

# *“The role of VCAT in a changing world”*

# **CONSULTATION PAPER**

**March 2009**

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## **Introduction**

In 2008, VCAT (Victorian Civil and Administrative Tribunal) celebrated 10 years of operation. This milestone is an ideal time to carry out an extensive review to audit VCAT's performance and to broadly focus on some key issues around access, operation and jurisdiction.

VCAT's workload has increased significantly over the past 10 years. The total number of matters brought before VCAT has increased from a total of 74,317 in 1998/1999 to more than 86,000 in 2008. It has also acquired a number of new jurisdictions (such as health professionals, working with children checks and disability issues) and has added the human rights division and the legal practice list to its original structure.

In March 2008 the Attorney-General, the Hon. Rob Hulls MP, asked the president of VCAT, Justice Kevin Bell, to carry out a review of VCAT (terms of reference included on page 4).

Since his appointment Justice Bell has embarked on an extensive performance and organisational analysis of VCAT and has overseen the implementation of significant organisational changes.

## **Purpose of consultation paper**

The purpose of this consultation paper is to stimulate and promote input from VCAT's key stakeholders and the community to discover how VCAT is regarded in terms of the access, operational and jurisdictional issues specified in the terms of reference. Suggestions are also sought on the direction VCAT needs to take to meet the challenges of the next decade.

This paper provides an overview of the role of VCAT generally, how it is currently structured and its objectives. It also looks at some of the issues and opportunities we face in terms of meeting these objectives, in particular VCAT's role as a centre of excellence in alternative dispute resolution (ADR).

VCAT is committed to consulting with all stakeholders and is keenly interested in obtaining views, comments and suggestions on all the issues raised in this paper and the terms of reference. For more detailed background refer to Justice Kevin Bell's speech to the Law Institute of Victoria at [www.vcatreview.com.au/speech](http://www.vcatreview.com.au/speech).

Interested parties can register to be kept informed of progress through our website [www.vcatreview.com.au](http://www.vcatreview.com.au). There is also the opportunity to attend a number of workshops, focus groups and regional forums throughout the period of community consultation. These events will be advertised on our website and via other forms of media.

Following consultation with our stakeholders and the broader community the president will provide a report to Government in November 2009. The president's report will address the terms of reference and consider options for improving access, efficiency and cost-effectiveness and promoting a best practice approach to all of the tribunal's operations.

## VCAT background

The enactment of the *Victorian Civil and Administrative Tribunal Act 1998* saw a total of 15 boards and tribunals in Victoria consolidated jurisdictionally into one institution known as VCAT. The objective was to create a 'super tribunal' offering a 'one-stop-shop' dealing with a range of civil and administrative disputes.

VCAT was established in order to provide a modern structure for the resolution of disputes in Victoria. Its objectives were to:

- streamline operations to ensure efficiency and provide support to its members
- promote equal access to justice
- apply the relevant laws, rules and principles and do so objectively, independently and impartially
- reduce the cost of justice
- provide flexible and informal practices for hearing and determining disputes
- facilitate the use of technology and alternative dispute resolution

Since its inception, VCAT's purpose has been to provide Victorians with a modern, low cost, accessible, efficient and independent civil and administrative justice system which delivers high quality dispute resolution.

At present over 130 separate pieces of legislation confer jurisdictions on VCAT. More than one million Victorians are directly affected by VCAT decisions in any given year. Recently the State Government introduced a policy that a party should have the freedom to choose where to access and seek justice. As a consequence of this policy VCAT was given unlimited jurisdiction in civil claims and domestic building disputes.

VCAT is the biggest tribunal of its kind in Australia, if not the world. It operates three divisions with 14 lists. During 2007-08 VCAT finalised a total of 86,911 cases.

## Alternative dispute resolution

Alternative dispute resolution (ADR), and in particular mediation, is an important means of dispute resolution at VCAT. About 70 per cent of matters referred to mediation are settled.

VCAT is a Recognised Mediator Accreditation Body (RMAB) under the National Mediator Accreditation system. This means that VCAT is able to accredit mediators and provide training programs directly to mediators.

VCAT has a purpose built Mediation Centre at 55 King Street, Melbourne comprising of hearing rooms, meeting areas and break out rooms.

Positioning VCAT as a centre of excellence in ADR is one of the organisation's key strategic objectives.

## Issues identified for discussion

Interested parties are invited to comment on any matters raised in this paper as well as to respond directly to the issues raised below. General comments about any other aspect of VCAT's operation would also be welcome.

### ACCESS ISSUES:

- Has VCAT improved access to justice and delivered equitable outcomes for all Victorians?
- What steps can be taken to further improve access to justice and to make VCAT quicker, more efficient and inexpensive?
- Do the processes currently used by VCAT ensure that all parties to a dispute are given a fair hearing and an opportunity to present their case?
- Do people in the outer suburbs of Melbourne and in regional and country Victoria have the same ready access to VCAT as people living in urban Melbourne?
- Does VCAT make itself open to people with disabilities and other access barriers?
- Is VCAT doing enough to ensure that the community is aware of what it does and how they can make a claim?
- In what ways do you think VCAT can improve community awareness of its role?
- Are VCAT decisions generally seen to be fair, competent and principled?
- Do parties come away from a VCAT proceeding believing that they have had a fair go?
- Is decision-making at VCAT seen to be reasonably consistent and predictable?

### OPERATIONAL ISSUES:

- Has VCAT been cost effective in delivering services to Victorians, and how can it become more cost effective and efficient?
- Has VCAT's use of technology and ADR helped parties to resolve their disputes fairly and quickly?
- Is VCAT's system for listing matters operating well for users and the community generally?
- Are there significant delays in getting applications listed for hearing or ADR (such as mediation)?
- Are VCAT's procedures for dealing with applications transparent, fair and flexible?
- Does VCAT give enough assistance to self represented parties?
- Is VCAT too legalistic?
- What does VCAT do well? In what areas do you think VCAT does not perform well?
- Is the current list structure appropriate and if not, how can it be improved?
- How does VCAT perform in handling large or complex cases (as opposed to small claims)?

## JURISDICTIONAL ISSUES:

- Have the jurisdictions assigned to VCAT since 1998 been appropriate? In what ways can the process and principles under which VCAT acquires new jurisdictions be enhanced?
- Has VCAT's exercise of concurrent jurisdictions with Victoria's courts enhanced access to justice in Victoria?
- How well is VCAT handling large civil and domestic building cases?
- Should all large cases be assigned to a judge or deputy president for case management?

## ALTERNATIVE DISPUTE RESOLUTION:

- Should ADR be a compulsory step in every dispute at VCAT?
- Is VCAT an appropriate physical forum for ADR, or is it seen as too formal?
- Is ADR at VCAT becoming too legalistic? If so, how can ADR be made simpler and more accessible?
- Should there be limits on legal representation in ADR?
- What educative function can VCAT play in the promotion of ADR?
- What additional steps can VCAT take to become a centre of excellence for ADR?

## Making a submission

Please provide comments about the role of VCAT in a changing world by **5pm on Monday 8 June, 2009** by mail to:

**President's Review  
VCAT  
Level 1, 55 King Street  
Melbourne Vic 3000**

Submissions may be in hard copy (written or printed) form, or can be made by email to [review@vcatreview.com.au](mailto:review@vcatreview.com.au). Submissions can also be lodged via the review website on [www.vcatreview.com.au](http://www.vcatreview.com.au)

The author must sign a written submission either on his or her own behalf or on behalf of the organisation making the submission.

Those signing on behalf of an organisation should indicate the level at which the submission has been authorised (eg President, Chief Executive, Secretary).

A return address for correspondence and a contact telephone number should be provided with the submission. Submissions forwarded by email must include the name, postal address and phone number of the person or organisation making the submission.

Where possible, hard copy submissions should be typed on A4 paper. This helps with reproduction of the submission. Where typing facilities are not available, hand written submissions are acceptable, but care should be taken to ensure that they are legible and suitable for photocopying.

It is helpful if each hard copy submission is sent with an electronic version on disk or CD-ROM, preferably in Microsoft Word® or Portable Document Format (PDF). This assists with publishing submissions on the review website.

Should you have any questions about this review please email [review@vcatreview.com.au](mailto:review@vcatreview.com.au)

## What should be in a submission?

There is no prescribed form for a submission. Submissions may be in the form of a letter, a short document or a substantial paper. They may include appendices and other supporting documents.

Submissions may contain facts, opinions, arguments and recommendations for action. It is helpful if submissions are prefaced by a brief summary of the main points.

Supplementary submissions may be lodged during the course of this review's consultation to provide additional information or comments.

## Terms of engagement

As a general principle all submissions will be placed on the review website, as will papers and other material developed for the review process.

The president will not accept submissions by organisations submitted wholly on a confidential basis. Where the nature of the material dictates, however, submissions may append material marked 'confidential' and severable from the covering submission.

The president will accept confidential submissions from individuals who can establish that publication might compromise their ability to express forthright viewpoints.

Please note that any request made under the *Freedom of Information Act 1982* for access to any material marked 'confidential' will be determined in accordance with that Act.

Submissions will be placed on the review website at [www.vcatreview.com.au](http://www.vcatreview.com.au)

## APPENDIX

# President's review of VCAT Attorney-General's terms of reference

### INTRODUCTION

VCAT was established in July 1998 to:

- provide a new structure for Victoria's tribunals and to streamline their administration
- improve access to justice
- facilitate the use of technology and alternative dispute resolution (ADR)
- develop flexible and cost-effective practices for hearing and determining disputes in its original and review jurisdictions

VCAT's workload has increased steadily over the past 10 years. It has acquired many new jurisdictions (such as health professionals, working with children checks and disability issues) and has added the human rights division and the legal practice list to its original structure.

### REVIEW SCOPE

The review will audit VCAT's performance over the past 10 years and broadly focus on the following key issues:

#### Access issues:

- whether VCAT has succeeded in improving access to justice and in delivering equitable outcomes for all Victorians
- whether steps could be taken to further improve such access

#### Operational issues:

- whether VCAT has been cost-effective in delivering services to Victorians, and whether there is scope for achieving greater administrative efficiencies
- whether VCAT's use of technology and ADR has assisted parties to resolve disputes fairly and more speedily, and whether existing services could be enhanced

#### Jurisdictional issues:

- whether the additional jurisdictions assigned to VCAT since 1998 have been appropriate, and whether the process and principles under which VCAT acquires new jurisdictions could be enhanced
- whether the exercise of concurrent jurisdiction with Victoria's courts has enhanced the administration of justice in Victoria

Further issues identified in the course of the review may also be considered.

#### TIMING

The review report should be delivered on or before 30 November 2009.