

CONTENTS

Unit 3 – Area of Study 1 – The Victorian Criminal Justice System	1
Topic Checklist	1
Key Skills	2
The Principles of Justice: Fairness, Equality and Access	3
Key Concepts in the Victorian Criminal Justice System	6
The Rights of an Accused	9
The Rights of Victims	11
The Role of Institutions Available to Assist an Accused	13
The Purposes of Committal Proceedings	16
Effectiveness of Committal Proceedings	18
The Purposes and Appropriateness of Plea Negotiations and Sentence Indications in Determining Criminal Cases	21
The Reasons for a Victoria Court Hierarchy in Determining Criminal Cases, Including Specialisation and Appeals	24
The Responsibilities of Key Personnel in a Criminal Trial	26
The Judge	26
The Jury	28
The Parties	30
Legal Representation	32
The Purposes of Sanctions: Rehabilitation, Punishment, Deterrence, Denunciation and Protection	34
Fines, Community Corrections Orders and Imprisonment, and their Specific Purposes	35
Fines	35
Community Corrections Orders	36
Imprisonment	37
Factors Considered in Sentencing	40
Factors That Affect the Ability of the Criminal Justice System to Achieve the Principles of Justice	42
Recent Reforms and Recommended Reforms to Enhance the Ability of the Criminal Justice System to Achieve the Principles of Justice	42
Unit 3 – Area of Study 2 – The Victorian Civil Justice System	48
Topic Checklist	48
Key Skills	49
The Principles of Justice: Fairness, Equality and Access	50
Key Concepts in the Victorian Civil Justice System	53
Resolving Civil Dispute – Factors to Consider When Initiating a Civil Claim	56

The Purposes and Appropriateness of Consumer Affairs Victoria in Resolving Civil Disputes	59
The Purposes and Appropriateness of the Victorian Civil and Administrative Tribunal in Resolving Civil Disputes	60
The Purposes of Civil Pre-Trial Procedures	64
The Reasons for a Victorian Court Hierarchy in Determining Civil Cases, Including Administrative Convenience and Appeals	70
The Responsibilities of Key Personnel in a Civil Trial	72
The Judge	72
The Jury	73
The Parties	73
Legal Practitioners	74
Judicial Powers of Case Management, Including the Power to Order Mediation and Give Directions	75
The Methods used to Resolve Civil Disputes and their Appropriateness	81
Mediation	81
Conciliation	82
Arbitration	83
Comparison Between Conciliation, Arbitration and Mediation	87
The Purposes of Remedies	88
Damages and Injunctions, and their Specific Purposes	89
Factors That Affect the Ability of the Civil Justice System to Achieve the Principles of Justice, Including in Relation to Costs, Time and Accessibility	93
Costs are Linked with Affordability	93
Time	94
Access	96
Recent Reforms and Recommendations to Enhance the Ability of the Civil Justice System to Achieve the Principles of Justice	99
Reform to Improve Fairness and Access	99
Recommendations to Address Costs	99
Recommendation to Reduce Delays	100
Reforms Saving Time, Improving Specialisation and Accessibility	100
Reform VCAT – Improve Access for People who Represent Themselves at VCAT	101
Recommendations to Improve Access	101
Solutions	105

TOPIC 18B – THE PURPOSES AND APPROPRIATENESS OF THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (VCAT) IN RESOLVING CIVIL DISPUTES

In 2008, Victorian Attorney General Robert Hulls commented on the public's demand for more accessible and affordable justice and "innovative ways of doing things." One measure introduced in 1998 and came into operation in 2000 was VCAT. Its roles were designed to provide Victorians with a fair, accessible, low cost, efficient and independent tribunal delivering high quality dispute resolution, suitable for a broad range of civil disputes.

VCAT's structure involves the President (a Supreme Court Judge) and 13 Vice Presidents (County Court judges) that are responsible for the administration of VCAT, its four divisions and its nine lists where the approximately 200 Members will resolve the disputes. VCAT's appropriateness is evident in Justice Greg Garde's words, who as a Supreme Court judge has been appointed VCAT President to oversee its running. In 2016, His Honour said, "the obligation to provide a *fair hearing* is an important component and obligation of the Tribunal's function."

Therefore, VCAT's purpose is to fulfil key principles of justice, including those outlined by 24 of the *Charter of Human Rights and Responsibilities Act 2006*. According to the Charter, a fair hearing involves: the provision of a reasonable opportunity to put a case forward, that will be heard and determined according to law by a competent, independent and impartial tribunal.

As a dispute resolution body, VCAT has been viewed as an appropriate body as it fulfils its four main roles:

Administrative Convenience/ Efficiency:

VCAT is a tribunal that resolves nearly 90,000 civil and administrative legal cases annually in its nearly 50 venues across Victoria. These cases would be otherwise be abandoned by parties whose rights have been infringed, or they would need to seek justice through the expensive court system. Additionally, over 60% of its cases were resolved through mediation or compulsory conferences, reducing delays and backlogs in the civil justice system that is already over-stretched by its workload.

Saving time:

VCAT is less formal dispute resolution body when compared to our formal courts. The process has improved through electronic lodgement of claims VCAT emphasis on encouraging parties to reach agreement through processes like conciliation, mediation and compulsory conferences. Unlike the courts, VCAT does not rely on complex rules of evidence and procedure. Additionally, the Residential Tenancies List hears over 65,000 cases per annum and the majority are resolved within two weeks. Even the Civil Claims List resolves issues within 10 weeks of a claim being lodged. This List has improved from 18 weeks down to 10 weeks in the last 3 years. This is substantially quicker than the dispute being pursued through the formal process of the courts.

Access due to loss costs:

VCAT's nominal or non-existent fees coupled with the non-requirement for legal representatives in most hearings, makes it substantially cheaper than the courts. In 2015, a three-tiered system was established for corporations, standard and Health Care Card users. For example, someone on a health care card can pursue civil action in the Civil Claims List or Residential Tenancies List for free, and the standard fee for these lists is only \$61-50.

Expertise/ specialisation:

VCAT Members who preside over each case heard within the List, are experts that will make a binding decision or final determination in the case at a hearing if the parties are unable or unwilling to agree to settle their dispute. Each of the approximate 200 Members that preside over each hearing within a List, has specialist knowledge, qualifications and legal background. This ensures Members have the skills, ability and capacity to conduct hearings within a particular division and make fair decisions quickly. Furthermore, since 80% of people appearing before VCAT are self-represented litigants, services like the Self Help Centre and strategies implemented are designed to provide access to information where they can with the assistance of experts, find timely and cheaper solutions to the legal issues.

However, VCAT's appropriateness or effectiveness in fulfilling its purposes has been hampered by two weaknesses. Firstly, there is a **limited right to appeal** from VCAT on a point of law to Supreme Court (Trial Division). The 2016 annual report showed that only 80 out of 90,000 disputes sought leave to appeal, only 11 decisions overturned. This may reflect the effectiveness of VCAT but also discouragement for those who are unable to afford the appeals process. For example, the Macedon Rangers Case 2009 saw Macedon Rangers Council spent over \$160,000 on an appeal to stop pokies. Therefore, access maybe reduced due to the high costs of legal representation that contradicts the purposes for VCAT's establishment.

Secondly, despite access and fairness through nominal fees, VCAT has recently **increased some fees** – eg Environmental Planning List now charges \$3500 to lodge claim.

Additionally, even though most parties represent themselves, legal representation is necessary in some lists, due to complex nature of dispute, thereby reducing access to inequality caused by costs. **VCAT is an effective dispute resolution body that is suitable in resolving a substantially growing number of a civil disputes, but not all types of civil disputes.**

QUESTION 51

Discuss the appropriateness of VCAT or CAV in resolving civil disputes. [6 marks]

QUESTION 52

Describe the role of the Victorian Civil and Administrative Tribunal (VCAT). [2 marks]

QUESTION 53

Outline two roles of VCAT or CAV. [2 marks]

QUESTION 54

Outline one difference in the purpose of VCAT with CAV. [2 marks]

QUESTION 55

You are a tenant who is having problems with your landlord. Explain the benefit of going to CAV rather than to VCAT. Under what circumstances would your case proceed to VCAT? [4 marks]

TOPIC 19 – THE PURPOSES OF CIVIL PRE-TRIAL PROCEDURES

The primary purpose is for both parties to **be informed** about the details of the legal claim that has been made. This involves both sides having access to and exchanging precise information regarding the nature of the claim and the remedies being sought.

The parties are able to **clarify issues** since they have disclosed all information to the other parties. This assists the parties help prepare parties for their case since they can determine which issues are agreed upon and which issues are still in dispute.

The parties can **determine the strength and weakness of their case in order to determine whether they should proceed** with time consuming and costly litigation. This may encourage parties to reach an out-of-court settlement, or seek other methods of dispute resolution like negotiation or mediation.

The **courts are able to monitor the proceedings** through the lodgement of specific documents that are mandatory, as outlined in specific legislation. Eg compulsory directions hearings are designed for the court to know details like witness lists as a means to minimize adjournments as the parties are ready to proceed to trial. Even if the parties proceed to trial, the pre-trial procedures help identify key issues in dispute, that will be the focus of the hearing, thereby saving time and money.

PRETRIAL PROCEDURE AND SPECIFIC PURPOSES

The Pleadings involve both parties to a civil dispute stating their case in written form through the exchange of documents. Purposes of pleading are to inform and clarify issues in the hope that settlement can be reached.

These documents include:

Statement of Claim which is usually filed with the writ and sets out precise details of plaintiff's claim send to the defendant. It also makes the defendant aware of cause of claim, alleged facts and remedy sought.

Notice of appearance occurs once writ has been served. The defendant has limited time to respond. The defendant will file a notice with the court and the plaintiff, therefore highlighting that they intend to challenge the claim.

Statement of defence is served by defendant's solicitor and is a reply to the plaintiff's statement of Claim. The purpose is to allow the defendant to outline their version of the facts, defend claims made against them, deny all or some of the claims being made.

Counterclaims can be made by the defendant, who initiates their own civil action against plaintiff, arguing that their rights that have been partly or completely infringed by the plaintiff.

Strengths	Weaknesses
<p>Parties are able to access relevant information regarding the case such as claims, defenses and counter claims. This ensures adequate preparation and provides equal opportunity for parties to put forward their case.</p>	<p>Complexity of pleadings requires expensive legal representation to prepare relevant documents.</p>
<p>Additionally, procedures like the statement of defense and counter claim provide the defendant with the opportunity to defend themselves. This ensures fairness for the defendant as they can put their case forward.</p>	<p>One party may be unable to pursue civil action due to their socio-economic circumstances, and therefore, an injustice is not rectified.</p> <p>Parties are placed at a great disadvantage if they cannot afford legal representation to effectively prepare documentation required to pursue or defend a claim.</p>

The Discovery Stage or phase includes the discovery and inspection of documents, discovery by written interrogatories, and discovery by oral examination. This allows parties to gain further and better particulars, that is, more information about the facts of the case.

The discovery of documents ensure that either party can request to inspect/copy relevant documents eg. medical reports, contracts, reports by expert witnesses.

Interrogatories are specific written questions concerning issues of fact that must be answered in writing (by affidavit) within 60 days and can be served by other party on the other.

The discovery by oral examination is used as substitute to written interrogatories.

The Purpose of the discovery phase is to give parties access to all relevant information. This assists the parties to clarify issues, and therefore reduces the element of surprise since all relevant documentation has been disclosed. Additionally, this exchange assists the parties with preparation of their case and decide whether they should settle out-of-court since the discovery phase has exposed that they have a weak case.