

## **Victorian Civil and Administrative Tribunal Submission**

### **Access to Justice Review 2016**

*“It should never be forgotten that tribunals exist for users, and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases.” Sir Andrew Leggatt, 2001<sup>1</sup>*

#### **1. Introduction**

VCAT’s vision is to serve the community by resolving disputes in a timely, cost effective and efficient way. Our goal is to be an outstanding civil and administrative tribunal. Access to a fair and impartial justice system is a fundamental tenet of the rule of law. Enabling access to the tribunal is one of our core values. VCAT’s four year Strategic Plan, *Building a Better VCAT 2014-17*, identifies “better access” as one of our key strategic directions.

Tribunals, as distinct from courts, are generally established to provide expeditious and relatively informal resolution of civil matters that either cannot be resolved by mutual agreement between the parties or are still in dispute following review by relevant complaint handling bodies. In Victoria, VCAT was established to deal with the vast majority of civil disputes for the state. VCAT uses dispute resolution mechanisms with as little legal formality as possible. VCAT recognises that negotiation and mediation are the best ways to resolve disputes and that contested hearings should be a last resort.

In 2014-15, VCAT finalised 85,887 matters. Our highest volume lists are Residential Tenancies, Civil Claims and Guardianship. While the proportion of parties who are self-represented varies within each list, VCAT estimates that more than 80 per cent of matters that come to the tribunal involve self-represented litigants. Some lists experience high numbers of cases involving people who are disadvantaged or vulnerable.

The Residential Tenancies List deals with about 60,000 cases a year. Nearly all tenants and a small proportion of landlords represent themselves. This amounts to about 50,000 tenants and landlords representing themselves at VCAT each year. The Guardianship List and the Civil Claims List, which hear about 11,000 and 7000 cases each year respectively, also have a large proportion of self-represented parties. Many objectors in the Planning and Environment List represent themselves. Lists such as the Building and Property List, the Review and Regulation List and the Human Rights List have fewer self-represented litigants.

This means VCAT’s core customer base is self-represented litigants who need access to easy-to-understand information and simple processes to be able to resolve their common legal problems. In 2015-16, VCAT embarked on several projects to improve support for people accessing the tribunal, especially those who prepare and present their cases without legal representation.

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<sup>1</sup> International Framework for Tribunal Excellence, April 2014

In partnership with Monash University, VCAT has conducted a pilot project, called the Self Help Centre, to give on-the-spot support to people who attend VCAT for a hearing at our main venue at 55 King Street, Melbourne. In this program, undergraduates from the Faculty of Law assist people with various tasks such as completing application forms, obtaining ASIC searches, understanding a proceeding or a VCAT order, or simply referring them to other appropriate support services. The pilot project shows enormous promise and VCAT would like to continue the project, subject to available funding.

We have also recently completed a comprehensive Customer Service Review that examined all of our access channels, including phone, email, counter and online services. The review found that accessing VCAT's services is not as streamlined or as customer centric as it should be and that there is significant room for improvement.

We are also reviewing our website to improve content, navigation and usability. We are applying plain English principles to all content on the new website, which will also comply with government accessibility guidelines. The new website will be launched in the first half of 2016.

VCAT has recently conducted a detailed analysis of activity across all of our lists, including the Civil Claims List. This analysis showed that the increases in VCAT fees, introduced by the Government in July 2013, July 2014 and July 2015 are likely to have influenced the number of civil claim matters lodged with VCAT, with a 15.3 per cent decrease in 2013-14 compared to 2012-13. Matters valued at more than \$500 and less than \$3000 had a higher than average decrease, suggesting fewer people were willing to pay the increased fees for low value claims.

The information from this analysis informed the Access to Justice Review's background paper on VCAT small civil claims, which points to the need to get the balance right between 'simplicity, affordability and efficiency'. It noted that the cost of resolving small civil claims at VCAT needs to be proportionate to the value of the claim.

The Productivity Commission found that VCAT is the most efficient tribunal in Australia, although average costs have increased at a rate of about 3 per cent a year since VCAT's inception in 1998. However, the recent decline in small civil claim applications points to the need to find a more cost effective way for the community to resolve low value civil disputes. VCAT would welcome an opportunity to partner with the Government to expand the role of alternative dispute resolution (ADR) and explore how online dispute resolution (ODR) mechanisms could provide another channel for people to resolve small civil claims.

VCAT's response to the Access to Justice Review's Terms of Reference provides more detail on all of these initiatives and makes recommendations as to further actions that VCAT could pursue, in partnership with Government and other key stakeholders, to improve access to the tribunal and support for self-represented litigants.

## 2. VCAT's Response to the Review's Terms of Reference

### ***Term of Reference 1:***

***The availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems.***

VCAT estimates that more than 80 per cent of matters that come to the tribunal involve self-represented litigants. This means we must provide easy access to legal information and advice. There are a number of services available to self-represented litigants at VCAT and there are a number of ways to enhance and better integrate these services within the broader legal service support system.

Easy access to VCAT's services will reduce the need for self-represented litigants to seek support from community legal centres and other referral agencies. Clear, concise and accessible information on VCAT's jurisdiction, how the law works and the role that VCAT can play in resolving disputes will expand opportunities for access to VCAT and early resolution of disputes, which in turn reduces the pressure on legal and community support services. This information will also help parties to work out if VCAT can help them or if they have to look to the courts to resolve their dispute. Clear, concise and accessible information can be provided directly through VCAT and through a collaborative effort with agencies providing information to members of the public at first point of contact.

### ***VCAT's website and online services***

VCAT's website is its key communications channel, with more than 3.8 million page views a year. It is usually the first port of call for people thinking about bringing a matter to VCAT. In early 2015, VCAT started a major project to improve the navigation, content and usability of the website and to ensure it complies with government accessibility guidelines. The work we are doing takes into account findings from the recent customer service review. The review found that the current website is not as user-friendly as it needs to be. When VCAT customers cannot find the information they are looking for on the website, they then have to contact VCAT or other support agencies.

VCAT is currently developing a website which is easier to navigate and focuses on getting people to the information they need as fast as possible. We are rewriting our content into plain English. The new site will undergo extensive user testing to ensure the navigation and text meet the public's expectations. Due to go live in the first half of 2016, the new site will also be optimised for mobile devices.

VCAT is also providing more services online, making it easier for people to lodge their application online and to have their date for hearing automatically listed. In 2015, we launched two new online application forms for the Civil Claims and Owners Corporations Lists. Applications submitted online are now digitally processed directly into our case management system. In 2015, VCAT also expanded the Residential Tenancies Hub (formerly known as VCAT Online), giving access to online applications and notices to private landlords and tenants. This service was previously only available to real estate agents and Department of Housing representatives.

In 2016, VCAT will continue to roll out online applications across a number of its lists with seven new online forms due for public release in March. The most highly used application forms are a priority. We have some way to go, with more than 70 forms still to be digitised.

The A2J software used in the US and the CourtNav software used in the UK are best practice examples of how technology can be used to help support self-represented litigants. Courts in the US provide computers in their registry offices that parties can use to complete and print court forms using the A2J software. VCAT's online forms could be enhanced by using a similar technology to provide self-represented litigants with verbal, step-by-step instructions on how to complete the forms, including in languages other than English. This technology would greatly assist people with low literacy skills to complete our forms.

We are piloting the electronic lodgement of documents as part of the Court Services Victoria (CSV) e-Lodgement project in the Review and Regulation List. In the future, VCAT aspires to be an 'e-tribunal' with electronic files replacing paper files. Ultimately, we are working towards a system where parties can commence a matter online, have access to the electronic case file and follow its progress. To realise this vision, a significant investment in VCAT's (and CSV's) ailing and outdated IT systems will be required.

While the new website and online application forms will comply with the Government's accessibility guidelines and will be the primary source of information about VCAT's jurisdiction, practices and procedures for self-represented litigants, it cannot be the sole channel for VCAT to provide advice and information. Research shows that more than 20 per cent of Australian households do not have access to the internet at home<sup>2</sup> and 66.6 per cent of low-income Australians do not have access to the internet at home<sup>3</sup>.

Accordingly, communication and information strategies that rely primarily on internet access are unlikely to assist many vulnerable and disadvantaged Victorians access the justice system. Many people who come from culturally and linguistically diverse backgrounds or who have a disability or low literacy skills may not be able to access the information provided on VCAT's website. These parties will continue to need one-on-one help to access information about VCAT's practices and procedures. The Self Help Centre pilot, detailed in the case study under TOR 9, complements VCAT's online and web-based services.

### ***Supporting diversity and social inclusion***

The Judicial Council on Cultural Diversity ('the Council') is a national advisory body formed to assist Australian courts, judicial officers and administrators to positively respond to the diverse needs of the community. The purpose of the Council is to develop a framework to support procedural fairness and equality of treatment for all court and tribunal users, regardless of race, colour, religion or national or ethnic origin, and to promote trust and confidence in Australian courts and the judiciary. The Council invited all justice agencies to nominate 'champions' to facilitate communication with the Council. VCAT has nominated a senior member to that role.

In recognition of the diverse community that VCAT serve, VCAT established a Diversity Committee in 2015. Head of the Human Rights Division Deputy President Genevieve Nihill AM is the chair of that committee, which is responsible for:

- providing strategic advice to the President to ensure that VCAT's services are accessible to all groups in the Victorian community
- identify those groups that may be excluded and develop strategies to bring these groups into VCAT's service delivery framework
- ensuring that inclusion principles are adopted when developing new systems and processes, and that government accessibility standards are met

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<sup>2</sup> Australian Communications and Media Authority (ACMA) Communications report 2011-2012, <http://www.acma.gov.au/theACMA/communications-report-series-presentations-2012>.

<sup>3</sup> Dr Sarah Wise's September 2013 report entitled "Trying to connect" in relation to Anglicare Victoria's Hardship Survey 2013, funded by the Australian Communications Consumer Action Network (ACCAN).

- raising awareness among VCAT members and staff of the particular characteristics of diversity within the Victorian community and across VCAT
- acting as a vehicle for VCAT to comply with its obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the Charter').

The Diversity Committee's work program for 2015-16 includes implementing VCAT's Koori Inclusion Action Plan, reviewing VCAT's use of interpreters and language services policy, developing a disability action plan, and promoting greater awareness of the Charter.

Social and cultural disadvantage are major impediments to accessing the justice system. Forty-five per cent of the Victorian population are born overseas or have one parent born overseas. There are cultural and language impediments to understanding the operation of the rule of law and its application through the justice system.

Community leaders and centres are likely to be the most accessible source of information and guidance for culturally and linguistically diverse Victorians. Ideally, VCAT would partner with community leaders and cultural centres to provide easy access to resource material so that all Victorians are aware of their dispute resolution options.

The experience of law and justice is not uniform. Information, education and positive experience can contribute to better legal and social outcomes. VCAT has the capacity to provide a positive experience of the justice system through its less formal procedures and accessible venues, its commitment to ADR, and determination to resolve disputes in a respectful way. Legislative recognition that allows the involvement in procedures of people who are not interpreters, but have relevant language or cultural knowledge, provides scope to address cultural barriers to justice.

VCAT is increasing the knowledge and skills of its staff and members to understand the impact of social and cultural disadvantage on parties. We provide a range of training opportunities to support this purpose. The Diversity Committee also provides information and resources to staff and members to enhance their awareness of cultural, linguistic, and human rights issues, and strategies for incorporating inclusiveness principles in their work.

We are revising our standards and guidelines for working with interpreters. The new guidelines will reflect the work being produced by the Council, which recognises the importance of ensuring that every person who requires language services to take part the legal process can do so. The standards will be reflected in the information provided on the website, the reception processes for parties, and hearing procedure. Training interpreters in VCAT's processes would significantly improve efficiencies and outcomes for VCAT and its users.

However, there simply are not enough qualified interpreters to satisfy the demand. When an interpreter is not available, the fair hearing obligation cannot be met, almost always resulting in an adjournment. This creates delays and uncertainty for parties. Access to interpreters in remote and regional areas is also limited. This problem could partly be resolved by greater use of video conferencing facilities.

Even if all of our written material was translated into other languages, some people from CALD groups are not literate in their first language. For this reason, individual help must also be offered to self-represented litigants from CALD groups. The Self Help Centre partly addresses this need.

### ***VCAT's customer service review***

In 2015, VCAT also conducted an independent review to assess the way we deliver our services to tribunal users and to identify where we could make our services more user-friendly, customer focused and accessible. The review found that VCAT's service channels have not kept pace with technological developments and that with investment to modernise, streamline and simplify our processes, we would increase access to justice for the community and generate greater efficiencies.

The review found that VCAT's processes are behind industry benchmarks, in particular:

- VCAT is heavily reliant on written correspondence and traditional mail services and is not using modern communication methods (such as SMS, email and social media)
- there are a significant number of calls from the public that could be eliminated or automated (up to 30 per cent of calls)
- VCAT does not have a single phone number or a central call centre. There are up to 14 phone numbers for VCAT and customer service staff are located in separate lists within the registry
- a typical case in most lists is handled by multiple areas of registry resulting in unnecessary double handling and duplication
- our customers must navigate complex forms.

VCAT has accepted, in principle, the recommendations of the customer service review. VCAT recognises that we need to move from a highly transactional, paper based, manual model of service delivery to a more customer focused, and digital service model if it is to meet the service expectations of the Victorian community and increase access to justice.

### ***Recommendations:***

VCAT working with Government to:

- improve the support services available to the Victorian community, by improving our customer services, expanding digital and online accessibility, and considering the ongoing role of a Self Help Centre in the context of other support services available to self-represented litigants
- ensure digital services are as accessible as possible and meet best practice standards, noting that A2J software extensively used in the USA enables interactive DIY forms for self-represented litigants, which will increase useability and accessibility, particularly for people with low literacy skills in English or languages other than English
- develop strategies to improve access to justice by culturally and linguistically diverse groups through supporting Government's efforts to enhance the quality and quantity of professional interpreters operating in Victoria, particularly in rural and regional locations, and the provision of legal information in multiple languages.

***Term of Reference 2:***

***Options for diverting people from civil litigation and into alternative services where appropriate, such as a 'triage' model***

VCAT does not wish to make any substantive comments in relation to this term of reference. We support the notion that all elements of the justice system need to have the capacity to direct people to the most appropriate form of resolution. We support efforts to divert people from civil litigation where possible, and where this does not impinge on the principles of procedural fairness and a just outcome.

***Term of Reference 3:***

***Whether and how Alternative Dispute Resolution (ADR) mechanisms should be expanded so that more Victorians can make use of them.***

VCAT uses a broad range of ADR mechanisms to help parties resolve their disputes without the need for a full hearing. ADR processes are informal and often less stressful, giving parties greater control over the outcome of their disputes, and often lead to successful outcomes not achievable with a full hearing. Even when ADR does not resolve a case, it can narrow the issues in dispute so that the full hearing takes less time.

ADR provides opportunities for therapeutic outcomes and for parties to resolve their own disputes. As a result, ADR processes and notions are central to the way VCAT does its business. ADR at VCAT comprises:

- a specialist panel of mediators who conduct mediations across many of VCAT's lists and offer a wide range of specialist expertise as well as in-depth mediation experience
- VCAT members, accredited as mediators, who conduct compulsory conferences and mediations
- accredited staff mediators who conduct SMAH for low-value claims up to \$3000.

ADR is most prominently used in the Civil Division. VCAT has increased its use of ADR in recent years and now almost all matters in the Civil Division that have no monetary value or are valued at \$100,000 or more are referred to mediation or compulsory conferencing in an effort to resolve the matter or narrow the dispute prior to hearing. Even where settlement is not achieved, ADR by a senior and experienced VCAT member often results in narrowing the issues and parties within a case and reducing the complexity.

VCAT's jurisdiction covers a range of human problems – a wedding dress that did not fit; bathroom works not completed properly; a proposed development which will impinge on winter sun; an elderly parent who is struggling to manage their money; a racist comment which has caused hurt and humiliation; money not paid for work properly completed.

VCAT knows from its long experience that the best way to address the human problems behind a legal dispute is to provide a forum for parties to talk, explain, reflect and reach agreement about the way forward. As a consequence, in many lists, ADR is included as a standard step in the process before parties become entrenched in legal proceedings, caught up in paperwork and expended time, committed personal and business resources, emotional energy and, in some cases, legal costs. Even in those lists where ADR is not a standard process, members use the informality of hearings to encourage and facilitate discussions that can lead to individual issues or the whole matter being resolved before a final decision.

A small civil claim hearing may start with the VCAT member offering that the parties have a short talk focused on outcomes. The parties know that if they cannot resolve the matter themselves, the member will decide. While the member is out of the room, parties can revive earlier settlement talks or try to find common ground. If the matter is not resolved, the hearing proceeds with the member explaining the legal issues and how they will be assessed.

The parties may have a second opportunity to talk again while the matter is stood down and the member prepares their decision. The parties have by then heard each other's story, can assess, in a common sense way, how the evidence looks and decide to resolve the matter before an order is announced.

**VCAT Case Study One – Two small businesses – two chances at settlement discussions: Coffee Roaster (CR) v Website Designer (WD)**

CR roasts coffee beans and supplies them as a wholesaler to restaurants and also makes retail sales from its premises. CR wanted to expand its retail sales, by enabling customers to purchase over the internet. CR did not have a website.

In its over-the-counter sales, CR gives customers a discount based on volume purchased. Coffee is sold in 1 kg bags. Prices are \$20 for one bag, \$18 each for two bags, and \$16 each for three bags. CR wanted this to be replicated on the website.

WD sells cheap, generic websites. WD shows potential customers a template of what it supplies, and then inserts text and images into the template. A website costs about \$1600.

WD had supplied the website and rendered its invoice. CR didn't pay. CR sued first, claiming \$3000 in damages for alleged loss of its reputation and general inconvenience caused by a bad website design. WD counterclaimed for its \$1600.

CR's argument was that the website confused its customers because it did not show the discount. The customer would tick boxes on a page of the website to order bags of coffee, and that page would show for example \$60 for three bags. When the customer then proceeded to the checkout page, the website would recalculate and show the price as \$48 for three bags.

The VCAT member read all the documents before the beginning of the hearing, and before swearing the parties. He then asked them to give him a brief summary of their respective positions.

CR explained its claim in the way set out above.

The VCAT member suggested to the parties that they have a few minutes to discuss a potential settlement. He said that the Tribunal's role was to decide cases according to law, which in many cases only allowed it to order that one party was fully successful and the other party fully unsuccessful. By comparison, in negotiations the parties were free to reach an arrangement which perhaps might be different to what the Tribunal could order. He said that negotiations gave the parties greater flexibility and if they wished to do this he would leave the room, and would say for the record that their discussions would be *without prejudice* so that when he returned all they needed to tell him was whether or not they had reached a settlement. He also reminded them that if they did not settle they were not allowed to tell him why. The parties agreed to do this.

When the VCAT member returned to the room a few minutes later the parties said they had not settled. The hearing then proceeded and the member heard both sides' evidence. CR was owned by a husband and wife. Both were present but the wife said she did not want to say anything.

At the conclusion of the evidence it was clear that WD was not in breach. It had not misrepresented the qualities of its website. The website did show the proper prices. If CR was serious about its customers being confused, all that was needed was a simple sentence on the page on which ordering took place, advising the customer that the discounts would be applied on the checkout page. WD had said that the text on the website was easily edited, so this could have been done without any fuss.

At the conclusion of the evidence the VCAT member said to the parties that, now that they had heard the other party's evidence, they might want to have another chance to discuss settlement. WD said he would be prepared to but CR said certainly not.

Accordingly the VCAT member said that he would now announce a decision according to law. He found that CR's case failed because objectively the website did not confuse customers, who would see the discounts being applied at the checkout page, and that if CR wanted to make the website even clearer it could insert some text on the ordering page. On the other hand, WD had proved its claim and was entitled to payment. An order was made dismissing CR's claim and allowing WD's counterclaim in full.

### **VCAT Case Study Two – Two small businesses – settlement discussions before the hearing assisted by the member: Materials Supplier (MS) v Boat Builder (BB)**

MS supplied \$30,000 worth of materials to BB in 2011. BB used the materials to build a boat. BB did not get paid by the purchaser of the boat and has never paid MS for the materials. MS applied to VCAT for an order that BB pay him \$30,000.

The application, notice of hearing and documents in support of the application were sent to an old address for BB. However, BB learnt about the time and date of the hearing from MS and attended. At the start of the hearing, BB asked for an adjournment because he had not received the application and supporting documents before the day of the hearing.

Before making a decision about the adjournment application, the VCAT member asked the parties whether they wanted to try to settle the matter. The VCAT member explained the benefits of settling without the need for a formal hearing, including having certainty about the amount and date of any payment and the applicant not having to enforce a VCAT order in the Magistrates' Court of Victoria or the respondent not having an order enforced against him.

Both parties agreed to try to settle the dispute. Initially, the VCAT member was not involved in the discussions between the parties. However, the parties asked for the member's help when their negotiations stalled. The VCAT member told the parties she could help them resolve the dispute but that the hearing would be adjourned to be heard by a different member if they did not reach a compromise. The parties agreed to this.

BB subsequently admitted that he owed MS \$30,000 but said he would have to declare himself bankrupt if an order was made and enforced against him because he had no assets and very little income. BB offered to borrow money from his family to pay half of the debt (\$15,000) in one month.

MS rejected BB's offer. MS was upset that he had been waiting five years for payment. MS made a counter offer to accept \$20,000 on condition that the money was paid in one month and that if the payment was not made, MS could automatically obtain an order against BB for the whole amount (\$30,000). BB accepted MS' offer. BB and MS wrote down their agreement, which they signed and dated. The VCAT member made an order that the application was struck out and that the applicant could apply to reinstate the application if MS breached the agreement.

ADR statistics for 2014-15 show that:

- 441 matters were referred to compulsory conference or mediation in the Civil Claims List (or 11 per cent)
- 803 matters were referred to compulsory conference or mediation in the Building and Property List (or 24 per cent)
- 184 matters were referred to compulsory conference or mediation in the Owners Corporations List (or 10 per cent)<sup>4</sup>.

In 2015, VCAT engaged Deloitte Access Economics to conduct a cost benefit analysis of our ADR program. The purpose of the review was to determine whether ADR at VCAT delivers value for money as an alternative to the traditional hearing process and to better articulate the public and private benefit of ADR.

The Productivity Commission noted that there is a lack of robust evidence to demonstrate the benefits of ADR compared with other methods of resolving similar disputes. VCAT's attempts to determine the cost benefits of our ADR program met with similar constraints. Having said this, the Deloitte review found that the public cost of ADR is marginally less than conducting a hearing alone. It also found that, in contrast, conducting ADR which then goes to a hearing is more expensive.

The review also found that there were other broad but less tangible benefits of ADR, compared to traditional hearings, including its capacity to:

- narrow the issues within a case (notably where there are a number of parties)
- facilitate greater access to justice as it is less intimidating than a formal tribunal hearing or court appearance
- deliver a better outcome in that it facilitates on-going relationships
- provide mutual benefits for participants and a resolution for all parties.

ADR conducted by VCAT members, particularly experienced members with extensive experience in mediating a dispute, is effective but costly, and therefore more appropriately targeted at high-value and complex matters where there are multiple parties. A matter is sent to a compulsory conference at the discretion of the Head of List who determines whether this will result in the most expedient resolution of the matter. Budget constraints limit the extent to which VCAT employs compulsory conferences.

In contrast, VCAT's SMAH stream is conducted by an accredited staff mediator. Parties attend a brief mediation prior to their scheduled hearing. If the matter does not settle at the short mediation, the parties are given a hearing on the same day. In 2014-15, VCAT listed 551 matters for SMAH with 130 matters proceeding to mediation and 62 per cent of these matters resolved without the need for a hearing.

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<sup>4</sup> VCAT Annual Report 2014-15

VCAT's use of SMAH is limited by access to available staff. Releasing staff from their regular duties in the Registry to conduct a SMAH mediation is not always possible. The application of SMAH for matters listed in suburban and regional areas is further constrained, as typically in these locations there is only one VCAT staff member available to take appearances, manage the daily list, deal with inquiries and support the VCAT member. As a result, VCAT's use of ADR in suburban and regional locations is generally not as extensive as the ADR offered at our main hearing venue at 55 King St.

VCAT would welcome opportunities to explore options for extending our ADR program, particularly to expand the use of SMAH to create a more affordable and efficient resolution of small civil claims. This issue is explored further under TOR 4.

### ***Online Dispute Resolution (ODR)***

Digital technologies are creating new opportunities to increase access to justice. Online Dispute Resolution (ODR) is a broad term that captures a range of ways new web-based technologies can provide a lower cost court system and increase access to justice. This is an area of rapid development internationally. The Civil Justice Council of the UK have appointed an ODR Advisory Group, to investigate the potential for ODR to increase access to justice. Both Canada and the Netherlands have ODR systems in place.

Potential benefits of ODR include:

- access to a secure online portal at the party's convenience, 24/7
- exchange of information with the other party in a safe and confidential environment
- removes the need to take time off work to attend a VCAT hearing or mediation
- removes the tyranny of distance, improving access to VCAT for people in regional and remote areas of Victoria
- allows people from non-English speaking backgrounds to have the online portal and online mediators translated into their preferred language
- caters to people from different cultures who are not accustomed to the western, adversarial system of justice
- parties receive a binding order from the tribunal giving effect to the agreement reached.

Establishing an ODR pilot would require an initial investment for the project development, capital investment and project evaluation. There are a number of products on the market such as PARLe and Modria that can be customised to suit individual jurisdictions and could be easily modified or adapted to meet VCAT's unique requirements. VCAT would welcome an opportunity to explore the application of ODR at VCAT, particularly for small civil claims, residential tenancies and owners corporations disputes.

### ***Recommendations:***

VCAT working with Government to:

- explore options for extending our ADR program in order to expand the use of compulsory conferences and SMAH for small civil claims
- develop a proposal for Government's consideration to conduct a pilot project using an ODR web-based portal for small civil claims valued up to \$10,000.

**Term of reference 4:**

**Potential reform to the jurisdiction, practices and procedures of VCAT to make the resolution of small civil claims as simple, affordable and efficient as possible.**

With some restrictions, VCAT or any court of competent jurisdiction may hear and determine a cause of action arising under any provision of the *Australian Consumer Law and Fair Trading Act 2012* (Vic), although the Magistrates' Court has a jurisdictional limit for most disputes of \$100,000. The primary distinction between the jurisdictions is that VCAT's processes are oriented to self-represented litigants whereas Court processes are orientated towards represented litigants. Courts do take steps to assist self-represented litigants to lodge and present claims and some VCAT users access legal representation.

The Civil Claims List receives about eight per cent of all matters lodged with VCAT. Following the Government's decision to increase fees in 2013-14, there has been a decrease in small claims valued at less than \$10,000, with the sharpest downturn in applications valued at less than \$3000. Matters valued at more than \$500 and less than \$3000 had a higher than average decrease, suggesting fewer people were willing to pay the increased fees for low value civil claims. This has given rise to community concern that the fees for small claims are inhibiting access to justice by making it less worthwhile for individuals to pursue small claims.

The same trend can be seen in the Magistrates' Court. Civil claims lodged in the Magistrates' Court have declined 30 per cent from 2009-10 to 2013-14, with the greatest decline in matters valued at less than \$10,000.

It is important that the community have access to an affordable mechanism to resolve small civil disputes and that the cost of administering such a mechanism is proportionate to the value of the claim. VCAT's Civil Claims List receives funding for the costs of members and it retains any revenue raised through fees. The cost of lodging an application at VCAT is a matter for Government. In 2014-15 fees recovered 36 per cent of the costs of administering the List. VCAT redirects funding from other lists to cover costs.

VCAT is committed to maintaining access to justice as well as keeping costs as low as possible and would welcome the opportunity to work with Government and other stakeholders to identify the most efficient way to resolve small civil claims. One way to do this is to expand the use of VCAT's SMAH program.

Civil claim matters can be divided into 'contested' and 'uncontested matters'. Uncontested matters usually relate to debt recovery and do not lend themselves to ADR as the respondent is unlikely to participate. VCAT estimates that uncontested matters amount to about one third of all small claims.

Contested matters, on the other hand, do lend themselves to ADR. Directing all contested small civil claims valued at less than \$10,000 directly into a *compulsory* SMAH conducted by a qualified staff member could provide a more cost effective and efficient way of resolving small civil claims at VCAT. As outlined above, if the matter is resolved at mediation, the parties leave with a binding order. If the matter is not resolved, then it is immediately listed for hearing on the same day and, in most cases, is heard on the same day. The advantage of this approach is that where the SMAH is successful, it would reduce the time involved for all parties, as well as reducing VCAT member time.

Based on an analysis of contested matters in the Civil Claims Division<sup>5</sup>, valued at less than \$3000 conducted in 2014-15, 59 per cent of matters were contested. The estimated number of contested matters are as follows:

- 1936 in the Civil Claims List
- 101 in the Building and Property List
- 1117 in the Owners Corporations List.

Based on the 62 per cent settlement rate of the SMAH program, if the SMAH program was expanded to include the Building and Property List and Owners Corporations List, VCAT estimates that this could result in a saving of approximately 2000 hearing days based on the SMAH process. This is estimated up to 600 - 800 member sitting days, which equates to 2-4 members. If the SMAH program was expanded further to deal with all contested matters under \$10,000, extrapolating the SMAH data, it is estimated that up to 3400 matters would be settled at SMAH, saving approximately 1200 hearing days or 5-7 members.

There are a number of careful considerations that need to be given to the expansion of SMAH as a compulsory element of resolving small civil claims at VCAT. First, additional staff mediators would be needed. Based on the 2014-15 figures above, to redirect 5365 contested matters to compulsory staff-led mediation would require up to 8 FTE (based on 1 FTE conducting 3 mediations per day). Consideration would also need to be given to the impact on facilities and the additional demand on mediation rooms.

Consideration could also be given to a system that allows for the matter to be determined by a VCAT member on the papers alone, avoiding the need for a hearing, with the right of review ensuring procedural fairness for respondent parties, noting that this option would require legislative change.

Another potential area for reform would be to examine the way in which civil jurisdiction operates across the justice system to identify and eliminate unnecessary duplication. There are significant inefficiencies with the current arrangements whereby both the Magistrates' Court and VCAT conduct civil matters. The current system we have in Victoria is simply a historical legacy, resulting in the state resourcing two separate administrative systems to resolve civil matters.

There is opportunity to streamline and simplify the civil claims jurisdiction in Victoria, notably for matters under \$100,000. Rationalising the administration of the civil jurisdiction could free up Magistrate resources across the State to deal with criminal matters and increasing family violence matters. Such a review could examine the nature of the jurisdiction, appropriateness and effectiveness of the various dispute resolution methods, areas of overlap and duplication, fee thresholds, and overall administration costs.

### ***Recommendations:***

VCAT working with Government:

- explore options for introducing compulsory SMAH for all contested small civil claims under the value of \$10,000

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<sup>5</sup> VCAT currently only captures data on the rate of contested matters within its SMAH program, valued under \$3000. This rate has been extrapolated to the broader Civil Claims List, Building and Property List and Owners Corporations List.

- expedite uncontested small civil claims and amend the VCAT Act to allow for uncontested claims to be determined on the papers, avoiding the need for a hearing, noting that the right of review would ensure procedural fairness
- explore opportunities to rationalise the dual administrative systems operating in Victoria to resolve small civil claims.

***Term of Reference 5:***

***The provision and distribution of pro-bono legal services by the private legal profession in Victoria, including:***

- ***ways to enhance the effective and equitable delivery of pro-bono legal assistance;***
- ***opportunities to expand the availability of pro-bono legal services in areas of unmet need; and***
- ***options for expanding existing incentives for law firms within the Victorian Government Legal Services Panel.***

VCAT does not have any substantive comments to make in relation to this term of reference, however notes that the Self Help Centre model has the potential to help grow a culture of pro-bono legal service provision. While students cannot give legal advice, they are given exposure to vulnerable and disadvantaged people in need of legal assistance, demonstrating the important role pro-bono work plays in the civil justice system.

In creating incentives for law firms within Victoria Government Legal Services Panel, caution needs to be given to avoid unintended negative consequences, for example legal firms engaging in unnecessary litigation to fulfil pro-bono requirements.

***Term of Reference 6:***

***The availability and distribution of funding amongst legal assistance providers by the Victorian and Commonwealth governments to best meet legal need.***

VCAT does not have any substantive comments to make in relation to this term of reference.

***Term of Reference 7:***

***Whether there is any duplication in services provided by legal assistance providers, and options for reducing that duplication, including the development of legal education material.***

Navigating the system in order to access legal assistance is complex. VCAT is often in a situation where it needs to refer a member of the public to various support services. Yet different organisations have different eligibility criteria and many organisations and service providers, including VCAT, provide information and advice that is not always consistent or easy to understand.

VCAT supports efforts to provide a single source of information for legal assistance and advice and will collaborate with the government and key stakeholders in order to meet this objective.

**Term of Reference 8:**

***The resourcing of Victoria Legal Aid (VLA) to ensure that Government funding is used as effectively and efficiently as possible and services are directed to Victorians most in need, including:***

- ***Within the total funding envelop, the types of matters funded by VLA, eligibility criteria for legal assistance and the level of assistance provided;***
- ***VLA's current service delivery model, including the use of panel arrangements and internal lawyers and spending on allied support services.***

VCAT does not have any substantive comments to make in relation to this term of reference.

**Term of Reference 9:**

***Options for providing better support to self-represented litigants throughout the Victorian justice system.***

Since its inception VCAT's purpose has been to provide Victorians with low cost, accessible, efficient and high quality dispute resolution. One of VCAT's primary obligations is to provide parties with access to a fair hearing. A fair hearing necessarily involves the opportunity to put a case, the right to be heard and the right to have the case determined impartially and according to law. However, a fair hearing is also about the information and assistance that VCAT provides to parties, particularly self-represented litigants.

If self-represented litigants are not provided with the necessary information and assistance, they may not receive the fair hearing to which they are entitled. Further, if courts and tribunals fail to adequately assist self-represented litigants, this greatly reduces the efficiency of the judicial process due to, for example, longer hearings, more adjournments and pressure being placed on customer service staff by anxious parties.

In keeping with population growth, the number of people representing themselves in Victorian courts and tribunals will continue to grow. Demographic and societal changes are changing the types of support required to help self-represented litigants, particularly with respect to guardianship but also with respect to housing and development patterns and trends.

VCAT is also concerned about ensuring access to justice for people who live in suburban, regional and rural areas. VCAT services are best delivered in the community for the community. In this way we have provided 4G laptop access to members hearing matters in locations outside of our main hearing venue at 55 King Street. These laptops allow members to access VCAT's case management systems at any location, enabling hearings to occur at a range of non-court venues including hospitals, council and community facilities. This mobility has great potential for making VCAT services available in more locations across the state. VCAT has also entered into separate arrangements with some local government agencies to be able to hold hearings in community facilities.

There are a number of services available to self-represented litigants at VCAT, including support provided by VCAT's customer service staff (both in person and over the phone), information provided through the VCAT website, which links to a number of support services including community legal centres, and support provided by Legal Aid and Court Network who are located at many of the venues where VCAT matters are heard.

As stated above, in 2015, VCAT piloted the Self Help centre, hosting eight law students to directly assist self-represented litigants in accessing and understanding VCAT's practices and procedures. The objective of the pilot, still underway, is to explore the merits of utilising under-graduate law students to help self-represented parties to better understand VCAT processes and procedures, pre and post hearings. We consider that the Self Help Centre service fills a number of gaps in VCAT's current services for self-represented litigants.

The Access to Justice Review's background paper on self-represented litigants identifies a number of policy options for assisting self-represented litigants. The following is VCAT's commentary and submissions on these ideas.

### ***The Self Representation Service***

Victoria Legal Aid (VLA) has an office on level 5 at 55 King Street. The office is staffed by a duty lawyer and a legal assistant, who triage potential clients. A party will be eligible for VLA assistance, under the VLA guidelines, if they receive a Centrelink pension, possess a current Health Care Card or meet the income test.

The income test varies annually. Currently, a person is eligible if their weekly after tax income is less than:

- \$750 if they have no dependent children; or
- \$900 if they have a dependent partner or one dependent child, with an additional \$50 for each dependent child; or
- they are supported by a partner or another person and their combined income is less than \$900 after tax per week, with an additional \$50 for each dependent child.

The VLA duty lawyers provide representation in:

- residential tenancies (tenants and residents only); and
- working with children check matters.

In residential tenancies matters, priority is given to possession order hearings involving an allegation of tenant fault (for example, danger, damage, illegal use, breach of compliance order etc). Whether representation is given in rent arrears matters depends on the vulnerability of the tenant or resident. Priority is also given to creation of tenancy and restraining order applications.

VLA duty lawyers prioritise assistance to people who have a hearing on that day. Advice only is given in relation to:

- Civil claims
- Guardianship and administration matters
- Equal Opportunity Act matters.

Advice may be given on procedural matters relating to applications in other lists, but substantive advice is not given. Accordingly, VLA can only assist a limited number of self-represented litigants.

The introduction of a Queensland style “Self Representation Service” at VCAT would be welcome, as this model enables any person who is unable to afford private legal assistance and who is ineligible for legal aid to have a free one-hour appointment. However, QCAT deals with less than 30,000 cases each year, only one third of the number of cases dealt with by VCAT. Careful consideration will need to be given to whether this model would be able to meet the needs of all of VCAT’s self-represented parties, given the size and complexity of VCAT’s various jurisdiction and if not, how it could be adapted to do so.

VCAT proposes a self-help service model that combines this type of service and VCAT’s Self Help Centre pilot. Procedural information can be provided to parties by undergraduate students, and limited legal and strategic advice can be provided to parties by legally qualified employees and volunteer lawyers. If a party needs ongoing representation, the party can be referred to VLA or another appropriate community legal centre.

This model aims to ensure that as many parties as possible who need one-on-one help receive it, and that the available legal resources are appropriately distributed to parties according to their needs and their capacity to help themselves. For example, in most cases, a party who needs help to complete a form will not need legal advice. Assistance with form filling can be done by undergraduate law students in the first instance and where necessary, the party can be referred to a lawyer for legal advice. Even fewer parties will need legal representation at the hearing but where appropriate, pro bono legal representation may be arranged.

An additional benefit of retaining law student involvement in a self-help service model is that it provides students with invaluable practical experience, while hopefully also instilling in the students an appreciation for, and ongoing commitment to, pro bono work. VCAT’s Self Help Centre pilot is described in more detail below.

Self-represented litigants with disabilities, mental health issues, from CALD groups and socially disadvantaged groups will particularly benefit from this one-on-one help and support. As discussed above, if appropriately resourced, the Self Help Centre services could be extended to help self-represented litigants in suburban and regional areas, particular those litigants who are culturally or socially disadvantaged.

### ***Unbundling of legal services***

VCAT encourages self-represented litigants to ask lawyers to provide them with ‘unbundled’ legal services in large or complex disputes, particularly when a significant legal issue arises.

At directions hearings, for example, members may encourage self-represented litigants to ask a lawyer to help them prepare points of claim or defence or to give them discreet advice about a jurisdictional issue or an interlocutory application. This also often happens if a case needs to be adjourned and it becomes apparent that a party may benefit from legal advice on a discreet legal issue.

VLA, Justice Connect and the Tenants Union of Victoria also often provide ‘unbundled’ legal services to parties. For example, in the Human Rights List, VLA attends directions hearings and provides information and legal advice to self-represented applicants. This duty lawyer service is extremely valuable for the parties and VCAT, as some applicants with unmeritorious claims decide to withdraw them after getting legal advice from VLA. Those that proceed are often able to provide VCAT and the respondent with much better particulars of their claim. This helps VCAT to conduct and hear applications in a timely and efficient manner.

### ***Focus on the role of VCAT***

All new VCAT members receive training on how to conduct a fair hearing with one or more self-represented party. The training covers topics such as why access to justice is important, the legal basis for the requirement to conduct a fair hearing and 11 best practice techniques for conducting a hearing.<sup>6</sup>

More experienced VCAT members also refresh their skills in this area by attending VCAT and Judicial College of Victoria seminars on self-represented litigants and conducting hearings with parties with high conflict personalities.

### ***Utilising law students to provide assistance***

#### **Case Study Three: The Self Help Centre pilot**

The Self Help Centre pilot provides a self-representation service that aims to improve the assistance provided by VCAT to self-represented litigants, particularly vulnerable and disadvantaged Victorians. The pilot provided practical support, aimed at improving access to VCAT services, information and advice.

The pilot project established an external practical subject for Monash law students, providing them with valuable 'hands on' experience at VCAT, as well as providing face-to-face support for people attending VCAT, mostly for civil and residential tenancy matters. The first phase of the pilot project involved a group of eight students, with two students rostered on one day per week providing self-help services to people attending hearings at 55 King Street. The pilot was conducted over a semester (August to October). The second stage of the pilot is set to start in the first semester of 2016.

VCAT members supervised two days of intensive induction training for the students. The training provided a comprehensive overview of VCAT's practices and procedures. It also outlined the student's role in providing assistance, making it clear that they were not, under any circumstances, to provide legal advice. The students were provided with detailed resources, including details of support and referral agencies.

In brief, following their induction training, the students:

- observed cases in the Civil Claims and Residential Tenancies Lists to gain an understanding of the way in which the hearings are conducted and the types of issues arising
- shadowed a Court Network volunteer to gain an understanding of Court Network's role in supporting self-represented litigants to ensure they complement, and not duplicate, the work of the Court Network volunteers (in practice the students worked in close collaboration with Court Network)
- liaised with the VLA duty solicitor at VCAT and under their supervision, progressed to recording enquiries of parties waiting to consult with the solicitor
- provided pre-hearing support in appropriate cases referred to them from the Customer Service centre on the ground floor
- provided post-hearing support to self-represented litigants in civil claims and residential tenancy matters, to assist with understanding the outcomes of the hearing and to determine if any further referrals or support were needed.

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<sup>6</sup> As identified in US research conducted by the National Center for State Courts.

The students documented the support they provided to the self-represented litigants and this was observed by the supervising members to ensure that the scope of the support was appropriate and did not constitute legal advice. The students also collected feedback forms from the self-represented litigants themselves to determine whether they found the support helpful and to what degree. This feedback is currently being analysed by VCAT and Monash University and will form the basis of the evaluation of the pilot.

Some VCAT parties can access legal advice from VLA or other community legal centres such as Justice Connect and the Tenants Union of Victoria. However, people must meet a strict means tests and other criteria in order to access these services. This means that many VCAT parties who cannot afford a lawyer, cannot get any help from VLA or other community legal centres because they do not meet the means test or the relevant criteria. The Self Help Centre fills this gap by providing help to all self-represented litigants, regardless of their financial position or their level of need.

Court Network also provides VCAT parties who have hearings at 55 King Street with emotional and practical support. The Self Help Centre students worked closely with Court Network. Self-represented parties were more likely to seek post hearing help if they have engaged with the students before the hearing.

Court Network referred a number of self-represented litigants to the students for help with issues not within Court Network's domain (such as completing VCAT forms). Similarly, the Self Help Centre students often referred parties with high support needs to the Court Networkers.

An informal analysis of the feedback forms shows that the Self Help Centre students helped self-represented litigants to, for example:

- fill in application and other forms
- obtain ASIC searches online
- search the internet for online resources
- ask VCAT for an interpreter
- apply for a certified copy of an order or a recording of a VCAT proceeding
- understand VCAT orders
- access support services such as housing services, family violence services and financial counselling services.

While VCAT customer service staff give self-represented litigants information about VCAT's requirements and procedures, they cannot assist with such tasks as filling out application forms. The Self-Help Centre filled this gap.

The Self Help Centre students also gave self-represented litigants detailed information about VCAT's practices and procedures via fact sheets and, where necessary, explained their content. The Self Help Centre fact sheets cover topics such as:

- what will happen during a hearing, where to sit, what to call the member etc
- applying for a review if a party missed their hearing
- how a tenant can stop an eviction until a review hearing is held
- applying for leave to apply for a second review if a party missed their review hearing
- how to apply to the Residential Tenancies Bond Authority for a bond after a VCAT order
- enforcing a monetary order
- enforcing a non-monetary order
- how to appeal a VCAT decision.

Anecdotal feedback collected from self-represented litigants suggests that they were very grateful for the help and support they received from the students. Examples of comments made by self-represented parties in feedback forms are:

*She explained how the system works and was very pleasant, as I was shaking [and she] made me settle [down]: talked me through a lot and I am very grateful to meet her. Thank you.*

*It was very helpful because I had no idea what to expect and she was very informative. This was reassuring.*

*I had only two days prior notice to my hearing. [Student] explained the process, implications, and details to me in a friendly, understandable manner which was very much appreciated by me. I was very nervous and the information she provided me was valuable.*

*Was proactive in coming to us to explain the workings of the VCAT hearing and was very articulate in answering our many questions. Additionally she provided post hearing explanations including referring us to Legal Aid assistance for questions of which she did not have authority to answer.*

*Law students were extremely helpful - what a great idea to assist us with these application forms – the forms are difficult in making sure we have completed them correctly. We are so grateful that these Law Students could assist us.*

VCAT intends to support the Self-Help Centre pilot project for the first semester of 2016. The outcomes of the project will be evaluated against the project's objectives, however, early indications show that the project is providing valuable support to self-represented litigants that would not otherwise be provided. VCAT would like to continue its partnership with Monash University to formally establish the Self-Help Centre as a permanent component of VCAT's suite of support services to self-represented litigants. However, to enable the project to continue beyond the pilot phase, we will need funding for a legally qualified project coordinator to be employed to supervise the students and manage the service.

While VCAT members are supervising the students during the pilot, this is not sustainable due to the resource intensive nature of the supervision and because is not an appropriate use of VCAT member resources in the long term.

### ***Providing appropriate case management in Guardianship and Power of Attorney***

In the last decade, the Guardianship List has, as a result of societal and demographic trends, experienced an upward trend in the number of matters finalised and an increase in their complexity. Overall, the number of finalisations increased by more than 20 per cent in the seven years to 2014-15 and a further increase is expected during the next six years as incapacity in the community increases<sup>7</sup>.

The type of incapacity that is seeing the greatest growth is dementia, reflecting the current ageing of the population. In 2001, 17 per cent of the population was older than 60 years of age. By 2021 this is expected to have grown to 22 per cent. From 2009 to 2014, applications to the List in respect of those aged 60–79 increased from 22 per cent to 31 per cent and for those aged 80–89 increased from 27 per cent to 31 per cent of the total. This growth is likely

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<sup>7</sup> Incapacity can be the result of several factors including: life-long incapacity; acquired brain injury; mental illness, permanent or temporary; and dementia

to continue over the next six years. The number of Victorians older than 80 years of age is forecast to increase by a third on 2011 levels, to an estimated 280,000 by 2021<sup>8</sup>.

Demographic changes are also affecting the complexity of cases. Cases involving the elderly (the Guardianship List's largest client group) are particularly challenging, because of the number of family relationships and the value of assets involved. Hearing length is a good indicator of case complexity. In 2007-08, 14 per cent of hearings were expected to take more than 45 minutes. By 2014-15, this proportion had increased significantly to 24 per cent with the greatest growth coming from hearings lasting between 45 minutes and 1.5 hours. In light of this trend, and to ensure that parties have access to a fair hearing and that self-represented litigants are provided with the necessary information and assistance, VCAT's preference is to provide a greater level of case management to parties in the Guardianship List.

Intensive case management planning is a process of triaging files based on a risk and complexity assessment to ensure the needs of parties are met. Files are allocated to case managers who undertake end-to-end processing of applications and provide parties with a single point of contact, who is aware of the application and can assist with any enquiries. The case manager:

- contacts all parties to explain VCAT's processes, seek relevant documents and determine listing requirements to ensure hearings are efficient
- triages applications according to complexity and risk to the principal/proposed represented person to ensure hearings are listed within appropriate timeframes and before members with appropriate expertise
- reviews applications to determine if they can proceed to ADR.

Intensive case management of the Guardianship List would not only provide a greater level of support to the complex needs of the parties who appear in this list, but also ensure a quicker outcome as many of the issues are resolved pre-hearing, allowing for a more efficient hearing.

### ***Recommendations:***

VCAT working with Government:

- consider the ongoing role of a Self-Help Centre at VCAT that provides one-on-one assistance and support to self-represented litigants appearing at VCAT, particularly vulnerable and disadvantaged Victorians; and
- explore options to implement a model for intensive case management in the Guardianship List.

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<sup>8</sup> Department of Environment, Land, Water & Planning, *Victoria in Future*, 2015, p. 8

### 3. Recommendations Summary

VCAT working with Government to:

- improve the support services available to the Victorian community, by improving our customer services, expanding digital and online accessibility, and considering the ongoing role of a Self Help Centre in the context of other support services available to self-represented litigants
- ensure digital services are as accessible as possible and meet best practice standards, noting that A2J software extensively used in the USA enables interactive DIY forms for self-represented litigants, increasing useability and accessibility particularly for people with low literacy skills in English or languages other than English
- develop strategies to improve access to justice by culturally and linguistically diverse groups through supporting Government's efforts to enhance the quality and quantity of professional interpreters operating in Victoria, particularly in rural and regional locations, and the provision of legal information in multiple languages
- explore options for extending our ADR program in order to expand the use of compulsory conferences and SMAH for small civil claims
- develop a proposal for Government's consideration to conduct a pilot project using an ODR web-based portal for small civil claims valued up to \$10,000
- explore options for introducing compulsory SMAH for all contested small civil claims under the value of \$10,000
- expedite uncontested small civil claims and amend the VCAT Act to allow for uncontested claims to be determined on the papers, avoiding the need for a hearing, noting that the right of review would ensure procedural fairness
- explore opportunities to rationalise the dual administrative systems operating in Victoria to resolve small civil claims
- consider the ongoing role of a Self-Help Centre at VCAT that provides one-on-one assistance and support to self-represented litigants appearing at VCAT, particularly vulnerable and disadvantaged Victorians
- explore options to implement a model for intensive case management in the Guardianship List.