representatives from the office of the Small Business Commissioner and organisations representing the interests of landlords and tenants. The user group met once in the reporting period and provided feedback on tribunal processes relevant to them.

The future

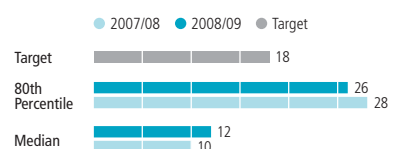
Changing economic conditions may lead to an increase in case numbers for the list. Apart from that possibility, we don't anticipate any significant changes.



Caseflow



Timeliness of finalised cases (weeks)



ADMINISTRATIVE DIVISION: PLANNING AND ENVIRONMENT LIST

The planning and environment list reviews decisions made about planning permits, including decisions whether to grant, refuse or amend them, or to impose conditions. Planning permits are issued for land use and development proposals such as subdivisions, dwellings, offices, advertising signage, childcare centres and aged care facilities.

We also make enforcement orders – for example, to stop a development from proceeding – and we hear and determine applications for declarations, and applications to cancel or amend permits previously granted by the tribunal.

Year in review

Cases

There was no diminution in the number of applications received this compared to last year – 3643 in total. However, timeliness has declined largely due to a shortage of members and longer hearings as well as the increasing scale and complexity of cases. We resolved 80 percent of our cases within 30 weeks. The target is 26 weeks. The median time for resolution was 20 weeks.

Appeals against decisions to refuse planning permits comprised 27 percent of applications – the largest proportion of types of applications in the list. Appeals by objectors against decisions to grant permits account for 19 percent of applications. Applications for amendments to permits issued at the direction of the tribunal continue to comprise a significant number of

application. Overall, numbers remained consistent for different types of applications compared to last year.

There was no significant change to the types of use and development proposals considered by the tribunal. Multi-unit residential developments continued to dominate, followed by single dwellings. However, the size and scale of many development proposals is increasing.

Accessibility

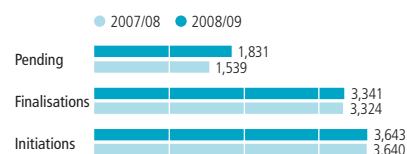
Most people are, at some stage, affected by planning proposals, whether as developers, investors, neighbours or builders. We are conscious that many unrepresented parties wish to have input into planning decisions, and we have promoted a culture of informality, equality and fairness between represented and unrepresented parties. We encourage lawyers, planners and the experts who regularly appear before the tribunal to support this culture, and we are grateful for the support we receive from them.

Further enhancing our accessibility, our website contains comprehensive information to guide parties in making and responding to applications.

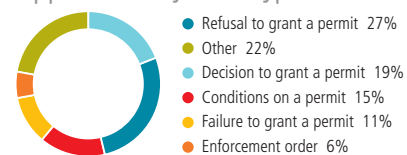
Efficiency

Our decision-making impacts on the State's economy. Applications involving development worth \$2.73 billion were initiated last year. It is therefore imperative that we resolve cases as quickly as possible to assist in

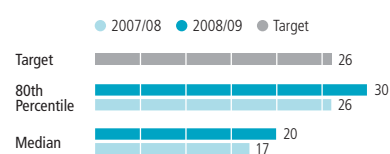
Caseflow



Applications by claim type



Timeliness of finalised cases (weeks)



ADMINISTRATIVE DIVISION:
PLANNING AND ENVIRONMENT LIST (continued)

Applications by claim amount

	2007/08	2008/09	Variance
Small Claim: < \$10,000	847	659	-22.2%
Standard Claim: \$10,000 - \$100,000	172	135	-21.5%
Complex Claim: \$100,000 - \$1m	1,145	940	-17.9%
Complex Claim: \$1m - \$5m	367	294	-19.9%
Complex Claim: \$5m - \$20m	133	155	16.5%
Complex Claim: \$20m +	34	0	-100.0%
No Value	942	1,460	55.0%
Total Cases Initiated	3,640	3,643	
Total Value	3,459,781,092	2,731,483,452	

Application by development type

	2007/08	2008/09	Variance
Building	3%	4%	1.3%
Child Care Centre	2%	1%	-1.4%
Dwelling	18%	18%	-0.1%
Multi dwelling	24%	31%	6.5%
Office	2%	1%	-0.6%
Outdoor Recreation Facility	0%	0%	0.2%
Sign	1%	1%	-0.1%
Sub division	7%	5%	-2.0%
Other	43%	39%	-4.0%

promoting the State's economic growth.

To support our aim of timely resolution, list members play an active role in case management. The case management committee reviews all cases before listing to identify potential problems and key issues, refer matters to mediation or to a Practice Day hearing and assess the likely length of the hearing.

Minor cases and procedural matters were listed for 'Practice Day' hearings each Friday. 'Practice Days' allow small matters to be listed together and called in turn by the presiding member. This process frees up time for the hearing of more complex matters.

Professional development

The list continued to invest in the development of its staff and members through the planning and environment professional development committee. See page 61 for further information.

New application forms and practice notes

A package of revised practice notes, new application forms and updated information for use in the planning and environment list was released last year.

The following practice notes were revised to reflect current practices and procedures, to improve the provision of information to the tribunal, and to reflect feedback from stakeholders: PNPE1 – general procedures; PNPE2 – information from decision makers;

PNPE3 – cancellation and amendment of permits and stop orders; and PNPE4 – enforcement orders and interim enforcement orders.

There are new application forms for all types of applications, which are easier to understand and enable information to be provided more clearly.

The VCAT website provides a range of information and guidelines for stakeholders about different types of procedures in the planning and environment list. This information has been updated to reflect the revised practice notes. In particular, more comprehensive information is provided about time limits and how time limits are calculated.

Our community

List members contributed to the wider planning and environment community through participation in seminars, conferences and working groups.

Deputy president Helen Gibson gave a number of talks, regionally and in Melbourne, through the Victorian Planning and Environmental Law Association (VPELA) on presenting at the tribunal. List members contributed to the professional development of council planners through the Department of Sustainability and Environment's PLANET program. Members conducted seminars relevant to running planning cases in the tribunal.

The future

Despite the economic climate, we anticipate remaining busy. We want to improve our capacity

to more rapidly resolve disputes, especially for matters of significant economic value. This will require us to work more efficiently to maintain timeliness and quality decision-making. We want to minimise the time taken between the listing and hearing of matters, and in delivering decisions. We will continue to focus on developing skills in decision-making, including focussing on the key issues and giving oral decisions wherever possible.

We will publicise our 'Red-Dot Decisions' (key decisions that may have wide application) through the Department of Planning and Community Development's 'Planning Matters' weekly bulletin.

In addition, we will undertake a review of our work practices, administrative processes and performance measurement to improve the processing of applications and the resolution of disputes in the list.

Applications by type

	2007/08	2008/09	Variance
Original Jurisdiction	422	561	32.9%
Review of a Decision	3,218	3,082	-4.2%
Total	3,640	3,643	



CASE STUDY: CLIMATE CHANGE AND COASTAL DEVELOPMENT

This case involved six permit applications for dwellings on lots 2-4 ha in area. The land was in an old crown township in a farming zone close to the coast. The tribunal found that the land was unsuitable for residential development. The overwhelming weight of planning policy discouraged residential development in this area. The dwellings were not reasonably required for the operation of agricultural activities conducted on the subject land and consequently were contrary to the purpose of the farming zone. The cumulative impact of the development would adversely affect the ongoing use of the area for productive agriculture and detract from the visual quality of the landscape contrary to policy and the environmental significance overlay affecting the land. The construction of dwellings on land subject to inundation was contrary to policy and not a good planning outcome.

The case was of particular interest because of potential sea level rises due to the effects of climate change. The tribunal concluded that sea level rise and risk of coastal inundation were relevant matters to consider in appropriate circumstances. It accepted the general consensus that some level of climate change will result in extreme weather conditions beyond the historical record that planners and others rely on in assessing future potential impact. The relevance of climate change to the planning decision making process is still in an evolutionary phase. Each case concerning the possible impacts of climate change will turn on its own facts and circumstances. However, in the present case, applying the precautionary principle, the tribunal considered that increases in the severity of storm events coupled with rising sea levels created a reasonably foreseeable risk of inundation of the subject land and the proposed dwellings, which was unacceptable.

Top 20 councils

Number of applications by council	2007/08	2008/09	Variance
Stonnington City Council	197	215	9.1%
Port Phillip Council	187	178	-4.8%
Mornington Peninsula Shire Council	185	171	-7.6%
Yarra City Council	157	159	1.3%
Boroondara Council	231	155	-32.9%
Bayside City Council	144	139	-3.5%
Moreland City Council	122	139	13.9%
Darebin City Council	140	129	-7.9%
Yarra Ranges Shire Council	102	110	7.8%
Glen Eira City Council	142	108	-23.9%
Hobsons Bay City Council	109	104	-4.6%
Melbourne City Council	101	103	2.0%
Banyule City Council	81	98	21.0%
Monash City Council	104	92	-11.5%
Kingston City Council	79	86	8.9%
Moonee Valley City Council	72	77	6.9%
Maroondah City Council	68	77	13.2%
Whitehorse City Council	86	75	-12.8%
Manningham City Council	66	70	6.1%
Greater Geelong City Council	75	66	-12.0%

Top 20 suburbs

Number of applications by suburb	2007/08	2008/09	Variance
South Yarra	57	63	10.5%
Brighton	42	56	33.3%
Richmond	58	53	-8.6%
Williamstown	45	43	-4.4%
Northcote	38	38	0.0%
Preston	29	37	27.6%
St Kilda	42	37	-11.9%
Melbourne	29	37	27.6%
Port Melbourne	41	32	-22.0%
Toorak	22	31	40.9%
Prahran	28	30	7.1%
Mount Waverley	29	29	0.0%
Croydon	17	28	64.7%
Hawthorn	50	28	-44.0%
Malvern East	48	28	-41.7%
South Melbourne	24	27	12.5%
Fitzroy	13	26	100.0%
Brunswick	26	24	-7.7%
Coburg	26	24	-7.7%
Kew	32	24	-25.0%

ADMINISTRATIVE DIVISION: LAND VALUATION LIST

The land valuation list hears applications by landowners seeking to review the valuation or classification of their land for rating or taxation purposes. These sometimes comprise relatively small disputes relating to the valuation of residential property, but more often comprise applications relating to commercial property or infrastructure assets where the amount in dispute may be many millions of dollars, and where the valuation has significant implications for land tax liability.

The land valuation list also hears and determines disputed claims arising from the compulsory acquisition of land for public purposes, or damage to land caused by mining, under a number of different Acts. These comprise a smaller proportion of the list, but are usually more complex and often take longer to hear and resolve.

Year in review

Cases

In 2008-09, the number of cases in the land valuation list almost trebled over the average for the three prior years. This was due to three main factors:

- The two-yearly statutory valuation of land as at 1 January 2008 occurred at close to the peak of the property market. By the time council rates and land tax were levied later in 2008-09 on the basis of these valuations, the

property market had fallen across much of Victoria. This resulted in a significant increase in objections to valuation (as a means of seeking to reduce rates and taxes), and a consequential increase in applications for review to the tribunal in the current year.

- In September 2008, the Court of Appeal handed down its decision in the test case *ISPT Pty Ltd v Melbourne CC and Valuer-General Victoria*. Over 100 tribunal cases relating to the valuation of major CBD properties in 2004 and 2006 had been adjourned pending the outcome of this test case, and were brought back into the list in November 2008.
- There has been an increase in public projects requiring the compulsory acquisition of land or easements. This has included a number of linear infrastructure projects (such as pipelines) affecting multiple landowners and occupiers, and has led to a consequential increase in disputed claims for compensation.

Alternative dispute resolution

The vast majority of applications in the land valuation list continued to be referred to a compulsory conference. This form of alternative dispute resolution is generally facilitated by a valuer member, who assists the parties to resolve their differences through informal discussions based on accepted valuation methodologies.

In 2008-09, the list continued to achieve a settlement rate exceeding 84 percent through the compulsory conference process.

Even where a compulsory conference is unsuccessful, it serves to isolate and reduce the issues in dispute, and thus shorten any contested hearing that follows. For self-represented parties, the compulsory conference process provides an opportunity for the process and policy behind valuation and compensation decisions to be better explained, and for the parties to recognise and respond to the real or underlying grievance that has led to the application to the tribunal.

Accessibility and efficiency

Despite a trebling of cases in the land valuation list in 2008-09, the list continued to meet its targets for the timely finalisation of cases, and indeed significantly improved its performance over the previous year. This was due to a number of factors, including:

- A second practice day each month to deal with procedural directions and short matters. Land valuation list practice days are now held on the first and third Fridays of each month.
- Flow-on benefits of the updating of some forms, correspondence and website material in the previous year, allowing members of the public to now more easily discern the nature of their issue, what material

they need to submit, and the procedures they should follow. This has led, in turn, to a reduction in matters requiring a directions hearing and a speedier listing of cases for a compulsory conference.

- Increased resourcing for compulsory conferences to meet the increase in cases, and the referral of a number of cases that did not settle at a compulsory conference to a second conference (rather than a contested hearing) where this was considered likely to facilitate a prompt resolution of the case.

In addition, the 104 cases that had been adjourned pending the outcome of the ISPT test case were pro-actively case managed by the tribunal after they were reinstated in the list in November 2008. With the co-operation of the parties, 80 of these cases were listed for a joint mediation over several days in February 2009, where more than half settled. The remaining cases have been managed through a series of practice day hearings and compulsory conferences commencing in May 2009. It is anticipated that less than 20 of these cases will ultimately require a contested hearing in 2009-10.

Our users and our community

We have continued to liaise with our major stakeholders and users, including the Municipal Valuers Association, the Australian Property Institute, the Valuer-General Victoria, and with valuers and valuation lawyers who regularly appear before the tribunal. The co-operative exchange of information and ideas has assisted with on-going process improvements, and has demonstrably assisted with the management of the increased number of cases in the land valuation list.

Applications by claim type

	2007/08	2008/09	Variance
Acquisition Application	21%	7%	-14%
Classification Appeal	3%	1%	-2%
Compensation	4%	9%	5%
Review a decision of an Authority	3%	1%	-2%
Valuation Application	69%	82%	13%

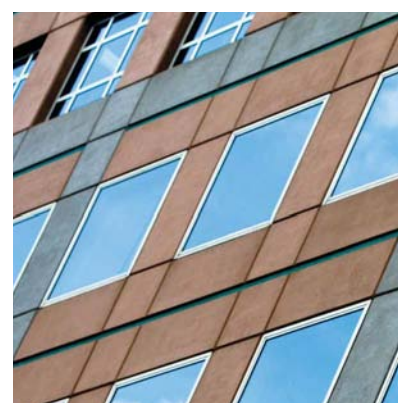
It is more difficult to liaise with self-represented applicants who have a single experience with the tribunal. We have continued to focus on updating our website as our key public communication tool.

The future

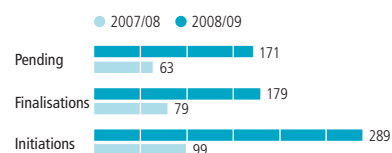
We expect the caseload in the land valuation list to increase further in 2009-10 in response to market conditions. This carries with it a number of challenges:

- Despite an improvement in case management overall, the threefold increase in cases in the list had led to an increase in case administration and an increased backlog for the hearing of those cases that do not settle at a compulsory conference. Additional resources will be required in 2009-10 to address this if the list is to continue to provide a timely, accessible and cost-effective service.
- With some member retirements in 2008-09, the land valuation list has a potential shortage of members with the expertise to hear and determine contested valuation cases. This may place additional pressure on hearing backlogs until new members are appointed and trained.
- A small number of valuers and valuation lawyers continue to fail to comply with tribunal directions and procedural timelines. With increasing case numbers, additional case management techniques and sanctions will need to be applied to avoid the disruption in case scheduling (and consequential costs and delays to other parties) caused by these non-compliances.

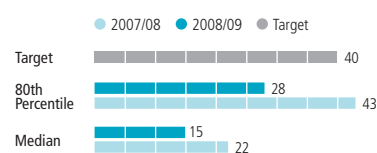
In 2009-10, we also propose to update the practice notes for the land valuation list to further explain and streamline processes in list.



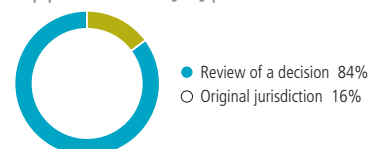
Caseflow



Timeliness of finalised cases (weeks)



Applications by type



ADMINISTRATIVE DIVISION: GENERAL LIST

The general list hears and determines a large variety of cases. It conducts “hearings on the merits” and reviews decisions made by a wide range of government agencies. If a decision of a government agency is to be reviewed, that application will generally be heard in the general list. The sorts of decisions the list hears include, for example, decisions made by the Transport Accident Commission, the Mental Health Review Board and the Victims of Crime Assistance tribunal or decisions made by agencies under the *Freedom of Information Act 1982*.

The statistics show an overall increase in applications of 14 percent. There has been a substantial increase in the number of applications made under the *Transport Accident Act 1986*. Applications under the *Freedom of Information Act 1982* lodged by the members of the opposition continue to increase throughout the reporting year. Apart from those areas, the variations in lodgements are minor and not of significance.

The time for finalisation of cases has remained steady and is well within our targets.

The Charter of Human Rights and Responsibilities has had a direct effect particularly with how we deal with Mental Health Review tribunal hearings and in our responsibilities towards self-represented applicants. This is because in the general list, the tribunal engages in a process of administrative decision-making.

Cases

The general list conducts administrative review. An enabling enactment sets out what decisions can be reviewed by VCAT. If a person wants a decision reviewed they would come to VCAT, where the decision is made afresh.

The VCAT Act requires a decision-maker to produce a s 49 statement setting out the decision for which application for review is made, the reasons for that decision and the documents the decision-maker relied on to make that decision.

The applicant and VCAT then know the parameters of the application. As this is the decision-maker's responsibility to prepare all this documentation, an applicant is not burdened with needing to say anything more than that they want VCAT to review the decision. VCAT will start again and make the decision afresh with all the information including any fresh material and information.

The benefits of using VCAT are that we can resolve matters between parties not only at a hearing but by using alternative dispute resolution processes.

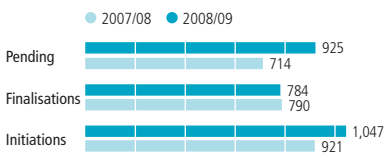
Most applicants are legally represented in transport accident commission cases. In other areas, representation is not uncommon.

During the reporting year, we have continued to send more matters to compulsory conference

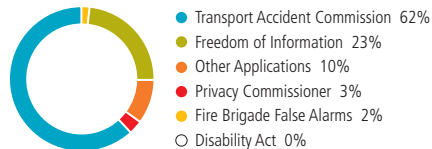
including applications under the *Freedom of Information Act*. Parties can be assisted in reaching a point where it becomes clear that a hearing will not be needed. This initiative significantly reduces the time for disposition of these cases.



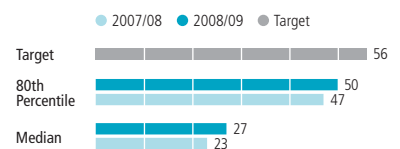
Caseflow



Applications by type



Timeliness of finalised cases (weeks)



CASE STUDY: A MATTER OF REASSURANCE

Mr and Mrs Smith were advised by the Department of Human Services that their estranged daughter had sought access, under the *Freedom of Information Act 1982*, to her child protection file. The department told them it had decided to release some information relating to their personal affairs. They were notified of their right to apply to VCAT for review before the information was released.

Mr and Mrs Smith were very anxious about exactly what personal information of theirs was proposed to be released, so they made an application to VCAT.

At a directions hearing the department's representative, with the assistance of the VCAT member, took time to explain the nature of the personal information that was to be released, which was their names and whether or not they were present at meetings, and what was not going to be released.

This explanation reassured Mr and Mrs Smith, and they withdrew their application.



ADMINISTRATIVE DIVISION: OCCUPATIONAL AND BUSINESS REGULATION LIST

The occupational and business regulation list conducts reviews of decisions made by occupational and licensing bodies, including the Director of Liquor Licensing, the various health profession boards including the Medical Practitioners Board, the Victorian Institute of Teaching and the Firearms Appeals Committee. The list has both original and review jurisdiction. Original jurisdiction involves the conduct of disciplinary proceedings relating to a number of occupational groups. Review jurisdiction involves reviews of licensing decisions of the Business Licensing Authority, as well as decisions made by various registration boards concerning professional registrations.

Key legislation

- Health Professions Registration Act 2005*
- Liquor Control Reform Act 1998*
- Transport Act 1983*
- Working with Children Act 2005*
- Occupational Health and Safety Act 2004*

Year in review

The statistics show an 11 percent reduction in applications. The reduction is accounted for by one large group of cases that were lodged in the previous year. As reported last year, VCAT had received over 160 applications for “staying” orders made by the Director of Liquor Licensing.

There continues to be a regular number of applications to VCAT for orders directing the Secretary to the Department of Justice to

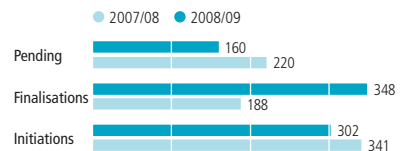
issue “assessment notices” to applicants with a particular criminal history allowing them to work in “child-related work”, or orders directing the Director of Public Transport to issue accreditation to taxi-cab operators who have a history of particular criminal offences.

Applications and referrals to VCAT under the *Health Professions Registration Act 2005* had an increased impact on the list’s workload during the year. It is anticipated in the forthcoming year that the number of inquiries initiated under the *Liquor Control Reform Act 1998* will substantially increase.

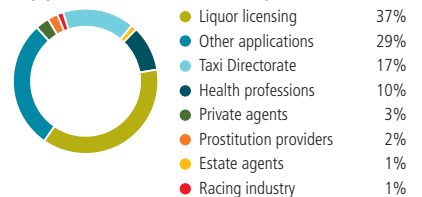
CASE STUDY: SPECIAL REFEREES

An application for review was lodged in relation to a decision made by the director of liquor licensing about variations to an existing licence. The issues between the parties were canvassed at a compulsory conference and the issues in dispute were narrowed. Some highly technical and contentious matters about noise and acoustics remained in dispute. The tribunal made orders under s95 of the VCAT Act for a referral of these noise and acoustics issues, to a special referee with expertise in those matters, to give his opinion with respect to them. That opinion was then provided to the parties before the hearing date. The proceeding resolved without a hearing.

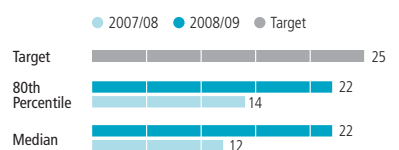
Caseflow



Applications by case type



Timeliness of finalised cases (weeks)



ADMINISTRATIVE DIVISION: TAXATION LIST

The taxation list has jurisdiction to carry out merits reviews of the taxation assessments of the Commissioner of State Revenue (the Commissioner) in the imposition of State levies and taxes under a number of Victorian taxing Acts, for example, the *Land Tax Act 1958*, *Payroll Tax Act 1971* and the *First Home Owner Grant Act 2000*.

Applications for merits review must be referred from the Commissioner upon request of the applicant. Where a taxpayer believes the Commissioner has erred in applying the law, the dispute must be resolved by the Court, rather than the tribunal. The tribunal's jurisdiction allows it to make only findings of fact in relation to disputes about assessments.

Year in review

Cases

The list received only eight applications this year which represented a 69.2 percent fall in the level of initiation from the previous year. We finalised 24 proceedings in the same period.

Accessibility and efficiency

Most cases were listed for at least one directions hearing in order to ensure any procedural issues or concerns of the applicants were properly addressed. In straight forward matters, the tribunal allowed parties to

request by consent that the directions hearing be vacated, with directions being made in writing for the hearing of the matter.

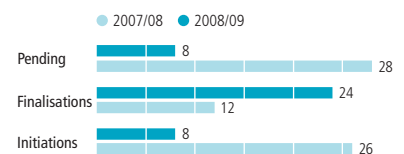
Our users

The commissioner is the only repeat user so there is no formal user group.

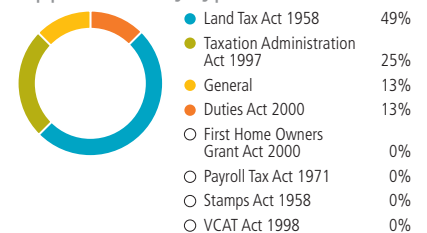
The future

We don't anticipate any significant change to the case profile or tribunal processes in the immediate future.

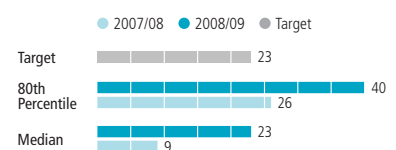
Caseflow



Applications by type



Timeliness of finalised cases (weeks)





OUR MEDIATION SERVICES

**VCAT CAN HELP YOU SORT OUT DISPUTES
IN AN INFORMAL AND INEXPENSIVE WAY.**



VCAT: A CENTRE OF EXCELLENCE IN ALTERNATIVE DISPUTE RESOLUTION

Alternative or Appropriate Dispute Resolution (ADR) is an umbrella term for processes, other than judicial determination, in which an impartial person assists the parties to a dispute to resolve the issues between them. ADR encompasses processes such as mediation, conferencing, conciliation and facilitation.

ADR can provide a quicker, more flexible and cost effective alternative to traditional litigation. It can allow the parties to choose the process that best suits their needs and to work together to resolve their dispute and agree to a settlement that makes sense to them.

The promotion and expansion of ADR as a means of reducing the cost of justice was one of the key features of the Attorney-General's Justice Statement 2, released in October 2008.

At VCAT, ADR processes have been used since the creation of the tribunal in 1998. VCAT has a purpose built mediation centre on level 2, 55 King Street comprising hearing rooms, meeting areas and mediation break out rooms.

VCAT is a Recognised Mediator Accreditation Body (RMAB) under the National Mediator Accreditation Scheme. VCAT's status as an RMAB is an important development because it allows VCAT to accredit mediators under the national scheme, and to deliver appropriate continuing professional development so that the tribunal's mediators meet their continuing accreditation requirements. To retain their accreditation

mediators must complete at least 20 hours of continuing professional development in every two year cycle.

In March this year Justice Kevin Bell, the president of VCAT, appointed Judge Ross AO as ADR judge at VCAT. His Honour is the first ADR judge at VCAT, indeed anywhere in Australia. In that capacity, and with the assistance of VCAT's principal mediator Marg Lothian, he was responsible for the development and implementation of VCAT's ADR strategy. The objective of that strategy is to position VCAT as a centre of excellence in ADR.

VCAT's ADR strategy has three key components:

- Enhancing capabilities
- Measuring success
- Improving outcomes

Enhancing capabilities

ADR processes at VCAT are conducted by both tribunal members and by a panel of sessional mediators. The tribunal recently 'refreshed' its panel, after an advertising, interview and selection process. At present there are 29 mediators on the panel and all are accredited mediators under the national scheme.

Mediation is the ADR process used by VCAT's panel mediators in mediation. Mediation can be described as a process in which the parties, with the support of a mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes for

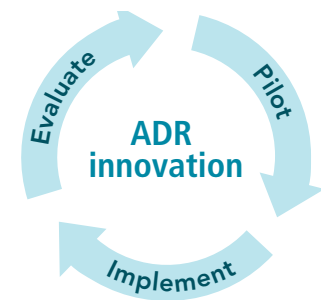
their proceeding. The emphasis of the process is for the parties to achieve a negotiated settlement. The mediator acts as an impartial third party to assist the parties to reach their decision. Mediators do not provide advice to parties, nor do they evaluate or adjudicate disputes.

In addition to VCAT's panel mediators, tribunal members are also actively engaged in ADR processes, across all of VCAT's jurisdictions. Such processes include mediation, case conferencing, compulsory conferences and the facilitation of expert conclaves. Over 60 VCAT members are accredited mediators.

At compulsory conferences, members may give the parties advice, for example about the sort of evidence they will need to prove their case. These conferences are particularly useful in building matters and other large civil disputes.

The tribunal has over 90 accredited mediators at its disposal to assist parties in the resolution of their disputes. Many of our mediators have specialist expertise in particular disciplines such as building, construction and engineering. In 2008/09 over 700 cases were finalised at mediation.

One of the key components of VCAT's ADR strategy is about enhancing the tribunal's ADR capability. As part of that process the tribunal will be offering training opportunities to members and staff who wish to become accredited mediators. The tribunal will conduct a 5 day mediation course in September for this purpose. It is anticipated that 20 members and staff will attend.



We will also be building on our current professional development program for mediators by offering lunch time seminars and master classes.

But enhancing the tribunal's ADR capability is not just about the number of mediators, it is also about extending access to ADR processes.

To date formal ADR processes have not usually been available to parties with small civil claims or in the residential tenancies jurisdiction, although members routinely employ ADR techniques to encourage settlement before they start to hear and determine a case. In these jurisdictions every effort is made to keep the number of tribunal attendances to a minimum in order to deliver a cost effective dispute resolution service. Generally this means that parties only come to the tribunal once – to have their dispute heard and determined.

VCAT is looking at a number of initiatives to enhance access to ADR.

In May and June this year the tribunal conducted a civil ADR blitz under the direction of deputy president Steele. The focus of the blitz was small civil claims which would not otherwise have been dealt with until October 2009. The blitz took place over 6 days and dealt with over 800 cases. About 20 members and mediators were involved, and all of the parties were given the option of having their dispute mediated. Over 150 matters were mediated.

In the residential tenancy jurisdiction we intend to pilot the use of telephone mediation in rent arrears/possession cases. The pilot will include cases from regional Victoria. We also intend to pilot the use of mediation in residential tenancies compliance cases. The residential tenancies

mediation pilot project is an initiative of senior member Lambrick.

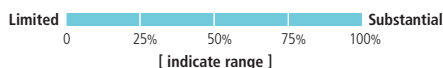
Measuring success

To properly evaluate the quality of the ADR processes the tribunal provides, it must be able to measure the outcome of those processes. Historically the measurement of success has been limited to settlement rates at formal mediations. Successive VCAT annual reports have consistently reported a 70 percent settlement rate at mediation.

But settlement rates tell us only part of the story. They say nothing about those cases where ADR has resolved some, but not all, of the issues in dispute. Nor do settlement rates necessarily reflect party satisfaction with the ADR process. Did the parties have an opportunity to put their point of view? Did they think the process was fair?

From 1 June this year panel mediators and VCAT members have been asked to complete an ADR report after every formal ADR process.

The ADR form identifies the ADR processes used and whether the dispute was settled. In cases where the dispute was not completely resolved the report will capture the extent to which the issues between the parties were narrowed, on a scale like the one below:



We also propose to measure party satisfaction with the ADR process, by asking parties to complete a qualitative survey.

Improving outcomes

Enhancing our capabilities and more accurately measuring our success will provide us with some of the tools we need to improve ADR outcomes

for VCAT parties. These initiatives allow us to identify and replicate best practice in the tribunal.

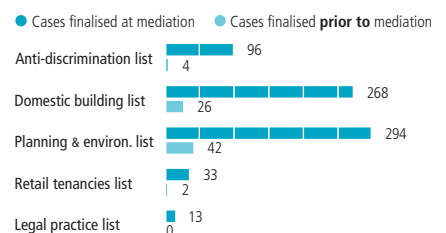
Innovation can also contribute to improving our performance and we intend to pilot and evaluate innovative ideas. In June this year the tribunal introduced a pilot mandatory cooling off period for mediations conducted by panel mediators where a party is not legally represented.

In circumstances where one or more of the parties are not legally represented at mediation and an agreement is reached, that agreement is now subject to a mandatory cooling off period of two business days. If any party, upon reflection, wishes to withdraw from the settlement within the two day period they can contact the tribunal by phone and advise us of their decision. The tribunal then contacts the other parties to inform them that the settlement has been revoked and the matter is usually set down for a directions hearing.

The 'cooling off' pilot will operate for six months. It will then be evaluated and, if successful, implemented across the tribunal.

By piloting, evaluating and implementing new ideas we will improve ADR outcomes and position VCAT as a centre of excellence for ADR.

Successful mediations 2008/09



VCAT mediation statistics 2005-2009

List	Cases finalised prior to mediation (No)				Cases finalised at mediation (No)				Mediation Success Rate (%)			
	2008/09	2007/08	2006/07	2005/06	2008/09	2007/08	2006/07	2005/06	2008/09	2007/08	2006/07	2005/06
Anti-discrimination list	4	17	6	17	96	87	90	93	68	72	65	59
Domestic building list	26	16	33	41	268	222	260	276	64	64	72	66
Planning and environment list	42	20	36	44	294	170	240	239	67	70	69	75
Retail tenancies list	2	3			33	35	32	14	53	62	59	58
Legal practice list	0	2	3	2	13	34	47	38	77	68	78	86
Total	74	58	78	104	704	548	669	660	329	70	69	70

A chalkboard with the words 'MAGAO', 'CRANKY', and 'SH' written in white and pink chalk. The text 'OUR GROUPS AND COMMITTEES' is overlaid in white, bold, sans-serif font. Below it, a paragraph of text is also in white, bold, sans-serif font.

OUR GROUPS AND COMMITTEES

**BY WORKING TOGETHER THROUGHOUT THE YEAR
VCAT'S GROUPS AND COMMITTEES HAVE CONTINUED
TO IMPROVE THE WAY VCAT WORKS.**

RULES COMMITTEE

In accordance with the VCAT Act, the rules committee comprises VCAT's judicial members, a full-time member who is not a legal practitioner, an Australian legal practitioner (within the meaning of the *Legal Profession Act 2004*) and two persons nominated by the Attorney-General.

The committee undertakes a number of important leadership functions within VCAT, including:

- 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
- establishing the divisions of VCAT.

Rules committee membership

As at 30 June 2009, the rules committee comprised:

Justice Kevin Bell, BA, LLB (Hons)

Justice Bell worked in community legal centres and academia until signing the bar roll in 1985. He was a member of the small claims and residential tenancies tribunals in the 1980s, and was appointed queens counsel in 1997. He practised administrative, industrial and native title law until appointed a justice of the Supreme Court in February 2005. Justice Bell was appointed president of VCAT in March 2008.

Judge Marilyn Harbison, BA (Hons), LLB, LLM

Judge Harbison was appointed vice-president of VCAT, human rights division, in January 2007. She has been a judge of the County Court since 1996, where she had charge of the business and damages lists. Prior to her judicial appointment, she was a partner in a city law firm specialising in commercial litigation; a council member of the Law Institute of Victoria; chairperson of the Housing Guarantee Fund; and president of the Public Interest Law Clearing House.

Judge Iain Ross, B.Ec, LLB, LLM, MBA, PhD

Judge Iain Ross AO was appointed Judge of the County Court and vice-president of VCAT on 1 November 2007. Dr Ross was previously partner of a city law firm, and vice-president of the Australian Industrial Relations Commission.

Other Judicial Members

Judge Bowman, Judge Davis, Judge Duggan, are full-time judges of the County Court and vice-presidents of VCAT. They are members of the rules committee and can be called upon to sit, if required.

Louise Jenkins, BA, LLB

Ms Jenkins is a barrister and solicitor of the Supreme Court of Victoria, and partner at law firm Allens Arthur Robinson. She practices litigation for major Australian companies and international insurers. Ms Jenkins is a member of the tribunal and a trustee of Law Aid, and was appointed to the committee on 1 July 1998.

Margaret Baird, BTRP (Hons), Grad Dip Law

Ms Baird is a member of the planning and environment list of VCAT. She was appointed to the committee on 24 June 2003. Previously she worked as a consultant strategic planner and sessional member of Planning Panels Victoria.

Michael Macnamara, BA (Hons), LLB (Hons)

Mr Macnamara is the deputy president who heads the retail tenancies, real property and taxation lists of VCAT, and was previously deputy president of the Administrative Appeals Tribunal of Victoria. He was appointed to the committee in July 2007.

Bill Sibonis, BPD, BTRP¹

Mr Sibonis worked as a town planner in local government, a sessional member of Planning Panels Victoria, and associate general editor of Victorian Planning Reports. He was appointed to the committee in July 2007.

Rules committee activities and meetings

The Rules Committee amends the rules and practice notes of VCAT in response to procedural reform, changes in jurisdiction and as new legislation is allocated to VCAT's lists. During 2008-09, the committee met on four occasions, October and December 2008, February and May 2009.

¹ Mr Sibonis was appointed as a full time Member of VCAT as at 21 July 2009



OUR GROUPS AND COMMITTEES: **RULES COMMITTEE (continued)**

The committee has a four-member quorum. A question arising at a meeting is determined by a majority of votes, with the person presiding having a deliberative vote and, in the case of an equality of votes, a second or casting vote. The committee must ensure that accurate minutes are kept of its meetings, but otherwise it regulates its own proceedings.

VCAT rules

The *VCAT Rules 2008* commenced on 30 June 2008 and have been in force for one year.

Practice notes

In May 2009, the committee approved the amended practice notes for the planning and environment list.

New jurisdictions

In February 2009, the *Relationships Act 2008*, which commenced on 1 December 2008, was allocated to the general list. The purpose of the Act is to establish a relationship register to allow Victorian couples in domestic relationships to register their relationship with the Registrar of Births, Deaths and Marriages. Part 2.4 of this Act confers jurisdiction of an administrative nature on VCAT to review decisions of the Registrar of Births, Deaths and Marriages.

In May 2009 the *Unclaimed Monies Act 2008* which commenced on January 2008 was allocated to the general list. The purpose

of the Act is to safeguard and collect unclaimed money and ensure the identification of the owners of such money. Section 59 of this Act confers jurisdiction of an administrative nature on VCAT to review administrative functions carried out by the registrar of unclaimed monies.

In December 2008 various sections of the *Building Act 1993* were allocated to the domestic building list. The purpose of the Act is to establish a regulatory framework for building practitioners and plumbers. The Act confers jurisdiction on the VCAT to hear professional disciplinary and occupational licensing matters.

In February 2009 sections 30, 81D, 81E, 81J(1)(b) and 81Q) of the *Local Government Amendment (Councillor Conduct and Other Matters Act 2008* were allocated to the occupational and business regulation list. The purpose of the amendments to the Act includes supporting and enforcing standards of conduct for local government councillors. Sections 30, 81D, 81E, 81J (1)(b) and 81Q of the Act confers jurisdiction regarding disciplinary matters on VCAT.

In October 2008, sections 64, 83, 182 the *Pipelines Act 2005* which commenced on 1 July 2007 were allocated to the occupational and business regulation List. The purpose of the Act is to establish an approval process and ensures effective management of safety and environmental impacts of pipelines. The

Act also provides inspection and enforcement powers. Sections 64, 83 of the Act confers jurisdiction on VCAT to review decisions regarding the application, operation of, amendment of conditions and cancellation of licences. Section 182 concerns the review decisions of an inspector to issue improvement and prohibition notices.

In October 2008, section 89 of the *Rail Safety Act 2006*, which commenced on 1 January 2007, was allocated to the occupational and business regulation list. The purpose of the amendments to the Act includes maintaining and improving the safety of rail operations (trains and trams) in Victoria. The Act confers jurisdiction on VCAT to review decisions of the safety director.

PROFESSIONAL DEVELOPMENT GROUP

The professional development group – chaired by deputy president Cate McKenzie – has a broad professional development focus. While most lists provide specific professional development opportunities for their members, this group has primary responsibility for coordinating the overall professional development of VCAT members and mediators. The group works collaboratively with VCAT’s mediation committee and VCAT’s presidential members.

Activities

We held monthly meetings and organised frequent professional development seminars across a number of lists. These included:

- Mediation techniques at hearings – an interactive seminar which included presentations by a number of VCAT’s deputy presidents;
- *Experts, Conclaves and Hot-tubbing* – a seminar presented by deputy president Aird about expert evidence initiatives in VCAT’s domestic building list;
- *Kracke v Mental Health Review Board*, presented by VCAT’s president, Justice Bell about a recent major decision concerning the application of the Victorian Charter of Human Rights and Responsibilities.

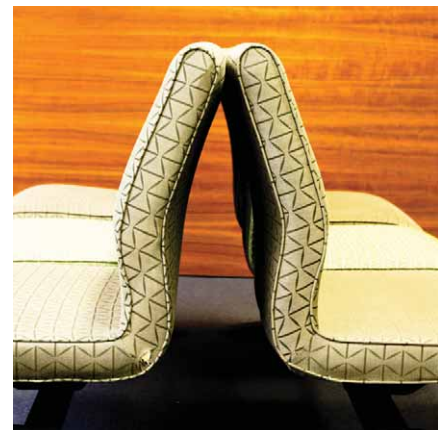
In November 2008, we hosted a conference open to all VCAT members and mediators. The conference included a number of presentations

and much interactive discussion about topics such as ADR, professional development needs, the Charter of Human Rights and Responsibilities, and cultural awareness issues. It was well-attended and very successful.

Future

The group will continue to arrange professional development events on matters of general interest to VCAT members and mediators as a whole. We try to be responsive to their needs and wishes. We look forward to the establishment of the proposed learning centre at VCAT. This will enhance professional development opportunities for all at VCAT.

We will host another VCAT conference later this year. We continue to be involved in other matters related to professional development such as mentoring proposals, and to support professional development initiatives in individual lists as required.



HEADS OF LISTS COMMITTEE

President Justice Bell chairs the heads of lists committee, which also comprises VCAT's vice-presidents Judge Harbison and Judge Ross, and the eight deputy presidents who head VCAT's lists.

The role of the heads of lists committee has been significantly enhanced under Justice Bell's

leadership. It is now the principal forum for discussing, and making decisions in relation to, the major policy and operational issues affecting VCAT (subject to the statutory authority of the president). It is also an important mechanism by which governance, coherence and unity is achieved within the organisation, consistent with the *ONE VCAT* policy.

PLANNING AND ENVIRONMENT PROFESSIONAL DEVELOPMENT COMMITTEE

The planning and environment professional development committee comprises members of the planning and environment list and is dedicated to the professional development of the list members.

A highlight of the 2008-09 year for the list was the list conference. The conference included an afternoon walking tour of a selected area of Richmond to consider issues about inner city development. A full day followed with seminars and discussion focusing on the themes of decision making and professional development of tribunal members.

The list also conducted twilight seminars over a diverse range of topics, including changes to the EPA Guidelines for onsite management of wastewater and the proposed re-drafting of residential zones.

Members attended and presented at a number of external conferences and seminars run by the Victorian Planning and Environmental Law Association, the Planning Institute of Australia, Swinburne University students program and the Department of Planning and Community Development's PLANET Program.

Additionally, list members participated in training run by the Judicial College of Victoria, and VCAT's professional development group. Topics included judicial leadership, judgment writing, judicial mediation and alternative dispute resolution.

LIBRARY COMMITTEE

The library committee comprises a number of tribunal members from various lists, the VCAT librarian and the technology services coordinator. The committee meets regularly to ensure the VCAT library offers an efficient service to members, assisting them to carry out their primary functions of hearing and determining tribunal matters.

The main library is located on the fourth floor at 55 King Street. Branch libraries, containing selected resource materials, occupy the common areas on the first and sixth floors. The library provides legal texts, law reports and journals, electronic access to resources, and legal research training. Additionally, it provides a contact

point for VCAT members, allowing them to make suggestions to enhance library services.

One of the library's key responsibilities is to ensure the accurate publication of VCAT's decisions on the Australasian Legal Information Institute (AUSTLII) website.



MANAGING VCAT

A LOT GOES ON BEHIND THE SCENES TO ENSURE
VCAT OFFERS A HIGH-QUALITY SERVICE.

GOVERNANCE

Appointing members

Consistent with the VCAT Act, the president of VCAT must be a Supreme Court Judge, and any vice-president must be a judge of the County Court. The Attorney-General recommends these judicial appointments to the Governor-in-Council, after consulting with the Chief Justice and Chief Judge.

Deputy presidents, senior members, and full-time and sessional members of VCAT are also appointed by the Governor-in-Council.

Both judicial and non-judicial members hold five-year terms and are then eligible for re-appointment. They may resign their office by delivering a signed letter of resignation to the Governor.

Member profile

As at 30 June 2009, we had five vice-presidents – two of whom were located permanently at VCAT – and 221 non-judicial members, up from 217 in 2007–08.

VCAT's non-judicial membership comprises 41 full-time members (the same number as last year) and 180 sessional members (down from 193 as at June 2008).

Our members include legal practitioners and other professionals with specialised knowledge or expertise, such as planners, engineers, architects, medical and allied health practitioners,

accountants, land valuers and real estate agents. VCAT functions efficiently and effectively, thanks to the contributions of these diverse members, many of whom are qualified to sit on a number of our lists. In turn, members gain career flexibility, satisfaction and development, from exposure to a variety of jurisdictions.

Members' remuneration is fixed by the Governor-in-Council. Remuneration and allowances totalled \$13.51 million in the 2008/09 financial year compared with \$11.93 million in 2007–08.

Directing VCAT

VCAT's president is responsible for directing vice-presidents, and for advising the minister about any action that would assist in:

- The more convenient, economic and efficient disposal of VCAT business;
- Avoiding delays in the hearing of proceedings; and
- Rendering the VCAT Act or any enabling Acts more effective.

The president and vice-presidents, in consultation with deputy presidents, the chief executive officer and principal registrar:

- Direct VCAT business;
- Manage VCAT's administrative affairs;
- Direct the professional development and training of members; and
- Determine venues and times for hearings.

Additionally, the president and vice-presidents sit on VCAT's 'rules committee', along with other persons appointed under the VCAT Act. The rules committee makes VCAT's rules and practice notes, and establishes the divisions of the tribunal.

The presidential members also promote continual learning and reinforce the ethical responsibilities of members and staff.



OUR PEOPLE



Our staff comprises ten senior managers, four registrars, five deputy registrars, 17 team leaders and one customer service manager. These are supported by 159 administrative staff who work in registry administrative officer, customer service, and corporate services roles. Staff numbers increased to 196, up from 187 last year. This increase has occurred through an expansion in positions as a result of the registry restructure and recruitment for vacant positions. VCAT has 39 part time staff, one casual staff, one on maternity leave, four on family leave without pay and three people on external secondments. There are also eight staff on internal development secondment opportunities.

Staff conference

The theme for this year's staff conference focused on VCAT moving forward as one team in alignment with the president's vision to become *ONE VCAT*. The conference was opened by Justice Bell and was also attended by VCAT's chief executive officer, Terry O'Donoghue, and approximately 150 staff and members. The conference program included a welcome to recent new starters, presentations on VCAT's new dress code, the Certificate IV in Government course, and the new family violence support worker's role. Several workshops were undertaken to generate ideas on what VCAT's services

and structure might look like in the future and profile the diversity of people that work at VCAT.

A new rewards and recognition program was launched at the conference, with the first of several awards presented to a number of staff who had made outstanding contributions to VCAT over the previous year. A highlight of the conference was an inspirational presentation by guest speaker Walter Mikac. Walter, who tragically lost his family at Port Arthur in 1996, delivered a powerful message on the skills that can be used to overcome adversity, overcome challenges and move through change and accomplish personal, professional and team goals.

Youth Employment Scheme

VCAT provided nine young Victorians aged 16-24 with traineeships through the Youth Employment Scheme, a joint venture between the Victorian Government and employers. Three of the five trainees who completed their traineeships went on to obtain either fixed term or ongoing work at VCAT, while one obtained employment at Consumer Affairs Victoria. VCAT had 4 trainees as at 30 June 2009.

Employee relations

VCAT is an equal opportunity employer and several staff have been recruited this year following merit and equity principles. We are committed to harmonious employee relations.

This year we provided staff with regular updates on developments in areas such as bullying, sexual harassment and the Victorian Public Service (VPS) Code of Conduct through seminars and the distribution of VPS policies on these topics.

VCAT's commitment to ensuring its employees achieve work/life balance is evidenced by several staff taking up the opportunity to enter into job-sharing agreements and various flexible working arrangements.

Training and development

VCAT invested heavily in the training and development of its staff in the current year. There has been a significant amount of training provided to staff whose roles had changed as a result of the registry restructure. VCAT's commitment to training and development is underlined by the appointment of a dedicated staff development manager position, which commenced in March 2009. This commitment has been further underlined by the development of a revised induction program to facilitate the smooth entrance of new starters into the organisation, accompanied by training for team leaders, managers and supervisors in the Department's probation process.

A wide variety of training has been conducted internally, including legislative briefing sessions across the majority of VCAT's lists, and role specific customer service and administrative



processing training for registry roles. There has been an increased emphasis on training related to performance development in response to Employee Attitude Survey results which identified this as an area requiring improvement. Staff have availed themselves of the opportunity to attend training provided through the 'One Justice' training curriculum, including courses in:

- Recruitment and selection
- Working effectively with diversity
- Computer and writing skills
- Management and leadership development
- First aid and CPR
- Customer service
- Performance management and development
- Bullying, sexual harassment and the VPS Code of Conduct

Several senior and middle managers have been offered the opportunity to receive coaching to facilitate their leadership development. Various staff have further developed their skills and knowledge through attending a variety of conferences, including the Australian Court Administrators' Group (ACAG), Australian Institute of Judicial Administration (AIJA), and the Australian Guardianship and Administration Council (AGAC). Staff have also attended various seminars offered by the Institute of Public Administration Australia

(IPAA) on topics including leadership and the changing nature of public administration.

VCAT is also a participant in the Australasian Committee for Courts Education (ACCE), which provides a forum for learning and development professionals across Australasian courts and tribunals to share knowledge, skills and resources to improve the development of staff.

This year has also seen a greater uptake of staff enrolling in the Certificate IV in Government (Court Services), a nationally endorsed qualification from the Public Service Training Package. VCAT had six staff enrolled in this course as at 30 June 2009, up from two the previous year, with plans to have up to ten new students each year in the future.

Two staff completed qualifications this year. One staff member completed the inaugural Diploma of Government (Court Services) and another completed a Diploma of Management. One staff member was also undertaking the Public Sector Management Program, a public sector leadership development program offered in conjunction with Victoria University.

Wages and superannuation

Employee wages totalled \$8.51 million in 2008-2009, compared to \$8.43 million in 2007-2008. Staff were employed under the terms and conditions of the VPS Agreement, which

incorporates performance management and progression plans for all staff. The Agreement recognised and rewarded eligible staff who demonstrated sustained improvement in performance against agreed progression criteria with an average two percent salary increase effective 1 October 2008.

Staff continue to receive superannuation benefits through a choice of superannuation funds, including the State Superannuation Funds (new and revised), the Vic Super fund or privately nominated funds.

Occupational health and safety

VCAT aims to provide and maintain a safe working environment which ensures and nurtures the health and well being of all staff, members and visitors to VCAT. During 2008-2009 there was one new WorkCover claim, with no days lost to injuries. This represents an improvement on 2007-2008, in which there were four new claims, and ten workdays lost.

VCAT's fire wardens received regular training and tests of fire, bomb and other emergency evacuation procedures. VCAT increased its number of accredited first aid officers to 16. Staff also received ergonomic assessments and equipment, while eyesight tests were available for all staff.

OUR REGISTRY



In the 2008/2009 financial year, staff processed approximately 86,000 applications, supported 110,000 hearings and finalised just over 81,000 matters.

More than 150 staff make up the VCAT registry, working with members and other staff to serve the community. Most registry employees are based at 55 King Street, but staff are located at some suburban and rural Magistrates' Courts where VCAT also conducts hearings.

Registry review

The VCAT registry has had to adapt over the years to new and growing jurisdictions. To ensure its continued high level of service with this increasing workload, a review of its processes, systems and structure was commissioned. The review commenced in 2007 and highlighted the need to:

- enhance customer services;
- enhance member services;
- reduce duplications and inefficiencies;
- support VCAT's positioning as an 'employer of choice';
- recognise staff strengths and capabilities; and
- plan for future growth and development.

Registry staff, deputy presidents and members were all involved in the review. Together, they documented existing registry processes for

each list and jurisdiction, identifying where improvements and efficiencies could be made. This resulted in a re-design of ideal processes and led to some ideas regarding how the registry structure could be enhanced to better respond to the suggested changes.

A number of proposals were provided by staff. The staff supported a move to a divisional structure that was characterised by a team based model and supported the end to end processing of matters. In August 2008 approval was received by the president and heads of list to implement the new structure.

New registry structure

The new registry structure comprises:

- the administrative division, which supports the general, land valuation, planning and environment and occupational business regulation lists;
- the civil division, which supports the civil claims, credit, domestic building, legal practice, real property, residential tenancies, retail tenancies and taxation lists;
- the human rights division which supports the anti discrimination and guardianship lists; and
- the listing directorate, which supports all lists, allocating cases to members for hearing, and managing hearing venues.

The implementation of the new structure has had a significant impact on staff. As part of the

change, staff were required to adapt to the new model of end-to-end processing whilst being absorbed into newly created teams. Registry staff showed great flexibility in terms of integrating and performing with a new group of people.

The significance of this new structure was highlighted when an entire division of registry was relocated from the seventh floor resulting in registry staff being dispersed over two geographically separate locations.

The successful implementation of the new registry structure is thanks to all the patience, hard work and dedication of the fantastic staff. Their participation and cooperation has been exceptional.

In the next year we hope to build on the work so far and consolidate the new structure whilst exploring further opportunities to improve the services provided by the registry.

INFORMATION TECHNOLOGY

Case management

VCAT operates two computerised case management systems, Caseworks and the Tribunal Management System (TMS).

Caseworks and TMS are efficient, reliable systems and are critical to our operations. VCAT members and staff use Caseworks and TMS 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

VCAT Online

VCAT Online is a web-based interface to the TMS case management system and enables registered users of the high volume residential tenancies list to:

- Complete application forms;
- Generate and print notices of dispute under the *Residential Tenancies Act 1997*;
- View notices of hearings and VCAT orders;
- Request warrants of possession; and
- Withdraw applications.

VCAT Online incorporates a complex automated scheduling module, which meant that for 58 percent of cases (54 percent in 2007-08), users

received advice of a hearing date, time and location within seconds of lodging an application. Applications to the residential tenancies list dropped during 2008–09 and this is reflected in a reduced number of applications lodged through VCAT Online which totalled 45,721 in 2008-09 compared to 50,242 in 2007-08.

VCAT Online Guardianship List

VCAT Online Guardianship List (VOGL) provides an online interface between the Victorian State Trustees and VCAT for the purpose of examining annual accounts by administrators and enabling state trustees examiners to:

- view annual accounts online;
- generate letters requesting further information from administrators; and
- submit the outcomes of their examinations back to VCAT.

In 2008-09 State Trustees completed 5,127 financial examinations on the VOGL system.

Order Entry System

Order Entry System (OES) is a module of the TMS case management system that is used to produce orders. During hearings, members of the residential tenancies and guardianship lists can use OES to produce and print orders that can be signed and given to the parties immediately after hearings.

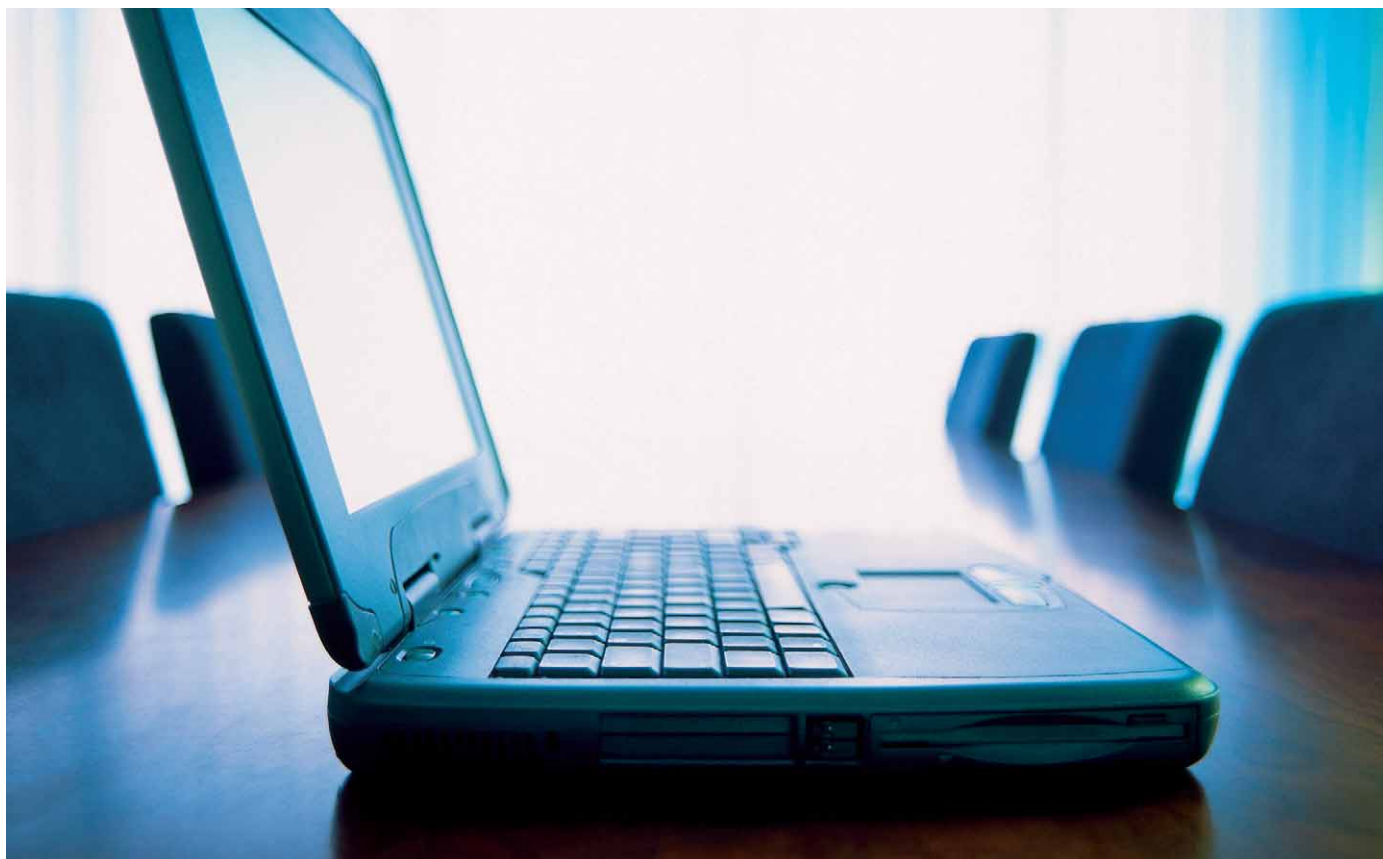
During 2008–09, members using OES in the residential tenancies list created 53,652 orders during hearings comprising 89 percent of all orders, compared to 56,036 or 86 percent of orders in 2007–08. In the guardianship list, members produced 14,468 orders comprising 92 percent of all orders using OES in hearings compared to 12,898 or 88 percent of orders in 2007-08. VCAT staff produced the remaining orders generated by these lists as directed by the members.

During 2008-09, OES was further expanded throughout all existing Magistrates' Courts with the ability to deliver TMS via Citrix enabling members sitting in locations outside the CBD to access the case management system remotely.

System and infrastructure upgrades

We incorporated additional telecommunications and computer system upgrades, including:

- the purchase of 10 additional desktop computers for staff;
- a version upgrade of the Lotus Notes email system;
- introduced an SMS hearing reminder service for parties in the residential tenancies list;
- tested and deployed a community reference directory to all VCAT computers;
- reconfigured the QMaster call centre management system to accommodate changes flowing from the VCAT registry review;



- tested and configured a Citrix server for remote access of Caseworks and TMS;
- replaced a digital recording network server;
- installed audiovisual equipment in a main conference room; and
- continued the replacement of obsolete printers with new and more energy efficient multi-function device (MFD) printers.

Digital recording

The digital recording system records proceedings taking place throughout all VCAT hearing rooms and stores those recordings onto a central server computer. The system allows VCAT users to request transcripts of hearings (at their cost) and VCAT presiding members to access voice recordings. Transcripts may be an important source of information in the event of an appeal. The increasing use of these recordings protect the interests of both users and members participating in hearings, with the added benefit of monitoring and improving standards of conduct by all participants during proceedings.

In 2008–09 we received 558 requests for transcripts from VCAT users, an increase of 107 from the 2007-08 reporting period, and 319 requests for copies of voice recordings from VCAT members – 40 more than in the previous financial year.

The future

VCAT will continue to incorporate information technology developments to enable the consolidation of Integrated Courts Management System (ICMS) at VCAT. The system aims to establish a single, integrated technology platform and set of applications for the courts and tribunals, with deployment to VCAT scheduled for late 2010.

In the next financial year, we plan to incorporate the following initiatives:

- a version upgrade for the case management system Caseworks;
- installation of advanced audio visual and telecommunications systems for the new learning centre and 3 hearing rooms located at 55 King Street;
- establish a pool of laptops for use by bench clerks in hearing rooms;
- upgrade the content management system of the VCAT website;
- establish a pool of laptops for use by members while on circuit to remote venues;
- upgrade digital recording mixers in hearing rooms; and
- test web streaming of video from the VCAT website.

A close-up photograph of a grid of dark, textured metal mailboxes. Each mailbox has a small rectangular label with a white number. The numbers are arranged in a grid: 72, 73, 74, 75 in the top row; 78, 79, 80, 81 in the second row; 86, 87 in the third row; 90, 60, 92, 93 in the fourth row; 96, 97, 98, 99 in the fifth row. The mailboxes are slightly worn and have 'COA' embossed on them. The background is a repeating pattern of these mailboxes.

FURTHER INFORMATION

MORE DETAILED INFORMATION ABOUT VCAT'S
FINANCIALS, JURISDICTIONS AND MEMBERS.

OPERATING STATEMENT AND FINANCIAL SUMMARY

Expenditure

In 2008–09, VCAT's recurrent expenditure of \$34.92 million was nine percent higher than the \$31.84 million expended by VCAT in 2007–08, divided among expenditure on salaries to full-time and sessional members (\$11.97 million), staff salaries (\$8.51 million), salary related on-costs (\$4.16 million) and operating expenses (\$10.28 million).

Funding

VCAT received Victorian government appropriations (\$17.98 million) either directly from the Department of Justice or by way of other departments making contributions to VCAT. These sources fund the majority of lists with the exception of lists funded by other sources as described below. Appropriations include revenue of \$1.92 million generated by those lists receiving application fees.

- The residential tenancies trust fund, established under the *Residential Tenancies Act 1997*, wholly funds the residential tenancies list (\$10.15 million).
- The domestic builders fund, established under the *Domestic Building Contracts Act 1995*, wholly funds the domestic building list (\$2.45 million).
- The guardianship and administration trust fund established under the *Guardianship and Administration Act 1986*, partially funds the guardianship list (\$1.8 million).
- The legal services board established under the *Legal Profession Act 2004*, wholly funds the legal practice list (\$1.35 million).
- The owners corporation (Victorian property fund) jurisdiction was established under the *Owners Corporation Act 2006*, and is wholly funded by consumer affairs Victoria (\$1.19 million).

VCAT audited accounts

VCAT's accounts are audited and published as part of the accounts of the Department of Justice and provided in that Department's annual report.

The figures published in the Department's annual report may vary from the information published in this annual report, due to adjustments made in the period between their respective publications.

FUNDING 2008/09

	2008/09	2007/08
VCAT funding sources	\$m	\$m
Output Appropriations	17.64	16.94
Residential Tenancies Fund	10.15	9.23
Domestic Building Fund	2.45	2.23
Guardianship and Administration Trust Fund	1.80	1.70
Retail Tenancies List	0.34	0.30
Legal Practice List	1.35	1.44
Victorian Property Fund	1.19	-
Total	34.92	31.84

EXPENDITURE

	2008/09	2007/08
VCAT operational expenditure	\$m	\$m
Salaries to staff	8.51	8.43
Salaries to full-time members	6.77	7.64
Sessional members	5.20	4.29
Salary related on-costs	4.16	3.44
Operating costs	10.28	8.04
Total	34.92	31.84

VCAT EXPENDITURE ALLOCATED BY LIST*

List	\$m	\$m
Planning	7.91	7.64
Guardianship	4.95	4.39
General/ OBR/ Taxation	2.43	2.28
Anti-Discrimination	0.40	0.31
Civil Claims	2.26	2.43
Real Property	0.18	0.11
Land Val.	0.64	0.64
Credit	0.54	0.51
Health Profession	0.02	0.11
Retail Tenancies	0.45	0.52
Legal Practice List	1.35	1.44
Residential Tenancies Fund	10.15	9.23
Domestic Building Fund	2.45	2.23
Victorian Property Fund (Owners Corporation)	1.19	-
Total	34.92	31.84

* 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.

ALLOCATION OF FUNCTIONS

According to *Victorian Civil and Administrative Tribunal Rules 2008* [SR65/2008] and Draft *Victorian Civil and Administrative Tribunal (Amendment No 1) Rules 2009* dated 25 May 2009
As at 30 June 2009

Administrative division

General list

The functions of the tribunal under the enabling enactments set out in the items below 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);

Associations Incorporation Act 1981;

Births, Deaths and Marriages Registration Act 1996;

Cemeteries and Crematoria Act 2003;

Children, Youth and Families Act 2005;

Co-operatives Act 1996;

Country Fire Authority Act 1958;

Dangerous Goods Act 1985;

Disability Act 2006 section 50 (decision as to disability);

Domestic (Feral and Nuisance) Animals Act 1994 section 98(2) (declaration and registration of dangerous dogs);

Drugs, Poisons and Controlled Substances Act 1981;

Electoral Act 2002;

Electricity Safety Act 1998;

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);

Fisheries Act 1995;

Freedom of Information Act 1982;

Fundraising Appeals Act 1998;

Gas Safety Act 1997;

Health Act 1958 section 125 (compensation for seizure of property);

Health Records Act 2001;

Infertility Treatment Act 1995;

Information Privacy Act 2000;

Livestock Disease Control Act 1994;

Local Government Act 1989 sections 38(2A) and 48 (decisions of the Municipal Electoral Tribunal), section 133 (decision of the Minister imposing a surcharge) and clause 8 of Schedule 12 (decisions of returning officer concerning how-to-vote cards);

Melbourne and Metropolitan Board of Works Act 1958;

Mental Health Act 1986 sections 79 (decisions of the Chief General Manager), 120 (decisions of the Mental Health Review Board);

Metropolitan Fire Brigades Act 1958;

Motor Car Traders Act 1986 section 79 (claims against the Guarantee Fund);

Parliamentary Salaries and Superannuation Act 1968;

Relationships Act 2008 Part 2.4 of Chapter 2;

Road Management Act 2004;

Road Transport (Dangerous Goods) Act 1995;

Sports Event Ticketing (Fair Access) Act 2002;

State Employees Retirement Benefits Act 1979;

State Superannuation Act 1988;

Superannuation (Portability) Act 1989;

Transport Accident Act 1986;

Transport Superannuation Act 1988;

Travel Agents Act 1986 section 46 (claims against approved compensation schemes);

Unclaimed Money Act 2008 sections 59, 61 and 63;

Victims of Crime Assistance Act 1996;

Victoria State Emergency Service Act 2005;

Victorian Plantations Corporation Act 1993;

Victorian Qualifications Authority Act 2000.

Land valuation list

The functions of the tribunal under the enabling enactments set out in the items below are allocated to the land valuation list of the administrative division.

Flora and Fauna Guarantee Act 1988 section 43(12) (claims for compensation);

Health Services Act 1988 section 67 (compulsory acquisition of land);

Land Acquisition and Compensation Act 1986;

Local Government Act 1989 section 183 (differential rating);

Mildura College Lands Act 1916 section 2(ec) (decision of Valuer-General on value of land);

Mineral Resources (Sustainable Development) Act 1990 section 88 (compensation for loss caused by work under a licence);

Pipelines Act 2005 section 154;

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);

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).

Occupational and business regulation list

The functions of the tribunal under the enabling enactments set out in the items below 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) and 129A(1)(c) (decisions regarding accreditation of bodies);

Agricultural and Veterinary Chemicals (Control of Use) Act 1992;

Architects Act 1991;

Biological Control Act 1986;

Building Act 1993 Division 12 of Part 12A;

Children's Services 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);

Dangerous Goods Act 1985;

Disability Act 2006 section 45 (registration of a disability service provider);

Domestic (Feral and Nuisance) Animals Act 1994 section 98(1) (registration of premises to conduct a domestic animal business);

Education and Training Reform Act 2006, Division 14 of Part 2.6 and Part 4.8;

Estate Agents Act 1980 except sections 56B(1) (see real property list) and 81(5A) (see general list);

Firearms Act 1996 section 182 (decisions of Firearms Appeals Committee);

Gambling Regulation Act 2003;

Health Professions Registration Act 2005 Part 4;

Health Services Act 1988 section 110 (decisions of Minister or Chief General Manager under Part 4);

Liquor Control Reform Act 1998;

Local Government Act 1989 sections 30, 81D, 81E, 81J(1)(b), 81K, 81L, 81Q and 81R;

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);

Mineral Resources (Sustainable Development) Act 1990;

Motor Car Traders Act 1986 except sections 45 (see civil claims list) and 79 (see general list)

Occupational Health and Safety Act 2004;

Owner Drivers and Forestry Contractors Act 2005 section 41 (dispute between contractor and hirer);

Owners Corporations Act 2006 Part 6 and Part 12;

Pipelines Act 2005 sections 64, 83 and 182;

Prevention of Cruelty to Animals Act 1986 section 33 (licensing of scientific establishments and breeding establishments);

Private Security Act 2004 Part 7;

Professional Boxing and Combat Sports Act 1985 (licences, permits and registration);

Prostitution Control Act 1994;

Public Transport Competition Act 1995;

Racing Act 1958;

Rail Safety Act 2006 Part 7;

Second-Hand Dealers and Pawnbrokers Act 1989 sections 9B and 14 (correction of register);

Surveying Act 2004 section 33 (review of decision, finding or determination);

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 planning and environment list);

Travel Agents Act 1986 except section 46 (see general list);

Utility Meters (Metrological Controls) Act 2002;

Veterinary Practice Act 1997 section 55 (registration and discipline);

Victoria State Emergency Service Act 2005;

Wildlife Act 1975;

Working with Children Act 2005.

Planning and environment list

The functions of the tribunal under the enabling enactments set out in the items below are allocated to the planning and environment list of the administrative division.

Aboriginal Heritage Act 2006;

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;

Flora and Fauna Guarantee Act 1988 sections 34(3), 41 and 41A (interim conservation orders);

Heritage Act 1995;

Local Government Act 1989 sections 185 (imposition of a special rate or charge) and 185AA (imposition of a special rate or charge);

Mineral Resources (Sustainable Development) Act 1990 except sections 88 (see land valuation list), 94 and 95 (see occupational and business regulation list);

Owners Corporations Act 2006 Part 6;

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);

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).

Taxation list

The functions of the tribunal under the enabling enactments set out in the items below are allocated to the taxation list of the administrative division.

Business Franchise Acts;

First Home Owner Grant Act 2000;

Taxation Administration Act 1997.

Civil division

Civil claims list

The functions of the tribunal under the enabling enactments set out in the items below are allocated to the civil claims list of the civil division.

Domestic Building Contracts Act 1995;

Fair Trading Act 1999;

Motor Car Traders Act 1986 section 45 (rescission of agreement of sale of motor car);

Owner Drivers and Forestry Contractors Act 2005;

Owners Corporations Act 2006 Part 6 and Part 11, Divisions 1, 2, 3 and 4;

Retirement Villages Act 1986.

Credit list

The functions of the tribunal under the enabling enactments set out in the items below are allocated to the credit list of the civil division.

Chattel Securities Act 1987 section 25 (compensation for extinguishment of security interest);

Credit Act 1984;

Credit (Administration) Act 1984;

Consumer Credit (Victoria) Act 1995 except Part 4 and section 37(1)

(see occupational and business regulation list);

Fair Trading Act 1999.

Domestic building list

The functions of the tribunal under the enabling enactments set out in the items below are allocated to the domestic building list of the civil division.

Building Act 1993 except Division 12 of Part 12A;

Domestic Building Contracts Act 1995;

Fair Trading Act 1999;

House Contracts Guarantee Act 1987;

Owners Corporations Act 2006 Part 6 and Part 11, Divisions 1, 2, 3 and 4.

Legal practice list

The functions of the tribunal under the enabling enactments set out in the items below are allocated to the legal practice list of the civil division.

Fair Trading Act 1999 (dispute between a legal practitioner and a client of a legal practitioner);

Legal Profession Act 2004.

Real property list

The functions of the tribunal under the enabling enactments set out in the items below 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;

Owners Corporation Act 2006 Division 3 of Part 11;

Property Law Act 1958 Part IV;

Sale of Land Act 1962 section 44;

Subdivision Act 1988 Part 5, 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 licensees).

Residential tenancies list

The functions of the tribunal under the enabling enactments set out in the items below are allocated to the residential tenancies list of the civil division.

Disability Act 2006 Part 5 Division 2;

Fair Trading Act 1999;

Housing Act 1983;

Landlord and Tenant Act 1958;

Owners Corporations Act 2006 Part 6 and Part 11, Divisions 1, 2, 3 and 4;

Residential Tenancies Act 1997;

Retirement Villages Act 1986.

Retail tenancies list

The functions of the tribunal under the enabling enactments set out in the items below are allocated to the retail tenancies list of the civil division.

Fair Trading Act 1999;

Retail Leases Act 2003.

Human rights division

Anti-discrimination list

The functions of the tribunal under the enabling enactment set out in the items below are allocated to the anti-discrimination list of the human rights division.

Equal Opportunity Act 1995;

Racial and Religious Tolerance Act 2001.

Guardianship list

The functions of the tribunal under the enabling enactments set out in the items below are allocated to the guardianship list of the human rights division.

Disability Act 2006 Part 5 Division 3, Part 7, Part 8 Divisions 1, 3 and 5;

Guardianship and Administration Act 1986;

Instruments Act 1958 Division 6 of Part XIA;

Medical Treatment Act 1988 section 5C (enduring powers of attorney);

Trustee Companies Act 1984.

VCAT MEMBER DIRECTORY

List of abbreviations: **AD** anti-discrimination, **C** credit, **CC** civil claims, **DB** domestic building, **G** guardianship, **Gen** general, **LP** legal practice, **LV** land valuation, **OBR** occupational and business regulation, **P** planning, **Real P** real property, **Res T** residential tenancies, **Ret T** retail tenancies, **Tax** taxation

Judicial members	Lothian, Margaret	DB, Ret T, CC, Res T, G, P, Real P	Liden, Susanne	Res T, CC, G, AD, C
President	Monk, Jane [^]	P	Martin, Philip	P, LV, OBR
The Honourable Justice Kevin Bell	Preuss, Jacqueline	Gen, AD, P, OBR, G, CC	Moraitis, Stella	Gen, CC, G, Res T, C
Vice-presidents	Rickards, Jeanette	P, LV, OBR	Naylor, Rachel	P
His Honour Judge John Bowman	Scott, Robert	Res T, CC, Gen, G	O'Halloran, Donald	RT, G, Gen, CC, OBR
Her Honour Judge Sandra Davis	Vassie, Alan	Res T, CC, LV, Gen, Real P, Ret T, C, G, LP	O'Leary, Peter	P, OBR
Her Honour Judge Marilyn Harbison	Walker, Rohan	Gen, Res T, CC, AD, P, DB, G, Ret T, Real	Potts, Ian	P, Real P
His Honour Judge James Duggan	Senior sessional members	Lists	Proctor, Ian	Res T, G, Gen, CC, C
His Honour Judge Iain Ross AO	Dudycz, Dr Maria	AD, G, OBR	Tilley, Annemarie	Res T, CC, AD, Gen, G
Deputy presidents	Galvin, John	Res T, CC, G	Sessional members	Lists
Lists	Hawkins, Annabel Mary	Res T, CC, G	Alsop, David	P
Aird, Catherine	Komesaroff, Tonia	P, LV	Anderson, Diane	OBR
Billings, John	Levine, Michael	CC, C, DB, OBR, Gen, G, Real P, Res T, LV, Ret T	Anderson, Sandy	OBR
Coghlan, Anne	Megay, Noreen	Gen, G, OBR, CC, Tax, AD, LP, Res T, Real P, Ret T	Archibald, Mary	OBR
Dwyer, Mark	Sharkey, Gerard	P, Real P, Ret T	Arnott, Anne	OBR
Gibson, Helen	Young, Roger	DB, Real P, Ret T, CC, Res T, P, LV	Barrand, Pamela	Res T, CC, G
Macnamara, Michael	Full time members	Lists	Barry, Pamela	OBR
McKenzie, Cate AM	Barker, Heather	Res T, CC, G	Barton, Terence	G
Steele, Bernadette	Bennett, John	P, OBR	Batrouney, Roger	No list assigned
Gen, OBR, DB, Ret T	Benz, Elisabeth	P	Beasley, Speros	
Senior members	Butcher, Gerard	LP, CC, OBR, Gen	Bilston-McGillen, Tracey	P
Lists	Carruthers, Maureen	G, AD	Blachford, Melvin	OBR
Baird, Margaret	Cimino, Sam	P, OBR	Bolster, John	G, CC, Res T, Gen, OBR
Byard, Russell	Grainger, Julie	Res T, CC, G, C	Bridge, Emma	Res T, CC, G, Gen
Davis, Robert	Hewet, Laurie	P, OBR	Brown, Vicki	LV
Gen, Ret T, Real P, DB, OBR, P, CC, Tax, AD, LP	Holloway, William	Res T, CC, DB, G, Gen	Burdon-Smith, Susan	Res T, CC, G
Fanning, David	Kefford, Jacquelyn	Res T, CC, C, G	Burge, Dr Dorothy (Barbara)	OBR
Res T, G, CC			Burgess, Zena	AD, G
Howell, Malcolm			Bylhower, Marietta	OBR
LP, CC, OBR, Gen				
Lambrick, Heather				
Res T, CC, G, OBR				
Liston, Anthony				
P, OBR				

Calabro, Domenico	Res T, CC	Graves, Phillip	G	Nagle, Kathleen	OBR
Cali, Louis	OBR	Grayling, Jennifer	LP	Nihill, Genevieve	Res T, CC, G, Gen, OBR
Cameron, Dr Melanie	OBR	Grosvenor, Russell	OBR	Norman, Kathryn	Res T, CC, G
Campbell, Heather	No list assigned	Gu, Xu Ming	OBR	Ogloff, James	OBR
Carew, Megan	P	Gymer, Raymond	OBR	Osborn, Jane	P
Chapman, Ysanne	OBR	Gysslink, Paul	OBR	Ozanne-Smith, Eleanor (Prof)	OBR
Chase, Gregory	P	Hally, Mary	OBR	Page, Rodney	LP
Cherrie, Deborah	LP	Hannerbery, Elaine	LP	Pearson, Ros	OBR
Chuck, Alan Kenneth	P	Hadjigeorgiou, Nicholas	P	Phillips, Robert	CC, Res T, G
Clarke, Dr Bernard	OBR	Halstead, David	OBR	Phillips, Sabine	OBR
Cleary, Peter	LV	Hancock, Elizabeth	LV	Pinksier, Dr Nathan	OBR
Cogley, Vicki	OBR	Harper, Patricia	LP	Pitt, Margaret	LP
Coldbeck, Peter	Gen, G, CC, OBR, Res T	Harris, Elizabeth	No list assigned	Pizzey, Geoffrey	P
Collopy, Dr Brian	OBR	Harrison, Fiona	LP	Popovic, Jelena*	G, CC, Res T, Gen, OBR
Cook, Dalia	p	Harty, Christopher	P	Power, Marian	OBR
Cooney, Elizabeth Lillian	LP	Harvey, Margaret	G, AD, CC, Res T	Price, Roland	Res T, CC
Coulson Barr, Lynne	LP	Homewood, Penelope	P	Quirk, Anthony	P, Real P
Counsel, Caroline	LP	Horan, Anthony	LP	Rae, David	P
Crawford, Gwenneth	OBR	Hughes, Elizabeth	OBR	Raleigh, Steven*	G, CC, Res T, Gen, OBR
Cremean, Bernadette	AD, CC, Res T	Jacquiery, Errol	LP	Read, Michael	P
Croft, Dr Clyde	Tax, OBR, LP	Jenkins, Louise	LP	Reddy, Dr Aruna	OBR
David, Graeme	P	Jones, Russell	No list assigned	Richards, Keith	OBR
Davies, Dennis	No list assigned	Jopling, Peter	LP	Riley, Dr Colin	OBR
Davies, Hugh	CC, Res T	Keaney, John	P	Roller, Louis	OBR
Davies, Vicki	P	Keddie, Ann	P	Rowland, Linda	Gen, Res T, CC, G, AD
Davine, Diarmid	LP	Keith, Benedict	OBR	Rundell, John	P, Real P
Davis, Dr Julian	G, OBR	Klingender, Jessica	Res T, CC	Rundell, Geoffrey	P
Dea, Anna	OBR	King, Ross	OBR	Ryan, Amanda	OBR
Delaney, Clare	OBR	Kirmos, Kay	Res T, CC	Shanahan, Dr Elizabeth	OBR
Dickinson, Anthony	OBR	Kominos, Angela	Res T, CC, AD, G	Sharpley, Gregory	
Dillon, John	OBR, Civil, Res T	Lambden, Elizabeth*	G, CC, Res T, Gen, OBR	Shattock, Peter	No list assigned
Doherty, John*	Res T, CC, G	Langton, Robert	CC, Res T, DB	Slee, Felicity	OBR
Drinkwater, John	OBR	Levin, David	LP	Soldani, Angela	Res T, CC, G
Dudakov, Brian	LV	Levy, Leonard	OBR	Southall, Anthony	No list assigned
Duffy, Jane	OBR	Lightfoot, Brian	CC, Res T, Ret T, Real P, G	Story, Rowan (AM RFD)	OBR
Duggan, Anne	G	List, David	OBR	Tan, Dr Eng-Seong	OBR
Eggleston, Peter	Res T, CC	Lulham, Ian	DB, Res T, CC	Taranto, Mary-Ann	P
EllMoussalli, Michael	OBR	Mainwaring, Dr Sylvia	P, AD, Real P	Von Einem, Ian*	G, CC, Res T, Gen, OBR
Evans, Robert	P	Malbon, Alan	OBR	Wajcman, Jack	Res T, CC
Fabris, Dr Elaine	OBR	Marshall, Simone	OBR	Walter, Richard	P
Farhall, John	OBR	McCabe, Edmund	Res T, CC, G	Warren, Lindsay	CC, Res T, Ret T, G
Farkas, Michael	LP	McCann, David	Res T, CC	Wentworth, Elisabeth	AD, CC, C, Gen, Res T, LP
Ferres, Dr Beverley	AD, G, OBR	McDonald, Timothy*	G, CC, Res T, Gen, OBR	West, Lynda	Gen, CC, G, Res T, AD
Fraser, Glenys Arlene		McFarlane, Timothy	G	Williams, Charles	Gen, OBR, AD, G
Fry, Sydney	Res T	McGarvie, Ann	Res T, CC, G	Wilson, Cynthia	P
Fong, Christina	P	McKeeken, Joan (Prof)	OBR	Zemljak, Francis	AD, OBR
Gerber, Paula	DB, AD, CC	McKenzie, Susanne	LP	Zheng, Samuel	OBR
Geyer, Carol	OBR	McKeown, Patricia	OBR		
Gleeson, John	OBR	McNamara, Kenneth	P		
Glover, Dr John	Gen, Tax	Myers, Paul	LP		
Glynn, Alison	P	Molloy, Dr Patricia	OBR		
Good, June	Res T, CC, G	Molnar, John	OBR		
Gorman, Lois	G, OBR	Mulcare, Christine	LP		

Totals: Judicial members **6**, deputy presidents **8**, senior members **14**, senior sessional members **8**, full time members **19**, part time members **2**, sessional members **172**

* Magistrates

^ Jane Monk is on secondment at Department of Sustainability and Environment

VCAT HEARING LOCATIONS



VCAT CONTACT DETAILS

MAIN OFFICE

Victorian Civil and Administrative Tribunal (VCAT)
55 King Street, Melbourne, Victoria 3000
Email: vcat@vcat.vic.gov.au Website: www.vcat.vic.gov.au

Anti-discrimination list

Tel: +61 9628 9900
Fax: +61 9628 9988

Civil claims list

Tel: +61 9628 9830
Fax: +61 9628 9988
1800 133 055
(within Victoria)

Credit list

Tel: +61 9628 9790
Fax: +61 9628 9988

Domestic building list

Tel: +61 9628 9999
Fax: +61 9628 9988

General list

Tel: +61 9628 9755
Fax: +61 9628 9788

Guardianship list

Tel: +61 9628 9911
Fax: +61 9628 9822
1800 133 055
(within Victoria)

Land valuation list

Tel: +61 9628 9766
Fax: +61 9628 9788

Legal practice list

Tel: +61 9628 9081
Fax: +61 96289988

Occupational and business regulation list

Tel: +61 9628 9755
Fax: +61 9628 9788

Planning and environment list

Tel: +61 9628 9777
Fax: +61 9628 9788

Real property list

Tel: +61 9628 9960
Fax: +61 9628 9988

Residential tenancies list

Tel: +61 9628 9800
Fax: +61 9628 9822
1800 133 055
(within Victoria)
Registered users can access VCAT online through the website.

Retail tenancies list

Tel: +61 9628 9960
Fax: +61 9628 9988

Taxation list

Tel: +61 9628 9770
Fax: +61 9628 9788

www.vcat.vic.gov.au