



timely.
low cost.
expert.
accessible.



independent.

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The Hon Rob Hulls MP

Attorney-General
55 St Andrews Place
Melbourne 3002

Dear Attorney-General

We are pleased to present our annual report of the performance and operations of the Victorian Civil and Administrative Tribunal (VCAT) from 1 July 2004 to 30 June 2005 according to the requirements under 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 2005; and
- proposals for improving the operation of VCAT and forecasts of VCAT's workload in the subsequent 12-month period.

Sincerely



Stuart Morris
President

30 September 2005



John Ardlie
Chief Executive Officer

30 September 2005



About our Cover Theme

In our seventh year of operation, we chose the VCAT themes of *timely*, *low cost*, *expert*, *accessible* and *independent* to communicate our key objectives and strengths in providing a valuable dispute resolution service to the Victorian community.

Pictured from the top—Ian Proctor, Principal Registrar, Sessional Member Peter Eggleston, Administrative Officer Emily Arnold (right) and Full-Time Member Jeanette Rickards.

purpose, objectives and background.

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



Artwork donated by visiting French artist Noelle Herenschmidt.

Background to the VCAT Act

The 1996 Department of Justice report *Tribunals in the Department of Justice: A Principled Approach* acknowledged that tribunals "are now considered to be an integral part of the justice system".

On 1 July 1998, the Victorian Civil and Administrative Tribunal (VCAT) was established under the *Victorian Civil and Administrative Tribunal Act 1998* (the VCAT Act).

A Supreme Court judge heads VCAT as President and two County Court judges serve as Vice-Presidents. Deputy Presidents head the various Lists and a Rules Committee appointed under the VCAT Act develops rules of practice and procedure and Practice Notes for VCAT.

VCAT provides Victorians with accessible justice regarding administrative review matters, civil disputes and human rights.

Purpose

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

Aims and Objectives

List Users

Achieve excellence in our service to List users by being:

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

Our Role

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

- Independent
- Responsible
- Responsive

Our People

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

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

The Community

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

- User feedback
- Education

about vcat.

Who We Are

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

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

VCAT amalgamated all or part of 14 former boards and tribunals and comprises three divisions—Civil, Administrative and Human Rights. Each division has a number of Lists specialising in particular types of cases.

VCAT has a hierarchy of members:

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

The President assigns members to specific Lists according to their expertise and experience. If a member has appropriate qualifications, he or she may be assigned to hear cases or mediate in more than one List. In this way, VCAT allows for the most efficient use of members' time, as well as flexible and appropriate use of members' expertise. Of the 37 full-time members, 31 are allocated to more than one List. The remaining full-time members are specialist planners or planning lawyers who work exclusively in the Planning and Environment List.

What We Do

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

- consumer matters;
- credit;
- domestic building works;
- residential tenancies; and
- retail tenancies.

Our Administrative Division deals with disputes between people and Government about:

- land valuation;

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

Our Human Rights Division deals with matters relating to:

- guardianship and administration; and
- discrimination.

In addition, we review decisions made by a number of statutory professional bodies such as the Medical Practice Board of Victoria.

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



From centre, Vicki Gouros and Bronwyn Corr assist a VCAT user arriving for a hearing on the fifth floor. Staff members of the fifth floor service at 55 King Street assist the public and VCAT members with as many as 100 hearings each day and up to 300 people, recording the arrival of parties for hearings and directing them to hearing rooms.

year in review.



highlights.

List Users

- Received 88,417 applications (86,355 in 2003–04), representing a 2% increase. 5, 14
- The number of cases resolved remained steady, totalling 88,558 (88,516 in 2003–04). 5, 6
- Cases pending totalled 9,031 (9,173 in 2003–04) representing a decrease of 2%. 5
- Received 50,201 applications via VCAT Online, representing 76% of the total applications for the Residential Tenancies List (compared with 72% in 2003–04). 6, 47, 52
- Visits to the VCAT web site rose 23% from 333,549 in 2003–04 to 411,237 in 2004–05. 80

Our Role

- Achieved a high level of performance on budget, with VCAT operating expenditure remaining steady at \$24.63 million in 2004–05, in line with budget projections, and increasing by 3.3% compared with 2003–04. 6, 18, 67
- The overall VCAT mediation success rate moved from 67% in 2003–04 to 68% in 2004–05. 6, 22

Our People

- The number of VCAT employees rose 2% from 176 in 2003–04 to 179 in 2004–05. 5, 64
- A total of 45 employees attended 52 training courses offered by the Department of Justice, providing 60 days of training. 7, 64
- VCAT non-judicial membership decreased 3% from 153 in 2003–04 to 149 in 2004–05. 62
- VCAT members attended training and development programs offered by the Judicial College of Victoria, Monash University and the AIIA Tribunals Conference, as well as List-specific training programs, particularly in the Planning and Environment List and General List. 43, 62

The Community

- Conducted regular user group meetings across Lists aimed at improving service delivery by encouraging feedback from the community that uses VCAT's services. 5, 50
- Judicial Members, Deputy Presidents, Members and senior staff presented a number of speeches and information sessions to raise awareness of VCAT's services. 50



From left, Central Listings Manager George Adgemis, Finance Manager Alan Karfut and Principal Registrar Ian Proctor meet to discuss budget issues. At VCAT, we achieved a high level of performance on budget, with real VCAT operating expenditure remaining steady at \$24.63 million in 2004–05, in line with budget projections.

year at a glance.

Item	2004-05	2003-04	% Change
Overview			
Applications lodged	88,417	86,355	2
Cases finalised	88,558	88,516	-
Cases pending	9,031	9,173	(2)
Overall mediation success rate (%)	68	67	2
Visits to VCAT web site	411,237	333,549	23
Hearing venues used	101	103	(2)

Lists

Applications received per List:

• Residential Tenancies List	65,950	64,213	3
• Planning and Environment List	3,515	3,702	(5)
• Guardianship List	9,333	9,896	(6)
• General List and Taxation List	1,087	1,465	(26)
• Domestic Building List	825	839	(2)
• Anti-Discrimination List	433	481	(10)
• Civil Claims List	6,488	5,131	26
• Real Property List	71	43	65
• Retail Tenancies List	197	161	22
• Occupational and Business Regulation List	113	144	(22)
• Land Valuation List	209	98	113
• Credit List	236	182	30

Our People

VCAT employees	179	176	2
Judicial members	8	8	n/c
Full-time members	36	38	(5)
Sessional members	115	116	(1)

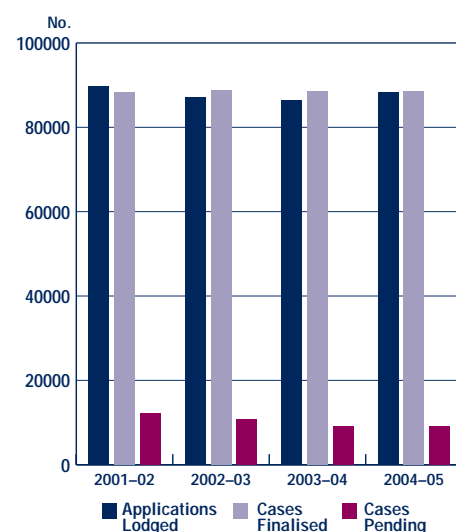
The Community

User group meetings conducted	17	20	(15)
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Five-Year Financial Summary

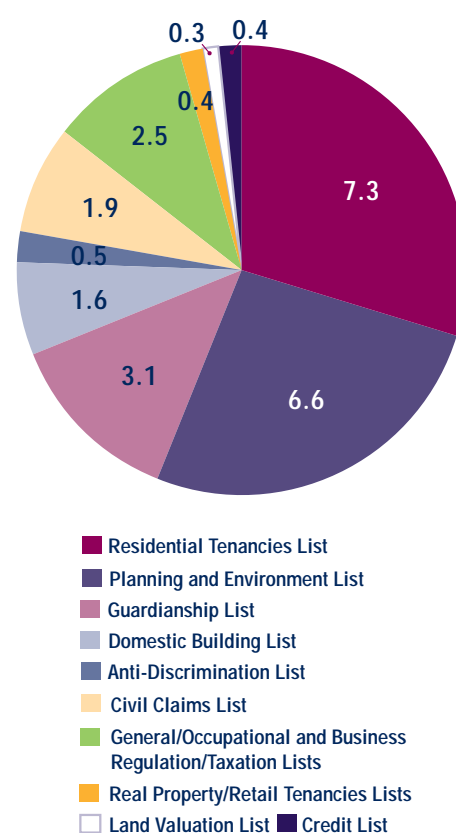
Item	2004-05	2003-04	2002-03	2001-02	2000-01
<i>VCAT funding sources:</i>					
• Appropriations (VCAT)	\$14.99	\$14.49	\$13.90	\$12.15	\$11.24
• Residential Tenancies Trust Fund	7.32	6.97	6.63	6.66	6.31
• Domestic Builders Fund	1.63	1.45	1.40	1.49	1.35
• Guardianship and Administration Trust Fund	0.70	0.94	0.80	0.78	0.83
Total:	24.63	23.85	22.73	21.08	19.73
<i>VCAT operational expenditure:</i>					
• Salaries to staff	6.35	6.22	5.77	5.81	5.62
• Salaries to full-time members	5.26	5.31	5.35	4.10	4.25
• Salaries to sessional members	3.60	3.30	3.18	2.86	2.59
• Salary related on-costs	2.54	2.42	2.63	2.40	1.50
• Operating costs	6.88	6.60	5.80	5.91	5.77
Total:	24.63	23.85	22.73	21.08	19.73

All VCAT Cases—2001-05



A fundamental indicator of VCAT's performance, the number of cases finalised should equal the number of applications received in a year, while the number of cases pending stays at an acceptable level. This result was achieved during 2004-05.

VCAT Expenditure by List 2004-05 (\$M)



VCAT expenditure totalled \$24.63 million, which was divided among the Lists as shown.

spotlight on timely.

The trend over the last 40 years has been for the Parliament to vest increased power in tribunals. There is no doubt that one reason for this increased power is to promote timely decisions. At VCAT we take this seriously. William Gladstone observed in the nineteenth century that “justice delayed, is justice denied”. This aphorism may have been forgotten during the twentieth century, but VCAT believes it is of central relevance to the twenty-first century.

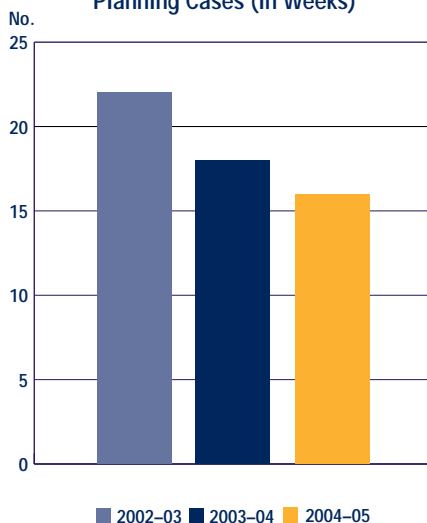
Over the last two financial years there have been substantial reductions in the time it takes VCAT to decide cases. The Planning and Environment List and the Civil Claims List stand out among the Lists.

The Residential Tenancies List has maintained a remarkable record of timeliness. The average time taken between the lodgement of an application and a VCAT decision is only 20 days (not business days, but days!). This result is due to the highly sophisticated systems in place, including VCAT online, which results in a high proportion of applications being lodged over the Internet.

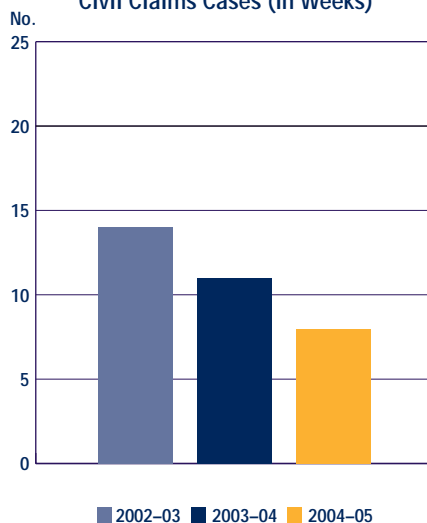
Matters in the Guardianship List must be listed within 28 days of lodgement. This procedure reflects the importance and urgency of many guardianship and administration matters.

It is easy to see why VCAT strives to avoid unnecessary delays. When matters are delayed the parties are left in limbo. Not only is justice delayed, but also the costs of resolving a dispute usually escalate. The delay in resolving a dispute sometimes causes anguish. And in some proceedings, such as planning matters, delay will impose unnecessary holding costs.

Median Time to Determine Planning Cases (in Weeks)



Median Time to Determine Civil Claims Cases (in Weeks)



With the spotlight on ‘timely’, Deputy President Michael Levine asks, “Why have a Tribunal of such broad reach as VCAT and where does VCAT differ from a court?”

According to Michael, VCAT certainly differs in a number of areas, but perhaps the most obvious difference is VCAT’s speedy resolution of disputes or ‘timeliness’.

“Parties require early resolution so they can get litigation over and done with. The legacy of a protracted dispute causes a reduction in general wellbeing, to say nothing of the financial cost.

“VCAT does not employ a notice of intention to defend system with default judgments, yet 70% or more than 60,000 of VCAT’s 90,000 cases are heard and determined within eight weeks—probably 40,000 are determined within three weeks.

“Remembering that many of VCAT’s jurisdictions have an unlimited Supreme Court-equivalent jurisdiction, those cases that are not resolved within eight weeks, because of complexity, are not left to languish. Rather, they are doggedly administered judicially to reach as speedy a conclusion as may be possible. Processes employed by VCAT include compulsory conferences conducted by full-time Members who have the authority to hear many cases and who encourage the parties to move to early settlement.

“The differences are noticeable. The delays are minimal. The costs are reduced. The nervous wait for resolution alleviated. Overall, VCAT offers an excellent system.”

spotlight on low cost.

The cost of civil litigation is a significant social problem, since the prospect of high costs discourages many from seeking justice. There is little doubt that over the last few decades the problem has been getting worse. Time and again, when the Parliament vests new powers in a tribunal rather than a court, the question of cost has been identified as a factor.

VCAT seeks to address the problem in a number of ways.

The VCAT Act establishes the general rule that each party pay his or her own costs of a proceeding. This general rule tends to keep a rein on legal costs. Human experience suggests that parties to litigation expect to win. In systems where the loser pays the winner's costs, there can be a tendency for parties to run up costs in the expectation that the other side will have to pay them.

The registry of VCAT plays an important role in assisting parties in bringing or defending proceedings. For example, VCAT will serve documents in a planning proceeding on behalf of an objector applicant. And in the Guardianship List, the registry staff provide considerable administrative back-up for applicants and represented persons.

In recent years, VCAT has used electronic communications and the Internet to great effect in reducing costs to the parties.

Nowhere is this clearer than in the Residential Tenancies List. In the year under review, VCAT Online was used to initiate more than 50,000 residential tenancy cases.

In addition, the use of in-house mediation—which is free to the parties—has assisted parties to reduce the cost of litigation. This method is used to special effect in domestic building disputes and discrimination claims. Settling cases at mediation significantly contributes to the reduction in costs.

Our experience is that costs are minimised where delays are avoided. We find that if adjournments are freely granted on flimsy grounds, costs to the parties will escalate. Case management is often employed to keep proceedings moving.

In addition, costs can be reduced by the procedures used to hear cases. By adopting less formal methods, hearings are shorter and save the parties money. The following examples are less formal methods:

- swearing in the parties to a civil claim at the start of the hearing; and
- allowing objectors in a planning matter to simply state their case to the tribunal, without giving formal evidence.

At the heart of cost-effectiveness is the culture of VCAT. We support a culture of 'getting on with it'.



With the spotlight on 'low cost', all of VCAT members recognise the importance of keeping costs to a minimum for the parties. However, VCAT also considers the personal cost parties may experience. As an example, anti-discrimination matters must be handled in a sensitive and supportive way.

According to Principal Mediator Margaret Lothian, mediation plays a critical role in resolving matters in a way that minimises the cost.

When asked what kind of costs parties face at VCAT, Margaret replied: "In most cases, parties bear the legal costs, so the risk of a big order for costs against a party is small. However, with big cases, such as those matters handled by the Domestic Building List, there is no certainty that, by bringing a matter here, costs will be contained. Legal costs, opportunity costs and even the emotional cost associated with a large, complex case can be a big burden for litigants. In large building cases, an order for costs against the losing party is common.

"What is certain is the opportunity for early mediation or an early compulsory conference. VCAT charges no additional fee for this service—it is provided as part of the service covered by the application fee. Parties who prepare well, bargain effectively and have the good fortune to have an intelligent, well prepared opponent, can dispose of their dispute in a timely and cost-effective way."

spotlight on expert.

The Supreme Court has held that tribunals like VCAT are expert tribunals: that is, the members of VCAT are expected to use their knowledge and experience in deciding cases. In fact the VCAT Act specifically states that, subject to complying with the rules of natural justice, the tribunal may inform itself as it thinks fit.

In order to harness the expertise of members, the Governor in Council has appointed a wide range of persons to VCAT. Although the membership of VCAT includes plenty of lawyers, it also includes a wide range of other disciplines, including town planners, valuers, environmental scientists, doctors, engineers and architects.

A member can only sit in a VCAT List to which he or she is assigned. This rule ensures that specialised knowledge is brought to particular types of disputes—town planners hear town planning cases, valuers hear valuation cases, and so on. In addition, lawyers will be specialists in a particular area of law, such as taxation, building disputes or tenancy matters. The assignment of lawyers to particular Lists allows this specialised knowledge to be used, which allows hearings to proceed more quickly at lower cost.

A significant proportion of VCAT members are appointed on a sessional basis, allowing a wide range of specialised skills to be included in the tribunal membership, even though cases requiring some of these skills may be infrequent.

VCAT also uses the expertise of members in the conduct of mediations. For example, members who are architects or town planners conduct most mediations in the Planning and Environment List. And mediators experienced in building usually conduct mediations in the Domestic Building List.

Sometimes VCAT will not have a member with expertise in a particular area. In such a case VCAT can appoint a person with appropriate qualifications to advise it as an independent expert. One such case involved the construction of a groyne in Port Phillip Bay, where the tribunal appointed an experienced coastal geomorphologist to assist it. In another case relating to a discipline hearing involving issues concerned with dental health, VCAT appointed an experienced dentist as an expert to assist it.

Typical Professional Background of VCAT Members

Civil lawyer

Planning lawyer

Anti-discrimination lawyer

Town planner

Architect

Valuer

Medical practitioner

Engineer

Environmental scientist

Community worker

Historian



As we focus the spotlight on ‘expert’, we highlight the contributions of the many VCAT members who devote a wide scope of skills and experience as they sit in numerous jurisdictions across the Lists. This ‘cross-membership’ enables VCAT to run most effectively.

According to Deputy President Michael Macnamara, a former barrister and solicitor of the Supreme Court of Victoria, VCAT’s members offer the benefit of various professional expertise other than legal qualifications. “The Planning and Environment List benefits most by the extensive use of these non-legal expert members, where members include qualified planners, architects, heritage consultants, engineers and environmental scientists.

“Legally-qualified members must determine questions of law or, if the presiding member is not a legal practitioner, these questions can be determined by that member if all parties agree. Expert Tribunal members may use their expertise to understand and assess expert evidence from their field of expertise.”

spotlight on accessible.

VCAT strives to make it easy for the ordinary person to access justice.

We accomplish this task by assisting parties to make or defend applications, without the need to engage lawyers. We promote accessibility by adopting less formal procedures than those used in courts.

In the case of civil claims involving less than \$10,000, lawyers cannot appear without the leave of the tribunal (which is rarely granted).

This procedure is a proportionate measure, which allows the ordinary person to feel the dispute is being heard on a level playing field.

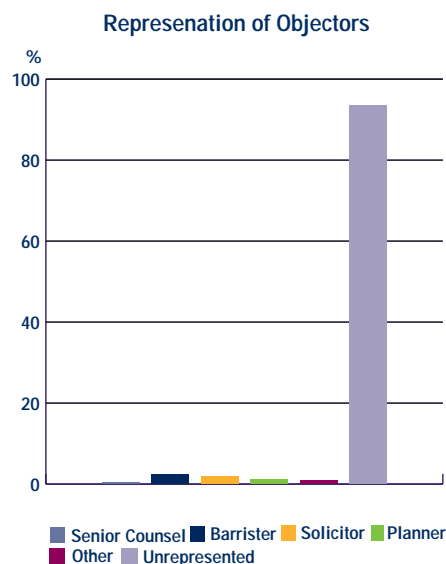
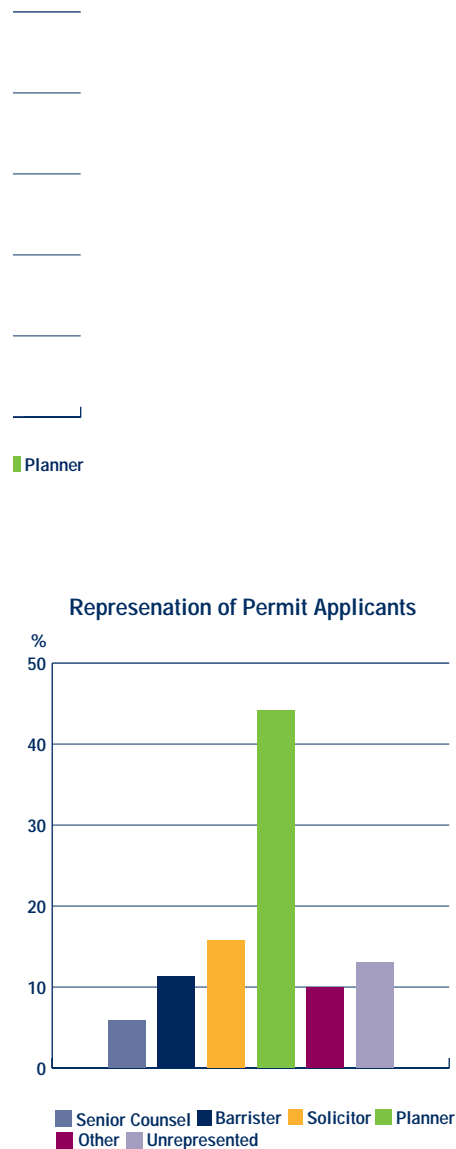
Even in Lists where lawyers are free to appear, it is commonplace for parties to appear unrepresented, or represented by a non-lawyer professional. A survey of cases heard in the Planning and Environment List provides some hard data to illustrate this. The survey covered all cases determined by the List in the month of June 2004. It measured the mode of representation for responsible authorities, permit applicants and objectors, respectively.

The results of the survey, illustrated in the graphs, show that most parties—even permit applicants—appear without lawyers.

By contrast, in the New South Wales Land and Environment Court, lawyers represented councils and permit applicants in more than 90% of cases.

Hearings in VCAT's Planning and Environment List are usually held in a conference room, not a courtroom, and parties can make a simple submission without having to be sworn in or enter a witness box. Town planners determine most cases at VCAT, not lawyers. The hearing room architecture and the informal procedures enable laypersons to freely participate in town planning appeals. In addition, VCAT provides financial support to the AustLII database so that its decisions are freely available to the community.

Planning and Environment List



Turning the spotlight on 'accessible' we see the flexible, responsive and sensitive ways that VCAT helps people have their cases heard. Deputy President John Billings, who has practised law as a barrister and solicitor and lectured in law, says that since its establishment, VCAT has developed Rules, Practice Notes and general procedures to promote easy access to the Tribunal. "We have simplified the way people can apply to VCAT. Registry staff assist them when appropriate. More generally, members and senior registry staff participate in public education forums. We post helpful information on VCAT's web site where visitors can download application forms.

"The Residential Tenancies List developed VCAT Online permitting applications to be lodged electronically via the Internet. At present the Guardianship List is building on this foundation, but already a range of features serves the special needs of the List's users.

"The Guardianship List in particular is accessible at all hours of day and night in case of emergencies. We routinely schedule hearings at hospitals, nursing homes and community health centres throughout Victoria, as close as possible to the place where the person with a disability resides. When conducting a hearing, members commonly sit around a table with the represented person, his or her family and others in order to relax the sense of formality and encourage everyone to feel comfortable about having their say."

an essay on vcat independence.

When Mr Justice J D Phillips retired from the Supreme Court of Victoria in March 2005, the focus of his final address was the independence of the judiciary. He said that judicial independence was the cornerstone of our constitutional system, as courts must from time to time tell the political arms of government what they can and cannot do according to law.

Although the judge was principally concerned with the Supreme Court, we think this issue applies equally to VCAT. Not only does the tribunal determine a large number of civil and administrative disputes, but also very commonly some arm of government is a party to these disputes. In fact, many controversial disputes involving government, in particular planning and freedom of information matters, arise in VCAT and not a court. This is the reason why, in last year's annual report, we stressed that the tribunal plays a critical role in standing between the strong and the weak, the government and the governed, the rich and the poor.

The independence of our judicial institutions, including VCAT, is for the benefit of the community, not the members of those institutions. As Sir Gerard Brennan put it: "Judicial independence does not exist to serve the judiciary; nor to serve the interests of the other two branches of government. It exists to serve and protect not the governors but the governed."

A number of features of the VCAT Act are designed to promote both institutional and individual independence. VCAT is headed by judges. Members are properly remunerated. Full-time members are precluded from taking other employment. Members have immunity from being sued for things done in exercising power. In exercising power, members of VCAT are obliged to act fairly and in accordance with the rules of natural justice.

In his retirement speech Mr Justice Phillips commented that some individuals in authority see the Supreme Court as no different from a tribunal, such as VCAT. He said that the basic distinction is easy enough: "A court exercises judicial power and must be, and be seen to be, impartial and so must be independent of all else." Of course, the Parliament has vested substantial judicial power in VCAT, including the power to make declarations and decide an array of civil disputes.

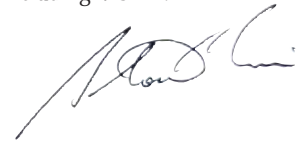
We acknowledge the importance of the Supreme Court as the principal court in the State. Also we are aware that the role of VCAT, in applying expertise to the resolution of disputes in a timely, inexpensive and less formal way in accordance with its statutory requirements, is somewhat different.

However, given the judicial power exercised by VCAT, along with the range, nature and importance of the matters it determines, the independence of VCAT is no less important than that of the courts.

When the Parliament established VCAT it deliberately decided that members (other than judges) have a term of office of five years.

This approach was seen as the solution to balancing a number of interests. Unlike previous provisions, there was no option to appoint a member for a shorter term. The removal of this option has promoted greater independence of VCAT members. The current system is akin to an engagement on a five-year contract. Further, a member who seeks re-appointment has a legitimate expectation that the process leading to a recommendation for re-appointment will not be attended by arbitrary considerations, political bias or personal whim. In our opinion, this expectation is being met. The Attorney-General has given strong support to an independent process, which has taken politics out of the appointment process.

The health of our institutions depends as much on convention and practice as it does on rules. The establishment of VCAT has immeasurably strengthened tribunals in Victoria. It has created a single tribunal, headed by judges, which is independent in theory and practice. It has replaced a miscellany of tribunals and boards, some of which were amenable to executive influence. It is important to recognise what we have achieved. It is important to understand how we are going about enhancing these achievements. It is important to avoid undermining the independence of judicial institutions, including VCAT.



Stuart Morris
President

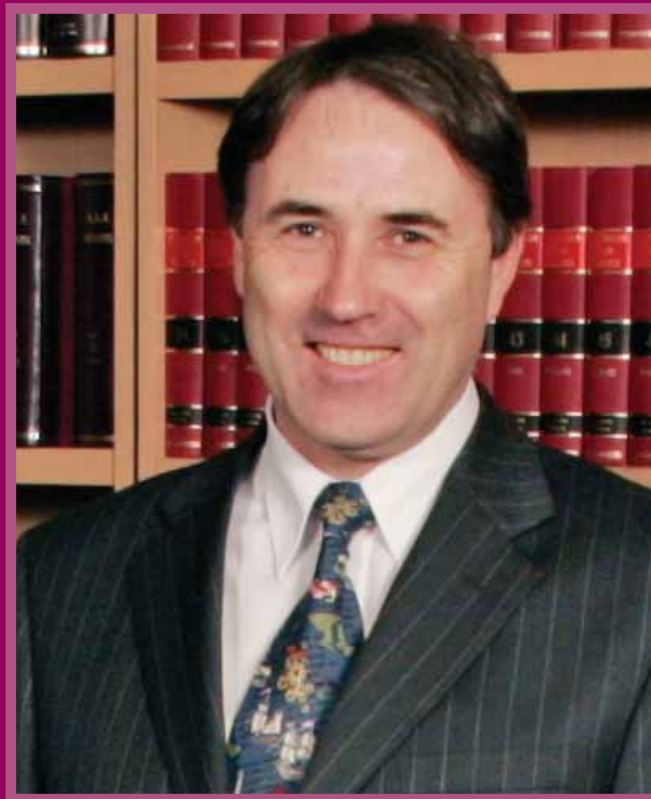


John Bowman
Vice-President



Sandra Davis
Vice-President

reports.





President of VCAT Justice Stuart Morris.

The tribunal has completed its seventh year and has become 'part of the furniture' in Victoria. The success of VCAT is now being replicated elsewhere, with a new State Administrative Tribunal in Western Australia and a consolidated tribunal service in the United Kingdom. In addition, the New Zealand Law Reform Commission has made recommendations pointing to the VCAT model as the preferred direction in New Zealand.

Enhanced Independence

The VCAT model has very significantly enhanced the independence of the tribunal and its members. This has strengthened the democratic and fair governance of Victoria. Also there have been significant financial benefits from the consolidation of a large number of boards and tribunals into one organisation. We estimate that real inputs required to dispose of cases have significantly declined since VCAT commenced in 1998.

For a residential tenancy case, this decline has been from \$112.09 to \$99.73 (in 2004-05 dollar values), which represents an increase in efficiency of 11%. Average real inputs of a non-residential case (again in 2004-05 dollar values) have declined from \$1,081.78 to \$692.26 an efficiency improvement of 36%. In addition other reforms, such as VCAT Online in the Residential Tenancies List, have substantially reduced costs to parties.

Overview of Case Load

We have experienced an outstanding year in the efficient disposal of case load. A total of 88,417 applications were initiated during the year in review. There was a 26% increase in the number of applications lodged in the Civil Claims List and a 3% increase in the number of applications in the Residential Tenancies List. By contrast, after record growth in the preceding financial year, there was a decline in the number of cases in both the Planning and Environment List and the Guardianship List. The downward trend in the number of transport accident cases continued. The tribunal has coped well with these changes in workload.

Two years ago the major problems facing the tribunal were delays in the hearing of planning matters and delays in the hearing of civil claims. Both of these challenges have been met and continue to be met.

In August 2003 I announced Operation Jaguar, a comprehensive plan to streamline the Planning and Environment List so as to promote more timely decisions. Over the last two years we have seen an increase in the number of these cases by 7.5%. Yet, with the same resources, we have been able to reduce the median time between the lodgement of an application and the decision from 22 weeks to 16 weeks, which represents a reduction of 27%.

During the previous financial year problems in coping with the workload in the Civil Claims List were addressed and the timeliness of cases in the List dramatically improved. In June 2003 the typical waiting time between initiating an application and its finalisation was 21 weeks; by June 2004 it was eight weeks; in June 2005 it was seven weeks. This result is outstanding in the light of the significant escalation of civil claims.

I congratulate VCAT members and staff on their enthusiasm and cooperation in achieving these improvements and on the continuing satisfactory performance of other Lists.

Budgetary Matters

VCAT has operated within its discretionary budget. This feat has required discipline. The average cost of resolving disputes at VCAT is low, especially having regard to the role the staff of the tribunal play in assisting those who are parties to proceedings. But it is important that the tribunal is adequately funded and that growth in workload, and the addition of new jurisdictions, are properly taken into account.

Incorporation of Legal Profession Tribunal

Legislation has been passed incorporating the Legal Profession Tribunal into VCAT and is expected to come into operation in October 2005. In order to meet this challenge a Legal Practice List will be established. I have appointed Judge John Bowman to be in charge of this List. In addition the tribunal has effected physical works to accommodate members and staff who will be transferred to VCAT. I thank the Chairman of the Legal Profession Tribunal Judge Dee and his staff for their cooperation with regard to the changed arrangements.

Member Remuneration

In April 2004 there were substantial differences between the Executive Branch of Government and the Judicial Branch in relation to the determination of the Judicial Remuneration Tribunal. Fortunately, these issues were addressed by the *Judicial Salaries Act 2004* and by a public statement given by the Attorney-General that the government is committed to adjusting the salaries of VCAT members at the same rate as other judicial officers. The Attorney has indicated that this will be achieved by periodically fixing members' salaries and allowances pursuant to section 17 of the VCAT Act at the time as the annual adjustments of the salaries of judges, masters and magistrates. During the year under review these new arrangements worked satisfactorily.

Accommodation and Security

Hearings in the tribunal's Residential Tenancies, Guardianship and Civil Claims Lists are decentralised and often heard in suburban or country locations. Cases in the Planning and Environment List that arise in rural Victoria are also usually heard in a country venue. However, a substantial portion of the tribunal's workload must be heard in a central Melbourne location.

The present city venue at 55 King Street, Melbourne is subject to a lease that expires in 2008. The existing building does not provide a desirable long-term option as the tribunal's city headquarters.

Tribunals have been part of the Victorian judicial landscape for more than 40 years. Tribunals, epitomised by VCAT, are here to stay. Thus it is highly desirable that the tribunal have a central city venue that is owned and controlled by the State Government. It is also

desirable that this venue be located within the courts precinct in Melbourne, since this will promote significant co-location advantages and synergies.

VCAT has been closely involved in the preparation of the Master Plan for the Melbourne Courts Precinct, which recommends a site in the legal precinct. It is hoped that decisions will be made in the coming few months to bring about an orderly transition between the existing venue and a new venue.

Judicial College of Victoria

Members of the tribunal have participated in a number of programs organised by the Judicial College of Victoria. The College is already showing its value in the professional development of judicial officers and VCAT members.

Non-Party Access to Files

Issues have developed over the period concerning non-party access to tribunal files. There is no question that tribunal hearings and determinations are part of the public face of justice and should be open to scrutiny.

Different questions arise in relation to non-party access to tribunal files, particularly as many documents placed on files are prepared by lay persons. The tribunal has adopted a privacy policy in relation to these matters, which is reproduced in this Annual Report (refer to page 74). However there is a case for legislative reform so as to protect legitimate rights and clarify the powers of the tribunal. The Courts Consultative Council has established a working group in relation to this question, as it affects all jurisdictions. VCAT looks to a positive outcome from this process.

papers and formal speeches delivered by the President of VCAT in 2004–05.

The President of VCAT presented the following formal papers in 2004–05:

- *VCAT Practices and Procedures: Recent Developments* to mark the launch of the second edition of *Pizer's Annotated VCAT Act* on 20 July 2004.
- *Selections from my Scrapbook* at Victorian Planning and Environmental Law Conference, Aitkin Hill, on 9 September 2004.
- *Where is Technology taking the Courts and Tribunals?*, Courts Technology Conference, Melbourne on 20 October 2004.
- *Third Party Participation in the Planning Permit Process* at the conference on Environmental Sustainability, the Community and Legal Advocacy conducted by Victoria University, Melbourne on 4 March 2005.
- *Melbourne 2030 and Pricing Policies* at Planning Institute of Australia 2005 National Congress, Melbourne on 19 April 2005.
- *Fair Trading Laws: VCAT and the Courts* at Fair Trading Compliance Conference, Melbourne on 13 May 2005.

In addition, the President made 38 other speeches and presentations, as set out on page 77.

president's report.



Vice-President Judge Bowman.

Revisions to VCAT Act

After seven years it has become clear that there needs to be housekeeping amendments to the VCAT Act to deal with various matters that have come to light. We look forward to working with the Attorney-General on this issue.

Council of Australasian Tribunals

VCAT has continued to support the Council of Australasian Tribunals (COAT), an organisation that represents and supports tribunals across Australia and New Zealand. To this end I have been engaged in professional development work in New South Wales and New Zealand, as well as in Victoria.

Involvement in the Community

The tribunal has identified an important responsibility of educating the public and stakeholders about its jurisdictions and processes.

The tribunal's web site has been further developed; over the year in review it received more than 400,000 visits, which is more than any other jurisdiction.

Once again, we have conducted open days during Planning Week and Law Week. We have also cooperated with the Department of Sustainability and Environment in conducting its planning, education and training program (PLANET). This program is provided to councils and members of the planning community.

In addition, I have taken an active role, as President, in explaining the role of the tribunal to the community. Over the reporting year I delivered a number of papers and made numerous presentations to councils, community groups and professional groups. And I have visited regional areas in an endeavour to better understand the needs of country communities.

I believe it is important that the leaders of Victorian institutions, such as VCAT, publicly speak out to explain the work of their bodies and to defend interests.

A particular focus of the financial year has been my attempt to develop strong bonds between the tribunal and local government, such that there is mutual respect between the roles played by each of us.

Changes in Membership

During 2004–05 the five-year terms of eight full-time members expired. All of these members were re-appointed. As illustrated by this example, a strong continuity of membership has assisted the tribunal in carrying out its work, while enhancing the independence of the tribunal.

Deputy President Sandra Davis was appointed a judge of the County Court in October 2004. This appointment was strongly welcomed by VCAT members and reflected the high esteem held toward Deputy President Davis.

Additionally, VCAT was fortunate that Judge Davis was appointed a Vice-President of the tribunal in April 2005, and she plays a major

role in the leadership of the tribunal.

Judge David Jones filled the position of a short-term Vice-President during part of the year under review. Since Judge Jones received another appointment, he was unable to continue in this role. But we have learned that both the tribunal and the community will benefit from the appointment of retired judges as Vice-Presidents on a sessional basis.

During the period the sessional membership of the tribunal was invigorated, especially in relation to the Planning and Environment List. Ten specialist members were added, with skills in town planning, heritage, environment and engineering.

I wish to place on record the tribunal's appreciation for all members who have retired from service during 2004–05.

Body Corporate Disputes

In 2003–04, Consumer Affairs Victoria published *Future Directions Paper Bodies Corporate*. The paper describes calls for a dispute resolution process empowering body corporate members to resolve most issues without making application to a tribunal or court, which we support. It proposes a dispute resolution process with the final stage being an expert court or tribunal that could resolve more complex technical and legal issues. VCAT would be well placed to take on the role of tribunal and provide expert services in an accessible, affordable, just and efficient manner. Government is considering the issue.

Regulating Registered Health Professionals

The Victorian Department of Human Services is reviewing the regulation of registered health professions in Victoria. One option involves VCAT conducting hearings into unprofessional conduct of a serious nature. We have advised that while it is not appropriate for VCAT to comment on the relative merits of the options, VCAT is well able to deal with the proposed role given our broad experience in administra-



Vice-President Judge Davis.

tive review and dispute resolution, including dealing with allegations of unprofessional conduct of a serious nature across a variety of professions via our Occupational and Business Regulation List. Government is considering the issue.

VCAT Strategic Planning

While VCAT is an independent body, it is also part of Victoria's justice system. As such, we seek to work cooperatively with other components of the system for the benefit of Victorians.

The Attorney-General developed the Justice Statement project to provide a framework for long-term strategic change in his portfolio. The project will provide a work program for the next five years and a general outlook for the next 10 years.

One part of this program is the planned establishment of a neighbourhood justice centre in inner Melbourne. It will incorporate a one-stop multi-jurisdiction court offering a range of on-site services to benefit victims, offenders, civil litigants and the local community. We will work with the courts and the Government to support the Justice Statement. Refer to page 19 of this Annual Report for more details.

Feedback

As President, I receive feedback concerning the work of the tribunal. Naturally any adjudication process will sometimes result in dissatisfaction. My staff and I take seriously and carefully consider all complaints, sometimes with the assistance of tribunal leaders. Recently I received a letter from a party expressing personal appreciation for a member's professional conduct at a hearing, as follows:

"He spoke pleasantly to all parties ... and clearly explained pertinent information with regard to the legalities and the issues. We are more than satisfied ..."

This member sets an appropriate standard to which all members may aspire.

Acknowledgements

The success of the tribunal over the year under review was a team effort. All presidential members showed great leadership. Senior members and members carried out their tasks capably and enthusiastically. The staff of VCAT provided loyal and capable support. I acknowledge the contribution and support of the full-time Vice-Presidents of the tribunal Judge John Bowman, Judge Sandra Davis and Judge Barry Dove, who have shared the responsibility of managing the administrative affairs of VCAT.

I also wish to thank Chief Executive Officer John Ardlie, Principal Registrar Ian Proctor, and the head of Central Listings George Adgemis and their respective staff. Finally I thank my personal staff, associates Chris Wiseman, Teresa Bisucci and Marion Isobel, and secretary Robyn Weeden, for their valuable support during the period.

On behalf of everyone at VCAT, I anticipate another successful financial year as we continue to provide a service that focuses on timely, low-cost, expert, accessible and independent adjudication.

Stuart Morris
President

chief executive officer's message.

The year under review confirmed the contribution of VCAT administrative staff in the resolution of disputes in an accessible, cost effective, fair and efficient way across Victoria. In this way, staff members contribute to the Government's goal to create a fairer society that supports the disadvantaged and respects diversity within our community.

Our Staff

Staff Performance Assessment

We assess VCAT staff performance according to the Victorian Government's Performance Management and Progression System, which ended its second year on 30 June 2005. The system enables management and staff to plan careers, work roles, levels of performance and remuneration. The great majority of staff were assessed as performing well.

Employee Survey Results

Each year the Department of Justice (DOJ) conducts an employee attitudes survey. The 2004 survey results for VCAT were released in February 2005. The results identified strengths, including strong emphasis on client service, teamwork being encouraged and sexual harassment and discrimination not being tolerated. However, weaknesses identified included occupational health and safety, staff selection processes and career development. In May 2005 we conducted a successful VCAT Staff Conference. Along with other valuable benefits, staff spoke about these issues concerning them. A staff-nominated focus group will work with management to address these issues.

Court Registrars' Qualifications

In March 2005 the DOJ introduced a qualification for court registrars in Victoria. The courts and VCAT worked with Victoria University, the Clerk of Courts Group and the DOJ to develop a nationally-accredited Certificate IV Traineeship in Government (Court Services). The course will develop

skills and competencies essential to fulfilling the functions of a court or tribunal registrar. Developed by judges and court and tribunal officers with Victoria University, the course is managed by a Board of Studies comprising the chief executive officers of the courts and VCAT, Mr Darren Stebbings, President of the Clerk of Courts Group, Ms Sue Marshall of Victoria University, Mr Mark McCutchan, State Courts Training Officer and Mr Roy Kriegler, Manager of Strategic Court Development.

Financial Performance

In 2004–05, our operating expenditure of \$24.63 million increased by 3.3% compared with \$23.85 million in 2003–04, as shown in the table below.

VCAT Operational Expenditure

	03-04	04-05	%
	\$M	\$M	Rise
Salaries to members	8.61	8.86	3
Salaries to staff	6.22	6.35	2
Salary related on-costs	2.42	2.54	5
Operating	6.60	6.88	4
Total	23.85	24.63	3

We achieved these pleasing results in the context of salary rate increases beyond these percentage figures.

When adjusted for price rises beyond our control, our expenditure per application dropped by 4% in 2004–05 dollar values. See page 68 of this Annual Report for more information.

Technology at VCAT

At VCAT we rely heavily on information technology to deliver services to Victoria through the Internet and our effective case management system.

We continually look for ways to improve these systems. In 2004–05 we implemented the following key initiatives:

- the Alternative Procedure for Possession via VCAT Online;



Chief Executive Officer John Ardlie with Karen McNamara.

- significant improvements to the ability of our TM system to support the Guardianship List;
- upgrades to the Caseworks case management system; and
- substantial hardware, communications and infrastructure upgrades, many at the initiative of the DOJ.

Refer to page 51 of this Annual Report for more information.

VCAT in 2005–06

In part this Annual Report looks to the future. Our plans include the following initiatives:

Integrated Courts Management System

The Victorian Government has funded the development of the Integrated Courts Management System (ICMS) to establish a single, integrated technology platform for the courts and VCAT.

We welcome this major initiative and look forward to participating in its development. The plan envisages the new system first being implemented in the courts, with VCAT to follow in 2008–09.

Before then our work with ICMS will include the following projects:

- We have started creating VCAT Online—Guardianship List (VOGL) using the Internet to improve the administrative process in parts of the Guardianship List. We plan to implement VOGL in September 2005.
- In response to user requests we plan to introduce VCAT Connect to provide Internet access to case information in all Lists but the Residential Tenancies and Guardianship Lists. Parties will be able to visit the VCAT web site to access useful information about their cases using a simple password. This new service may reduce telephone calls to VCAT from parties asking the question ‘When is my hearing please?’ and allow us to redirect resources to meet increasing demand.

Proposed incorporation of the Legal Profession Tribunal as a List at VCAT

Provision for the accommodation of the judicial members and staff of the Legal Profession Tribunal has been made at VCAT. Administrative procedures will be put in place to support the proposed move to the new arrangements when the legislation comes into operation, incorporating the tribunal as a List at VCAT.

Regional Services Review

The practicalities of providing services to regional areas can mean that matters initiated in regional Victoria take longer to be finalised than matters initiated in metropolitan and suburban Melbourne. We will focus on this issue to offer the same level of service across Victoria.

Neighbourhood Justice

The Attorney-General’s Justice Statement provides a work program for the next five years and a general outlook for the next 10 years. One part of this program is the planned establishment of a neighbourhood justice centre in

Collingwood. It will incorporate a one-stop multi-jurisdictional court offering a range of on-site services to benefit victims, offenders, civil litigants and the local community. VCAT looks forward to making a contribution in establishing this centre.

Acknowledgements

At VCAT

I wish to thank Justice Stuart Morris for his leadership and counsel during the year. I recognise the significant contributions of the Vice-Presidents, Judges Higgins, Bowman, Davis and Dove, and I thank them. I appreciate the continuing support and cooperation of the deputy presidents and members.

I congratulate the entire registry team, including ‘out posted’ VCAT staff, and the secretaries and judicial support staff, for their commitment to the high level of service provided at VCAT.

In particular, I recognise the outstanding contribution to our operations provided by Principal Registrar Ian Proctor, strongly supported by his colleagues Richard O’Keefe and Jim Nelms who manage divisions of the registry.

I thank George Adgemis and his team in Central Listings for the efficient and effective scheduling of VCAT matters throughout the State. This unit manages the case listing process at more venues than any other jurisdiction. Finally, VCAT relies on the Protective Services Unit—Victoria Police for day-to-day security. We recognise their essential contribution as they provide a safe environment for the Tribunal and its users.

Outside VCAT

At VCAT, we represent one element of the civil dispute resolution structure provided by Government, including the courts and dispute resolution agencies such as Consumer Affairs Victoria, Building Advice and Conciliation Victoria and the Dispute Settlement Centre of Victoria.

On behalf of our members and staff, I am grateful for the assistance of court registrars and their colleagues at courts where VCAT sits. We experience a high degree of cooperation and support from the court CEOs and their colleagues.

We could not function without support from the DOJ, other government departments, authorities and community organisations. The DOJ is critical to our role through Court Services, Infrastructure Development, Justice Policy, Technology Services, Human Resources and others too numerous to mention. I appreciate the assistance provided by the Secretary of the DOJ, Ms Penny Armytage and acknowledge the outstanding support of Executive Director of Court Services, John Griffin and his colleagues at Court Services. The Department of Infrastructure and Regional Development and the Department of State Development also play important roles. State authorities such as the Office of the Public Advocate and State Trustees Ltd provide VCAT and its users with important support. I recognise the community-based organisations that enable VCAT to sit at out-posted locations to assist users in regional areas.

Thank you to my administrative team, including Karen McNamara who so competently manages my office, Lorraine Renouf, Human Resources Manager, Alan Karfut, Finance Manager and Rupali Varma, Deborah Ziebell and Nancy Molloy who assist VCAT members and staff throughout the year.



John Ardlie
Chief Executive Officer

important cases in 2004–05.

The following summary highlights some of the important cases determined by VCAT during the financial year. Please refer to the AustLII web site at www.austlii.edu.au for more information on individual cases and for the full text of each case.

Golden Ridge v. Whitehorse CC (Mitcham Towers) [2004] VCAT 1706 (7 September 2004)

After a four-day hearing and a site inspection, the tribunal granted a permit for the erection of two residential towers of eight and 14 stories above a three-level podium on land adjacent to the Mitcham Railway Station. This decision is important in its consideration of planning policy, whether this policy be expressed in a planning scheme or in the State Government policy *Melbourne 2030*.

The tribunal found that the proposed development was strongly supported by the planning policy set out in the Whitehorse Planning Scheme and the strategic planning policy in *Melbourne 2030*. The tribunal considered that the weight of policy favoured high-density apartments in the Mitcham activity centre in order to meet future housing needs and reduce reliance on cars. The tribunal found that the development would create a net community benefit and granted the permit. (Justice Morris, Senior Member Marsden and Member Read) On 11 August 2005, the Court of Appeal upheld the tribunal's decision, specifically rejecting arguments that the tribunal had misapplied *Melbourne 2030*. (See *Whitehorse City Council v. Golden Ridge Investments Pty Ltd & Ors* [2005] VSCA 198.

Public Advocate v. RCS [2004] VCAT 1880 (27 September 2004)

An application was made for a guardian to be appointed for RCS, who had been severely disabled after a car accident and had no prospect of recovery. This case turned on whether it was in the best interests of RCS to have a guardian who had the power to refuse medical treatment.

The tribunal accepted evidence that, prior to the accident, RCS had indicated that if he was in a position of severe and permanent disablement, he would not want to be kept alive by the appli-

cation of medical science. The tribunal inferred that a reasonable person in RCS's position could conclude that medical treatment should be refused. As such, the tribunal appointed RCS's wife and brother as joint limited guardians with the power to make decisions regarding medical treatment. (Justice Morris)

Re Korp [2005] VCAT 779 (28 April 2005)

A social worker with the Alfred Hospital applied to VCAT for the appointment of the Public Advocate as a guardian for Mrs Maria Korp, who was in a vegetative state after being found in the boot of a car with a serious brain injury. Mr Korp, who had been criminally charged in relation to his wife's injury, did not support the guardian having the power to refuse medical treatment, since he contended his wife was a devout Catholic.

The tribunal held that the fact that Mrs Korp was a Catholic did not mean that a decision to refuse medical treatment would not be possible or would be unlawful. The tribunal was satisfied that Mrs Korp required a guardian and appointed the Public Advocate as a guardian with the power to make decisions concerning medical treatment. (Justice Morris)

Islamic Council of Victoria v. Catch the Fire Ministries Inc [2004] VCAT 2510 (22 December 2004)

The applicant complained under the *Racial and Religious Tolerance Act 2001* that the respondent had made statements that incited scorn, fear and hatred of Muslim people. The respondent, through seminars and publications, had characterised Islam as an inherently violent religion and stated that 'true Muslims' were terrorists who loot, kill and destroy people.

The tribunal found that the respondent had engaged in racial vilification and incitement of hatred of Muslim people. The tribunal found that the statements were not made in the context of a serious discussion of Islam but were presented in a way that was essentially hostile, demeaning and derogatory of all Muslim people. The tribunal ordered the respondents to publish an apology and provide an undertaking that they would not engage in further vilification or incitement. (Judge Higgins)

As at 30 June 2005, this case was on appeal to the Victorian Court of Appeal.

Fletcher v. Salvation Army Australia (Anti-Discrimination) [2005] VCAT 1523 (1 August 2005)

Robin Fletcher, a prisoner who claimed to be a witch, made a complaint under the *Racial and Religious Tolerance Act 2001* that a Christian religious course being offered in prison made inflammatory remarks and incited hatred of Wiccans, occultists and pagans. The tribunal summarily dismissed his claim, calling it 'preposterous'. The tribunal noted that there was some community concern about the Racial and Religious Tolerance Act potentially impairing free speech. The decision emphasised that the Act is reserved for extreme situations where a person incites hatred of another person on racial or religious grounds. The tribunal commented that this did not mean that people could not evangelise and proselytise, just that they must do so without inciting hatred of those who follow different religions. The tribunal further suggested reforms to the Act designed to curb unmeritorious claims. (Justice Morris)

Doncaster Road Property Partnership v. Manningham City Council [2004] VCAT 2445; (2005) 19 VPR 71

This application involved a proposal to establish a Mercedes Benz car sales showroom and service centre at Doncaster. The importance of the tribunal's decision lies in its examination of the role and implementation of policy and structure plans.

The tribunal refused a permit for the showroom on the grounds that it would be an under utilisation of the land and it would compromise the strategic objectives in both the planning scheme and *Melbourne 2030*. The tribunal found that the development would compromise the urban design vision for Doncaster and affect the potential to achieve more appropriate development for the area in the future. (Deputy President Gibson and Member Naylor)

vcat forward plan.

VCAT's future directions are shaped by:

- the jurisdictions the Victorian Parliament confers on us;
- the strategic plans developed by the Government concerning dispute resolution in Victoria;
- the number of matters initiated at VCAT by individuals and companies (demand);
- the financial resources provided to us by Government and other funding sources; and
- our ability to efficiently use those resources to meet demand to provide a timely, low cost, expert, accessible, independent and fair dispute resolution service.

In June 2005, we published the VCAT Forward Plan 2005–06 to 2007–08, which describes how we see our future. The following information provides a summary of the plan.

Jurisdiction

VCAT was in part created to provide an efficient venue when Parliament wished to give appeal rights to citizens that could be exercised in a specialist, independent forum.

Over the years Parliament has steadily given us more jurisdictions and as discussed elsewhere in this Annual Report, in 2005–06 we will see further expansion.

We plan on the basis that our jurisdiction will slowly increase over the years.

Government Strategic Plans

One of the Government's goals is to create a fairer society that reduces disadvantage and respects diversity as stated in *Growing Victoria Together: A Vision for Victoria to 2010 and Beyond*.

Over the last few years innovative approaches to dispute resolution have been developed in Victoria. We expect this approach will continue under the Attorney-General's Justice Statement. For example, we see ourselves playing a part in innovations such as the

Government's first proposed Neighborhood Justice Centre.

While we do not seek to expand our jurisdiction, we are ready to accept expansion if, due to our performance, the Parliament sees this as desirable.

Demand

As described on page 53, we project approximately 88,000 matters will be initiated in 2005–06, rising to 90,000 matters in 2007–08.

Resources

We intend to meet rising demand in our existing jurisdictions and small new jurisdictions (in terms of numbers of matters initiated) within our existing resources.

If a major new jurisdiction is conferred it will require increased funding.

We will efficiently harness our people, physical assets (such as hearing rooms across Victoria) and information technology. VCAT members and staff have and will continue to significantly improve their productivity through resource sharing, training and improved information technology.

VCAT will continue to work well with our partners in the courts, the Department of Justice, other government departments and public authorities. They are our essential external resources who we acknowledge in this Annual Report.

Information Technology

With regard to information technology, our most critical issue is the Integrated Courts Management System (ICMS), which will establish a single, integrated technology platform and set of applications for the courts and VCAT. Initially, ICMS will be implemented in the courts, with VCAT to follow in 2008–09. The plan allows for short-term ICMS projects, including VCAT Online—Guardianship List and VCAT Connect, which will improve information flow between VCAT and its partners and users.

A Quality Service

In achieving these objectives, we play a vital role in civil dispute resolution in Victoria in terms of upholding the rule of law.

It is critical that people are confident that the rule of law will be enforced if they have to use VCAT.

Our responsibility is to help them resolve their disputes as fairly, as quickly and as efficiently as possible.

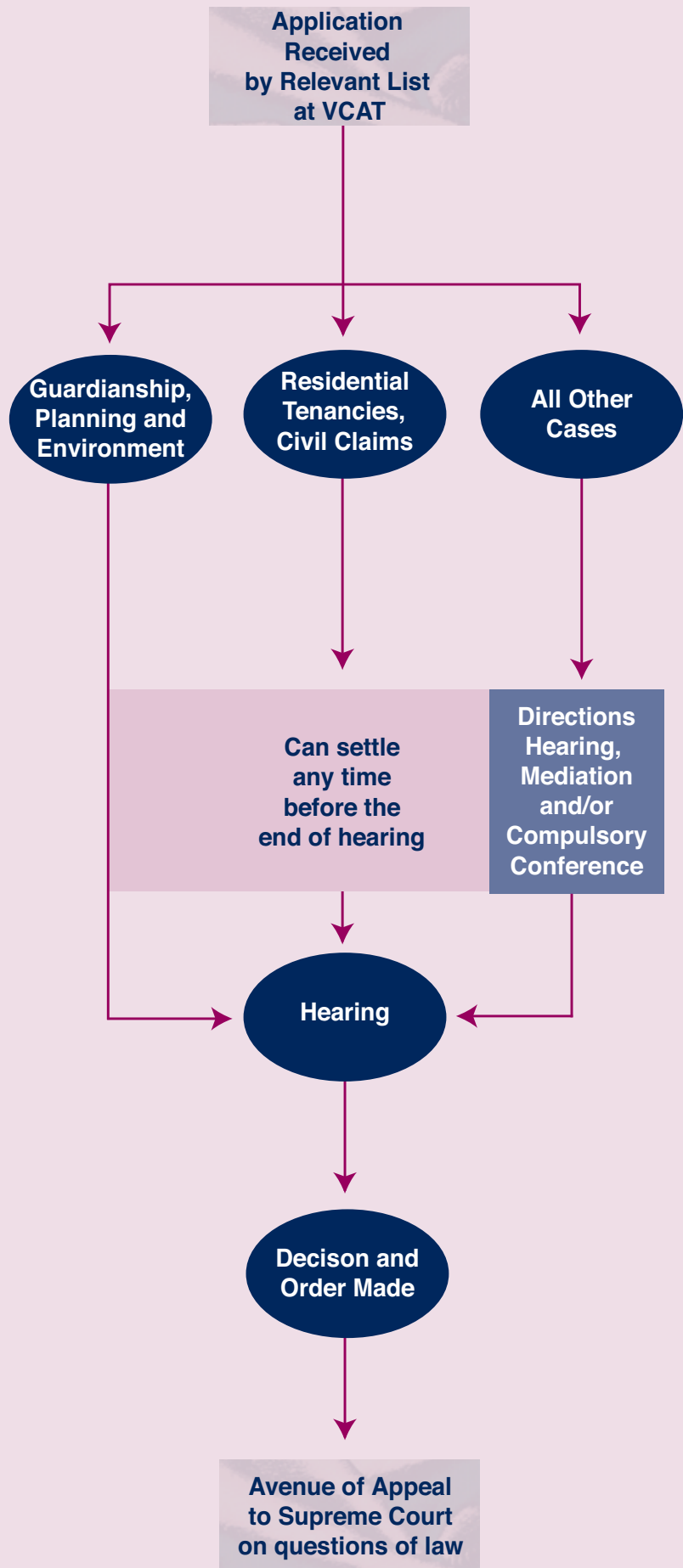
These issues are critical as we go forward.

a simplified approach to resolving cases.

As a general guide, the flow chart shows a simplified approach to the mechanisms established to resolve cases. Variations in resolving cases occur due to the nature of the cases brought to each List. Cases may take from 15 minutes to as much as a day or more to resolve. Some may take several weeks due to the complex nature of the issues involved. The process begins when a person files an application with a List. To help settle a dispute, a mediation, directions hearing or compulsory conference may take place depending on the case. However, many cases proceed directly to a hearing. Hearings give parties the opportunity to call or give evidence, ask questions of witnesses and make submissions. At the end of the hearing, a member of VCAT either gives a decision on-the-spot, or writes a decision after the hearing and delivers the decision as soon as possible.

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

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



list performance.



At VCAT the aim of alternative dispute resolution in general, and mediation in particular, is to give parties the best opportunity to settle their disputes as early as possible.

Large-scale litigation costs are high, even at VCAT, not only in terms of the associated financial costs but most often the parties experience a high personal cost. As quoted in *Mediation News* (available via the VCAT web site at www.vcat.vic.gov.au) when asked "What did it cost you?" a former litigant replied, "In legal costs, nothing0

. I believe I lost about 30% of a normal year's turnover from my business during the time I was embroiled in this dispute. In emotional terms, I was away from my family at a time when I really needed to be there for them." In addition, mediated or negotiated settlements allow the parties to reach a solution that VCAT would not order. For example, in three small mediations conducted in one day 'issues of principle' were important. The parties were happy to spend time and money to have their matters heard, but they would not agree to pay each other. In each case the parties settled on the basis that a donation be made to a specific charity. More than \$8,000 was committed to four charities on that day.

Mediation Services Group

The Mediation Services Group, comprising Principal Mediator Margaret Lothian, Listings Manager George Adgemis and Emma Fray of Listings, oversee day-to-day mediations at VCAT conducted by members of the VCAT Mediation Panel.

VCAT Mediation Panel Expanded

In December 2004 VCAT advertised for mediators for the Anti-Discrimination, Credit, Domestic Building and Retail Tenancies Lists. As a result, VCAT appointed 18 excellent mediators, of which four were new to VCAT. On 30 June 2005, panel members totalled 48 mediators, compared with 53 at the end of 2003-04.

What would have happened if the famous case Donoghue v. Stevenson had been mediated at VCAT? Susanne Liden posing as Ms Donoghue and Peter O'Leary standing in as Mr Stevenson, with Marg Lothian as mediator, demonstrated how they conducted their moot mediation for Law Week on 17 May 2005.



Mediation in the Lists

During 2004-05, the types of matters referred to mediation in the Anti-Discrimination, Credit, Retail Tenancies, General and Real Property Lists were similar to the previous financial year. In the Anti-Discrimination, Retail Tenancies and Real Property Lists, members first referred matters to directions hearings. Most anti-discrimination matters proceeded to mediation. Mediation was particularly appropriate in such cases because it afforded the parties opportunities to reach the heart of their concerns and make positive differences in the way they dealt with each other in future negotiations.

In the Domestic Building List, small claims matters (involving disputed amounts up to \$10,000) went directly to a hearing and were only mediated occasionally. The first stage of standard matters (\$10,000 to \$100,000) was mediation and complex matters (more than \$100,000) went first to a directions hearing. Most complex matters went to either mediation or compulsory conference—sometimes they required both.

The Planning and Environment List, referred approximately 20% of its cases to mediation (21% in 2003-04) and increased its mediation pool by training more members.

Statistical Profile

VCAT Mediation Services collects statistics that show mediation use at VCAT. During 2004-05, 2,209 cases were initially listed for mediation (2,336 in 2003-04) of which 66% proceeded to mediation (64% in 2003-04) and 29% were adjourned or cancelled (30% in 2003-04). The mediation success rate by List ranged from 64% to 76% and the overall success rate rose from 67% in 2003-04 to 68%. This result included cases that were finalised before or at mediation as a proportion of the cases listed for mediation.

Professional Development

Under the chairmanship of the Principal Mediator, the VCAT Mediation Committee supports the professional development of VCAT mediators. Refer to page 60 for the activities of committee members.

mediation plays an essential role in resolving a wide range of disputes.

Community Awareness

What would have happened if the famous case *Donoghue vs. Stevenson* had been mediated at VCAT? In front of an enthusiastic audience during Law Week on 17 May 2005, mediators Susanne Liden (posing as Ms Donoghue) and Peter O’Leary (sitting in as Mr Stevenson) with Principal Mediator Margaret Lothian acting as mediator explored the possibilities in a moot mediation.

During the period, Margaret Lothian regularly gave speeches and held information sessions on the subject of mediation at VCAT to a variety of organisations, including the Law Institute of Victoria and the Australian Institute of Building Summit.

On 10 June 2005 mediator Dr Greg Lyons commented on VCAT Mediation at the Australian Institute of Judicial Administration’s Tribunal Conference. Refer to page 77 for more information on speeches and information sessions conducted by VCAT members. The video *Working It Out Through Mediation*, available online at www.vcat.vic.gov.au, continued to serve as an effective resource for parties preparing to attend their first mediation at VCAT.

Case Study: Mediation Often Promotes Creative Solutions

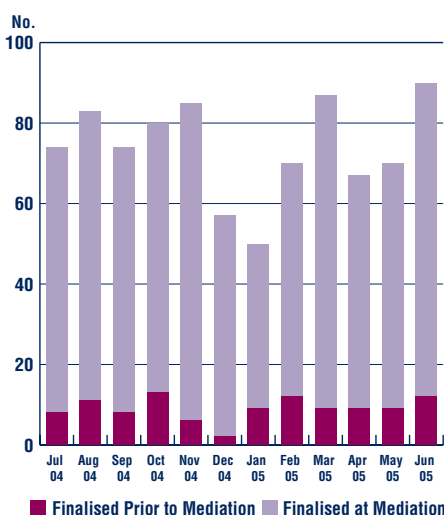
VCAT is renowned for the intensity and passion of disputes within the Planning and Environment List. Strongly held opposing views are the rule and because VCAT decisions frequently include an element of discretion regarding policy, at least one party is likely to emphatically disagree with the outcome.

A dispute concerned the impact of further expansion of a large commercial development in outer Melbourne on the provision of future infrastructure. The development owner, local authority and infrastructure authority held strong and divergent views about what should be immediately permitted and what should occur on the site in the long term.

The dispute before VCAT nominally dealt with the immediate problem, but it was apparent that a sensible solution could be achieved only if the long-term uses and development options for the land were considered as well. Two experienced VCAT mediators co-mediated the matter, and in a number of short sessions over a six-month period, parties were able to formulate and agree on a creative outcome that achieved the objectives of each party.

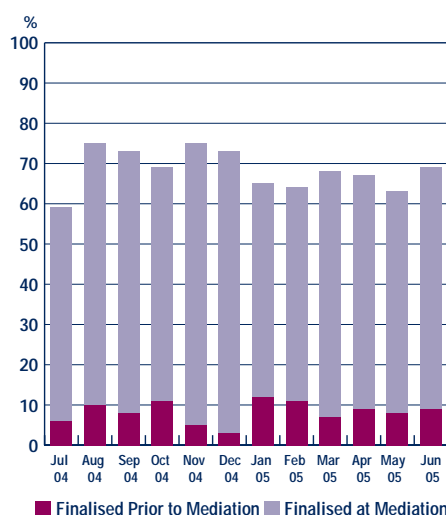
Had the matter gone to hearing, many days of submission and cross-examination would have taken place with each party arguing from a set position that left little room for compromise. It is likely that VCAT would have been required to rule in favour of one position or another without exploring alternative solutions that best met the needs of each party.

Successful Mediations—2004–05



‘Successful Mediations’ shows, on a monthly basis, the number of VCAT cases that were finalised prior to or at mediation.

Mediation Success Rate—2004–05



‘Mediation Success Rate’ shows cases finalised prior to and at mediation as a percentage of those cases finally listed for mediation.

VCAT Mediation Statistics—2002–05

List	Cases Finalised Prior to Mediation			Cases Finalised at Mediation			Mediation Success Rate (%)		
	2004–05	2003–04	2002–03	2004–05	2003–04	2002–03	2004–05	2003–04	2002–03
Anti-Discrimination List	11	19	18	125	126	111	76	70	70
Domestic Building List	40	39	44	282	275	231	64	66	58
Planning and Environment List	51	68	56	334	356	304	70	68	63
Retail Tenancies List	6	8	27	38	19	80	66	61	66
Overall	108	134	145	779	776	726	68	67	64

anti-discrimination list.

List Snapshot

Purpose

A List in the Human Rights Division of VCAT, the purpose of the Anti-Discrimination List is to hear and determine complaints of contravention of the *Equal Opportunity Act 1995* (EO Act) and the *Racial and Religious Tolerance Act 2001* (RRT Act). Complaints under the EO Act claim discrimination on the basis of various attributes, such as sex, race, impairment, or religious belief or activity, in various areas of activity such as employment, education, sport and the supply of goods and services. The claims also relate to sexual harassment and victimisation. Complaints under the RRT Act concern claims of unlawful racial or religious vilification.

Objectives

- Resolve 60% of cases within 14 weeks of application and 80% within 23 weeks.
- Maintain a 70% settlement rate for mediations.

Key Results

- Resolved 61% of cases within 14 weeks of application and 78% within 23 weeks.
- Achieved a 76% mediation success rate.

Future

- Resolve 60% of cases within 14 weeks of application and 80% within 23 weeks.
- Maintain a 70% settlement rate for mediations.

Statistical Profile

- Applications received: 433
- Cases resolved: 451
- Cases pending: 134
- Application fee: nil
- Number of members: 30

Head of List Profile

Judge Sandra Davis, BA (Hons), M Sc (Econ), MA, LLB (Hons), was head of the Human Rights Division and Deputy President in charge of the Anti-Discrimination List and the Occupation and Business Regulation List, which she had managed since February 2004 and September 2000, respectively, prior to her appointment as Judge of the County Court on 26 October 2004. She returned to VCAT as Vice-President and Head of the Human Rights Division in April 2005 and resumed leadership of the Anti-Discrimination List and Occupational and Business Regulation List. From May 1999 to September 2000, Judge Davis was Deputy President of the Guardianship List. In June 1998, she was appointed a senior member of VCAT. In May 1998, she was appointed Deputy President of the former Administrative Appeals Tribunal. Prior to 1998, she practised in administrative, industrial, commercial and human rights law at the Victorian Bar. In addition to hearing cases in the Anti-Discrimination List and Occupational and Business Regulation List, Judge Davis regularly sits in the General List and Guardianship List.

Overview

Members of the Anti-Discrimination List determine complaints regarding breaches of the *Equal Opportunity Act 1995* (EO Act) and exemptions from the provisions of the EO Act. Complainants initially lodge their complaints with the Equal Opportunity Commission (EOC). If the EOC declines a complaint, or determines that the complaint is not conciliable, or if attempts to conciliate are unsuccessful, complainants may require the EOC to refer their complaints to VCAT.

In addition, List members hear applications:

- made to strike out complaints on the basis that they are frivolous, vexatious, misconceived, lacking in substance or an abuse of process; and
- for interim orders to prevent a party to a complaint from acting prejudicially to conciliation or negotiation, or to VCAT's ultimate decision.

Case Profile

In 2004–05, the number of complaints referred to VCAT totalled 315, compared with 400 complaints in 2003–04. The number of exemption applications received during 2004–05 increased by 46%, totalling 118, compared with 81 applications in 2003–04.

A significant proportion of applications was for renewals of exemptions previously granted. The number of cases resolved decreased 8%, totalling 451, compared with 491 in 2003–04. List members also hear complaints of a religious or racial vilification under the *Racial and*

Religious Tolerance Act 2001. In a number of cases, the complainants invoked both Acts. Cases pending decreased 7%, totalling 134 on 30 June 2005, compared with 153 on 30 June 2004.

Application Types

Complaints referred to the List claimed discrimination on the basis of race, sex, age, impairment, industrial activity, parental status or status as a carer in areas such as employment, education and the supply of goods and services.

The percentage of employment-related complaints comprised 69%, compared with 71% in 2003–04. The next highest number of complaint referrals related to the provision of goods and services at 15% (23% in 2003–04) and education at 5% (4% in 2003–04).

In 2004–05, the attribute profile of complaints referred to the List comprised:

- 29% sex discrimination and sexual harassment (26% in 2003–04);
- 25% impairment (24% in 2003–04);
- 11% race (10% in 2003–04);
- 2% victimisation (9% in 2003–04); and
- 30% other (31% in 2003–04).

How We Dealt with Cases

Mediation continued to be a successful means of resolving disputes and was used at an early stage in the process. The success rate achieved in resolving complaints at mediation was 76%, compared with 70% in 2003–04. The mediation success rate remained high due to the considerable expertise of the List's core

Vice-President of VCAT and Head of List Judge Sandra Davis discusses the fast tracking of cases with Sessional Member Dr Maria Dudycz. In an effort to further streamline the case management process, a number of relatively straightforward cases proceeded directly to hearing without the usual interlocutory steps. We listed these matters for hearing within a few weeks of the first directions hearing.



we determine applications for exemption and complaints of discrimination.

mediators. Although mediation was unsuccessful in a small percentage of cases, the process effectively laid the groundwork for settling disputes prior to hearing, significantly reducing the number of cases that required a full hearing.

Timeliness

We resolved 61% of cases within 14 weeks of application and 78% of cases within 23 weeks. This result compares with 58% of cases being resolved within 14 weeks of application and 81% of cases within 23 weeks in 2003-04.

Changes to Procedures

In our effort to further streamline the case management process, the Head of the List identified a number of relatively straightforward cases to proceed directly to hearing without the usual interlocutory steps. We listed these matters for hearing within a few weeks of the first directions hearing.

Community Awareness

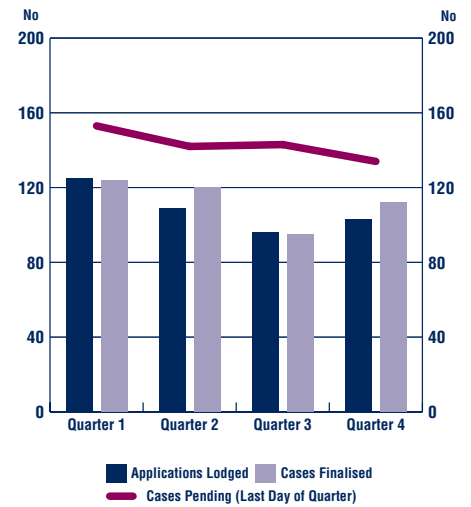
Vice-President Judge Davis gave a presentation to the Workplace Relations Section of the Law Institute of Victoria on VCAT's role and jurisdiction in determining employment-related discrimination complaints under the *Equal*

Opportunity Act 1995. In addition, she summarised the role of mediation at VCAT, the increasing number of discrimination complaints relating to termination of employment, and developments in the law and tribunal practice in relation to inspection of files by non-parties. To maximise the opportunities for the EOC to make submissions to VCAT at hearings in relation to exemption applications, which raise issues of general community interest, we developed a process for notifying the EOC of important exemption applications.

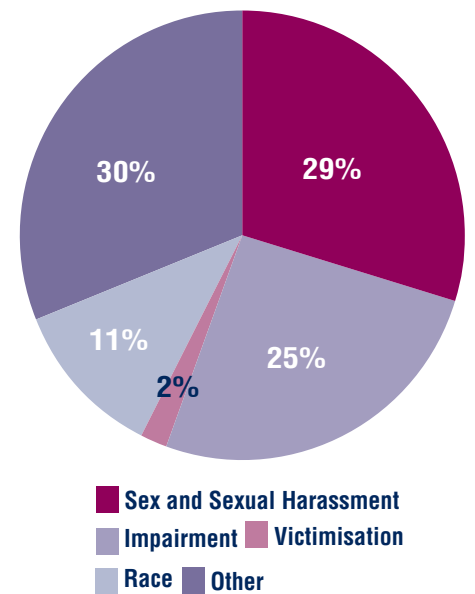
User Group Activities

The List's user group comprised legal practitioners who regularly represented complainants and respondents. The user group met on 28 June 2005 to discuss matters of relevance to List users. Matters discussed included inspection of VCAT files by non-parties, recent VCAT and Supreme Court decisions, and expanding case load in particular areas.

Case Flow 2004-05



Complaints by Type 2004-05



Timeliness: Age of Cases Resolved Compared with 60% and 80% Targets—2004-05



Case Study: Tattooist Refuses Service to Hepatitis C Sufferer

A tattooist declined to tattoo a person carrying Hepatitis C. While it is unlawful to refuse to provide a service for a person with an infectious disease, section 80(1)(a) of the EO Act allows discrimination if it is reasonably necessary to protect the health or safety of a person or the public. Determining what was 'reasonably necessary' in this case from the perspective of a reasonable person in the tattooist's position, Justice Morris considered a number of factors, including the probability of an adverse event occurring, the consequences of the adverse event, the utility of the activity, and the fact that not all people assume the same level of risk when it comes to protecting their own health and safety.

At the hearing, an infectious diseases specialist said that a carrier of Hepatitis C risked local infection from the tattoo and should take preventative antibiotics. In addition, the tattooist needed to take 'universal precautions' (wearing a mask and gloves) to prevent exposure to blood and bodily fluids. In the health-care setting, the risk of Hepatitis C infection from needle-stick injuries constitutes around 2%. In this case, the tattooist said he had two needle-stick injuries and refused to provide the service to protect his own health.

In making his decision, Justice Morris reviewed the various regulations and the tattooing industry guidelines. Although the risk of blood splash or needle-stick injury during the process was low, he concluded, "it was not so low that a reasonable person would safely ignore it." In addition, Justice Morris noted that tattooists learn the art on-the-job, receive no formal education, and the standards of hygiene and infection control are substantially lower than health-services provisions. Furthermore, Justice Morris noted there is no strong public interest in providing a tattoo.

Although some tattooists would tattoo a person carrying Hepatitis C, VCAT should not require a risk-averse tattooist to do so. Accordingly, Justice Morris found the complaint not proven.

civil claims list.

List Snapshot

Purpose

A List in the Civil Division of VCAT, the purpose of the Civil Claims List is to hear and determine disputes in relation to the supply of goods or services, whether for private or business use under the *Fair Trading Act 1999*, *Motor Car Traders Act 1986*, *Credit Act 1984* and *Consumer Credit Act 1995*.

Objectives

- Resolve 60% of cases within 12 weeks of application and 80% within 16 weeks.
- Resolve higher value and complex cases by compulsory conference.

Key Results

- Resolved 81% of cases within 12 weeks of application and 89% within 16 weeks.
- Settled more than 90% of the claims exceeding \$10,000 referred to compulsory conference.

Future

- Resolve 60% of cases within 10 weeks of application and 80% within 14 weeks.
- Continue to resolve higher value and complex cases by compulsory conference.

Statistical Profile

- Applications received: 6,448
- Cases resolved: 6,137
- Cases pending: 1,565
- Application fee under the *Fair Trading Act 1999*: \$31.70 (claims less than \$10,000); \$262.90 (claims \$10,000 to \$100,000); \$526.80 (claims above \$100,000)
- Number of members: 74

Deputy President Profile

Michael Levine, LLB and Churchill fellow, was appointed Deputy President of the Civil Claims List in February 2003. Previously, Mr Levine was appointed Deputy President of the Civil Claims List on 1 July 1998 and Deputy President of the Residential Tenancies List on 1 September 2000. For the last 30 years, he has held positions such as inaugural senior referee of the Small Claims Tribunal, inaugural chairman of the Residential Tenancies Tribunal and inaugural chairman of the Credit Tribunal. He worked as a solicitor in private practice, specialising in company liquidation and bankruptcy from 1968 to 1975. Mr Levine sits on other Lists in VCAT.

Case Profile

During 2004–05, the Civil Claims List received 6,448 applications, compared with 5,131 in 2003–04, representing a 26% increase.

The number of cases resolved increased, totalling 6,137, compared with 5,610 in 2003–04. Due to a surge in applications received late in the financial year, cases pending rose by 25%, totalling 1,565, compared with 1,254 on 30 June 2004.

Cases brought to the List related to disputes between the purchasers and suppliers of goods and services of any value covering the gamut of relationships between buyers and sellers in Victoria. The proportion of business applications rose from 34% in 2003–04 to 40% in 2004–05. The number of respondents who were private individuals rose from 24% in 2003–04 to 29% in 2004–05. In the majority of matters, the parties represented themselves, thereby significantly reducing their legal costs.

Claims less than \$10,000 represented 91% of total applications received (91% in 2003–04), while claims between \$10,000 and \$50,000 constituted 7% (7% in 2003–04) and claims exceeding \$50,000 represented 2% (2% in 2003–04). The total value of amounts claimed by applicants increased by 41%, totalling \$52.2 million, compared with \$36.9 million in 2003–04. Cases initiated in the Magistrates'

Court that automatically transferred to VCAT under the provisions of the *Fair Trading Act* increased, although the imposition of substantial legal costs imposed by Magistrates prior to the transfer posed some concern.

Application Types

The types of applications lodged comprised:

- 16% building (21% in 2003–04);
- 31% debt recovery services (21% in 2003–04);
- 12% services (18% in 2003–04);
- 10% motor vehicles (11% in 2003–04);
- 7% household goods (6% in 2003–04); and
- 24% other (23% in 2003–04).

How We Dealt with Cases

Almost all claims amounting to less than \$10,000 were listed for hearing within two working days and the parties were notified seven weeks in advance of the hearing date. In the case of the respondent to the application, VCAT simultaneously served the application. Claims exceeding \$10,000 were assessed and in some, but not all, cases different processes, including compulsory conferences and directions hearings, were held. Compulsory conferences for claims exceeding \$10,000 proceeded at a vigorous pace and the List succeeded in settling more than 90% of such cases. Compulsory conferences brought

From left, Sessional Members Stella Moraitis and John Galvin with Deputy President Michael Levine discuss the implications of possible transfer of cases under the Fair Trading Act.



together the parties to a dispute at an early stage in the proceedings, thereby avoiding considerable amounts in legal costs.

Timeliness

We resolved 81% of cases within 12 weeks of application and 89% within 16 weeks. This result compares with 58% of cases being resolved within 12 weeks of application and 75% within 16 weeks in 2003–04. In quarter one, 82% of cases were resolved within 12 weeks and, by quarter four, the figure was 83%. The List achieved this outstanding result in the context of a substantial increase in the number of applications.

User Group Activities

The user group of the Civil Claims List met on two occasions and included representatives from Small Business Victoria, Financial and Consumer Rights Council, Consumer and Tenant Resource Centre, Consumer Law Centre of Victoria Ltd, Consumer Affairs Victoria, Victorian Automobile Chamber of Commerce, Victorian Employers' Chamber of Commerce and Industry, Australian Retailers Association Victoria, and Victoria Legal Aid.

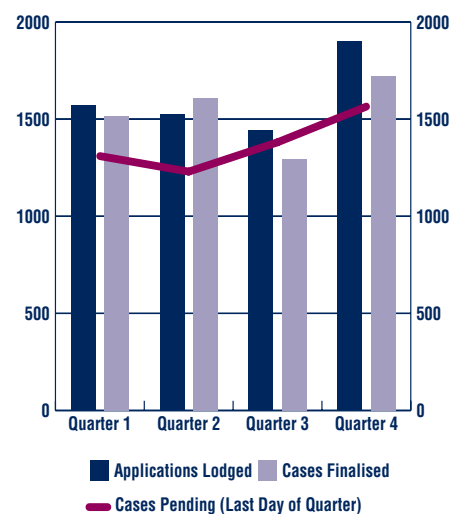
The user group meetings provided an excellent forum for discussing issues of concern to users.

Changes to Legislation

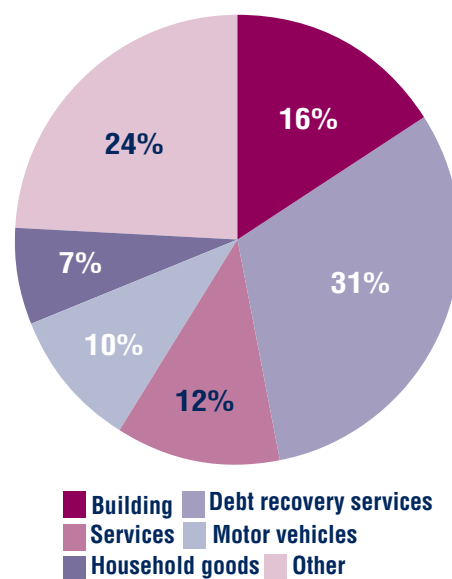
Amendments to the Fair Trading Act designated a number of Acts as Consumer Acts. Those Acts provided for individuals to claim for loss, injury and damages, arising out of a contravention of that particular Act. Some of those Acts are *Business Names Act 1962*, *Estate Agents Act 1980*, *Motor Car Traders Act 1986*, *Residential Tenancies Act 1997*, *Sale of Land Act 1962*, *Second-Hand Dealers and Pawnbrokers Act 1989* and *Travel Agents Act 1986*.

We anticipate that the List will deal with a number of applications arising from the amendments. In addition, matters relating to disputes under the *Retirement Villages Act 1986*, as between owner residents and managers, may be brought either to this List or the Residential Tenancies List.

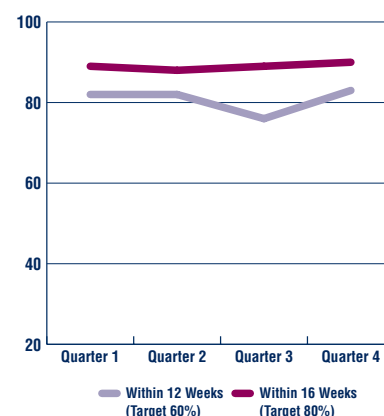
Case Flow 2004–05



Applications by Type 2004–05



Timeliness: Age of Cases Resolved Compared with 60% and 80% Targets—2004–05



Case Study: Contract Fails to Disclose Minimum Term for Unroadworthy Hire Car

The applicant had responded to a newspaper advertisement showing a telephone number and stating that long-term car rentals were available from \$65 per week. Telephone negotiations ensued and the applicant agreed to hire a car and was 'approved' to do so by the respondent. The applicant stated he would need the car for about six months and there was no mention of a minimum term being imposed.

The applicant attended the respondent's premises and signed an authority to arrange deductions from his account of almost \$100 per week for about six months. He was not shown that the payments were to be made for a period of three years. The respondent stapled to that authority a number of pages, which the applicant had not been given an opportunity to read. On examination, the pages contained onerous terms from the consumer's point of view in small font. An unread schedule in the pages indicated that the agreed hire car was a 1985 vehicle that had been driven more than half a million kilometres. An undisclosed initial placement fee of \$600, plus weekly payments for three years (156 weeks) constituted a purported agreement for more than \$15,000. As well as becoming aware of the onerous contractual terms, the applicant found the car had mechanical problems and was unroadworthy.

VCAT found in favour of the applicant on the basis that, pursuant to the Fair Trading Act, there was unconscionable, misleading and deceptive conduct, and it was an implied term that the vehicle would be fit for the purpose, which it was not. Therefore he was entitled to return the car and obtain a full refund.

List Snapshot

Purpose

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

Objectives

- Resolve 60% of cases within six weeks of application and 80% within eight weeks.
- Maintain mediation settlement rate at 73% of all cases.
- Monitor effectiveness of streamlined procedures and user guidelines for List users.

Key Results

- Resolved 76% of cases within six weeks of the application being received and 86% within eight weeks.
- Resolved repossession cases, on average, within 14 days of proof that the application had been served on the debtor.
- Settled 82% of cases referred to mediation.

Future

- Resolve 60% of cases within six weeks of application and 80% within eight weeks.
- Maintain settlement rate at 73% of all cases.
- Monitor effectiveness of streamlined procedures and user guidelines for List users.

Statistical Profile

- Applications received: 236
- Cases resolved: 231
- Cases pending: 34
- Application fee: \$31.70–\$1,053.70
- Number of members: 5

Deputy President Profile

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

Case Profile

In 2004–05, the Credit List received 236 applications, compared with 182 in 2003–04, representing an increase of 30%. The List finalised 231 cases, compared with 166 in 2003–04, representing a 39% increase. The number of cases pending on 30 June 2005 totalled 34, compared with 29 on 30 June 2004.

The rate of cases finalised in the List continued to increase. The slightly higher number of cases pending is almost entirely due to a number of cases that have been stayed pending the finalisation of a related Supreme Court case.

The majority of cases coming to the List related to requests for repossession orders, which totalled 172 in 2004–05, compared with 116 in 2003–04. A credit provider must not enter residential premises to recover mortgaged goods without an order from VCAT or a court. Not only does this result represent a substantial increase in the number of repossession applications made to the List, but also the proportion of repossession applications to total applications rose substantially. In 2004–05, that proportion was 74%, compared with 59% in 2003–04. It is uncertain how much of this increase was due to problems associated with financial over-commitment and how much was due to a growing awareness of the role of the List.

Another important element of the List's work involved applications made by credit providers relating to breaches of key requirements of the Consumer Credit (Victoria) Code (the Code), which sought determinations from VCAT as to whether or not civil penalties should be imposed on the credit providers. Applications of this kind are the most complex of the applications received by the List. Typically, they involve large numbers of credit contracts and require applicants to undertake extensive sampling processes and notifications to affected debtors.

Other cases concerned applications by debtors who, because they were suffering hardship, wanted to change their obligations under a credit contract or have enforcement proceedings against them postponed.

In November 2004 the financial limit for hardship applications was raised and linked to a floating figure, reflecting movements in average commitments for purchasing new housing. This change resulted in the limit for hardship applications rising from \$125,000 to more than \$300,000. We anticipate that this limit increase will eventually lead to an increase in hardship applications.

From left, mediator Ian Delacey advises Cate McKenzie of the successful outcome of a mediation. According to Cate, Ian is one of VCAT's most experienced and successful mediators who assists the List on a sessional basis. The increasing number of cases resolved by an agreement between the parties not only enabled the List to handle cases more promptly and efficiently, but also constituted a benefit for debtors and credit providers by giving them a basis by which either their relationship can continue or be finalised.



Application Types

Of the 236 applications received in 2004–05, 172 (73%) comprised repossession applications. This result represents a 48% increase, compared with 116 repossession applications received in 2003–04. The remaining applications involved applications to change contracts due to debtor hardship, applications to set aside contracts because the transactions that led to them were unjust, and civil penalty applications.

How We Dealt with Cases

Since many people who applied to the List were experiencing financial difficulty and hardship, we aimed to resolve these applications as quickly as possible. For the less complex applications, we continued the procedure of referring the application immediately to mediation, as soon as the Registry served the application on the credit provider. If mediation did not resolve the matter, we listed it for a hearing. This procedure continued to be successful and an efficient, fair and timely way of resolving matters.

At all stages in the process, List members encouraged parties to settle cases by agreement between themselves, without the need for parties to provide extensive written material or to go to a hearing. About 53% of cases were resolved in this way, compared with 42% in 2003–04.

We increased our use of mediation, settling 82% of cases referred to mediation (73% in 2003–04). In 2004–05, 108 cases were referred to mediation, compared with 52 in 2003–04. The increasing number of cases resolved by an agreement between the parties not only enabled the List to handle cases more promptly and

efficiently, but also constituted a benefit for debtors and credit providers by giving them a basis by which either their relationship can continue or be finalised.

Timeliness

In 2004–05, we resolved 76% of cases within six weeks of the application being received (79% in 2003–04) and 86% within eight weeks (86% in 2003–04). Repossession applications comprised the majority of cases, which were finalised, on average, within 14 days of the application being served on the debtor.

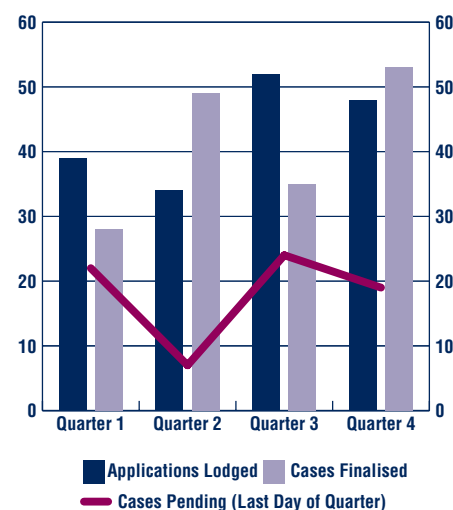
We continued to monitor compliance with VCAT directions so that the List received documents in a timely way. The procedure by which the Registry served an application on the respondent assisted in further reducing the time required to list cases for a mediation or hearing.

User Group Activities

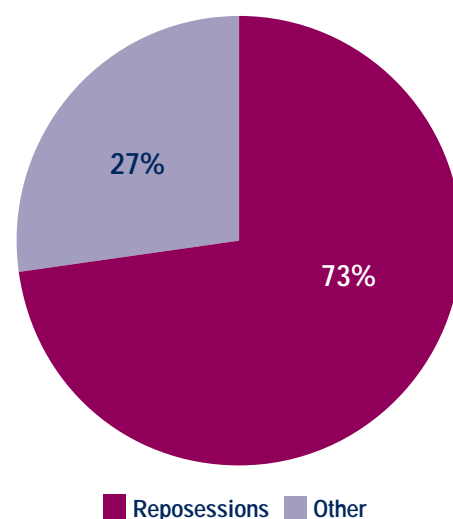
In 2004–05, the Credit List user group comprised 13 people (13 in 2003–04) representing consumers, credit providers, government and the legal profession. The Group met on two occasions to discuss List procedures and potential refinements. We have found the group's feedback most helpful.

On 9 November 2004 Deputy President McKenzie served as a panel member at the Second National Consumer Credit Conference hosted by the Director of Consumer Affairs Victoria.

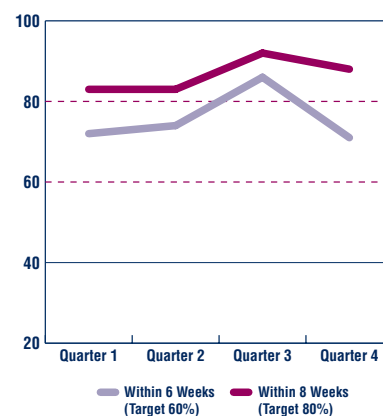
Case Flow 2004–05



Applications by Type 2004–05



Timeliness: Age of Cases Resolved Compared with 60% and 80% Targets—2004–05



Case Study: Credit Provider Fails to Disclose 'Holdback' Provision in Contract

A credit provider provided finance to pay course and seminar fees for people who wished to participate in programs run by the National Investment Institute. The credit contract did not mention that part of the amount of credit was a 'holdback' retained by the credit provider. VCAT found that the credit provider had breached the Code—first, by failing to state that the holdback was payable; and, second, by not including the holdback in the amount of interest stated in the contract. On appeal, the Supreme Court agreed with VCAT on the first point but said that its decision on the second point was incorrect. Both parties have since appealed to the Court of Appeal. As at 30 June 2005, that appeal was pending.

domestic building list.

List Snapshot

Purpose

A List in the Civil Division of VCAT, the purpose of the Domestic Building List is to resolve domestic building disputes among home owners, builders, insurers, architects and others. List members hear and determine:

- domestic building disputes;
- appeals against decisions of insurers under builders warranty insurance policies;
- appeals against decisions of the Housing Guarantee Fund Limited under the *House Contracts Guarantee Act 1987*, including those arising under the *House Contracts Guarantee (HIH) Act 2001*; and
- injunctions sought in relation to domestic building.

Objectives

- Resolve 60% of cases within 20 weeks of application and 80% within 35 weeks.
- Maintain settlement ratio by way of mediations and compulsory conferences.

Key Results

- Resolved 55% of cases within 20 weeks of application and 72% of cases within 35 weeks.
- Resolved approximately 66% of cases through mediation.

Future

- Resolve 60% of cases within 20 weeks of application and 80% within 35 weeks.
- Maintain settlement ratio by way of mediations and compulsory conferences.

Statistical Profile

- Applications received: 825
- Cases resolved: 826
- Cases pending: 521
- Application fee: \$262.90–\$526.80
- Number of members: 18

Deputy President Profile

Catherine Aird, B Ec, LLB, was appointed Deputy President of the Domestic Building List on 4 May 2004. Previously, Mrs Aird was a sessional member of the Domestic Building List and an inaugural member of the former Victorian Domestic Building Tribunal. Prior to her appointment to the Domestic Building Tribunal, she was the corporate solicitor for A V Jennings Homes for 10 years and legal officer with the RAIA Practice Division. In addition, Mrs Aird has extensive experience as a mediator both at VCAT and in private practice.

Case Profile

Applications received decreased by 2% from 839 in 2003–04 to 825 in 2004–05. Cases finalised decreased by 3% from 847 in 2003–04 to 826 in 2004–05. Cases pending on 30 June 2005 decreased slightly, totalling 521, compared with 522 at the end of 2003–04.

Application Types

The types of applications lodged involved:

- 71% disputes between owners and builders (66% in 2003–04); and
- 29% appeals against decisions of insurers (34% in 2003–04).

Most cases involved claims about defective and incomplete works, delays in the progress of the works, and the reasonable cost of rectification and completion works. In many cases there were complex factual, technical and legal questions to be determined, often involving multiple parties and requiring an apportionment of liability.

How We Dealt with Cases

Many cases were expensive and time-consuming for the parties. List members were aware of such issues and continued to adopt a policy of early intervention to resolve cases as quickly as possible.

Methods used by members to resolve cases included:

- mediations conducted by expert mediators;
- compulsory conferences conducted by List members;
- appropriate directions hearings, including directions appointing special referees; and
- holding expert conclaves to assist in achieving resolution with regard to cases involving highly technical matters.

Approximately 64% of cases were resolved through mediation.

Timeliness

In 2004–05, 55% of cases were resolved within 20 weeks of application and 72% of cases within 35 weeks. This result compares with 58% of cases being resolved within 20 weeks of application and 74% of cases within 35 weeks in 2003–04.

Many cases involved claims about defective building work where monitoring over a six to 12-month period was often required to determine the cause of damage and the appropriate method of rectification. A number of cases were stayed pending hearing and determination of appeals by the Supreme Court and Court of Appeal.

From left Deputy President Catherine Aird and Senior Member Roger Young discuss Roger's involvement with the Building Commission Review Task Force. He participated as the VCAT representative on the committee conducting a review into the Guidelines to Standards and Tolerances, established by the Building Commission.



Impact of Proportionate Liability Legislation

The legislative requirement for Courts and Tribunals to apportion liability first, in relation to building actions only, by reason of section 131 of the *Building Act 1993* and secondly, since 1 January 2004, by reason of the provisions of Part IVAA of the *Wrongs Act 1958*, has had a significant impact on the complexity of cases and the time taken to dispose of them. Cases often involved cascading joinder applications as parties tried to ensure that all relevant persons were parties for the purposes of apportionment.

Case Management Improvements

As part of our efforts to achieve timely and cost-efficient resolution of disputes, we established procedures enabling closer monitoring of the case management process. These procedures included directions by consent with the objective of containing legal costs by reducing the number of appearances at VCAT. Legal practitioners can download a Directions by Consent Form, available on the VCAT web site, thereby reducing the frequency of visits to VCAT by the parties and their representatives. However, unrepresented parties were encouraged to attend directions hearings to ensure they understood their obligations.

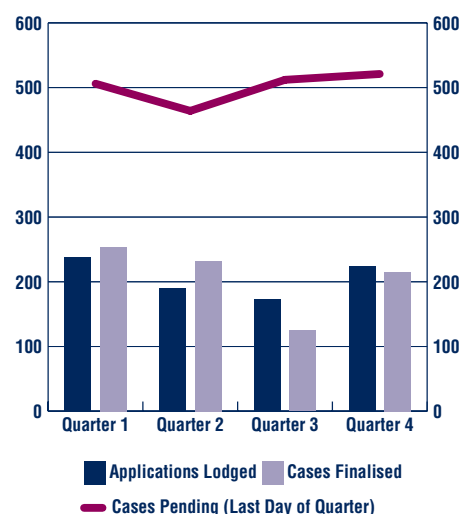
Increased Accessibility

We increased our accessibility in the community through various activities, including presentations made to the Building Disputes Practitioners Society in Melbourne in September 2004 and regional groups in Geelong in October 2004 and Ballarat in March 2005, and to the Master Builders' Association of Victoria Women in Building Lunch/Forum in May 2005. Subjects discussed at the presentations included mediation, how to avoid disputes, compulsory conferences and expert conclaves. Senior Member Young participated as the VCAT representative on the committee conducting a review into the *Guidelines to Standards and Tolerances*, established by the Building Commission.

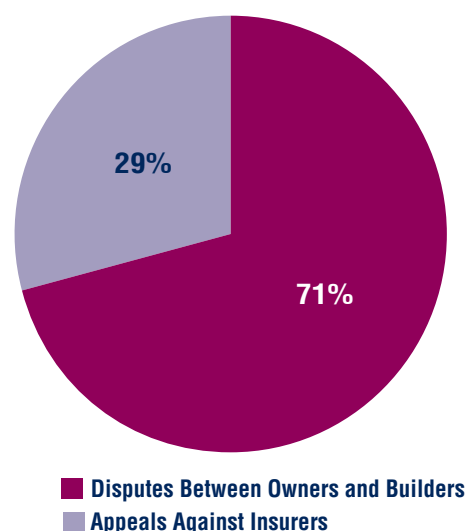
User Group Activities

The List's user group was reconstituted to ensure that the interests of the different stakeholders were fully represented. The group met on three occasions during 2004-05 and included representatives from the Building Disputes Practitioners Society. The Society has a wide representative base that includes lawyers, builders, engineers and other building practitioners. The Deputy President met with the user group to gain industry and practitioner views on aspects of directions and general issues of interest to List users. The group provided valuable feedback to the revised Practice Note to be introduced in 2005-06.

Case Flow 2004-05



Applications by Type 2004-05



Timeliness: Age of Cases Resolved Compared with 60% and 80% Targets—2004-05



Case Study: Discovering Less Formal Means of Resolving Building Disputes

Members conducting directions hearings always consider opportunities for less formal means of resolving building disputes. Standard cases are referred to a directions hearing following an unsuccessful mediation where directions are usually made for the completion of various steps leading to a hearing. In one case concerning the adequacy of a concrete slab, it was clear that the dispute between the owner and the builder was, in part, due to significantly different opinions provided by each of their building consultant experts. Rather than putting the parties to the expense of following the usual directions, a meeting of the experts was convened, chaired by a member of the List. Although the experts were unable to resolve their technical differences, they did agree to the appointment of an expert under section 94 of the VCAT Act to determine the cause and extent of the problem and to recommend an appropriate method of rectification. Following receipt of the expert report, a compulsory conference was conducted by the same List Member and settlement was achieved. The time taken to dispose of the dispute, and the costs to the parties, were significantly less than if a more formal approach had been taken.

List Snapshot

Purpose

Part of the Administrative Division of VCAT, the General List hears and determines a large variety of cases, including those relating to transport accidents, freedom of information (FOI), State superannuation and criminal injuries compensation.

Objectives

- Reduce waiting times from application to resolution.
- Use alternative dispute resolution processes where possible.

Key Results

- Resolved 57% of transport accident cases within 35 weeks of application and 77% within 55 weeks.
- Resolved 71% of FOI cases within 20 weeks and 88% within 36 weeks.

Future

- Resolve 60% of Transport Accident cases within 35 weeks and 80% within 55 weeks.
- Resolve 60% of FOI matters within 16 weeks and 80% within 29 weeks.

Statistical Profile

- Applications received: 1,041
- Cases resolved: 1,293
- Cases pending: 651
- Application fee: \$0–\$562.90
- Number of members: 36

Deputy President Profile

Anne Coghlan, BA, LLB, was appointed Deputy President of the General List on 11 February 2003. Mrs Coghlan brings to her position a strong background in administrative law and tribunal management. She is a council member of the Australian Institute of Judicial Administration, and a member of the Syllabus Advisory Committee of the Judicial College of Victoria, the National Executive Council and Victorian Chapter of the Council of Australasian Tribunals. Previously, she was Deputy President of the Anti-Discrimination List and Credit List, and a Deputy President of the Anti-Discrimination Tribunal. Mrs Coghlan was appointed a member of the Administrative Appeals Tribunal in 1994 and became the first National Convener of the Social Security Appeals Tribunal in 1988.

Case Profile

The General List received a total of 1,041 applications, compared with 1,405 in 2003–04, representing a substantial decrease of 26%. This result includes 715 transport accident cases, compared with 1,014 cases in 2003–04, representing a 29.5% decrease. The reduction in applications lodged reflected an ongoing trend and was contributed to by the establishment of a protocol between the Transport Accident Commission (TAC) and legal practitioners. This protocol required practitioners to apply directly to the TAC for the review of its decisions, in a joint endeavour to try and resolve matters at an early stage before it was necessary to lodge an application for review at VCAT. Cases finalised totalled 1,293, compared with 1,910 in 2003–04, representing a 32% decrease. Cases pending on 30 June 2005 decreased by 28%, totalling 651, compared with 903 at the end of 2003–04. The reduction in pending cases resulted in the lowest number on record, mainly due to increased productivity and a decrease in TAC applications.

Application Types

Transport accident cases made up the majority of applications lodged with the List.

Application types comprised:

- 69% transport accidents (69% in 2003–04);
- 16% freedom of information (15% in 2003–04);
- 3% false fire alarm fees (2% in 2003–04); and
- 12% other, including mental health, superannuation and criminal injuries compensation (14% in 2003–04).

How We Deal with Cases

Before a hearing took place, we conducted a compulsory conference for most cases. This procedure enabled List Members to discuss the issues with the aim of seeking resolution or partial resolution of the matter. This process continued to reduce the time required to hear matters and, in many instances, avoided the need for a hearing and reduced the number of applications to adjourn hearings. In addition, we reduced the number of directions hearings in TAC matters, since parties more frequently applied for standard orders by consent, resulting in a far more efficient use of our resources and costs savings for parties.

From left, Listing Officer Scott Vaughan, Administrative Officer Candice Batty and Manager Customer Service Jenny Phillips meet with Deputy President Anne Coghlan (standing) for the List's case administration monthly meeting to assess the throughput of cases in the List.



Timeliness

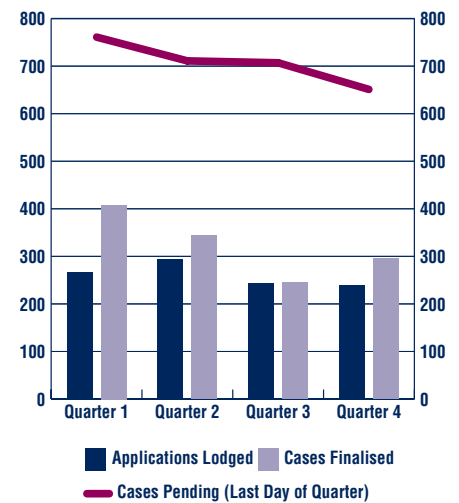
During 2004–05 we exceeded our performance targets, achieving greater productivity, resulting in a clearance rate of 134%. As a consequence, many members became available to sit in other Lists, providing opportunities for further job satisfaction and efficient use of resources.

We resolved 57% of transport accident cases within 35 weeks of application and 77% within 55 weeks. This result compares with 46% of cases resolved within 35 weeks and 87% within 55 weeks in 2003–04. The high number of transport accident cases resolved in 2004–05 included many older cases, leading to a decrease in timeliness as measured in this Annual Report. We resolved 71% of FOI cases within 20 weeks and 88% within 36 weeks. This result compares with 75% within 20 weeks and 91% within 36 weeks in 2003–04.

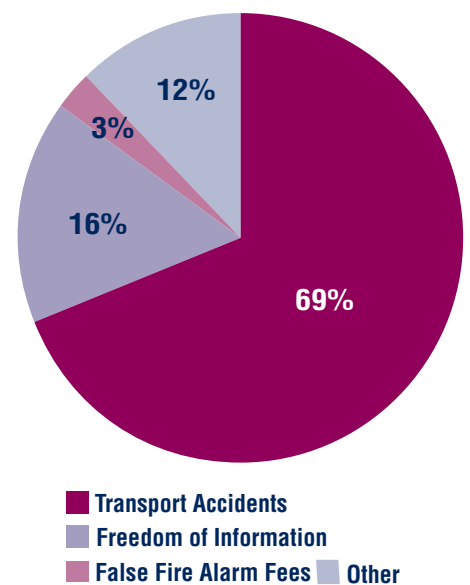
User Group Activities

During 2004–05, the List conducted two user group meetings, one for transport accident matters and one for all other General List matters. The user groups comprised representatives from the Victorian Bar, Office of the Victorian Government Solicitor, TAC, Privacy Commissioner, Health Services Commissioner, Victoria Police, Department of Human Services, Mental Health Review Board and solicitor firms practising in relevant areas. The meetings provided the opportunity to discuss management and procedural issues, such as how to manage intervention from third parties who do not wish their identity disclosed with regard to FOI applications. In March 2005, the Deputy President presented the paper *Use of Interpreters* as part of the Fact Finding in Tribunals Unit in the Monash University Master of Laws/Graduate Diploma Program.

Case Flow 2004–05



Applications by Type 2004–05



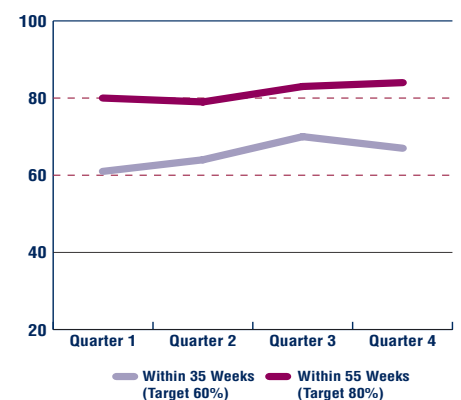
Case Study: Did Victoria Police Breach Applicant’s Privacy by Giving the Press His Mugshot?

Under the *Information Privacy Act 2000* (IPA Act), a person can make a complaint to the Privacy Commissioner when that individual believes an information privacy principle has been breached. If the Commissioner cannot resolve or declines the complaint, the complainant can apply to VCAT.

An applicant complained that the police released his mugshot, which they took while he was in their custody, to the *Leader* newspaper. He claimed that this action was contrary to or inconsistent with an information privacy principle. To determine whether or not there had been a breach, VCAT considered whether the IPA Act applied, since the police released the mugshot under the FOI Act. In accordance with section 13 of the IPA Act, VCAT decided the FOI Act did provide the police an exemption from complying with the information privacy principles under the circumstances.

Smith v. Victoria Police [2005] VCAT 654.

Timeliness: Age of Cases Resolved Compared with 60% and 80% Targets—2004–05



guardianship.

List Snapshot

Purpose

In the Human Rights Division of VCAT, the Guardianship List makes orders that protect adults aged 18 years or older who have a disability that impairs their capacity to make decisions about themselves, their circumstances, or financial and legal affairs. The List hears and determines applications to:

- appoint guardians to make decisions about health care, accommodation and other matters;
- appoint administrators to manage financial and legal affairs;
- revoke, suspend, vary or declare invalid enduring powers of attorney; and
- consent to special procedures including sterilisation, termination of pregnancy, donation of non-regenerative tissue, and procedures carried out for the purposes of medical research.

We oversee decisions made and actions taken by guardians and administrators, including giving or withholding approval for their proposed actions.

Objectives

- Aim to reduce waiting times.
- Where permitted by legislation, progressively introduce reassessments 'on the papers'.
- Achieve greater efficiency by using the Order Entry System and exchanging orders, reports and other materials with major List users electronically.

Key Results

- Resolved most cases within 27 days of application (30 days in 2003–04).
- In moving toward introducing reassessments 'on the papers', we identified suitable cases for special hearing days.
- Achieved greater efficiency by improving the Order Entry System and holding special reassessment hearing days.

Future

- Develop VOGL to enable VCAT to exchange documents with major users.

Statistical Profile

- Originating applications received: 3,036
- Re-assessments initiated: 6,297
- Cases resolved: 9,331
- Cases pending: 1,018
- Fee for Administration Orders: \$0–\$100 per year
- Number of members: 67

Deputy President Profile

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

Case Profile

The List received 3,036 originating applications, compared with 2,906 in 2003–04, representing a 4% increase. Reassessments initiated decreased by 10% from 6,990 in 2003–04 to 6,297 in 2004–05. Cases resolved decreased by 3% from 9,607 in 2003–04 to 9,331 in 2004–05. On 30 June 2005, cases pending remained steady, totalling 1,018, compared with 1,016 on 30 June 2004.

Application Types

The types of cases handled included:

- 15% guardianship orders (15% in 2003–04);
- 8% guardianship reassessments (8% in 2003–04);
- 24% administration orders (24% in 2003–04);
- 44% administration reassessments (46% in 2003–04);
- 2% advice to administrators (1% in 2003–04);
- 2% revocation of enduring powers of attorney (2% in 2003–04); and
- 6% other (5% in 2003–04).

How We Dealt with Cases

Based on the number of sitting days at a venue, we held 43% of hearings in Melbourne (46% in 2003–04), 24% in suburban Melbourne (24% in 2003–04) and 33% at country venues throughout Victoria (30% in 2003–04). Where possible, we held hearings at hospitals, nursing homes or community health centres as close as possible to the represented person's residence. Whenever necessary, we responded immediately to urgent or out-of-hours applications by conducting telephone hearings. Generally, we reassessed guardianship orders within one year and administration orders within three years, but we conducted early reassessments when required. In the meantime, we generally oversaw decisions made and actions taken by guardians and administrators. With regard to administrators, we considered examiners' reports on accounts lodged by administrators and took action where necessary. Taking into consideration the represented person's best interests, we provided advice to guardians and administrators, approving or disapproving actions proposed by them.

Deputy President John Billings discusses a case referred to the Office of the Public Advocate (OPA) for investigation with OPA Duty Officer Brendan Hoysted and sessional Member June Good. Such meetings provide opportunities to discover ideal ways to ascertain the wishes of persons with a disability in particular cases.



Timeliness

The List performed in a timely manner, resolving most cases within 27 days of application (30 days in 2003–04). We dealt with applications for non-routine (early) reassessment within 30 days of application (30 days in 2003–04).

Amendments to Legislation

We played a role in developing proposed amendments to legislation, in particular Part 4A of the *Guardianship and Administration Act 1958*, concerning consent to procedures carried out for the purposes of medical research.

IT Developments

We began the first stage of designing and testing the feasibility of VCAT Online—Guardianship List (VOGL) to improve our communications with major List users. The first stage involves electronically scanning administrators' accounts and supporting documents and transmitting them to the examiner. We began the process of establishing a new compliance team to manage the process and improve how we monitor and advise guardians and administrators.

As we implement VOGL, we are improving other processes to ensure accuracy of data and efficient management of information, including refining the new Account by Administrator Form and developing a version for use via the

Internet, developing a new Financial Statement and Plan, and revising standard letters, hearing notices and the Order Entry System.

User Group Activities

The List's user group, comprising representatives from the Office of the Public Advocate, professional administrators, and legal aid and advice organisations, met once during 2004–05. The meeting provided a forum for exchanging information and suggestions about services provided by the List. In response to suggestions made we have reviewed the form of notices of hearing given to persons with a disability to try to maximise their attendance at hearings and otherwise ensure that they receive any assistance they need.

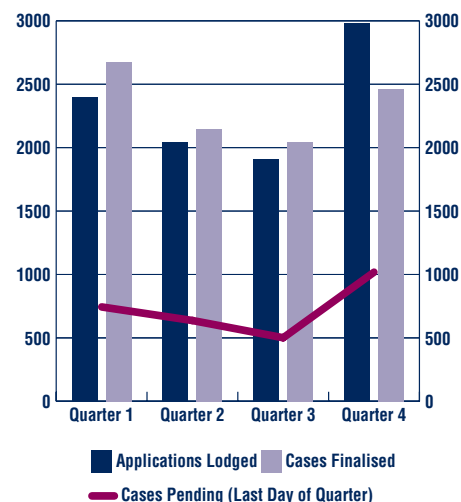
Community Education

We continued information sessions for newly appointed guardians and administrators and offered sessions in regional Victoria.

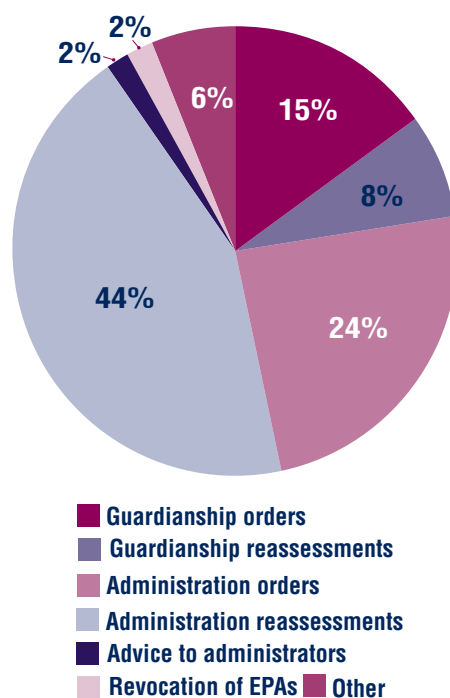
Social Work Students

Together with the Office of the Public Advocate, we presented an education series for social work students involving information sessions and visits to VCAT.

Case Flow 2004–05



Applications by Type 2004–05



Case Study: Intellectually-Impaired Sister Requires Consent to Provide Bone Marrow

VCAT was asked to give urgent consent to a special procedure for a Victorian cancer patient. She required a compatible bone marrow donation from an adult sister residing in Britain; the sister visited Victoria for the procedure and had a mild intellectual impairment. Although she said she wanted to be the donor, British and Australian assessments cast doubt on her capacity to give informed consent.

Two days after the application was made, the Public Advocate completed an investigation that included reports from Britain. The investigation disclosed that the cancer patient was aware that her sister proudly knew she was the only family member who could donate tissue, and she did not feel under pressure from her family. In addition, the procedure involved no particular risks. On the same day, VCAT convened a hearing at the patient's hospital and heard the sister in private before hearing the patient, her family and medical staff. As a result, VCAT gave consent to the special procedure.

land valuation list.

List Snapshot

Purpose

A List in the Administrative Division of VCAT, the Land Valuation List covers areas of jurisdiction that arise from 15 different statutes (refer to page 69).

Objectives

- Keep the average waiting time from application to resolution to a minimum.
- Maximise use of alternative dispute resolution techniques to achieve early settlement of cases.
- Improve list management procedures.

Key Results

- Resolved 58% of cases within 18 weeks of application and 87% within 40 weeks.
- Settled more than 90% of cases prior to hearing.
- Introduced a Practice Note for the List and new procedures and correspondence with a view to improving the statistical profile.

Future

- Resolve 60% of cases within 18 weeks and 80% within 40 weeks.
- Continue to achieve early settlement by maximising the use of compulsory conferences.

Statistical Profile

- Applications received: 209
- Cases resolved: 90
- Cases pending: 185
- Application fee: \$132
- Number of members: 17

Deputy President Profile

Helen Gibson, LLB (Hons), was appointed Deputy President of the Land Valuation List in April 2004. She is also Deputy President of the Planning and Environment List. Additionally, the former Deputy President of the Planning and Environment List Mr Richard Horsfall, a Senior Sessional Member, has played a key role in managing the Land Valuation List. He was previously a senior commercial solicitor and a Commissioner of the Liquor Control Commission.

Case Profile

The number of applications received totalled 209 in 2004–05, compared with 98 in 2003–04, representing an increase of 113%.

Cases finalised decreased by 24%, totalling 90 cases, compared with 119 in 2003–04. Cases pending on 30 June 2005 totalled 185 cases, compared with 66 at the end of 2003–04, representing a 180% increase.

The majority of the List's work arose from objections to municipal valuations of land for rating purposes. The situation involving Melbourne CBD, Southbank and St Kilda Road cases as described below largely accounted for the significant rise in pending applications.

Cases Proceeding as a Result of the Court of Appeal Decision

A total of 94 applications involving contested valuations for Melbourne CBD, Southbank and St Kilda Road properties were delayed due to the Supreme Court decision in *Port of Melbourne Corporation v. City of Melbourne* [2004] VSC 217 (23 June 2004). On 8 April 2005 a Court of Appeal ruling reversed the Supreme Court decision and opened the way for these cases to once again proceed at VCAT.

We used special case management procedures, including a series of group compulsory conferences and monthly directions hearing days akin to the Planning and Environment List practice days to closely monitor progress, coordinate management and avoid duplication from numerous individual hearings, since the advocates for the parties were the same and these cases shared common issues.

Application Types

In 2004–05, 93% of applications lodged involved the review of land valuations made for rating and taxation purposes, and 7% related to other applications such as farm rate classification and compulsory acquisition claims. This result compares with 99% of applications involving reviews of land valuations and 1% relating to other applications in 2003–04.

How We Dealt with Cases

Most cases brought to the List were settled rather than contested. To encourage early settlement without the need for a full hearing, initial directions were given for the exchange of valuer and valuation information in VCAT's initial acknowledgement letters. This procedure avoided the need for further orders and progressed the matter. In addition,

Deputy President Helen Gibson meets with Administrative Officer Malcolm Reid to discuss correspondence relating to the List's new Practice Note. Introduced on 4 April 2005, the Practice Note deals with matters such as communication between the parties, exchanging valuation and valuer information, expert reports, discovery of documents, submissions, involvement of the Valuer General and other procedural matters.



we automatically notified the Valuer General of all applications under section 22 of the *Valuation of Land Act 1960* to ascertain at an early date if he wished to become a party. These letters contained much more information as to VCAT's procedures than before. All new applications were listed for a directions hearing on a monthly practice day date soon after lodging to make initial case management orders. Most cases were listed for a compulsory conference. A robust form of mediation, the compulsory conference identifies key issues and seeks to achieve an agreed outcome. In this way, parties may achieve significant savings in time and costs, by avoiding lengthy hearings. Of the 90 cases resolved, more than 90% were settled either by compulsory conference or direct negotiation, with only a small number proceeding to a final hearing. Most cases were listed for directions hearings when it was discussed whether a compulsory conference would be useful. Usually, only smaller cases proceeded directly to a hearing without a compulsory conference. A typical compulsory conference for these cases took less than half a day. If the compulsory conference failed to result in settlement, the List member promptly scheduled the case for a hearing.

Timeliness

The number of cases pending was adversely affected by the Melbourne CBD, Southbank and St Kilda Road cases. In 2004–05, 58% of cases were resolved within 18 weeks of applica-

tion and 87% within 40 weeks. This result compares with 21% of cases being resolved within 18 weeks of application and 65% within 40 weeks in 2003–04. Since the Melbourne CBD, Southbank and St Kilda Road cases all involved major properties, longer times for resolution were expected. The parties' control the progress of a case rather than VCAT. By contrast, the procedures adopted in the usual run of cases brought about many settlements and withdrawals at an early date without a full hearing.

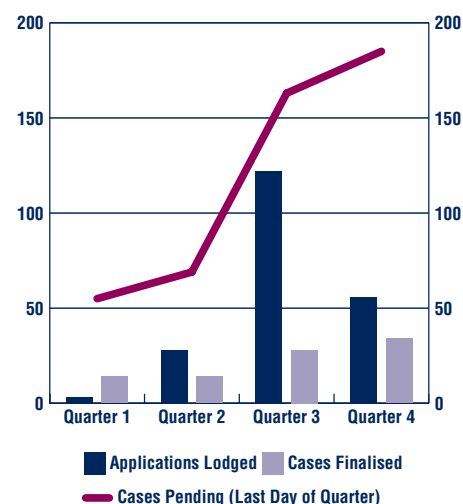
New Practice Note

On 4 April 2005 we introduced a new Practice Note to improve our List processes and procedures. Developed by Senior Member Richard Horsfall, the new Practice Note reflects extensive consultation and feedback from stakeholders, including the Valuer General, the valuation profession, municipalities and specialist legal practitioners. It deals with matters such as communication between the parties, exchanging valuation and valuer information, expert reports, discovery of documents, submissions, involvement of the Valuer General and other procedural matters.

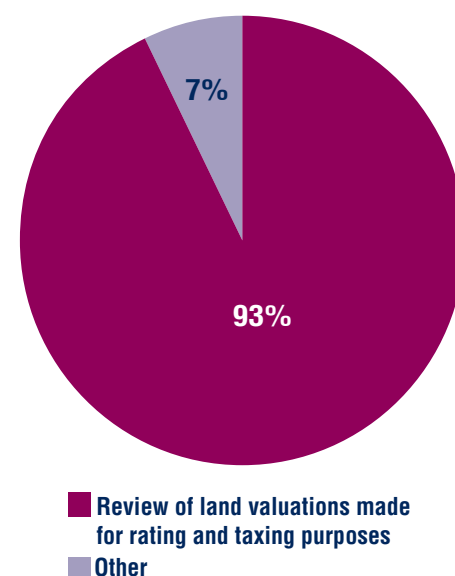
Changes in Membership

Mrs Jan Hancock rejoined the List as a valuer member. Richard Horsfall continued the administration of the List under the leadership of Deputy President Helen Gibson.

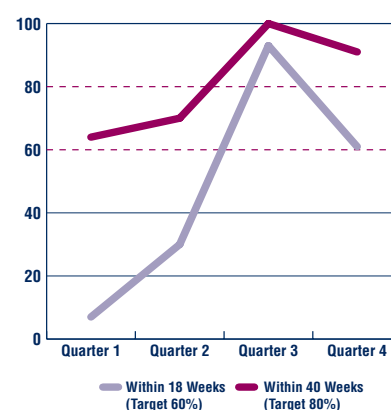
Case Flow 2004–05



Applications by Type 2004–05



Timeliness: Age of Cases Resolved Compared with 60% and 80% Targets—2004–05



Case Study: Review of Tariff under Water Act Refused

In *Tomey v. Wimmera Mallee Rural Water Authority* [2004] VCAT 1828 (15 September 2004) an application for review of a tariff under the *Water Act 1989* was refused. The self-represented applicants challenged the tariffs on the grounds that they did not use any water, that they were not a serviced property because their land was not connected to the supply channel, that they had opted out of the system under repealed provisions of the Water Act, and that fee-simple land could not attract involuntary debt.

VCAT made a study of the legislation, its history and its purpose, as reflected in parliamentary debates by the Honourable Alfred Deakin in 1886, when the tariff system for the Wimmera was introduced, and considered whether there was any right to opt out of the tariff system. VCAT upheld the tariff.

occupational and business regulation list.

List Snapshot

Purpose

A List in the Administrative Division of VCAT, the Occupational and Business Regulation List conducts reviews of decisions made by occupational and licensing bodies, including the Director of Liquor Licensing, Medical Practitioners Board, Business Licensing Authority, Institute of Teaching, Firearms Appeals Committee and Registrar of Private Agents. The List also has original disciplinary jurisdiction under a number of statutes, including the *Liquor Control Reform Act 1998* and *Estate Agents Act 1980*. The List hears cases involving 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.

Objectives

- Resolve 60% of cases within 20 weeks of application and 80% within 30 weeks.
- Prepare for an increased number of applications for review of decisions of the Victorian Institute of Teaching.

Key Results

- Resolved 54% of cases within 20 weeks of application and 76% of cases within 30 weeks.

Future

- Resolve 60% of cases within 18 weeks of application and 80% within 25 weeks.

Statistical Profile

- Applications received: 113
- Cases resolved: 119
- Cases pending: 69
- Review application fee: \$262.90
- Number of members: 36

Head of List Profile

Judge Sandra Davis, BA (Hons), M Sc (Econ), MA, LLB (Hons), was head of the Human Rights Division and Deputy President in charge of the Anti-Discrimination List and the Occupation and Business Regulation List, which she had managed since February 2004 and September 2000, respectively, prior to her appointment as Judge of the County Court on 26 October 2004. She returned to VCAT as Vice-President and Head of the Human Rights Division in April 2005 and resumed leadership of the Anti-Discrimination List and Occupational and Business Regulation List. From May 1999 to September 2000, Judge Davis was Deputy President of the Guardianship List. In June 1998, she was appointed a senior member of VCAT. In May 1998, she was appointed Deputy President of the former Administrative Appeals Tribunal. Prior to 1998, she practised in administrative, industrial, commercial and human rights law at the Victorian Bar. In addition to hearing cases in the Occupational and Business Regulation List and Anti-Discrimination List, Judge Davis regularly sits in the General List and Guardianship List.

Case Profile

The number of applications received decreased by 22% in 2004–05, totalling 113 compared with 144 in 2003–04. Cases finalised decreased by 16%, totalling 119, compared with 141 in 2003–04. The number of cases pending on 30 June 2005 totalled 69, compared with 75 at the end of 2003–04, an 8% decrease.

Application Types

The types of applications comprised:

- 32% liquor licensing (31% in 2003–04);
- 10% real estate agents (18% in 2003–04);
- 8% Victorian Taxi Directorate (1% in 2003–04);
- 8% doctors (7% in 2003–04);
- 1% prostitution service providers (3% in 2003–04);
- 9% private agents (10% in 2003–04);
- 2% racing (1% in 2003–04); and
- 30% other (29% in 2003–04).

Most applications involved the review of licensing decisions and disciplinary proceedings relating to a range of occupations and professions. For example, we reviewed decisions of the Medical Practitioners Board and the Psychologists Registration Board refusing to register or renew the registration of doctors and psychologists, or made determi-

nations against them as a result of findings of unprofessional conduct. In addition, we reviewed decisions made by the Taxi Directorate involving its refusal to issue metropolitan hire car licences, decisions of the Director of Liquor Licensing granting or refusing to grant liquor licences, and decisions of the Business Licensing Authority refusing to issue or renew licences to motor car traders and prostitution service providers. We also heard inquiries into the conduct of licensees under the Liquor Control Reform Act and the conduct of estate agents under the Estate Agents Act. Some delays experienced in these cases resulted from adjournment requests from the parties, particularly in liquor licensing cases. Most of these requests related to the need for more time for negotiation, or for the exchange of material, or for finalisation of proceedings elsewhere, which were relevant to the case at VCAT.

How We Dealt with Cases

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

From left, Vice-President and Head of List Judge Sandra Davis discusses updating the web site with revised forms and information about the List with Senior Member Robert Davis and Registry Manager Tracey Watson.



we resolve cases relating to occupational and business regulation.

process. We were able to accommodate cases requiring an urgent hearing within a very short time frame.

Timeliness

In 2004–05, we resolved 54% of cases within 20 weeks of application and 76% of cases within 30 weeks. This result compares with 2003–04, when we resolved 66% of cases within 20 weeks of application and 83% of cases within 30 weeks.

New Jurisdiction

On 1 July 2005, the *Occupational Health and Safety Act 2004* came into effect. Various provisions of the Act gave VCAT jurisdiction to review a number of decisions made by the WorkCover Authority after an internal review had taken place. These decisions included the issue of various notices (improvement, non-disturbance and prohibition), and determinations that there was reasonable cause for employees to be concerned for their health and safety. Section 127(2) of the Act adopts the wide definition of ‘interests’ in s.5 of the VCAT Act, enabling persons involving interests of any kind (not limited to proprietary, economic or financial interests) to apply to VCAT for review.

On 20 July 2005, President Justice Morris, Vice-President Judge Davis, Deputy President

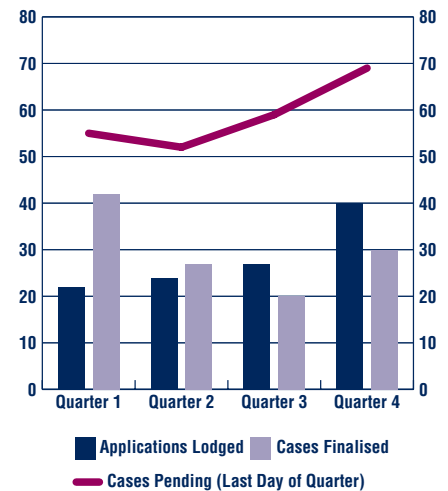
Coghlan and Sessional Member Janine Perlman attended a seminar on the Occupational Health and Safety Act run by the Judicial College of Victoria.

In 2005–06, the *Working with Children Bill 2005* will introduce minimum state-wide standards for individuals who work with children, whether in paid employment or as volunteers. The Bill will require those persons to obtain assessment notices from the Secretary to the Department of Justice. We expect the Bill to give VCAT jurisdiction to consider afresh whether to grant an assessment notice to a person convicted or found guilty of sexual offences against a child, or of child pornography offences.

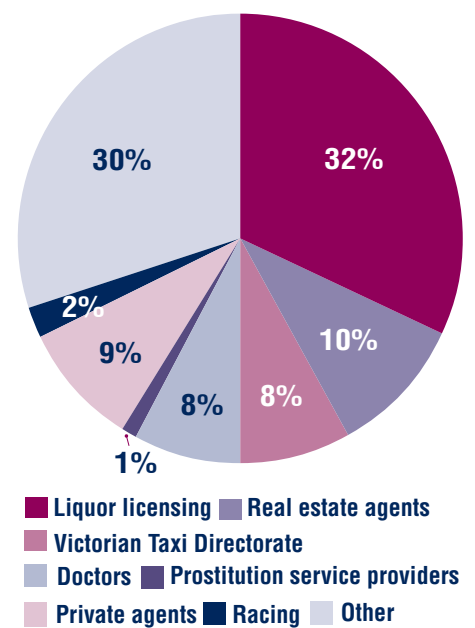
User Group Activities

The List’s user group met on 29 May 2005. Barristers, solicitors and representatives of various stakeholders involved in the List’s jurisdictions attended the meeting, including the Director of Liquor Licensing, Greyhound Racing Victoria, Victorian Institute of Teaching and the Department of Consumer Affairs. Subjects discussed included new jurisdictions of VCAT, the workload of the List, inspection of files, security measures at VCAT, directions hearings and proposed improvements to the List’s application forms.

Case Flow 2004–05



Applications by Type 2004–05



Timeliness: Age of Cases Resolved Compared with 60% and 80% Targets—2004–05



Case Study: Dentist Suspended from Practising Dentistry for Two Years Seeks Review of that Suspension

A dentist was suspended by the Dental Practice Board from practising dentistry for two years. He applied to VCAT for a review of that period of suspension. He was allowed to continue practising dentistry until the tribunal heard and determined the review application. In late 2003, the tribunal affirmed the decision of the Board, suspending him from practice for two years. However, the dentist continued to practise dentistry. In August 2004, Justice Morris ordered him to cease practising dentistry. That order was ignored. Contempt proceedings were issued against the dentist and, in September 2004, he was found guilty of contempt, fined \$10,000 and sentenced to six months’ prison, wholly suspended until early 2006. In contempt of that order, he continued to practise dentistry. Again he was found guilty of contempt in April 2005 and committed to prison for six months. This decision has been appealed to the Court of Appeal with the automatic result that the term of imprisonment imposed is stayed.

planning and environment list.

List Snapshot

Purpose

A List in the Administrative Division of VCAT, the Planning and Environment List:

- reviews the decisions of councils and other responsible authorities on applications made to them; and
- exercises powers conferred directly on it by the enabling legislation. Applications are made directly to VCAT, rather than to responsible authorities, for amending and cancelling permits, injunctions and declarations on matters such as the validity of permits or existing land use rights, and enforcement orders for breaches of planning schemes and permits.

There are 15 enabling Acts in the List's jurisdiction (refer to page 70).

Objectives

- Resolve 60% of cases within 18 weeks of application and 80% within 26 weeks.
- Maintain in-house development program and participation in PLANET program.
- Further increase use of mediation.
- Review and improve practices and procedures and public information mediums.

Key Results

- Resolved 62% of cases within 18 weeks of application and 84% within 26 weeks.
- Achieved a 68% mediation success rate.
- Reviewed and improved practices and procedures and public information media.
- Conducted in-house development program and participated in PLANET program.

Future

- Resolve 60% of cases within 18 weeks of application and 80% within 26 weeks.
- Maintain in-house development program and participation in PLANET program.
- Further increase use of mediation.

Statistical Profile

- Applications received: 3,515
- Cases resolved: 3,544
- Cases pending: 1,365
- Application fee: \$31.70–\$1,053.70
- Number of members: 51

Deputy President Profile

Helen Gibson, LLB (Hons), was appointed Deputy President in April 2004. She is also Deputy President of the Land Valuation List. Previously, Ms Gibson was Chief Panel Member with Planning Panels Victoria for eight years. She chaired many major panels and policy reviews. She was a member of the former Planning Appeals Board, Administrative Appeals Tribunal of Victoria and Land Valuation Board of Review. She was a solicitor in private practice, a councillor of the former Shire of Gisborne for seven years and a member of the local water trust and sewerage authorities.

Case Profile

During 2004–05, the Planning and Environment List experienced a year of consolidation in terms of the efficiency of its operations. The number of applications received in 2004–05 totalled 3,515, compared with 3,702 in 2003–04, representing a decrease of 5%. Cases finalised totalled 3,544, compared with 3,828 in 2003–04, representing a decrease of 7%. Cases pending on 30 June 2005 fell by 2%, totalling 1,365, compared with 1,394 at the end of 2003–04. We made a concerted effort to resolve old outstanding cases during the period. All cases lodged more than 12 months previously were progressively reviewed and listed for directions hearings to consider their future conduct. The initiative successfully resulted in the List disposing of 40 applications dating back as early as 2001–02 and returning other matters to active case management.

Application Types

The types of applications lodged comprised:

- 22% by objectors to council decisions to grant planning permits (22% in 2003–04);
- 32% by permit applicants about council decisions to refuse permits (32% in 2003–04);

- 16% by permit applicants about council decisions to impose conditions on a planning permit application (15% in 2003–04);
- 14% by permit applicants about failure of councils to decide about a planning permit application (17% in 2003–04);
- 4% enforcement orders (4% in 2003–04); and
- 12% other (10% in 2003–04).

Applications for review of permits covered a wide variety of matters most commonly involving property development and subdivisions associated with residential, retail, commercial and industrial uses. The majority of proposals considered involved residential developments ranging in size from one or two dwellings to hundreds of units. The main issues that concerned objectors included traffic, amenity and visual impact. Important aspects of the work undertaken by List members continued to include balancing the objectives of State and local planning policies and managing change in the urban environment. A number of high profile cases involving important applications of policy were decided during 2004–05, e.g. *Mitcham Towers*. Refer to *Golden Ridge v. Whitehorse CC (Mitchem Towers)* [2004] VCAT 1706—7 September 2004.

From left, Deputy President Helen Gibson with newly appointed Sessional Member Boyce Pizzey and re-appointed Sessional Member Sylvia Mainwaring. Boyce brings to the List considerable experience in heritage design and Sylvia offers the benefit of her experience as a chemical engineer specialising in scientific, environmental and planning issues.



we decide planning disputes and give leadership in applying planning policy.

How We Dealt with Cases

Most cases proceeded to a hearing without preliminary directions hearings. Directions hearings were held at the request of parties or were ordered by VCAT due to the complexity of the matter or the number of parties involved, or to resolve procedural and technical problems and preliminary points, such as joining additional parties, adjournments or urgent hearings. Preliminary hearings assisted in resolving issues, such as whether an application to the List or the grant of a permit was prohibited by law or the planning scheme. These matters were dealt with mostly at the practice day conducted each Friday.

Increased Mediations

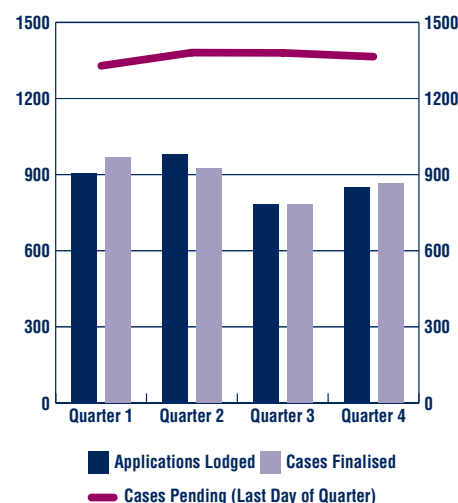
We continued to use mediation to resolve planning disputes. During 2004–05, we referred 690 applications to mediation (786 in 2003–04), representing about 20% of all applications. The success rate for mediations during that period was 70% (68% in 2003–04). List members referred cases to mediation more often with regard to larger matters and there were several cases where agreement was reached between an applicant and more than 20 objectors. Even where mediation did not result in an agreement it was useful in narrow-

ing the points of difference between parties and led to an expedited hearing. We aim to continue to actively use mediation in the next financial year with available resources.

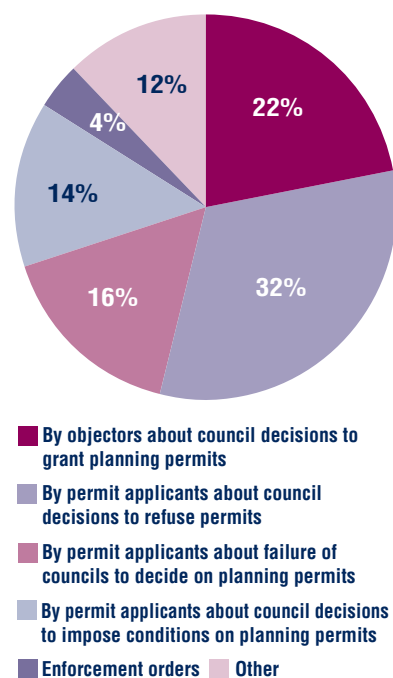
Operation Jaguar

The ongoing implementation of Operation Jaguar achieved more timely outcomes. Introduced in October 2003, Operation Jaguar comprised a series of measures to streamline the various processes involved with the List's decision-making from lodgment of an application for review to the decision. The measures continued to be effective, especially practice days. The President or Deputy President generally conducted practice days, which enabled matters that could and should be heard and determined quickly, to be accommodated without prejudice to the general operation of the List. They were most effective in streamlining procedural matters and dealing quickly with minor matters. In addition, practice days provided a means of promptly assessing whether applications were without merit or were misconceived and should be struck out without needing to wait for a regular hearing and unnecessarily consuming resources.

Case Flow 2004–05



Applications by Type 2004–05



Timeliness: Age of Cases Resolved Compared with 60% and 80% Targets—2004–05



Case Study: Objection to Mobile Phone Tower on Mount Franklin

An application was made to construct a 37.8 metre high mobile phone tower on Mount Franklin. Mt Franklin is a place recognised and protected under the planning scheme for its natural, cultural and scientific values, particularly its volcanic origins and geologically rare, breached crater and its cultural significance for the Aboriginal community, as well as for the community as a whole. VCAT was charged to decide whether the mobile phone tower was likely to impact on the values of Mt Franklin and if so, whether this impact could be justified, having regard to the social and economic importance placed on the provision of an efficient and effective telecommunications network for Victoria.

VCAT held that, from a culturally significant view, the tower would impact on the values of Mt Franklin and that the community's need for additional mobile coverage via a facility located and designed in the manner proposed was not sufficient to outweigh or otherwise justify this impact. It found that, contrary to the design and siting principles in the Telecommunications Code of Practice, the tower would interrupt a significant view and the proposed facility did not sufficiently minimise its impact, unlike an existing Optus facility, and co-location had not been sufficiently explored. The permit was refused. (Reference *Telstra Corporation v. Hepburn SC* [2005] VCAT 1099—9 June 2005.)

planning and environment list.

Practice days dealt with prompt hearings and enforcement orders. A prompt hearing enabled a final hearing of certain categories of appeal, which could and should be heard promptly. The List used a prompt hearing procedure with regard to applications for reviewing matters, involving such issues as requirements by responsible authorities to give notice or for more information. If the matter was able to be heard quickly, the prompt hearing would become a directions hearing when time could be fixed for a more detailed hearing of the matter. All applications for enforcement orders were listed for a practice day hearing immediately following the expiry of the 14-day period in which a respondent may object to granting an order, enabling the List to assess the urgency of the matter, whether any interim relief was appropriate and to give directions.

Timeliness

We resolved 62% of cases within 18 weeks of application and 84% of applications within 26 weeks. This result compares with 51% of cases being resolved within 18 weeks of application and 78% within 28 weeks in 2003–04. The procedures and reforms instituted by Operation Jaguar continued to assist in improving timeliness by streamlining the various processes involved with the List's decision-making from lodgment of an application for review to the decision. The process resulted in a reduction of the median time from lodgment of an application for review to decision from 18 weeks to 16 weeks.

Change in Membership

We appointed seven new sessional members targeting specific areas of expertise, covering planning, architecture, design, environmental management and engineering. In June 2005, Senior Member Jane Monk left the List on her appointment as Chair of the Priority Development Panel with the Department of Sustainability and Environment.

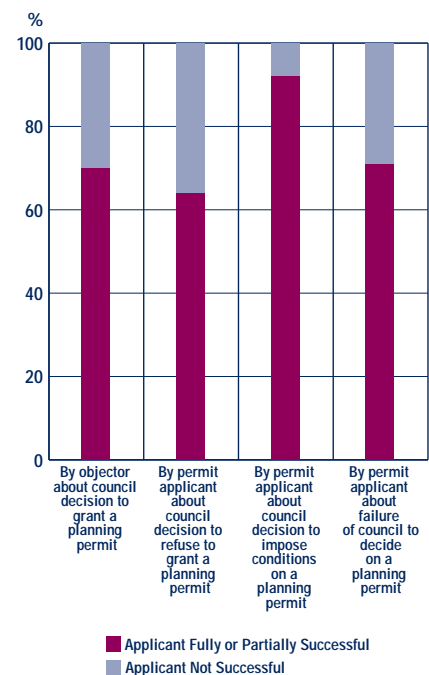
Continual Improvement

We continued to consolidate our operations and improve our administrative procedures. Our efforts in this regard included reviewing standard correspondence and addressing a common source of dispute relating to 'applications against failure' being lodged prematurely. Applications involving permit applicant appeals against the failure of the responsible authority to grant a permit require applicants to wait a period of 60 prescribed days before lodging an application at VCAT. This requirement involved a complicated process of calculating the number of prescribed days to complete certain procedures, which became a contentious issue with disputes often arising as to whether the requisite period had elapsed before the application was made. To avoid applications being lodged prematurely, we introduced a table designed to calculate the prescribed number of days and whether they had elapsed. Consequently, far fewer premature applications have been lodged. The introduction of a new summary improved the system of reporting decisions of particular interest to other members, the planning profession and the wider community, known as 'red dot decisions', and we expanded the circulation of these decisions.

Community Awareness

List members contributed to the improvement of industry practices and procedures and legislation by participating in industry conferences, seminars and working groups, and working with members of industry and professional associations. List members continued to participate in the Department of Sustainability and Environment's PLANET program, which offers professional development for council planners, in particular. They presented sessions on a variety of subjects, including *Introduction to VCAT*, *Understanding Neighbourhood Character*, *Preparing Enforcement Order Applications* and *Cross Examination Skills*. In

Outcome Analysis of Applications to VCAT Finalised in 2004–05



The graph displays outcomes only for the major application types and for applications received and resolved during 2004–05.

addition, List members conducted *Introduction to VCAT* seminars for the Royal Australian Institute of Architects.

On 18 November 2004, as part of Planning Week, List members conducted an open day and participated in a mediation information day for the public.

The President addressed numerous professional, civic and local government organisations about the work of the List and VCAT in general. He visited many councils in metropolitan and regional areas throughout Victoria to explain the role VCAT plays in the planning process and the nature of its decision-making process, often with reference to cases of specific interest to the municipality in question. These visits provided an opportunity for dialogue with councillors and officers and have been instrumental in countering adverse perceptions about the work of the List.

Training and Development

We conducted an in-house professional development program for List members. The program focused on three areas:

- Members' skills and professional improvement.
- Current topics of planning interest.
- Monitoring and review of decisions.

The program included presentations by industry professionals on topics such as the native vegetation framework and guidelines, amendments to the *Planning and Environment Act 1987*, noise and twentieth century architecture. The List held in-house discussions on topics such as decision writing and development contributions and regular training sessions on researching cases and information via the Internet.

List members toured completed projects to assess the outcome of decisions made by VCAT, especially where there had been contention over matters such as design, and whether the development respected neighbourhood character or the area's heritage significance.

In May 2005 List members joined other representatives from planning tribunals in Australia in attending a joint conference in Canberra with the New South Wales Land and Environment Court. The conference aimed to explore the practices, procedures and culture of other jurisdictions and to develop a better understanding of the ways in which common planning issues were handled and hearings conducted.

The List held an induction seminar for new sessional members and seminars specifically for sessional members. Deputy President Helen Gibson compiled a Planning Members' Manual, which contains information about internal practices, procedures and other matters of relevance to the List. While initially prepared for distribution to new sessional members, the manual will be an ongoing resource for all List members.

Outcome Analysis

An outcome analysis relating to applications made to the List in 2004–05 is shown on page 42. The tables opposite list the total number of applications received relating to the top 20 councils and top 20 suburbs where the planning site in question was located.

The graph on page 42 describes the outcome of applications to the Planning and Environment List. The 'plain English' classifications identify whether individuals making the applications were successful or were not successful.

Outcomes are shown only for the major application types and for finalised applications received in 2004–05. Applications that were withdrawn are not shown. (VCAT does not record the reasons why applications were withdrawn. They may have been withdrawn for many reasons, including if a compromise was reached before VCAT heard the application.)

The outcome classifications are a simplified version of more technical classifications of types of final orders made by VCAT. The percentages shown should be taken as a broad guide to the outcomes.

Top 20 Councils—2003–04 to 2004–05

Number of Council Applications		
	2004–05	2003–04
Boroondara	251	246
Mornington Peninsula	157	207
Moreland	140	103
Port Phillip	140	203
Yarra	140	224
Monash	128	138
Stonnington	127	194
Bayside	123	113
Greater Geelong	120	98
Banyule	116	102
Glen Eira	115	123
Hobsons Bay	114	112
Moonee Valley	101	85
Darebin	99	113
Casey	87	81
Melbourne	81	88
Manningham	80	59
Whitehorse	76	94
Knox	72	67
Kingston	68	84

Top 20 Suburbs—2003–04 to 2004–05

Number of Suburb Applications		
	2004–05	2003–04
Brighton	46	42
Coburg	43	19
Kew	43	44
Richmond	43	78
Hawthorn	36	64
Newport	35	21
Williamstown	35	37
Ivanhoe	33	23
Camberwell	32	31
Melbourne	32	22
Balwyn	31	20
Glen Iris	27	25
South Yarra	27	34
Frankston	26	19
Port Melbourne	26	31
Reservoir	25	30
St Kilda	25	34
Fitzroy	24	26
Northcote	23	34
South Melbourne	22	31
Berwick	21	23

real property, retail tenancies and taxation lists.

List Snapshot

Purpose

The Real Property List and Retail Tenancies List are part of the Civil Division.

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

In the Retail Tenancies List, the *Retail Leases Act 2003* gives the List exclusive jurisdiction to hear and determine disputes between landlords and tenants of retail premises, as defined. The List's jurisdiction extends to disputes between former landlords and tenants and disputes arising under former leases. The List has the same jurisdiction as the Supreme Court to grant relief against forfeiture to a tenant of retail premises. In addition, the *Fair Trading Act 1999* gives the List general jurisdiction over a wide class of commercial disputes, including landlord and tenant disputes. The Taxation List, which is part of the Administrative Division, hears disputes relating to assessments made by State Government departments with regard to the imposition of State levies and taxes.

Objectives

- Maintain acceptable waiting times from application to resolution for real property cases, retail tenancies cases and taxation cases.

Key Results

- Resolved 76% of real property cases within 25 weeks of application and 87% within 35 weeks.
- Resolved 61% of retail tenancies cases within 12 weeks of application and 72% within 18 weeks.
- Achieved a clearance rate of 150% in the Taxation List.

Future

- Maintain acceptable waiting times from application to resolution for real property cases, retail tenancies cases and taxation cases.

Statistical Profile

Real Property List:

- Applications received: 71
- Cases resolved: 45
- Cases pending: 47
- Application fee \$262.90–\$526.80
- Number of members: 19

Retail Tenancies List:

- Applications received: 197
- Cases resolved: 184
- Cases pending: 75
- Application fee \$262.90–\$526.80
- Number of members: 14

Taxation List:

- Applications received: 46
- Cases resolved: 66
- Cases pending: 14
- Application fee \$262.90
- Number of members: 8

Case Profile

The Real Property List received 71 applications in 2004–05, compared with 43 in 2003–04, representing a 65% increase. Cases resolved increased by 2%, totalling 45 in 2004–05, compared with 44 in 2003–04. Cases pending totalled 47 on 30 June 2005, compared with 21 at the end of 2003–04. Applications in the Retail Tenancies List increased, resulting in 197 applications being received; a 22% increase, compared with 161 in 2003–04. Cases resolved rose by 15%, totalling 180, compared with 157 in 2003–04. Cases pending rose by 27%, totalling 79 on 30 June 2005, compared with 62 on 30 June 2004.

The Taxation List received 46 applications in 2004–05, compared with 60 in 2003–04, representing a 23% decrease. Cases resolved increased by 53%, totalling 66 in 2004–05, compared with 43 in 2003–04. Cases pending totalled 14 on 30 June 2005, compared with 34 at the end of 2003–04—a 58.8% decrease.

Application Types

The vast bulk of applications received in the Real Property List involved jurisdiction under Part 1 of the *Water Act 1989* and certain provisions of the *Water Industry Act 1994*. Water Act proceedings primarily related to urban or suburban flooding involving burst water mains. Other applications involved

acquiring easements to facilitate subdivisions under the *Subdivision Act 1998*. The types of applications lodged in the Retail Tenancies List involved disputes arising between landlord and tenant relating to leases of retail premises. Disputes involved alleged misrepresentation, validity of rent reviews and repair issues.

In the Taxation List, applications related to State levies and taxes, including a number of matters concerning the First Home Owner's Grant scheme.

How We Deal with Cases

In resolving real property cases, we undertook the full set of interlocutory steps. Then, the parties exchanged their expert reports and attended a compulsory conference held by an engineering member. If the case remained unresolved, a legal and sometimes an engineering member conducted a hearing. We referred claims for modest sums under the *Water Act* directly to mediation, thereby resolving such matters quickly and cost-effectively.

Most retail tenancy matters had been subject to the ADR processes of the Small Business Commissioner; therefore, we did not order mediation as a matter of course. Occasionally, circumstances arose where the parties indicated their desire for a second mediation to take place. Proceedings, which sought injunctive

Deputy President Profile

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



we resolve cases relating to real property, retail tenancies and taxation.

relief, came directly to the List without previous processing by the Small Business Commissioner. Where urgent injunctive relief was sought, the application for a temporary injunction was heard immediately, often on the same day as the proceeding was filed.

With regard to taxation matters, we were able to accommodate special arrangements where needed by offering the parties an increased number of directions hearings. In addition, we arranged for the Commissioner of State Revenue to provide the same folder of relevant documents he must file with VCAT to each applicant for review to provide a common documentary record upon which each proceeding may be based.

Timeliness

In the Real Property List, we resolved 76% of cases within 25 weeks of application (64% in 2003–04) and 87% within 35 weeks (73% in 2003–04).

In the Retail Tenancies List, we resolved 61% of cases within 12 weeks of application (54% in 2003–04) and 72% of applications within 18 weeks (72% in 2003–04). In managing retail tenancies cases, we are able to provide the resources necessary to hear cases efficiently. However, delays are often encountered as a result of the parties preparing their cases for hearing.

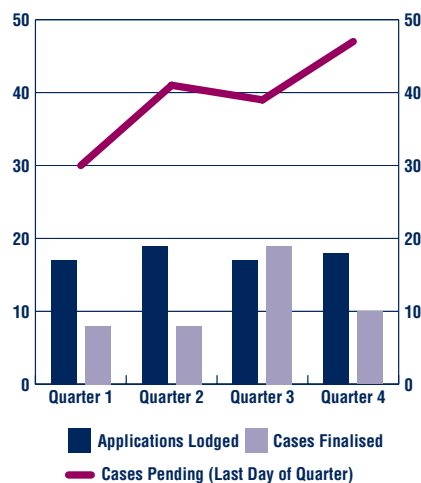
Case Study: Landlord and Tenant of Art Supply Business Disagree on Rent

The landlord and tenant could not agree upon the rent for a retail premises, where the tenant operated an art supply business. The matter was referred to a valuer appointed by the Real Estate Institute of Victoria for expert determination. According to the lease, this determination was to be final and binding. The expert valuer inspected the premises and received submissions from real estate consultants acting for both landlord and tenant. The valuer published his determination and the landlord felt that the rent fixed was far too low. He said the valuer had:

- under-estimated the lettable area of the premises;
- applied a discount to the rental based upon the permitted use for the premises, which he said was not the highest and best use for the premises; and
- failed to allow that under the terms of the lease, while the landlord would have to pay a goods and services tax (GST), he had no right to be indemnified for it from the tenant.

The valuer published a revised rental determination, without prior notice to the tenant. The tenant made an application to the Retail Tenancies List seeking a declaration that the first rental determination was final and binding and the landlord counterclaimed that neither the first nor the second determination was binding. VCAT held that the first valuation was binding, but the valuer had failed to use due care in calculating the GST separately from the rent. The valuer was liable in damages for negligence to the landlord for this amount.

Real Property Case Flow 2004–05

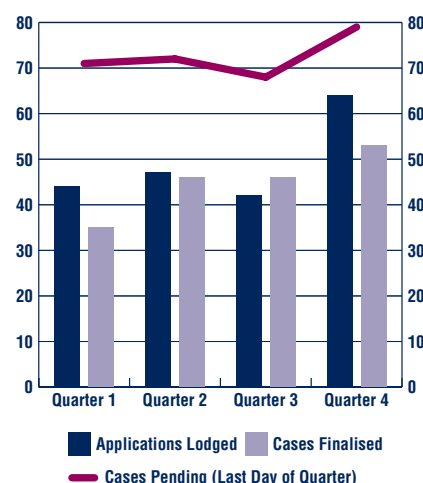


In the Taxation List, we achieved a clearance rate of 150%, which significantly reduced the number of cases pending. The case load of the Taxation List is very small and a small number of lengthy cases can greatly effect the result.

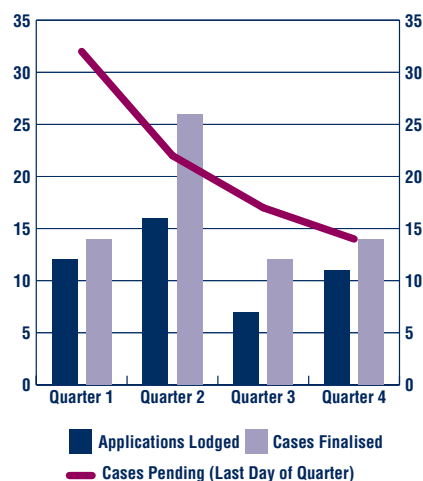
User Group Activities

The Retail Tenancies user group met in December 2004 to discuss the continued relevance of mediation for disputes already mediated by the Small Business Commissioner. No user group exists for the Real Property List or Taxation List since the workload of both Lists comprises a small number of cases.

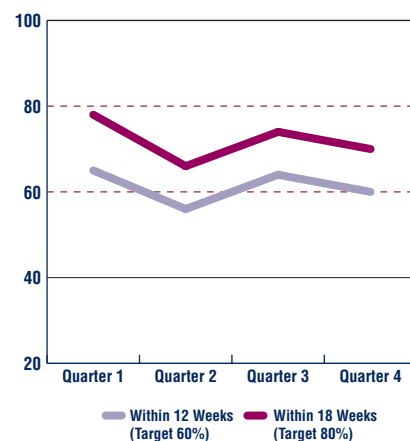
Retail Tenancies Case Flow 2004–05



Taxation Case Flow 2004–05



Retail Tenancies: Age of Cases Resolved Compared with 60% and 80% Targets—2004–05



residential tenancies list.

List Snapshot

Purpose

A List in the Civil Division of VCAT, the Residential Tenancies List receives, hears and determines applications made under the *Residential Tenancies Act 1997* (RT Act). Applications arise from disputes between landlords and tenants, rooming house owners and residents, caravan park or caravan owners and residents, and others.

Objectives

- Further improve and promote VCAT Online.
- Produce at least 70% of orders via the Order Entry System (OES).

Key Results

- A total of 50,201 applications were lodged using VCAT Online, representing 76% of applications.
- The average waiting time from application to resolution for all cases was 20 days.
- Approximately 47,517 orders (70% of all orders) made in the List (68,070 orders) were processed via OES.

Future

- Further improve and promote VCAT Online.

Statistical Profile

- Applications received: 65,950
- Cases resolved: 66,244
- Cases pending: 3,350
- Application fee: \$31.70
- Typical number of cases resolved per day, per member: 20
- Number of members: 60
- Number of venues visited: 30

Deputy President Profile

Michael Levine, LLB, Churchill fellow, was appointed Deputy President of the Residential Tenancies List on 1 September 2000. Previously, Mr Levine was appointed Deputy President of the Civil Claims List on 1 July 1998. He was re-appointed as Deputy President of that List concurrent with the Residential Tenancies List in February 2003. For the last 30 years, he has held positions such as inaugural senior referee of the Small Claims Tribunal, inaugural chairman of the Residential Tenancies Tribunal and inaugural chairman of the Credit Tribunal. He worked as a solicitor in private practice, specialising in company liquidation and bankruptcy from 1968 to 1975. Mr Levine sits on other Lists in VCAT.

Case Profile

The total number of applications received increased by 3% in 2004–05, totalling 65,950, compared with 64,213 in 2003–04. Cases finalised rose by 2%, totalling 66,244, compared with 65,050 in 2003–04. Cases pending totalled 3,350 on 30 June 2005, compared with 3,644 on 30 June 2004, representing a decrease of 9%.

Application Types

The people who made applications were:

- 68% landlords represented by estate agents or property managers (68% in 2003–04);
- 20% the Director of Housing (20% in 2003–04);
- 7% private landlords (6% in 2003–04); and
- 6% tenants or residents (5% in 2003–04).

Of all applications received:

- 48% related to possession orders (51.5% in 2003–04);
- 28% payment of bond (27% in 2003–04);
- 10% compensation or compliance orders alleging breach of duty (9.5% in 2003–04); and
- 15% other (12% in 2003–04).

How We Dealt with Cases

List members resolved most applications by hearing. In some cases, parties used the alternative procedure for possession. As a result of these procedures, the Principal Registrar was able to make orders without the need for parties to attend a hearing.

Timeliness

The average waiting time from application to resolution remained steady at 20 days, compared with 2003–04. Our ability to maintain timeliness was largely due to the efficient management of the List's resources across the State.

Order Entry System

The Order Entry System (OES) enables List members to produce orders using personal computers installed in hearing rooms. OES allows orders to be produced, printed, signed and given to the parties immediately after hearings.

During 2004–05, OES use increased with 47,517 orders (70% of all orders) made in the Residential Tenancies List (68,070 orders) being produced by List members using OES, meeting our target of 70%. This result compares with 2003–04 when 45,604 orders (68% of all orders) made in the List (66,611 orders) were produced by VCAT members using OES.

From left, Deputy President Michael Levine discusses changes to legislation with Sessional Member Janine Perlman and Full-Time Member Jack Wajzman. Amendments to the Fair Trading Act designated a number of Acts as Consumer Acts, including the Residential Tenancies Act 1997 and the Retirement Villages Act 1986.



As a further development of VCAT Online, the alternative procedure module was introduced in April 2005. This process allows landlords to apply for possession and rent and disposal of bond where the address of the tenant is unknown. In this case, the Principal Registrar makes an order without the parties having to attend a hearing.

VCAT Online

VCAT Online enables the List's registered users to complete application forms, and generate and print notices of dispute under the RT Act via the Internet, followed by immediate confirmation of lodgment and, in most cases, a hearing date. In 2004–05, 90,040 notices were created (70,887 in 2003–04) and 50,201 applications were lodged (45,940 in 2003–04) via VCAT Online. A total of 960 users were registered with VCAT Online as at 30 June 2005, compared with 860 users as at 30 June 2004. Refer to page 52 for more information about VCAT Online.

Changes to Legislation

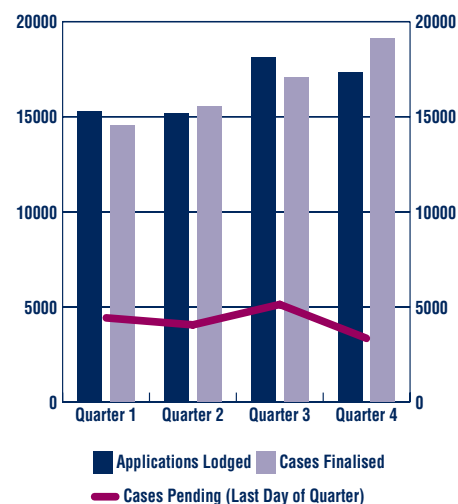
As reported on page 27 of this Annual Report, amendments to the Fair Trading Act designated a number of Acts as Consumer Acts. Those Acts provide for individuals claiming for loss,

injury and damages, arising out of a contravention of that particular Act, among which include the *Residential Tenancies Act 1997*. We anticipate that the List will deal with a number of applications arising from the amendments. In addition, matters relating to disputes under the *Retirement Villages Act 1986*, as between owners, residents and managers, may be brought either to this List or the Civil Claims List. We expect the impact on the List's case load arising from this jurisdiction will be minimal, as will cases brought to the List as a result of amendments to the *Housing Act 1983* relating to rental housing agencies.

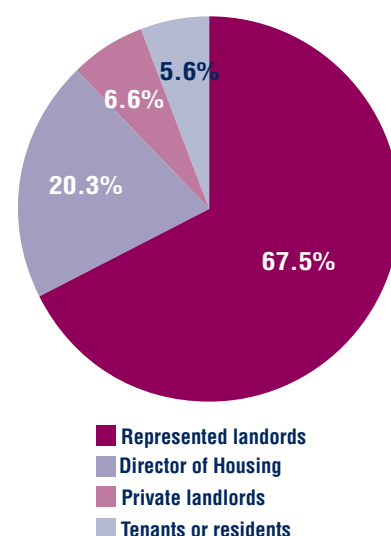
User Group Activities

The List's user group comprised representatives the Office of Housing, Real Estate Institute of Victoria, Tenants Union of Victoria, Community Housing Federation of Victoria and Legal Aid Victoria. The user group met on four occasions during 2004–05 (four in 2003–04) and provided a forum for discussing issues of concern to List users. The meetings assisted us in advising industry representatives of the specific details required for inclusion in notices alleging damage or danger by the tenant, necessitated by a decision of the Supreme Court.

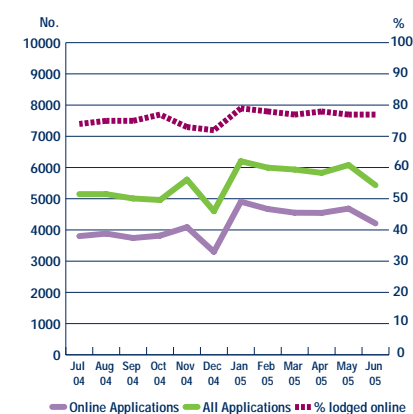
Case Flow 2004–05



Applications by Type 2004–05



VCAT Online Use 2004–05—Residential Tenancies List



VCAT Online Use shows the number of applications and notices generated via VCAT Online since July 2004. We received a total of 50,201 applications via VCAT Online, representing 76% of all applications and exceeding our target of 70%.

Case Study: Landlord's Administrator Serves Notice to Vacate Tenant on Grounds of Non-Payment of Rent

A landlord's administrator served a 14-day notice to vacate a tenant on the grounds of non-payment of rent. The tenant was the landlord's physically disabled daughter and the landlord was residing in an aged-care facility.

Living in the rented premises all her life, the tenant had begun to pay rent to the landlord's administrator when the landlord moved to the aged-care facility. The landlord's administrator gave evidence that he required the rent so he could pay the facility's fees.

While the administrator proved the grounds for possession, VCAT considered the relative hardships of the parties before making a decision. At the hearing, the tenant could not provide evidence regarding her financial position and the reason she had not paid the rent.

After some informal discussions, the tenant agreed to an application to appoint an administrator to oversee her financial affairs, and the matter was adjourned.

At a later hearing in the Guardianship List, VCAT appointed the State Trustees as administrators for the tenant, and they structured the tenant's finances so that she would pay the rent and arrears. VCAT adjourned the Residential Tenancies application with orders reflecting the payment arrangement and with the landlord's right to renew the application for a further hearing if the tenant does not make the payments.

serving our
community.



Central Listings

The staff of Central Listings manage and control the listing process. This important function involves the efficient use of hearing rooms and VCAT members and allocation of cases throughout Victoria.

Hearing Locations

During 2004–05, VCAT members conducted hearings at 55 King Street, Melbourne, and at 101 suburban and rural locations throughout Victoria (103 in 2003–04). Refer to the map of Victoria featured on the inside back cover of this Annual Report for hearing locations.

Wherever possible, VCAT members heard cases at locations convenient to the user. Such venues included hospitals, private nursing homes and special accommodation homes.

Magistrates as Sessional Members

VCAT uses a select group of magistrates to sit as sessional members. This process effectively increases our presence in rural Victoria and maximises our ability to hear urgent applications. During 2004–05, magistrate sessional members included two Deputy Chief Magistrates in Melbourne and magistrates located in Horsham, Shepparton, Bendigo, Moe and Geelong.

Video and Telephone Hearings

If VCAT users are unable to attend established hearing locations, they may attend hearings conducted by video or telephone. For a small fee, we can arrange video links to locations around Australia and overseas. In addition to providing added convenience for users, such hearings help to manage members' time more efficiently, especially when hearing urgent matters originating in rural areas.

During 2004–05, VCAT members conducted approximately 48 video conferences (60 in 2003–04), linking locations throughout Australia, as well as overseas, including New Zealand and England. Members conducted telephone conferences on a regular basis at VCAT, averaging six to eight hearings by telephone each week.

Sessional members provide important expertise in all Lists at VCAT. Background, from left, Senior Member Jane Monk, a town planner, joins Sessional Member Anne Keddie, an architect, to hear a Planning and Environment List matter.



Access for the Hearing Impaired

We offer hearing loop access in all hearing rooms at 55 King Street for hearing impaired users attending VCAT hearings. In addition to this advancement, we purchased a DVD player for use by the parties upon request, which has allowed users to present their cases in a format that assists them as well as VCAT.

Ground Floor Service

The ground floor service staff at 55 King Street provide general advice to users about VCAT operations and hearing procedures. In addition, they assist users in filling out application forms and arriving for hearings, as well as help users of the Residential Tenancies List in requesting that warrants of possession be issued.

During 2004–05, waiting times for the high volume task of preparing warrants continued to be minimal, taking an average of 15 minutes to process. Staff prepared between 25 and 30 warrants per day and operated a facsimile service that benefited users with timely processing of warrants directly to real estate agents, landlords and police stations.

Fifth Floor Service

Staff members of the fifth floor service at 55 King Street welcome parties arriving for hearings. We appointed two staff members, Coordinator Bronwyn Corr, assisted by Administrative Officer Vicky Gouros. They assist the public and VCAT members with as many as 100 hearings each day and up to 300 people by recording the arrival of parties for hearings and directing them to hearing rooms.

Victoria Legal Aid Duty Lawyer

The Victoria Legal Aid duty lawyer resides on the ground floor of 55 King Street. The duty lawyer assists unrepresented parties with confidential, on-the-spot legal advice, free of charge. In addition, the duty lawyer provides a valuable legal resource for VCAT staff in their day-to-day dealings with users, particularly with regard to complex matters. During 2004–05, the duty lawyer mainly benefited users of the Residential Tenancies List, Civil Claims List and Guardianship List.

community relationships.

President of VCAT Justice Stuart Morris (seated background, right, with Senior Member Margaret Baird) conducts a hearing in rural Victoria involving a planning appeal against the granting of a permit to allow an 'adult sex book shop' in the city of Shepparton. (Photo courtesy of Shepparton News.)



User Groups

User groups play a vital role in our ongoing improvement process, offering a forum where representatives of VCAT users may discuss important issues. Members of most Lists conduct regular user group meetings, usually on a quarterly basis. The user groups make up a broad spectrum of representatives from community and industry groups, and the legal profession. User group meetings give representatives the opportunity to provide valuable feedback, with the aim of improving the services that VCAT offers. This Annual Report features user group activities in each individual List report, starting on page 24.

Information Sessions

Information sessions provide an essential link to the community and help to raise awareness about the many services VCAT offers. VCAT members, including judicial members, and key staff regularly conduct information sessions covering various topics important to users. The following information details some of our major activities. For a more detailed listing of the major speeches and information sessions conducted, please refer to pages 13 and 77 of this Annual Report.

Visitors to VCAT

Legal groups, international groups, and tertiary and high school students visit VCAT frequently to observe how we operate. We accommodate such visits with an introductory seminar and access to our hearings.

Planning Week

The Planning and Environment List held an open day on 18 November 2004 during Planning Week to raise awareness about the work of the List. The sessions attracted approximately 60 people (50 in 2003–04) and covered such topics as the role of the List within VCAT, how to lodge an application for review, and how hearings and mediations are conducted.

Sessions Conducted by VCAT Members and Staff

During 2004–05, VCAT staff conducted presentations to the community, including professional groups, schools and service clubs. Deputy presidents and senior members of the Guardianship List, Credit List, Residential Tenancies List, and Planning and Environment List conducted List-specific sessions. Some examples of information sessions included presentations to representatives of:

- the Real Estate Institute of Victoria and tenants groups;
- consumer credit and banking and finance industries; and
- the medical profession and other related professions.

Sessions Conducted by the President

President of VCAT Justice Morris presented a number of formal speeches and informal speeches and presentations during 2004–05, including:

- *Where is Technology taking the Courts and Tribunals?*, Courts Technology Conference, Melbourne on 20 October 2004; and
- *Third Party Participation in the Planning Permit Process* at the conference on Environmental Sustainability, the Community and Legal Advocacy conducted by Victoria University, Melbourne on 4 March 2005.

For a list of formal speeches conducted, please refer to page 13 of this Annual Report and page 77 for a more detailed listing of informal presentations and speeches.

IT Snapshot

Objectives

- Expand the types of applications that can be made via VCAT Online.
- Rewrite and further expand VCAT Online.
- Continue developing TM to better support the Guardianship List.
- Begin electronic archiving of Residential Tenancies List and Guardianship List orders with the Public Records Office.
- Conduct an improvement program for Caseworks.
- Further upgrade computers used by VCAT members and staff and work with the DOJ to implement important software and infrastructure upgrades.

Key Results

- In April 2005, introduced applications under the Alternative Procedure for Possession via VCAT Online.
- Significantly improved the ability of TM to support the Guardianship List.
- Upgraded the Caseworks infrastructure, including installation of new version releases for both the application and database.
- Upgraded the operating system software for 240 PCs and installed 155 new computers at VCAT.
- Achieved substantial hardware and communications and infrastructure upgrades, many at the initiative of the DOJ.

Future

- Launch the VCAT Online rewrite early in 2005–06.
- Make a major contribution to the creation and implementation of the Integrated Courts Management System.
- Further expand the delivery of the Order Entry System to suburban and rural venues (using Citrix and upgraded bandwidth across the DOJ-wide area network).

Case Management

To manage VCAT's significant workload, we operate a computerised case management system comprising Caseworks and the Tribunal Management System (TM). Caseworks and TM are efficient, reliable systems and are critical to our operations. VCAT members and staff use Caseworks and TM to:

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

Caseworks

Caseworks is a mature, efficient system requiring little maintenance and development beyond fine tuning. In 2004–05, we implemented few changes, with the exception of preparing Caseworks for the introduction of the Legal Practice List and implementing a minor upgrade in July 2005. During the reporting period, the Consumer and Commercial Tribunal in Queensland chose Caseworks for implementation and we will provide some assistance to the tribunal.

In 2005–06 we will benefit from improvements to Caseworks as a result of that implementation.

TM

We continued to develop TM, incorporating the following changes:

- A major upgrade to facilitate the DOJ-wide roll out of Windows XP to all desktops.
- Updated the Order Entry System (OES) to facilitate the change of ownership of one of the commercial providers of administration services appointed by the Guardianship List.
- Improved the processes for fee collection in the Guardianship List.
- In conjunction with software development company Loatier Pty Ltd, began to develop VCAT Online—Guardianship List, an Internet interface that will provide access for State Trustees Ltd with regard to the examination of annual financial reports in the Guardianship List. We plan to complete this project in 2005–06. We acknowledge the assistance provided by the DOJ Technical Services section and the facilities manager Fujitsu Pty Ltd.



From left, Technology Officer Adam Trevethan, Technology Coordinator David Freeman, Digital Recording Manager Peter Cooper, Sophia Lee of the DOJ Technology Services Help Desk, Lucille DeKraan, Web Site Administrator, and Jody Randals of the DOJ Technology Services Help Desk. Containing comprehensive information about VCAT, the web site has assumed a higher profile across the DOJ. Constant interaction is vital to keep the dynamic platform up-to-date as forms, protocols, rules, regulations and legislation change.

VCAT Online

VCAT Online 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; and
- withdraw applications.

In 43% of cases, users receive advice of a hearing date within seconds of lodging an application.

VCAT Online attracted an increasing number of users during 2004-05, who lodged 50,201 applications online, representing 76% of all applications made to the Residential Tenancies List, compared with 72% in 2003-04.

In 2004-05, we expanded VCAT Online to allow the use of the Alternative Procedure for Possession via VCAT Online.

To an extent, VCAT Online is a victim of its own success. With up to 4,500 applications being made online each month, VCAT users have been experiencing problems using the four-year-old software. With the assistance of Loatier Pty Ltd, we re-wrote the software for VCAT Online and initiated final testing of the new version, which is due for release in July 2005. The look and feel of the new version is modelled on the standard design used by VCAT and the courts.

Order Entry System (OES)

OES enables members of the Residential Tenancies List and Guardianship List to produce and print orders that can be signed and given to the parties immediately after hearings.

During 2004-05, OES use in the Residential Tenancies List increased, with 47,517 orders (70% of all orders) being produced by VCAT members using OES (68% in 2003-04). In the Guardianship List, members produced 8,525 orders (65% of all orders) using OES (65% in 2003-04). VCAT staff produced the remaining orders generated by these Lists as directed by

the members. Members access OES at Magistrates' Courts in Ballarat, Dandenong, Frankston, Geelong, Heidelberg, Ringwood, Sunshine and Mildura. During 2004-05 we expanded OES to the Magistrates' Court at Werribee. Following consultation with the Chief Magistrate, we plan to expand OES to all Magistrates' Courts in Victoria.

Computer Hardware Upgrade

In consultation with the DOJ, the following communications infrastructure and computer upgrades occurred during 2004-05:

- We installed two new Caseworks servers, including the installation of new version operating systems and software upgrades for the Caseworks application and database.
- As part of a whole of Victorian Government agreement outlined in the *Telecommunications Purchase and Management Strategy*, we upgraded all data and communications infrastructure at VCAT. In early 2005-06, we plan to install a new call centre management and telephone system.
- As part of a DOJ-wide PC/server upgrade initiative to Windows XP/2000, we replaced all VCAT servers with new units or installed new operating systems. In addition, we upgraded all personal computers at VCAT, totalling 240 computers, and rolled out 155 new computers.

We acknowledge and appreciate the assistance provided by the DOJ Technology Services Branch. Our close association with staff of the Branch has further enhanced our ability to provide VCAT users and staff with a stable and reliable IT infrastructure.

Telecommunications

During 2004-05, VCAT received approximately 200,000 telephone enquiries (209,000 in 2003-04). The following Lists attracted the majority of calls:

- 28% Residential Tenancies List (28% in 2003-04);
- 21% Planning and Environment List (21% in 2003-04);

- 20% Guardianship List (21% in 2003-04); and
- 14% Civil Claims List (12% in 2003-04).

VCAT Web Site

In February 2004 we re-launched our web site and incorporated other improvements, including:

- continually updating content, such as recent decisions and other information about fees, forms and how to use VCAT;
- improving the navigation structure to make information easier to find;
- improving presentation in terms of colour and word highlighting; and
- standardising content presentation.

Refer to page 80 for more information.

Digital Recording

The digital recording system records proceedings that take place inside VCAT's hearing rooms and stores those recordings onto a central computer hard drive. The system allows VCAT users to order printed transcripts (at their cost) and VCAT members to use voice recordings. Transcripts may be an important source of information in the event of an appeal. The 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 2004-05 we received 447 requests for transcripts from VCAT users (253 in 2003-04) and 178 requests for copies of voice recordings from VCAT members (145 in 2003-04).

outlook for 2005–06.

As an important part of our role at VCAT, we estimate user demands to ensure that resources adequately meet those demands. We prepare forecasts of VCAT's workload and consider new jurisdictions that may be conferred on VCAT to determine whether they may have an impact on case volume.

Demand Forecast

Parliament decides the types of disputes we are to resolve. Without further new major jurisdictions for VCAT, we project approximately 88,000 matters will be initiated in 2005–06, perhaps rising to approximately 90,000 matters initiated in 2007–08.

The rise in demand could principally occur in the Civil Claims List, where we project annual growth of 10%. In the Planning and Environment List, we project annual growth of 5%, compared with the trend experienced since 1997–98 of 6% per annum. In the Guardianship List, we project annual growth of 2%.

If our annual budget continues to reflect rising costs, we will have the capacity to finalise approximately 88,000 matters per annum in a timely manner. If demand rises, we may need to seek additional funding. However, we will examine whether we can, to an extent, meet this challenge by further improving our efficiency. In addition, we may be able to transfer resources between Lists should demand shift, which is one of VCAT's strengths.

We are planning on the basis that, if needed, we will have the capacity to finalise 90,000 matters by 2007–08. Details regarding the performance of each individual List begin on page 24.

New Jurisdictions

VCAT has the flexibility to accept and integrate new jurisdictions at a relatively low cost to Government and VCAT users.

The *Housing (Housing Agencies) Act 2004* came into operation on 1 April 2005. The Registrar of Housing Agencies can decide complaints from tenants against the rental housing agency. Where the Registrar makes a finding against the housing agency, the housing agency may apply to VCAT. While we have not received any applications, over time we could receive significant numbers.

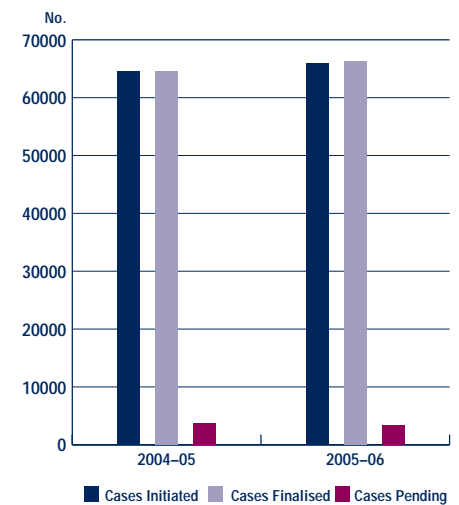
The *Retirement Villages (Amendment) Act 2005* came into operation in April 2005, which makes VCAT the main venue for resolving disputes between retirement village operators and residents. We are confident VCAT will be able to deal with the increased workload generated by this change.

From 1 July 2005 the *Occupational Health and Safety Act 2004* will enable VCAT to hear reviews of WorkSafe decisions. While we do not know how many applications we will receive, it could be a significant number. These matters may need to be handled very quickly since they could involve issues of whether a workplace can continue to operate.

The transfer of some functions of the Legal Profession Tribunal to a Legal Practice List at VCAT is planned for 1 October 2005. The planned Legal Practice List may add approximately 300 matters initiated a year.

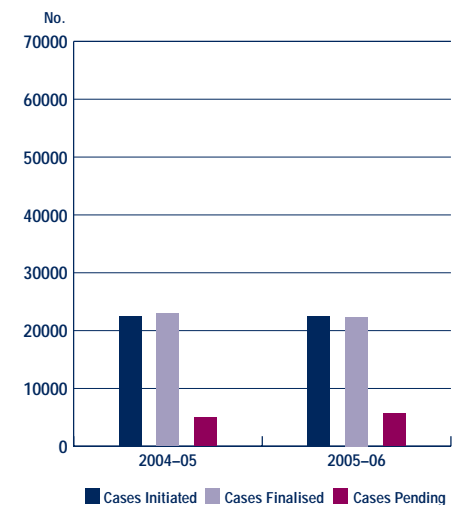
For a list of VCAT jurisdictions, please refer to page 69 of this Annual Report.

Residential Tenancies Cases—2004–05 to 2005–06



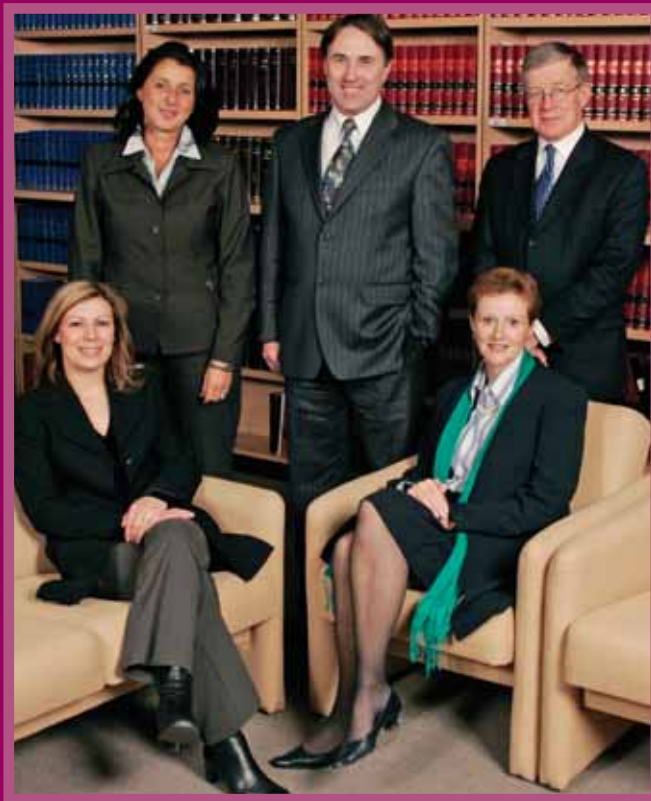
We expect the case load demand for the Residential Tenancies List to remain steady for 2005–06.

Cases in All Other Lists—2004–05 to 2005–06



We expect the case load demand for all other Lists, excluding Residential Tenancies List cases, to remain steady for 2005–06.

organisational profile.



governance policies.

The following information describes VCAT's governance policies.

Appointment of Members

Members of VCAT are appointed in accordance with the VCAT Act and include judicial members in the roles of President and Vice-President, and non-judicial members acting as deputy presidents, senior members and ordinary members.

Judicial Members

The VCAT Act provides that the President must be a Supreme Court judge and a Vice-President must be a judge of the County Court. The Attorney-General recommends judicial members for appointment to the Governor in Council, after consultation with the Chief Justice and Chief Judge.

Subject to the VCAT Act, they are usually appointed for five-year terms, after which they are eligible for re-appointment. They may resign their office by delivering a signed letter of resignation to the Governor.

Non-Judicial Members

The Governor in Council appoints deputy presidents, senior members and members of VCAT. Subject to the VCAT Act, they hold five-year terms and are eligible for re-appointment. They may resign their office by delivering a signed letter of resignation to the Governor.

All deputy presidents are full-time appointments. Senior members and members may be appointed as full-time or sessional members.

Directing VCAT

The President and Vice-Presidents of VCAT are:

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

In carrying out these functions, the Vice-Presidents are subject to the direction of the President. The President is responsible for advising the Minister about any action that the President considers would lead to the:

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

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

Rules Committee Members

VCAT's primary objective is to ensure access to justice for all Victorians. The Rules Committee is responsible for making VCAT's legislation and Practice Notes readily accessible to VCAT users.

Members of the Rules Committee are:

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

During 2004–05, a vacancy existed in the last category.

Functions

Members of the Rules Committee are appointed pursuant to section 152 of the VCAT Act and carry out a number of important functions with regard to the leadership of VCAT.

These functions include:

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

Quorum and Meeting Procedure

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

Ethical Standards

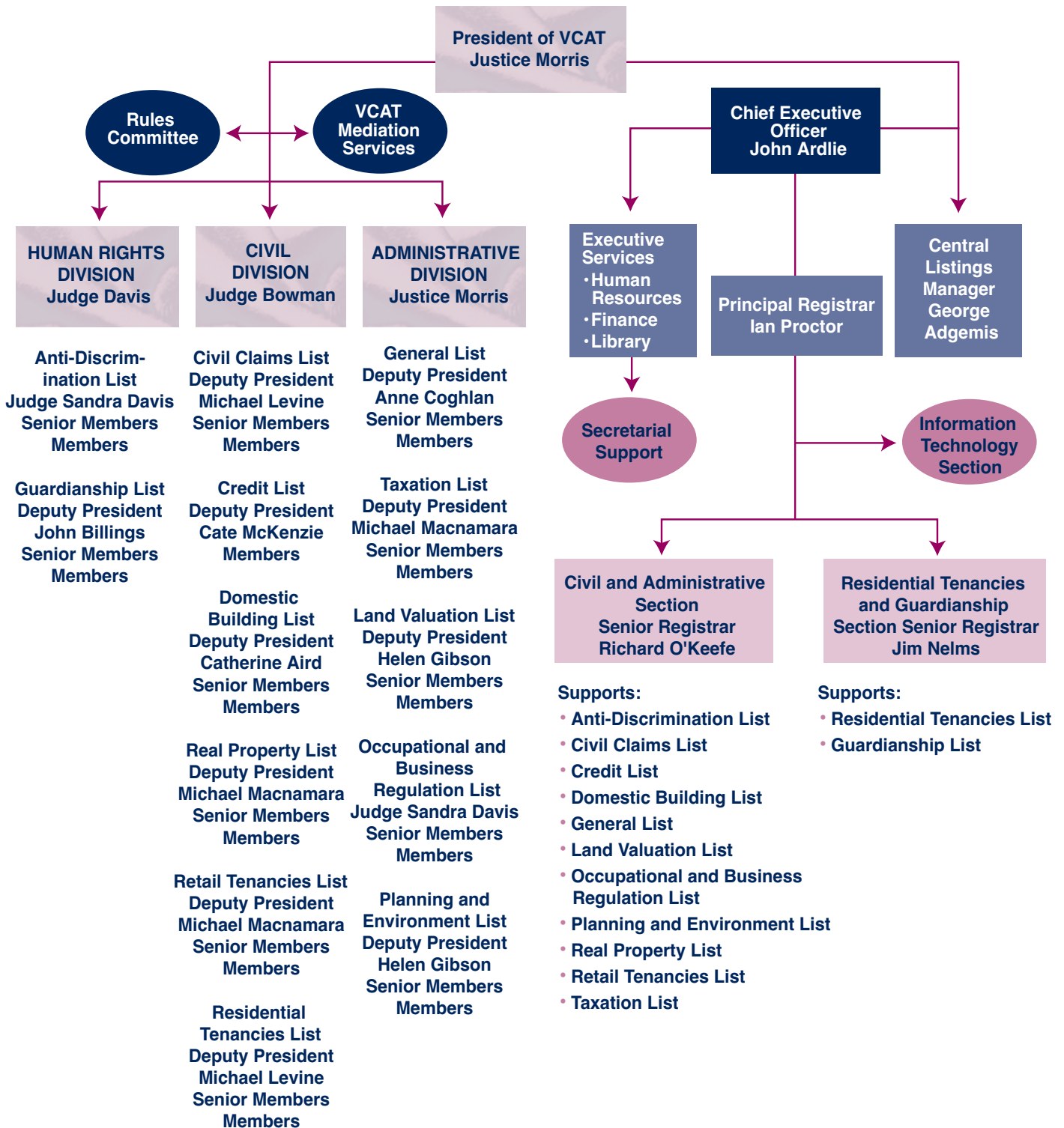
The Presidential members have taken steps to increase the knowledge and understanding of members and staff as to their ethical responsibilities. The VCAT Mediation Code of Conduct provides a guide for mediators and a way of informing parties of their rights at mediation. Refer to the VCAT web site at www.vcat.vic.gov.au for the Mediation Code of Conduct.

Rules Committee Meetings

Member*	Held	Attended
Justice Morris	7	7
Judge Bowman	7	6
Judge Davis	7	6
Margaret Baird	7	6
Louise Jenkins	7	5
Prof Sallmann	7	4

*Judge Duggan, Judge Higgins, Judge Strong, Judge Davey and Judge Wood of the County Court, who are Vice-Presidents of the tribunal, are not presently allocated to VCAT. Nonetheless Judge Strong attended two meetings of the Committee.

organisational structure as at 30 June 2005.



rules committee report.

The Rules Committee comprises VCAT's judicial members, a full-time member who is not a legal practitioner, a legal practitioner and two persons nominated by the Attorney-General. Refer to page 55 of this Annual Report for additional information and meeting attendance during 2004–05.

Membership

As at 30 June 2005, the Rules Committee comprised the following members:

Justice Morris

BEC (Hons), LLB (Hons). Appointed President of VCAT on 10 June 2003. Signed the Roll of Counsel of the Victorian Bar in 1976. Appointed Queen's Counsel in 1991. Appointed Justice of the Supreme Court of Victoria on 8 April 2003.

Judge Bowman

LLB (Hons). Appointed Vice-President of VCAT, Civil Division, on 4 February 2002. Signed the Roll of Counsel of the Victorian Bar in 1968. Judge of the Accident Compensation Tribunal from 1987 to 1992. Appointed to the County Court in 2001.

Judge Davis

BA (Hons), M Sc (Econ), MA, LLB (Hons). Appointed Vice-President of VCAT, Human Rights Division, on April 2005. Appointed Judge of the County Court on 26 October 2004. Appointed Deputy President of the Anti-Discrimination List in February 2004 and Deputy President of the Occupational and Business Regulation List of VCAT in September 2000. (See page 24 or 38.)

Other Judicial Members

Judge Duggan, Judge Higgins, Judge Strong, Judge Davey and Judge Wood are full-time Judges of the County Court who remain as Vice-Presidents of VCAT and members of the Rules Committee and are able to be called upon to sit if required.

Prof Peter Sallmann

LLB, M Phil. Appointed on 1 July 1998. Crown Counsel for the State of Victoria. Admitted as a barrister and solicitor of the Supreme Court of Victoria in 1973. Appointed Director of the Civil Justice

Review Project in 1997. Professor, Law Faculty at Monash University.

Louise Jenkins

BA LLB. Appointed on 1 July 1998. Barrister and Solicitor of the Supreme Court of Victoria. Partner, Arthur Robinson, Hedderwicks. Practises extensively in the litigation area for major Australian companies as well as a range of international insurers. She is a member of the Legal Profession Tribunal and a Trustee of Law Aid.

Margaret Baird

Bachelor of Town and Regional Planning. Appointed to the Rules Committee on 24 June 2003. Consultant, strategic planner and sessional independent panel member.

Activities

The Rules Committee amends the Rules and Practice Notes of VCAT to achieve procedural reform and respond to changes in jurisdiction, as the Parliament passes new legislation. During 2004–05, the committee met on seven occasions and approved Amendment Nos. 14 and 15 to the VCAT Rules. These amendments dealt with the following matters:

- Conditions applying to the right of a non-party to inspect tribunal files.
- Creation of a Legal Practice List.
- Specific procedures with regard to proceedings arising from amendments to the *Planning and Environment Act 1987* and the *Subdivision Act 1988*.
- Allocation of new enactments to various Lists.

The committee introduced a new Practice Note in the Land Valuation List and amended Practice Notes in the Planning and Environment List. In addition, the committee adopted a new method of citing Practice Note material.

Challenges to Decisions

During 2004–05 there was a challenge in the Supreme Court of Victoria in relation to the VCAT Rules. The challenge, brought by *The Herald & Weekly Times Limited*, related to non-party inspection of tribunal files (see *The Herald and Weekly Times Limited v. Victorian Civil and Administrative Tribunal* [2005] VSC 44). The challenge related to the validity of Rule 6.08,



From left (standing) Vice-President Judge Davis, President Justice Morris, Vice-President Judge Bowman (seated) Rules Committee Secretary Teresa Bisucci and Rules Committee Member Louise Jenkins.

which came into operation on 6 December 2004, and Rules 5.04, 5.10, 6.17(2) and 6.24, which have been in existence since 1998. Rule 6.08 qualified the right conferred on a non-party to inspect a file in proceedings arising under certain enactments. The right was subject to the tribunal making a direction or an order authorising the non-party to conduct an inspection of the file. Rules 5.04, 5.10, 6.17(2) and 6.24 required the tribunal to make a direction allowing access to parties. Justice Bongiorno held that the function of the Rules Committee was to regulate the practice and procedure of the tribunal. His Honour also stated that the rules, the subject of the dispute, denied access to a statutory right unless the tribunal exercised a discretion to permit access. These rules did not regulate the practice and procedure of the tribunal since they altered the rights conferred by Parliament. Hence the above mentioned Rules were declared to be beyond the power of the Rules Committee.

The Future

During 2005–06, the Rules Committee will continue to amend the Rules of VCAT and produce consistent and easily understood Practice Notes and explanatory guides. The primary focus of the committee will be on monitoring legislative amendments to substantive Acts made during 2005–06.

registry management.

The VCAT Registry comprises a team of about 130 people who work with members and other staff to serve the needs of VCAT's users. The majority of staff work at 55 King Street, Melbourne, and others work at Magistrates' Courts when VCAT members hold hearings.

The Registry comprises a:

- Residential Tenancies and Guardianship Section, supporting these two high-volume Lists;
- Civil and Administrative Section, supporting the 11 other smaller volume Lists; and
- Listing Directorate charged with the complex task of allocating members and managing hearing venues.

In the VCAT Registry, we aim to provide an efficient and streamlined service by:

- providing advice to our users about how VCAT operates by telephone and at the counter;
- helping users to lodge applications to VCAT;
- sending correspondence to users, such as letters about cases, hearing notices and VCAT orders;
- allocating members to deal with the extensive daily case load;
- arranging and servicing hearing venues across Victoria; and
- working to improve VCAT's administrative processes.

Registry Management

Registry management comprised the following senior managers as at 30 June 2005:

John Ardlie

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

Ian Proctor

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

Jim Nelms

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

Richard O'Keefe

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

George Adgemis

Appointed Listings Manager in July 1999.

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

Major Activities

The Registry played an important role in many of the achievements described in this Annual Report.

In addition, we implemented the following initiatives:

Tightening Performance

With the aim in mind to tighten a range of performance indicators, we adopted a policy to clear all work arriving on a desk by the end of the day. Staff have welcomed the policy and it has worked well. In other areas we set performance targets, monitored our performance against them and tried to respond whenever we were not meeting them.

Linking Performance

For the second year, staff have worked within the Victorian Government's Performance Management and Progression System. Annually, we link the individual performance agreements to Registry targets, enabling staff to plan their career, work role, level of performance and how they can improve and increase their remuneration.

Accredited Training

Delivered in partnership with Victoria University, the DOJ, courts and tribunals have introduced an accredited qualification for court and tribunal staff. It aims to enhance the public's access to justice, improve levels of service delivery in the courts and at VCAT, create efficiencies in the deployment of staff between the jurisdictions, and improve the career opportunities for staff. Two VCAT staff started in the first round of training in

Registry senior managers, from left—George Adgemis, Richard O’Keefe, Jim Nelms, John Ardlie (Chief Executive Officer) and Principal Registrar Ian Proctor.



Registry managers, from left—Tracey Watson, Justin McHenry, Tony Jacobs and Sue Lalji.



February 2005 with opportunities for another two enrollments each six months.

Workstations Replaced

In April 2005 we replaced 30% of the workstations on the seventh floor at 55 King Street, which houses most of the VCAT Registry. For operational reasons, about 40 old workstations, originally installed in 1999 as new workstations, remained. As well as being an overdue improvement, we took the opportunity to set aside accommodation for the soon to be established Legal Practice List.

Presentations and Participation on External Committees

The following Registry senior managers conducted presentations and/or participated on external committees during 2004–05:

Ian Proctor

- Conducted presentation on the subject of VCAT ‘Debt Recovery’ to the Building Designers Association of Victoria on 4 April 2005.
- Participated as a member of the Building Conciliation and Advice Victoria Working Party.

Richard O’Keefe

- Participated as a member of the Administrative Review and Constitutional Law Committee, Law Institute of Victoria.

Jim Nelms

- Participated as a member of the National Committee of Estate Examiners.

committee profile.

Heads of Lists Committee

The Heads of Lists Committee comprised the President of VCAT Justice Morris, Vice-Presidents Judge Bowman and Judge Davis and the Deputy President of each List.

The Heads of Lists Committee met monthly to discuss key issues regarding the day-to-day work of List members, such as case load, finance, training and changes in legislation, affecting VCAT.

Planning and Environment List Professional Development Committee

The Planning Committee comprised six members who met every six to eight weeks to review and prepare for upcoming events and seminars. While most of the committee's activities comprised twilight seminars on topics of interest, the committee also conducted early morning sessions including a very successful half-day bus tour in late 2004. Some events involved external speakers and others were led by planning members.

In addition, one of the initiatives of the new committee was to create a new Register of Conferences/Seminars, which was regularly updated and distributed in electronic format to all planning members each month. The register advised of both upcoming internal professional development activities and external seminars and conferences of interest. The committee organised the following activities organised during 2004–05:

- 12 August 2004—Justice Morris provided an overview of his recent presentations to Nillumbik and Casey Councils.
- 19 August 2004—discussion with members of VPP Parking Advisory Committee.
- 2 September 2004—presentation by external noise experts on noise attenuation in buildings, including demonstration of relevant noise equipment and testing.

Members of the Planning and Environment List Professional Development Committee meet to discuss a forthcoming seminar for List members. From left, Full-Time Members Jeanette Rickards, John Bennett, Philip Martin and Senior Member Tony Liston.



- 9–11 September 2004—a number of Planning Members attended the VPELA State Conference at Sunbury.
- 22 September 2004—presentation by heritage expert Peter Lovell on identifying 20th century housing styles.
- 25 November 2004—half-day bus tour of eastern and southern suburbs, to inspect completed developments approved by VCAT.
- 31 March 2005—session on 'good decision writing' led by Members Peter O'Leary and Tonia Komesaroff (both of whom had recently attended an external four-day course on this topic).
- 21 April 2005—early morning session on 'Running hearings—traps and tricks for young players'.
- 28 April 2005—presentation by Department of Sustainability and Environment on the forthcoming *Planning and Environment (Amendment) Act 2004*.
- 12–13 May 2005—most planning members attended the joint conference with the New South Wales Land and Environment Court held in Canberra.
- 2 June 2005—presentation by Full-Time Member Philip Martin and Deputy President Helen Gibson on recent changes to the development contributions statutory

regime in the Planning and Environment (Amendment) Act, and the first Tribunal decisions by Philip dealing with these changes.

- 9 June 2005—Senior Member Tony Liston ran an early morning session on using the 'VCAT Template' for writing decisions. In addition, many planning members attended (and paid for their own participation in) many other external professional development events over 2004–05 and each full-time member attended one conference at the expense of the Tribunal.

Professional Development Coordinating Committee

Members of the Professional Development Coordinating Committee (PDCC) review and guide activities concerning:

- mediation;
- the VCAT Library; and
- new members and seminars.

Prior to a meeting of the PDCC, committee members submit reports of their activities since the previous meeting. These reports are incorporated into the minutes of the PDCC. At each PDCC meeting, members discuss the work in progress of each committee.

Mediation Committee

The Mediation Committee makes recommendations to enhance mediation and undertakes the development of VCAT mediation and mediators. Committee members met on six occasions during 2004–05 and included:

- Margaret Lothian (Chair) Principal Mediator and VCAT sessional member;
- Cathy Aird, Deputy President of the Domestic Building List;
- Jacky Kefford, Susanne Liden and Peter O’Leary, full-time VCAT members;
- Dr Gregory Lyons, part-time VCAT member and academic;
- Struan Gilfillan, architect and VCAT sessional member;
- Jim Cyngler and Julian Ireland, barristers and mediators in private practice; and
- Marcel Alter, Ian De Lacy and Hani Greenberg, solicitors and mediators in private practice.

During 2004–05, committee members:

- obtained a pay rise for sessional and part-time mediators, in line with VCAT sessional members;
- provided mentors for VCAT mediators;
- conducted professional development activities for mediators (see below); and
- performed *Donoghue v Stevenson: the VCAT Mediation* as its contribution to Law Week.

Professional Development

During the financial year, professional development activities included:

- publishing three editions of *VCAT Mediation News*, available on the VCAT web site at www.vcat.gov.au;
- holding lunchtime seminars on *Unrealistic Expectations at Mediation—Maximising Value for Money* on 18 August 2004, *More Unreasonable Expectations* on 10 November 2004 and parts I and II of *The Ethics of Mediation*, on 9 February and 8 June 2005, both convened by Marcel Alter;

- arranging two seminars, the first on 14 October 2004 given by Professor John Wade covering the topic *Teaching Parties How to Negotiate and Coping with the Hard Bargainer*, and the second on 18 November 2004 convened by Joanna Kalowski on the subject *High Emotion Mediation*; and
- establishing a scheme where, with the consent of the parties, novice mediators can watch VCAT mediators in action.

Library Committee

In association with VCAT librarian Clare O’Dwyer, members of the Library Committee ensure that the VCAT library offers an efficient service to VCAT members. The library provides books and electronic access to resources, as well as an opportunity to enrich relationships among VCAT members.

The Library Committee comprised eight members who held three meetings during 2004–05.

The main library is located on the fourth floor and branch libraries containing selected essential resource materials occupy the common areas on the first and sixth floors.

In July 2004, we completed work to expand the fourth floor library to increase space for additional shelving and to provide workstations for sessional members and an area for social interaction.

As one of its main responsibilities, the VCAT Library publishes VCAT decisions to AustLII. During 2004–05, VCAT contributed \$10,000 to AustLII for goodwill and support, and in the expectation of favourable consideration of VCAT suggestions to AustLII. VCAT is ninth on the list of frequency of hits for all jurisdictions, exceeded in Victoria only by the Supreme Court.

VCAT Librarian and Committee Chair Clare O’Dwyer served as Media Liaison Officer for VCAT. During 2004–05, she organised media activities on behalf of President Justice Morris including:

- press conference, radio and print interviews;
- media guidelines to the press and on the VCAT web site;
- a regional tour to Bendigo with the assistance of Michael Soto who accompanied the judge;
- VCAT media releases; and
- serving as an ongoing contact point for all metropolitan and regional media.

New Members and Seminars

New Members and Seminars Committee members organise and hold seminars designed specifically for VCAT members on matters of interest to VCAT.

The committee comprised Deputy Presidents Anne Coghlan and Cate McKenzie and the committee co-opts other members as required. The Judicial College of Victoria greatly assisted the committee during the financial year by arranging speakers for seminars. The committee aims to coordinate its program to take account of other seminars, such as those held by the Judicial College and the VCAT Mediation Committee.

During 2004–05, the committee held two ‘twilight’ seminars—one seminar covered the subject of VCAT’s powers with regard to award of costs. Terry Kearney, taxing Registrar of the County Court and Tony Jacobs, Registrar of VCAT, served as speakers for the seminar. The second seminar featured speakers who were interpreters for the deaf and managers working with VICDEAF. Both seminars were successful and well attended by VCAT members.

member profile.

The Judicial members of VCAT comprise the President and seven Vice-Presidents. Two of the Vice-Presidents are located at VCAT at all times. The non-judicial members comprise Deputy Presidents, Senior Members and Members.

As at 30 June 2005, VCAT non-judicial membership totalled 37 full-time members (38 in 2003–04) and 112 sessional members (115 in 2003–04). VCAT members include legal practitioners and members of other professions, such as planners, engineers, architects, medical practitioners, land valuers and real estate agents who have specialised knowledge or expertise to assist VCAT in exercising its wide range of jurisdictions.

Cross-Membership

VCAT functions efficiently due to the contributions of many members who are qualified to sit in a number of jurisdictions that were previously managed by separate boards and tribunals. This flexibility of cross-membership enables members to serve on a variety of Lists where needed, increasing VCAT's overall effectiveness. Concurrently, members acquire broader experience, as well as accumulate knowledge from exposure to a variety of jurisdictions. In turn, this approach offers greater career flexibility and career satisfaction.

Member Remuneration

Members are entitled to receive remuneration and allowances that are fixed by the Governor in Council. Remuneration and allowances in 2004–05 totalled \$8.86 million, compared with \$8.61 million in 2003–04.

Training and Development

VCAT members attended a wide range of training and development programs during 2004–05. We continued an in-house professional development program for List members. The program included presentations by outside professionals and promoted discussion on topics such as hearing procedure.

Sessional Member Peter Eggleston combines roles as a VCAT sessional member primarily hearing cases in the Civil Claims List and as a full-time litigation partner in a city legal practice. These roles provide Peter with a practical, balanced and enhanced view of the law.



Janine Perlman has practiced as a barrister for 16 years. She has been a sessional Member of VCAT for six years and hears cases in the Civil Claims, Residential Tenancies, and Anti-Discrimination Lists.



Members attended a variety of industry and external conferences and seminars, including the Planning Institute of Australia Conference and the Urban Development Institute of Australia Conference. In addition, 20 members and three staff attended a joint conference with the New South Wales Land and Environment Court in May 2005. A total of 15 members and two staff attended the eighth AIIA Annual Tribunals Conference in Sydney on 8–9 June 2005 and seminars conducted by the Judicial College of Victoria (JCV) covering Judgment Writing, Judicial

Ethics, Horn of Africa Cultural Awareness and Tension in the Courtroom—Managing a Highly Charged Hearing. In addition, the JCV assisted VCAT to conduct a twilight seminar on Auslan Interpreting. Working closely with the JCV, VCAT continued its ongoing induction program for new members. During the financial year the program became available online through the Judicial Officers Information Network (JOIN) an initiative of the JCV.

With the assistance of VCAT, several List members continued their participation in the Monash University Diploma in Law course *Decision Making for Tribunal Members*, which included online segments.

List-Specific Training

Many of the Lists conducted individual List-specific training for members, particularly the Planning and Environment List and General List.

Members of the Planning and Environment List attended in-house professional development programs and a variety of industry and external conferences and seminars, including a joint conference with the New South Wales Land and Environment Court, the Planning Institute of Australia Conference, the Victorian Planning and Environmental Law Association Conference and the Urban Development Institute of Australia Conference. (Refer to page 43 for more information regarding training in the List.)

As a result of amendments to the *Mental Health Act 1986*, representatives of the Mental Health Review Board held a training session at VCAT for members of the General List on 6 April 2005. The aim of the session was to inform the List's members about legislative changes and their impact on VCAT's role when reviewing decisions of the Mental Health Review Board.

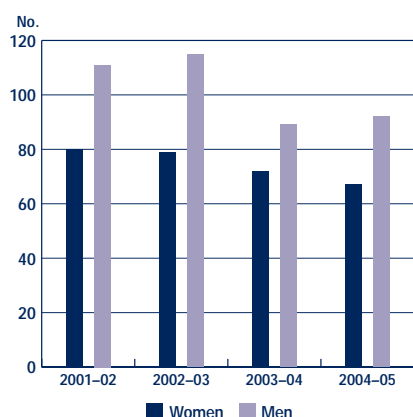
Full-Time Member Jeanette Rickards began her career as a solicitor specialising in local government and town planning. Prior to her appointment to VCAT in 1999, Jeanette worked as an adviser to the Minister for Planning. She played a major role in organising a joint conference with the New South Wales Land and Environment Court, which was held in May 2005.



Alan Vassie, BA (Hons), LL.M., was appointed as a Senior Member of VCAT in July 2005. After practising as a solicitor for five years he signed the Bar Roll in 1977 and practised as a barrister specialising in commercial and property law. He became a sessional Member of the Residential Tenancies Tribunal and of the Small Claims Tribunal in 1997 and a sessional Member of VCAT at its inception in July 1998. He was appointed as a Full-Time Member of VCAT in August 2002. Together with Deputy President John Billings and Member Jacky Kelford he is author of the volume in the VCAT Law and Practice series (published by Anstat) which is a commentary on the Residential Tenancies Act. As a Senior Member he sits mainly in the Civil Claims List and occasionally in the Residential Tenancies List and in other Lists.



Members by Gender—2001–02 to 2004–05



Type of Member	2004–05		2003–04		2002–03	
	Women	Men	Women	Men	Women	Men
Judicial Member (Full-Time)	1	2	-	3	-	3
Judicial Member (On Call)	-	5	-	5	-	4
Deputy President	4	3	5	3	4	6
Senior Member	5	7	4	7	4	5
Sessional Senior Member	-	6	1	8	1	6
Full-Time Member	8	9	9	10	9	11
Sessional Member	49	60	53	53	61	80
Total	67	92	72	88	79	115

As at 30 June 2005, the number of employees increased from 176 in 2003–04 to 179 in 2004–05. This total comprised five senior managers, 27 managers and supervisors, and 147 administration staff. Staff numbers included 16 staff on maternity leave, leave without pay or secondments. Additionally, we employed seven casual staff and 29 part-time staff.

The full-time staff equivalent figure decreased slightly from 156.3 in 2003–04 to 155.5 as at 30 June 2005.

Wages and Superannuation

Employee wages totalled \$6.35 million in 2004–05, compared with \$6.22 million in 2003–04. The Victorian Public Service (VPS) Agreement 2004 establishes a performance management and progression plan for all staff. This program recognises and rewards eligible staff who demonstrate sustained improvement in accordance with agreed progression criteria with an average 2% salary increase. Effective from 1 October 2005, we will provide staff with a 3% salary increase.

Staff members are eligible for superannuation benefits provided through various funds, including the Government Superannuation Office and VicSuper.

Employee Relations

The VPS Agreement specifies terms and conditions of employment for the period up to 1 October 2007 with an option to extend the agreement for a further 12 months.

The Agreement covers all non-executive employees in all Public Service Departments and agencies. A career structure provides staff with an opportunity for career progression through clearly defined progression criteria. In addition, the agreement increases pay equity and emphasises staff development and job growth.

Equal Employment Opportunity

VCAT is an equal employment opportunity employer. Through our recruitment process, we are committed to selecting the best applicants, consistent with merit and equity principles. We updated staff on current issues and developments with regard to sexual harassment and broader harassment and discrimination issues within the workplace by conducting seminars, workshops and circulating relevant literature. To achieve a balance between domestic and work commitments, 29 officers work on a permanent part-time basis.

Occupational Health and Safety

We aim to provide and maintain a safe working environment that nurtures the health and wellbeing of all staff, members and visitors to VCAT. During 2004–05, we engaged two occupational health and safety officers. We reviewed and tested emergency and evacuation procedures, and specialised advisers oversaw building security on a regular basis.

VCAT accepted one new WorkCover claim during 2004–05, resulting in no lost work days. This result compares with seven work days lost from two claims in 2003–04. A total of 85 judicial and staff members took advantage of the flu vaccination program conducted at VCAT. We are planning to organise an independent, qualified OHS professional to conduct a walk-through risk assessment of VCAT.

Training and Development

The Department of Justice (DOJ) provides a Corporate Training Program that is accessible to all VCAT employees. The program offers competency-based training in self-management, cultural awareness, occupational health and safety and computer training.



At the Staff Conference in May 2005, VCAT acknowledged two staff members for their outstanding contributions by presenting the VCAT Staff Award to Gemma Fowler (pictured) and Patricia Hussey. Award recipients are nominated by their peers, meeting a variety of performance criteria, ranging from service delivery to introducing improvements in office procedures.

A total of 52 training courses provided 60 days of training for 45 staff members. This result compares with 22 training courses providing 48 days of training for 29 staff members in 2003–04. These figures include 33 staff who attended a program for 'managing angry clients', specifically developed for courts and tribunals staff, to enhance the ongoing issue of court and tribunal security for staff members and users.

Youth Employment Scheme

VCAT actively participates in the Youth Employment Scheme, a joint venture between the Victorian Government and employers, designed to provide job opportunities for young Victorians aged between 16 and 24 years. In addition to employing four new trainees during the financial year, five trainees employed under the program in 2003–04 successfully obtained further employment at VCAT.

Staff Survey

We conducted a staff survey in December 2004 to determine staff satisfaction within the workplace and to identify any areas of concern and opportunities for improvement.

Since the last survey in 2003, performance increased significantly in the areas of staff understanding the process for resolving workplace issues, encouraging work-life balance and providing an open and trusting atmosphere.

Staff highly rated the following areas:

- VCAT has a strong emphasis on the importance of delivering good customer/client service.
- Staff have an understanding of job responsibilities.
- Management is approachable, accessible and supportive.
- VCAT considered flexible working arrangements fairly.
- The workplace is free from discrimination—sexual harassment and bullying are not tolerated.
- Staff feel safe in their working environment.
- Teamwork is encouraged and supported.

- Staff plan to continue working for the DOJ in 12 months' time.

Staff suggested the following areas for improvement:

- Listening to staff views.
- Security.
- Staff participating in the business planning process.
- Filling jobs on the basis of merit.
- Providing adequate feedback on work performance.

Staff Focus Group

To respond to the issues raised in the staff survey, we re-formed the Staff Focus Group and developed strategies to address the areas where we could make improvements. The group met on 10 occasions and contributed to the implementation of a number of significant programs, including:

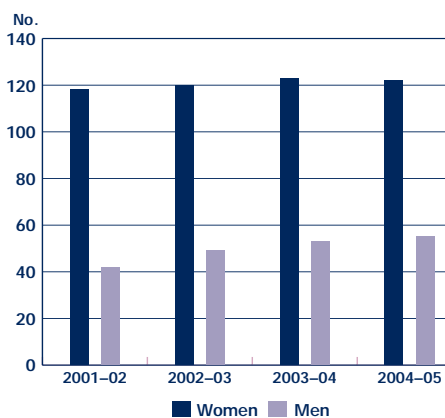
- VCAT staff conference held on 18 September 2004;
- internal rotation program for VCAT staff;
- induction program for all 'new starters' as an introduction to the organisation;
- placing photos of all staff and members on the bulletin board; and

- VCAT recognition program for staff awards.

Court Registrars

The nationally-accredited Certificate IV traineeship in Government (Court Services) aims to develop the skills and competencies essential to fulfilling the functions of a Court Registrar. During the financial year, two trainees from VCAT enrolled in the program, and another two VCAT staff members will commence as trainees in July 2005. Extending over a two-year period, the course will involve on-the-job training, classroom-based learning and some private study. Overall, trainees will study 15 subjects during a two-year period and will be subject to assessment during, and at the conclusion of, the course.

Staff Numbers by Gender—2001-05



Staff Numbers by Gender includes staff on maternity leave, leave without pay, secondments and casual roles (177 as at 30 June 2005) including 29 part-time staff. This number fluctuates from time to time.

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

VPS Grade	2004-05		2003-04		VPS Band	2002-03	
	Women	Men	Women	Men		Women	Men
VPS Grade 6	-	5	-	5	VPS-5	-	5
VPS Grade 5	3	3	2	3	VPS-4	5	5
VPS Grade 4	2	2	3	4	VPS-3	13	8
VPS Grade 3	27	8	22	6	VPS-2	94	24
VPS Grade 2	82	34	91	31	VPS-1	8	7
VPS Grade 1	8	3	5	4			
Total	122	55	123	53		120	49

*A new career structure was introduced across the Victorian Public Service on 1 November 2003. The structure changed from a five-level structure to a six-level structure. Staff translation was based on salary and work value.

appendices.



Artwork by visiting French artist Noelle Herrenschmidt.

operating statement and financial commentary.

The following information summarises VCAT funding sources and expenditure for 2003–04 and 2004–05.

Funding	2004–05 (\$M)	2003–04 (\$M)
VCAT funding sources:		
Appropriations	14.99	14.49
Residential Tenancies Trust Fund	7.32	6.97
Domestic Builders Fund	1.63	1.45
Guardianship and Administration Trust Fund	0.70	0.94
Total:	24.63	23.85
Expenditure		
VCAT operational expenditure:		
Salaries to staff	6.35	6.22
Salaries to full-time members	5.26	5.31
Sessional members	3.60	3.30
Salary related on-costs	2.54	2.42
Operating costs	6.88	6.60
Total:	24.63	23.85
VCAT Expenditure Allocated by List*		
Residential Tenancies List	7.32	6.97
Planning and Environment List	6.55	6.25
Guardianship List	3.13	2.98
General List, Occupational and Business Regulation List, and Taxation List	2.46	2.71
Domestic Building List	1.63	1.45
Anti-Discrimination List	0.53	0.75
Civil Claims List	1.91	1.70
Real Property List and Retail Tenancies List	0.41	0.37
Land Valuation List	0.28	0.37
Credit List	0.40	0.30
Total:	24.63	23.85

*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.

Expenditure

In 2004–05, VCAT's recurrent expenditure of \$24.63 million divided among expenditure on salaries to full-time and sessional members (\$8.86 million), staff salaries (\$6.35 million), salary related on-costs (\$2.54 million) and operating expenses (\$6.88 million) was 3.3% higher than the \$23.85 million expended by VCAT in 2003–04.

Funding

VCAT's funding in 2004–05 was provided by the following sources:

- Victorian Government appropriations (\$14.99 million) either directly from the Department of Justice or by way of other

departments that make contributions to VCAT. These sources fund all but those Lists funded by trust funds as described below. This funding includes revenue of \$1.39 million generated by those Lists through the receipt of application fees.

- The Residential Tenancies Trust Fund established under the *Residential Tenancies Act 1997*, which wholly funds the Residential Tenancies List (\$7.32 million).
- The Domestic Builders Fund established under the *Domestic Building Contracts Act 1995*, which wholly funds the Domestic Building List (\$1.63 million).

VCAT Funding Sources—2003–05



VCAT Operational Expenditure—2003–05



- The Guardianship and Administration Trust Fund established under the *Guardianship and Administration Act 1986*, which partially funds the Guardianship List (\$0.70 million).

VCAT Audited Accounts

VCAT's accounts are audited and published as part of the accounts of the Department of Justice, which are published in the Annual Report of the Department of Justice.

These figures may vary from the information published in VCAT's Annual Report due to adjustments made after the publication of this Annual Report.

an historical look at financial performance.

The Financial Performance of VCAT—an Historical Perspective

Since inception, VCAT has provided an economical service in terms of government expenditure.

In 2002, the Department of Justice (DOJ) reviewed VCAT. The reviewer found, “VCAT has achieved quite considerable productivity improvements since it was established”.

In 2004 the same reviewer returned to VCAT and found that we had continued to improve. He said, “In particular VCAT has been reviewing and improving the case flow processes of its lists and has further developed its use of IT to improve its operations.”

This view is supported by an analysis of the average real cost of inputs to VCAT of hearing and determining each application from 1997–98 (when VCAT commenced) to 2004–05.

Expressed in constant 2004–05 dollars terms, inputs per case have declined by more than 20%, or 3.7% per annum. In Table 1, the expenditure relating to the Residential Tenancies List is shown separately, since this List has the highest volume of cases.

We have achieved this result through the development of member and staff skills, improved registry practices, bolder listing practices, the greater use of single member tribunals and using technology extensively. In unadjusted dollar terms, over the last seven financial years the total funding has increased from \$18.27 million to \$24.63 million per annum. This result represents a funding increase of approximately 34% over six years, or an average increase of about 5% per year. However, in real terms the inputs used to hear and determine cases has fallen by 20% over six years. For Residential Tenancies List cases the reduction has been 11%; for other Lists the reduction has been 36%.

Table 1: Costs to VCAT per Application (\$) (in constant 2004–05 dollars*)

	1998–99	1999–00	2000–01	2001–02	2002–03	2003–04	2004–05
Residential Tenancies	112	107	101	109	101	103	100
Other	1,082	889	741	791	775	720	692
Total	314	278	246	266	262	261	250

Table 2: VCAT Inputs (\$M) (in constant 2004–05 dollars*)

	1998–99	1999–00	2000–01	2001–02	2002–03	2003–04	2004–05
Salaries to Staff	6.84	7.86	7.60	8.01	7.62	7.71	7.41
Salaries to Members	10.83	11.56	10.46	11.03	11.13	10.59	10.34
Operating Costs	5.09	4.99	4.71	4.87	4.10	4.24	4.38
Total before Rent	22.76	24.41	22.77	23.91	22.85	22.54	22.13

**We calculate ‘constant 2004–05 dollars’ as the real value of the inputs used in operating VCAT, not including rental payments.*

Table 3: Number of Applications Made to VCAT

	1998–99	1999–00	2000–01	2001–02	2002–03	2003–04	2004–05
Residential Tenancies	57,457	68,588	71,541	69,191	66,216	64,213	65,950
Other	15,085	19,180	20,901	20,663	20,891	22,142	22,467
Total	72,542	87,768	92,442	89,854	87,107	86,355	88,417

We adjusted expenditure downwards to compensate to allow for the following costs:

- Member salaries rising 46%. These salaries tracked inflation until 2002, when the Attorney-General supported substantial pay rises as a result of a work value study.
- Staff salaries, which increased 30%, slightly higher rate than inflation.
- Operating costs, which we adjusted by 21%, to compensate for the rise in the Consumer Price Index (Melbourne).

During the period we have occupied the same space, but the cost of rent has increased by reason of market circumstances. Since the cost of rent is outside the management control of VCAT, it is excluded from this analysis. Using this approach, the real value of inputs used in VCAT’s operations has been stable; both labour and operating inputs have changed little over the period, as shown in Table 2.

We divided those dollar figures by the number of applications made to VCAT over the period, as illustrated in Table 3.

legislation defining vcat jurisdiction.

As at 30 June 2005, the following legislation gave jurisdiction to VCAT:

Administrative Division

1. General List

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

- *Accident Compensation Act 1985.*
- *Adoption Act 1984* section 129A(1)(a) (decisions regarding fitness to adopt and approval to adopt).
- *Associations Incorporation Act 1981.*
- *Births, Deaths and Marriages Registration Act 1996.*
- *Children and Young Persons Act 1989.*
- *Community Services Act 1970.*
- *Co-operatives Act 1996.*
- *Country Fire Authority Act 1958.*
- *Dairy Act 2000.*
- *Dangerous Goods Act 1985.*
- *Domestic (Feral and Nuisance) Animals Act 1994* section 98(2) (declaration and registration of dangerous dogs).
- *Drugs, Poisons and Controlled Substances (Amendment) Act 1997.*
- *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.*
- *Gambling Regulation Act 2003.*
- *Gas Safety Act 1997.*
- *Health Act 1958* section 125 (compensation for seizure of property).
- *Health Records Act 2001.*
- *Industrial and Provident Societies Act 1958.*
- *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 7 of Schedule 5 (decisions of returning officers concerning how-to-vote cards).
- *Melbourne and Metropolitan Board of Works Act 1958.*
- *Mental Health Act 1986* sections 79 (decision 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).
- *Occupational Health and Safety Act 2004.*
- *Parliamentary Salaries and Superannuation Act 1968.*
- *Psychologists Registration Act 2000.*
- *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.*
- *Tertiary Education Act 1993.*
- *Transport Accident Act 1986.*
- *Transport Superannuation Act 1988.*
- *Travel Agents Act 1986* section 46 (claims against approved compensation schemes).
- *Utility Meters (Metrological Controls) Act 2002.*
- *Victims of Crime Assistance Act 1996.*
- *Victoria State Emergency Service Act 1987.*
- *Victorian Plantations Corporation Act 1993.*
- *Victorian Qualifications Authority Act 2000.*

2. Land Valuation List

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

- *Flora and Fauna Guarantee Act 1988* section 43(12) (claims for compensation).

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

3. Occupational and Business Regulation List

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

- *Adoption Act 1984* section 129A(1)(b) (decisions regarding approval of adoption agencies).
- *Agricultural and Veterinary Chemicals (Control of Use) Act 1992.*
- *Architects Act 1991*; Sch. 1, Part 1 cl. 2(ha)
- *Biological Control Act 1986.*
- *Children's Services Act 1996.*
- *Chinese Medicine Registration Act 2000.*

legislation defining vcat jurisdiction.

- *Chiropractors Registration Act 1996*.
- *Consumer Credit (Victoria) Act 1995* Part 4 (registration of credit providers) and section 37I(1) (permission, including conditions, to a disqualified person to engage or be involved in finance broking).
- *Dangerous Goods Act 1985*.
- *Dental Practice Act 1999*.
- *Domestic (Feral and Nuisance) Animals Act 1994* section 98(1) (registration of premises to conduct a domestic animal business).
- *Education Act 1958* section 55 (endorsement of a school to accept overseas students).
- *Electrical Safety Act 1998*.
- *Estate Agents Act 1980* except sections 56B(1) (see Real Property List) and 81(5A) (see General List).
- *Extractive Industries Development Act 1995* sections 39 (quarry manager's certificates) and 40 (panel inquiry into quarry manager's fitness).
- *Firearms Act 1996* section 182 (decisions of the Firearms Appeals Committee).
- *Health Services Act 1988* section 110 (decisions of the Minister or Chief General Manager under Part 4).
- *Liquor Control Reform Act 1998*.
- *Marine Act 1988* section 85 (cancellation and suspension of certificates and licences).
- *Meat Industry Act 1993* section 24 (licences to operate meat processing facilities, alteration of buildings).
- *Medical Practice Act 1994* section 60 (registration and discipline of medical practitioners).
- *Mineral Resources Development Act 1990* sections 94 (mine manager's certificates) and 95 (panel inquiries into fitness of mine managers).
- *Motor Car Traders Act 1986* except sections 45 (see Civil Claims List) and 79 (see General List).
- *Nurses Act 1993* section 58 (registration and discipline of nurses).
- *Occupational Health and Safety Act 2004* section 59(6) Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 1994 regulation 28 (certificates of competency, authorisation of certificate assessors).
- *Optometrists Registration Act 1996* section 58 (registration and discipline of optometrists).
- *Osteopaths Registration Act 1996* section 56 (registration and discipline of osteopaths).
- *Physiotherapists Registration Act 1998*.
- *Podiatrists Registration Act 1997* section 56 (registration and discipline of podiatrists).
- *Prevention of Cruelty to Animals Act 1986* section 33 (licensing of scientific establishments and breeding establishments).
- *Private Agents Act 1966*.
- *Professional Boxing and Combat Sports Act 1985* (licences, permits and registration).
- *Prostitution Control Act 1994*.
- *Public Transport Competition Act 1995*.
- *Racing Act 1958*.
- *Second-Hand Dealers and Pawnbrokers Act 1989* sections 9B and 14 (correction of register).
- *Therapeutic Goods (Victoria) Act 1994* section 71 (licensing of wholesale supply).
- *Trade Measurement Act 1995* section 59 (licensing and discipline).
- *Transport Act 1983* except section 56 (see Land Valuation List).
- *Travel Agents Act 1986* except section 46 (see General List).
- *Utility Meters (Metrological Controls) Act 2002*.
- *Veterinary Practice Act 1997* section 55 (registration and discipline).
- *Victoria State Emergency Service Act 1987* section 31(2)(d); Victoria State Emergency Service Regulations 1995 regulation 12 (discipline of members).
- *Victorian Institute of Teaching Act 2001*.
- *Wildlife Act 1975*.

4. Planning and Environment List

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

- *Catchment and Land Protection Act 1994* section 48 (land use conditions and land management notices).
- *Conservation, Forests and Lands Act 1987* section 76 (variation and termination of land management cooperative agreements).
- *Environment Protection Act 1970*.
- *Extractive Industries Development Act 1995* except sections 39 and 40 (see Occupational and Business Licensing List).
- *Flora and Fauna Guarantee Act 1988* sections 34(3), 41 and 41A (interim conservation orders).
- *Heritage Act 1995*.
- *Local Government Act 1989* sections 185 (imposition of a special rate or charge) and 185AA (imposition of a special rate or charge).
- *Mineral Resources Development Act 1990* except sections 88 (see Land Valuation List), 94 and 95 (see Occupational and Business Regulation List).
- *Planning and Environment Act 1987* except sections 94(5) and 105 (see Land Valuation List).
- *Plant Health and Plant Products Act 1995* section 39 (costs and expenses of inspectors).
- *Subdivision Act 1988* except sections 19 (see Land Valuation List), 36 and 39 (see Real Property List).
- *Transport Act 1983* section 56 (decisions of the Public Transport Corporation or Roads Corporation): Transport (Roads and Property) Regulations 1993 regulation 18.

- *Water Act 1989* except sections 19 (see Real Property List) and 266(6) (see Land Valuation List).
- *Water Industry Act 1994* except section 74 (see Real Property List).

5. Taxation List

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

- *Business Franchise (Petroleum Products) Act 1979*.
- *Business Franchise (Tobacco) Act 1974*.
- *Debits Tax Act 1990*.
- *Financial Institutions Duty Act 1982*.
- *First Home Owner Grant Act 2000*.
- *Land Tax Act 1958* with the exception of section 25(1)(a) to the extent that the decision of the Commissioner relates to the value of land.
- *Pay-Roll Tax Act 1971*.
- *Taxation Administration Act 1997*.

Civil Division

1. Civil Claims List

The functions of VCAT under the following enabling Acts 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).
- *Retirement Villages Act 1986*.

2. Credit List

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

- *Chattel Securities Act 1987* sections 25 (compensation for extinguishment of security interest).
- *Consumer Credit (Victoria) Act 1995* except Part 4 and section 37I(1) (see Occupational and Business Regulation List).

- *Credit Act 1984*.
- *Credit (Administration) Act 1984*.

3. Domestic Building List

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

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

4. Real Property List

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

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

5. Residential Tenancies List

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

- *Fair Trading Act 1999*.
- *Housing Act 1983*.
- *Landlord and Tenant Act 1958*.
- *Residential Tenancies Act 1997*.
- *Retirement Villages Act 1986*.

6. Retail Tenancies List

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

- *Fair Trading Act 1999*.
- *Retail Leases Act 2003*.

Human Rights Division

1. Anti-Discrimination List

The functions of VCAT under the following enabling Acts are allocated to the Anti-Discrimination List of the Human Rights Division:

- *Equal Opportunity Act 1995*.
- *Racial and Religious Tolerance Act 2001*.

2. Guardianship List

The functions of VCAT under the following enabling Acts are allocated to the Guardianship List of the Human Rights Division:

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

vcat member directory as at 30 June 2005.

List(s) Assigned

Judicial Members

President

The Honourable Justice Stuart Morris

Vice-Presidents (Full-Time)

His Honour Judge John Bowman

Her Honour Judge Sandra Davis

Vice-Presidents (On Call)

His Honour Judge James Duggan

His Honour Judge Michael Higgins

His Honour Judge Michael Strong

His Honour Judge Frederick Davey

His Honour Judge Tim Wood

Total Judicial Members: 8

Deputy Presidents *(Primary List Highlighted in Bold)*

Aird, Catherine CC, DB, G, P, Real P, Res T, Ret T

Billings, John CC, G, Res T

Coghlan, Anne C, CC, G, Gen, Res T, T

Gibson, Helen LV, P

Levine, Michael C, CC, DB, G, Gen, LV, OBR, Real P, **Res T**, Ret T

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

McKenzie, Cate AD, C, CC, G, Gen, OBR

Total Deputy Presidents: 7

Senior Members

Baird, Margaret P

Byard, Russell LV, P, Real P,

Davis, Robert AD, CC, DB, Gen, OBR, P, Real P, Ret T, T

Liston, Anthony P

Lyons, Dr Gregory AD, G, Gen

Megay, Noreen AD, CC, G, Gen, OBR, T

Monk, Jane P

Preuss, Jacqueline AD, CC, G, Gen, OBR, P

Scott, Robert CC, G, Gen, Res T

Steele, Bernadette AD, CC, DB, G, Gen, OBR, Real P, Res T, Ret T,

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

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

Total Senior Members: 12

Senior Sessional Members

Ball, Rowland CC, DB, Gen, P

Cremean, Dr Damien CC, DB, G, Gen, OBR, Real P, Res T, Ret T, T

Galvin, John G, Gen, OBR, Res T, T

Horsfall, Richard DB, LV, OBR, P

Marsden, Ian P

Sharkey, Gerard P, Real P

Total Senior Sessional Members: 6

List(s) Assigned

Full-Time Members

Barker, Heather CC, G, Res T

Bennett, John P

Carruthers, Maureen AD, G

Cimino, Sam OBR, P

Hadjigeorgiou, Nicholas P

Hewet, Laurie P

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

Kefford, Jacquelyn C, CC, G, Res T,

Komesaroff, Tonia LV, P

Lambrick, Heather CC, G, OBR, Res T

Liden, Susanne AD, CC, G, Res T

Martin, Philip LV, P

O'Leary, Peter OBR, P

Rickards, Jeanette LV, P

Tilley, Annemarie AD, CC, G, Gen, Res T

Vassie, Alan C, CC, LV, G, Gen, Real P, Res T, Ret T

Wajcman, Jack CC, Res T

Total Full-Time Members: 17

Sessional Members

Alexander, Dr Renata CC, Res T

Alsop, David P

Armitage, Roderic OBR

Auty, Dr Kathryn AD, CC, DB, G, Gen, Res T

Barrand, Pamela CC, G, Res T

Bilston-McGillen, Tracey P

*Bolster, John Douglas CC, G, Gen, OBR, Res T

Borg, Susan AD, CC, G, Res T

Bourke, Gavan LV

Bridge, Emma CC, G, Res T

Brown, Vicki LV

Burdon-Smith, Susan CC, G, Res T

Burgess, Zena AD, G

Carew, Megan P

Chase, Gregory P

Cleary, Peter LV

Colbran, QC Michael G

Coldbeck, Peter CC, G, Gen, OBR, Res T

Cremean, Bernadette AD, CC, Res T

Croft, Dr Clyde T

David, Graeme P

Davies, Hugh CC, Res T

Davies, Vicki P

Davis, Dr Julian G, OBR

Dawson, Julie AD, G

Dillon, John CC, Gen, OBR, Res T

List(s) Assigned

Doherty, John	CC, G, Res T
Dudakov, Brian	LV
Dudycz, Dr Maria	AD, G, OBR
Duggan, Anne	G
Dunlop, John	OBR
Eccles, Desmond	OBR, P
Eggleston, Peter	CC, Res T
Evans, Robert	P
Ferres, Dr Beverley	AD, G, OBR
Fong, Christina	P
Gerber, Paula	AD, CC, DB
Gibson, Geoffrey	T
Gilfillan, Struan	P
Glover, Dr John	Gen, T
Good, June	CC, G, Res T
Gordon, Michelle	AD, CC, G, Gen, OBR
Gorman, Lois	G, OBR
Grainger, Julie	CC, G, Res T
Graves, Phillip	G
Hancock, Elisabeth	LV
Harty, Christopher	P
Harvey, Margaret	AD, CC, G, Res T
Hastings, Malcolm	CC, G, Gen, Real P, Res T Ret T
Hawkins, Annabel	Res T, CC, G
Hendtlass, Jane	AD, CC, G, Res T
Howe, Renata	P
Ireland, Damien	OBR
Keaney, John	P
Keddie, Ann	P
Kirmos, Kay	CC, Res T
Klingender, Jessica	CC, Res T
Kominos, Angela	AD, CC, G, Res T
Laidler, Terrence	AD, OBR
*Lambden, Elizabeth Anne	CC, G, Gen, OBR, Res T
Langton, Robert	CC, DB, Res T
Lee, Christopher	LV
Lightfoot, Brian	CC, G, Real P, Res T, Ret T
Lothian, Margaret	CC, DB, G, P, Real P, Res T, Ret T
Louden, David	OBR
Lulham, Ian	CC, DB, Res T
Lush, Jennifer	Gen, G, AD, OBR
Mainwaring, Dr Sylvia	AD, P, Real P
McCabe, Edmund	CC, G, Res T
MacDonald, Dr David	G, OBR
*McDonald, Timothy John	CC, G, Gen, OBR, Res T
McFarlane, Timothy	G
McGarvie, Ann	CC, G, Res T

List(s) Assigned

McGregor, Irene	CC, G
McNamara, Kenneth	P
Moraitis, Stella	CC, G, Gen, Res T
Mulcahy, Peter	P, Real P
Naylor, Rachel	P
Nihill, Genevieve	CC, G, Res T
Norman, Kathryn	CC, G, Res T
Osborn, Jane	P
Ozanne-Smith, Eleanor	OBR
Perlman, Janine	AD, CC, Res T
Phillips, Robert	CC, Res T
Pitt, Margaret	P
Pizzey, Geoffrey	P
*Popovic, Jelena	CC, G, Gen, OBR, Res T
Price, Roland	CC, Res T
Quirk, Anthony John	P, Real P
Rae, David	P
*Raleigh, Steven	CC, G, Gen, OBR, Res T
Read, Michael	P
Reilly, Daniel	OBR
Richards, Keith	CC, DB, G, Gen, Real P, Res T, Ret T
Robinson, Ian Carlisle	LV
Rowland, Linda	AD, CC, G, Gen, Res T
Shnookal, Toby	DB, Ret T
Soldani, Angela	CC, G, Res T
Taranto, Mary-Ann	P
Terrill, Howard	P, Real P
*Von Einem, Ian Maxwell	CC, G, Gen, OBR, Res T
Walsh, Michael	CC, DB, Res T
Walter, Richard	P
Warren, Lindsay	CC, G, Res T, Ret T
Wentworth, Elisabeth	AD, C, CC, Gen, Res T
West, Lynda	AD, CC, G, Gen, Res T
Williams, Charles Robert	AD, G, Gen, OBR
Zala, Peter	LV
Zemljak, Francis	AD

Total Sessional Members: 109**Overall Total: 159 (92 Males, 67 Females)****List of Abbreviations:**

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

*(Magistrate)

access to files, publications and information.

Access to Files and Your Privacy at VCAT

VCAT stores information about people who have been involved in cases at VCAT in its register (including file numbers, names of parties and a collection of orders of VCAT) and in its proceeding files about individual cases. Those involved in the case give information to VCAT, which can include names, addresses and telephone numbers. Generally VCAT orders that decide a proceeding (final orders) are kept permanently and other information will be kept for five years.

The VCAT Act governs what information is available. It balances the principle that usually, justice should be administered in public with principles of privacy. The following summary explains who can obtain such information from VCAT.

Who Can Read VCAT Orders?

All VCAT orders are generally available to the public. Usually, orders name the people concerned but do not record such details as addresses and telephone numbers. The decisions may summarise evidence given to VCAT.

Some orders may allow a reader to discover a party's home address because some orders record the address of a rental property (Residential Tenancies List) or home renovation or building (Domestic Building List and Planning and Environment List), or the address for local government rates (Land Valuation List) because the address is part of the dispute. Since the orders usually record names of parties, a reader may be able to discover a party's home address. If a parties are concerned, they should make application to VCAT asking that orders not allow for a home address to be discovered. This action must be taken before any orders are made. Except in the Civil Claims List, Guardianship List and Residential Tenancies List, if a

decision includes written reasons for the decision, VCAT publishes the decision on the Internet

<http://www.austlii.edu.au/au/cases/vic/vcat/>.

If an individual searches the Internet using a person's name recorded in the decision, he or she may find the decision.

VCAT also publishes a small number of significant decisions from any List on its home page at www.vcat.vic.gov.au.

In individual cases VCAT may restrict or deny access to orders under section 144 of the VCAT Act (orders on the register) and section 146 of the VCAT Act (orders on files).

Who Can Read VCAT Proceeding Files?

VCAT proceeding files can hold the original application to VCAT, VCAT orders, correspondence between the parties and VCAT and documents provided to VCAT by the parties.

This information held at VCAT is generally available to any person who identifies a particular case and asks to inspect the file.

The exception created by law are files concerning the *Freedom of Information Act 1982* which are not open for inspection or copying by any person (VCAT Act—Schedule 1, Clause 30).

In individual cases VCAT may restrict or deny access to files under section 146 of the VCAT Act. Parties to cases may apply to VCAT to have access to the proceeding file.

Generally requests from a party for access to a file will be immediately granted in all but the Guardianship List. Files about proceedings finalised more than a year ago may not be available for a day while the file is retrieved from the off-site archive. Requests for Guardianship List files will be referred to a VCAT member to decide whether or not to grant access.

Any request from a non-party for access to a file in the following VCAT Lists—Civil Claims, Domestic Building, General (excluding FOI), Land Valuation, Planning and Environment, Real Property, Residential and Retail Tenancies—will be subject to retrieval from archive. These requests may be referred to a VCAT member.

Any request from a non-party for access to a file in Lists where parties regularly raise concerns about protection of their privacy—Anti-Discrimination, Credit, General (health records and privacy), Guardianship, Occupational and Business Regulation and Taxation—will be referred to a VCAT member who will consider whether a direction should be made under section 146(4)(b) of the VCAT Act.

Will VCAT Tell Others About The Information It Holds?

In most situations, apart from publishing decisions, repeating anything said or done at a public hearing of VCAT and allowing the public to search the register and files, VCAT is prohibited by law from disclosing information about you to the public.

Am I Allowed to Publish Information Discovered from VCAT Orders or Files?

The only restriction that applies by law is that unless VCAT orders otherwise, a person must not publish or broadcast or cause to be published or broadcast any report of a proceeding under the *Guardianship and Administration Act 1986* that identifies, or could reasonably lead to the identification of, a party to the proceeding.

Decisions of the Supreme Court of Victoria in 2004–05 about Access to VCAT Proceeding Files

In 2004–05 the *Herald and Weekly Times Ltd* made two applications to the Supreme Court of Victoria challenging VCAT's Rules regarding access to VCAT proceeding files.

Before the applications were decided, under the VCAT Rules, the *Herald and Weekly Times* were not able to access most proceeding files in the Anti-Discrimination List, Guardianship List, Occupation and Business Regulation List and Taxation List, unless VCAT ordered otherwise. When anyone who was not a party in a case applied for access to a file or files in those Lists, the issue was considered by VCAT on the basis of the privacy issues surrounding the individual case. This process may have included considering whether granting access to the file could reduce the chance that mediation, which is conducted in private, could successfully settle the dispute.

The VCAT Rules Committee made these Rules since it was concerned to protect the privacy of parties in these Lists at VCAT.

On 4 March 2005 in *The Herald and Weekly Times Ltd v. the Victorian*

Civil and Administrative Tribunal [2005]

VSC 44, Justice Bongiorno of the Supreme Court ruled that under the VCAT Act the VCAT Rules Committee did not have the power to make the above Rules.

On the next working day we published VCAT Privacy Guidelines. Access to VCAT files is open unless a direction is made to close the file.

The *Herald and Weekly Times Ltd* then applied to the Supreme Court of Victoria for an order that once it had made an application to view a file and paid the application fee, it had an immediate right to access the file and VCAT had no power to consider the application and close the file.

On 1 June 2005 in *The Herald and Weekly Times Ltd v. the Victorian Civil and Administrative Tribunal and ors* [2005]

VSC 188, Justice Hansen of the Supreme Court rejected the application. He found that under the VCAT Act once a person had applied for access to an individual file, VCAT could consider whether access to the file should be closed and that, if made, such a direction should be made within a reasonable time of the request.

Therefore, the VCAT Privacy Guidelines continue to operate. The *Herald and Weekly Times Ltd* have since appealed Justice Hanson's decision to the Victorian Court of Appeal.

Publications and Information

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

- Annual Report
- VCAT Act
- VCAT Information Booklet

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

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

Other relevant publications include:

- Kyrou Victorian Administrative Law
- Victorian Planning Reports
- Victorian Administrative Reports
- Pizer's Annotated VCAT Act

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

Publication of Determinations and Orders

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

Freedom of Information

Access to proceeding files is governed by the VCAT Act as described on page 74. VCAT is not subject to the *Freedom of Information Act 1982*.

user service charter.

This User Service Charter tells you about VCAT and the service that you can expect from us.

Our Purpose

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

What We do

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

- consumer purchases (whether private or business);
- credit;
- discrimination;
- domestic building;
- guardianship and administration;
- residential tenancies; and
- retail tenancies.

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

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

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

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

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

Who We Are

VCAT is made up of a judge of the Supreme Court of Victoria (its President), judges of the County Court of Victoria (its Vice-Presidents) and members of VCAT.

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

Our User Service Standards

We aim to abide by the following user service standards:

- Assist people in disputes to resolve their differences within published times.
- Serve you promptly and courteously, whether at VCAT's main offices or at other venues such as Magistrates' Courts.
- Answer your telephone calls promptly and aim to answer your questions during that call.
- Provide you with an accurate explanation of VCAT procedures.
- Make information on VCAT processes and procedures available by means of explanatory brochures, through the VCAT web site and advice from staff.
- Ensure that all VCAT facilities are safe, accessible and convenient to use.
- Ensure that all VCAT staff wear name badges when in public areas of VCAT.

You have a right to:

- fair and helpful assistance, including appropriate arrangements to cater for special access or cultural requirements;
- be provided with an interpreter where necessary;
- have your privacy respected and keep your information confidential, unless disclosure is authorised by the law;
- a fair and just mediation and/or hearing in a safe environment; and
- receive timely decisions by VCAT.

You have a responsibility to:

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

If You are Satisfied

Our aim is to ensure that all VCAT users are greeted by courteous staff who will provide clear and accurate information about VCAT. If we have pleased you with our level of service, then please let us know. We value your feedback, either in person, by mail, telephone, fax or email. (Refer to the contact details provided on the back cover of this Annual Report.)

If You are not Satisfied

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

If You Need More Information

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

Written feedback about:

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

speeches and information sessions.

<i>Date</i>	<i>Member</i>	<i>Subject/To</i>	<i>Date</i>	<i>Member</i>	<i>Subject/To</i>
Presentations and Speeches by President:			18 Mar 2005		Presentation to Urban Development Institute of Australia luncheon, Melbourne on planning matters
28 Jul 2004		Presentation to Nillumbik Shire Council			
10 Aug 2004		Presentation to Casey City Council			
13 Aug 2004		Speech to Municipal Group of Valuers at Parliament House, Melbourne	23 Mar 2005		Presentation to Banyule City Council
9 Sep 2004		Presentation for Readers of Victorian Bar on <i>VCAT Jurisdiction</i>	1 Apr 2005		Presentation to Australian Property Institute Compensation Workshop, Melbourne on <i>Introduction to Compensation</i>
16 Sep 2004		Presentation to NSW Council of Australasian Tribunals on <i>Giving Oral Decisions</i>	5 Apr 2005		Presentation to Knox City Council
			12 Apr 2005		Presentation to Brimbank City Council
7 Oct 2004		Presentation to Law Institute of Victoria seminar on VCAT	13 Apr 2005		Lecture on VCAT and planning matters for Melbourne University Planning Law Students
18 Oct 2004		Presentation to public meeting on planning at Williamstown			
27 Oct 2004		Presentation to Housing Industry Association conference	29 Apr 2005		Presentation to Local Government CEO's forum, Hastings on <i>The Review of Local Government Decisions at VCAT</i>
4 Nov 2004		Presentation at Building Appeals Board conference			
18 Nov 2004		Presentation at VCAT Open Day	3 May 2005		Presentation to Monash City Council
18 Nov 2004		Presentation to Bayside City Council	5 May 2005		Presentation to joint conference of VCAT Planning and Environment List and Land and Environment Court
20 Nov 2004		Presentation to NSW Motor Accidents Tribunal on <i>Making Decisions</i>			
30 Nov 2004		Presentation to Whittlesea City Council	18 May 2005		Speech to Melbourne Rotary Club luncheon on <i>The Emergence of Administrative Tribunals in Victoria</i>
4 Dec 2004		Presentation to Stonnington City Council	19 May 2005		Speech to VCAT 2005 Staff Conference, Melbourne on <i>VCAT in the Next Three Years</i>
8 Feb 2005		Presentation to Eastern Region Mayors' Group at VCAT			
25 Feb 2005		Presentation to New Zealand tribunals conference on <i>Making Decisions</i>	23 May 2005		Presentation at the Victorian Chapter of the Council of Australasian Tribunals (COAT) seminar, Melbourne on <i>A Legal Update on Recent Developments in Tribunals' Law and Practice</i>
10 Mar 2005		Presentation to Victorian Bar Readers			
17 Mar 2005		Presentation to Superannuation Complaints Tribunal Members' Conference, Woodend on <i>The Future of Tribunals and the Relationship between Tribunals and Appeal Courts</i>	7 Jun 2005		Presentation to Greater Geelong City Council
			10 June 2005		Presentation at 8th Annual AIIA Conference, Sydney on <i>Current Issues and Problems in the Determination of Planning Matters</i>
18 Mar 2005		Presentation to Australian Local Government Women's Association Inc Victoria State Conference, Doncaster on <i>VCAT, Women and Local Government</i>	14 June 2005		Presentation to Strathbogie Shire Council
			16 June 2005		Presentation to The Victorian Bar seminar, Melbourne on <i>VCAT: Special Features of the Jurisdiction</i>
18 Mar 2005		Presentation to Victorian Civil and Administrative Tribunal Planning Conference, Melbourne			

speeches and information sessions.

<i>Date</i>	<i>Member</i>	<i>Subject/To</i>	<i>Date</i>	<i>Member</i>	<i>Subject/To</i>
20 June 2005		Presentation to Boroondara City Council	Mar 2005	Richard Horsfall	<i>Restrictive Covenant Cases in VCAT to the Law Institute of Victoria Specialist Forum</i>
23 June 2005		Presentation to The Victorian Bar, Melbourne on <i>Part 9 of the Property Law Act</i>	Mar 2005	Sam Cimino Jane Monk Laurie Hewet	<i>Introduction to VCAT (in-house)</i>
Presentations and Speeches by Members and Staff:					
Jul 2004	Tonia Komisaroff Tony Liston	<i>Decision Making on Heritage Matters</i> to the Heritage Victoria Officers' Workshop	9 Mar 2005	Catherine Aird	<i>Resolving Domestic Building Disputes at VCAT to the Building Disputes Practitioners Society, Ballarat</i>
30 Jul 2004	John Billings	<i>Guardianship List and Medical Treatment</i> to the Medical and other staff of Northern Hospital	23 Mar 2005	Marg Lothian	<i>Complex Issues in Mediation Practice to the Specialist Forum for the Law Institute of Victoria</i>
Aug 2004	Renate Howe	<i>Save the Suburbs</i> to the Centre for Cultura Heritage Asia Pacific Seminar—Deakin University	23 Mar 2005	John Billings	<i>Enduring Powers of Attorney TV Education Network Seminar</i>
Sep 2004	Philip Martin	<i>How Evidence Is Received at Planning Hearings</i> to the Planet Seminar	Apr 2005	Tonia Komisaroff	<i>Professional Development on Decision Writing (in-house)</i>
Sep 2004	Sam Cimino Jane Monk Nick Hadjigeorgiou	<i>Cross Examination (in-house)</i>	May 2005	Sam Cimino Jane Monk Nick Hadjigeorgiou	<i>Cross Examination (in-house)</i>
Sep 2004	Sam Cimino Jane Monk Laurie Hewet	<i>Introduction to VCAT (in-house)</i>	May 2005	Sam Cimino Jane Monk Laurie Hewet	<i>Introduction to VCAT (in-house)</i>
16 Sep 2004	Robert Scott	<i>Role of the Guardianship List</i> to the Ausmed Publications Conference	May 2005	Tonia Komisaroff	<i>Managing a Hearing to the Land and Environment Court/VCAT Joint Conference in Canberra</i>
22 Sep 2004	Catherine Aird	<i>The Future Direction of the Domestic Building List</i> to the Building Disputes Practitioners Society, Melbourne	May 2005	Renate Howe	<i>Slum clearance and the Victorian Housing Commission—What can Planners Learn? RMIT Planning Students</i>
6 Oct 2004	Marg Lothian	<i>Mediation at VCAT</i> to the members of the Workplace Relations Section of the Law Institute of Victoria	May 2005	Nick Hadjigeorgiou	<i>Introduction to VCAT and the Importance of Evidence to the Planet Seminar</i>
27 Oct 2004	Catherine Aird	<i>Resolving Domestic Building Disputes at VCAT</i> to the Building Disputes Practitioners Society, Geelong	2 May 2005	Edward McCabe	<i>Role of the Guardianship List to Headway, Horsham</i>
Nov 2004	Peter O'Leary	Presentation with Jane Monk and Justice Morris for Planning Week	3 May 2005	John Billings	<i>Role of the Guardianship List to Headway, Ballarat</i>
16 Nov 2004	Robert Scott	<i>Role of the Guardianship List</i> to Headway, Mildura	13 May 2005	John Billings	<i>Applications to Guardianship List to the Medical and other staff, Mt. Eliza Aged Care</i>
Feb 2005	Sam Cimino Gerard Sharkey	<i>Mediation (in-house)</i>	27 May 2005	Catherine Aird	<i>Taking Care of Running Your Business to Avoid Conflict to the Master Builders Association of Victoria—Women in Building Lunch/Forum</i>
Feb 2005	Tonia Komisaroff	<i>Decision Making on Heritage Matters</i> together with Tony Liston to the Heritage Victoria Officers Workshop	17 May 2005	Peter O'Leary	<i>Mock Mediation—O'Donaghue v. Stevenson</i> with Marg Lothian and Susanne Liden for Law Week
23 Feb 2005	Marg Lothian	<i>Toxic Costs: The Practicalities at VCAT</i> to the Australian Institute of Building Summit	10 Jun 2005	Greg Lyons	<i>Tribunal Mediation to the Australian Institute of Judicial Administration Tribunal Conference</i>

glossary of terms.

Compulsory Conference

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

Directions Hearing

A directions hearing outlines the steps that the parties must take in order to get their case ready to be heard. This may include establishing and settling the points of claim and procedural matters.

DOJ

Department of Justice.

Expert Opinion

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

FOI

Freedom of Information Act 1984 jurisdiction administered by the General List of VCAT.

Hearing

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

Interlocutory Steps

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

Mediation

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

On the Papers

Orders made without the requirement that the parties be present. In making such orders, VCAT must be satisfied in writing that the orders to be made are as agreed between the parties.

Practice Day

Every Friday the Planning and Environment List conducts practice days, which enable matters that can and should be determined quickly to be accommodated. Up to 25 cases may be listed for short hearings, with decisions usually given on the spot. Parties must apply for a practice day hearing at least eight days prior to the requested date.

Responsible Authorities

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

Rules and Practice Notes

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

Special Referee

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

User Group

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

VCAT

The Victorian Civil and Administrative Tribunal (VCAT). On 1 July 1998, VCAT was established under the *Victorian Civil and Administrative Tribunal Act 1998*.

VCAT Act

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

vcat web site.

Visit the VCAT web site at

www.vcat.vic.gov.au where you can find out everything you need to know about VCAT.

The web site features information about:

- VCAT legislation, Practice Notes and Rules;
- a list of scheduled hearings;
- the daily law list; and
- a selection of key decisions.

In addition, it includes the streaming video *Working It Out Through Mediation*, and provides details about each List, including information about how to apply and enables users to download and print application forms. It also offers links to a variety of government, judicial and legal web sites.

VCAT Online

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

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

Visitation

The number of visitors to the VCAT web site rose 22%, attracting 405,615 unique visitors, compared with 333,549 visitors in 2003–04 and 57%, compared with 257,965 visitors in 2002–03.

During the financial year, the site received approximately 33,800 visits per month with 1,035,000 hits across all pages. The most popular web pages included:

- VCAT Online;
- the daily law list;
- VCAT decisions; and
- application forms.

Other popular web pages included Planning and Environment, Residential Tenancies and Civil Disputes/Small Claims.

In addition, the site includes information about VCAT legislation, Practice Notes and Rules, a list of scheduled hearings, and links to a variety of government, judicial and legal web sites.

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Address <http://www.vcat.vic.gov.au/CA256DBB0022825D/HomePage?ReadForm%1=Home%2=...&3=...> Go Links

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VCAT
VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

search

Home
About VCAT
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Daily Law List
Legislation/Practice Notes
Mediation
Anti-Discrimination
Civil Disputes/Small Claims
Domestic Building
FOI/TAC & Other Claims
Guardianship & Admin.
Planning & Environment
Residential Tenancies
Other Disputes at VCAT

Welcome to the **Victorian Civil and Administrative Tribunal (VCAT)**.

VCAT deals with disputes about:

- purchase and supply of goods and services
- discrimination
- domestic building works
- guardianship and administration
- residential tenancies
- consumer credit and retail tenancies.

VCAT also deals with disputes between people and government in areas such as:

- planning and land valuation
- licences to carry on businesses (including travel agents, motor car traders and others)
- State taxation
- many other government decisions (such as Transport Accident Commission decisions and Freedom of Information issues).

What's New

Media Release 22 June 2004
Guideline Judgments in VCAT's Planning and Environment List

Media Release 16 June 2004
Re-appointment of members

General List - TAC Applications Practice Notes - General List

VCAT
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how to apply and map of hearing locations.

How to Apply

Applying to VCAT is easy. You may request an application in a variety of ways:

- simply call or write to VCAT and ask for an application form;
- visit us at 55 King Street, Melbourne, Victoria to pick up an application form;
- download and print an application form via the VCAT web site at www.vcat.vic.gov.au; or
- lodge your application to the Residential Tenancies List via VCAT Online at www.vcat.vic.gov.au.

Main Office

Victorian Civil and Administrative Tribunal (VCAT)

55 King Street

Melbourne, Victoria 3000

Email: vcat@vcat.vic.gov.au

Web Site: www.vcat.vic.gov.au

Refer to the back cover of this Annual Report for the contact numbers of individual Lists.

Hearing Locations

We conduct hearings at 55 King Street, Melbourne, as well as at Cheltenham, Dandenong, Frankston, Heidelberg, Kew, Ringwood, Sunshine and Werribee. In addition, we visit the rural locations listed on the map below.

Details concerning country sittings are contained in the Law Calendar, which is produced by the Court Services section of the Department of Justice.



A quick, easy, and low-cost way
to have your case heard.

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

Visit our web site below or contact the individual Lists:

Anti-Discrimination List

Tel: 9628 9900

Fax: 9628 9988

Civil Claims List

Tel: 9628 9830

Fax: 9628 9988

1800 133 055 (within Victoria)

Credit List

Tel: 9628 9790

Fax: 9628 9988

Domestic Building List

Tel: 9628 9999

Fax: 9628 9988

General List

Tel: 9628 9755

Fax: 9628 9788

Guardianship List

Tel: 9628 9911

Fax: 9628 9822

1800 133 055 (within Victoria)

Land Valuation List

Tel: 9628 9766

Fax: 9628 9788

Occupational and Business

Regulation List

Tel: 9628 9755

Fax: 9628 9788

Planning and Environment List

Tel: 9628 9777

Fax: 9628 9788

Real Property List

Tel: 9628 9960

Fax: 9628 9988

Residential Tenancies List

Tel: 9628 9800

Fax: 9628 9822

1800 133 055 (within Victoria)

Registered users can
access VCAT Online through
the web site.

Retail Tenancies List

Tel: 9628 9960

Fax: 9628 9988

Taxation List

Tel: 9628 9770

Fax: 9628 9788



www.vcat.vic.gov.au



Residential Tenancies List