

WHERE IS TECHNOLOGY TAKING THE COURTS AND TRIBUNALS? ¹

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- 1 In May 1999 the Law Reform Committee of the Victorian Parliament published its landmark report on technology and the law. The Committee, which was chaired by Mr Victor Perton MP and included the Honourable Mary Delahunty and Mr Tony Robinson MP, looked at the long term future of the justice system and the use of technology in courts throughout the world. In putting forward its vision for the future the Committee said:

The rapid developments in technology offer the opportunity to transform the justice system into an accessible, inexpensive, transparent and efficient system, which is responsive to the needs of the community.²

- 2 In the five years since the publication of the Law Reform Committee's report, we have seen the increased use of technology in Victoria's courts and tribunals. For example, the Supreme Court of Victoria has introduced electronic trials, or "eTrials", for major civil cases involving thousands of documents. From time to time the Court conducts hearings using video conferencing or real time transcripts.³ Victoria's County Court and the Magistrates' Court have introduced significant new technologies. And the fourth pillar of Victoria's justice system, the Victorian Civil and Administrative Tribunal, known as "VCAT", has an extensive electronic case management system, including on-line applications in its high volume residential tenancies list.

- 3 Thus it is now time to pause and ask the question: where is technology taking the courts and tribunals? Is it making courts and tribunals more accessible? Is it making courts and tribunals less expensive? Is it making the courts and tribunals more transparent and more efficient?

- 4 The Law Reform Committee thought that the effective use of IT in the justice system could entirely change the relationship between courts, governments and the public, by ensuring that everyday legal issues could be

¹ A paper delivered at the "Court Technology – Updates and Developments Conference" on 20 October 2004 at the Sir Zelman Cowen Centre, Level 2, 295 Queen Street, Melbourne.

² Parliament of Victoria, Law Reform Committee, "Technology and the Law", May 1999, paragraph 3.1.

³ See Warren CJ, "IT and the Supreme Court – the Way to Go", 1 September 2004, <http://www.supremecourt.vic.gov.au>.

processed without the need for expensive legal advice or long court processes.⁴

- 5 More recently Victoria's Attorney-General has released a "Justice Statement", which is designed to set out a framework for the future of the justice system over the next ten years.⁵ The Justice Statement notes that significant investments have been made over the past 10 years in new technology for the courts.⁶ The Statement notes that

expenditure has been incurred in providing personal computers and networks to court personnel, developing case management systems of varying degrees of sophistication for each jurisdiction, and rolling out videoconferencing technology to all major courthouses. The courts have also developed their own websites to provide information to practitioners and the general public.⁷

But it also concedes that most of the current systems are ageing, with little flexibility.⁸

- 6 The government proposes an "integrated courts management system" for Victoria's Supreme, County and Magistrates' courts and VCAT. This initiative, which holds great promise, will provide for:

- an integrated electronic registry for all jurisdictions;
- wider availability of on-line court information;
- greater use of electronic transactions;
- computerised case management in all jurisdictions;
- better use of in court technologies; and
- improved data and statistics.⁹

- 7 The Justice Statement identifies certain core values: equality, fairness, accessibility and effectiveness.¹⁰ The Justice Statement identifies the role

⁴ Parliament of Victoria, Law Reform Committee, "Technology and the Law", May 1999, paragraph 3.1.

⁵ "New directions for the Victorian justice system 2004-2014", also known as the Justice Statement, May 2004.

⁶ Attorney-General of Victoria, "Justice Statement", May 2004, page 44.

⁷ Attorney-General of Victoria, "Justice Statement", May 2004, page 44.

⁸ Attorney-General of Victoria, "Justice Statement", May 2004, page 44.

⁹ Attorney-General of Victoria, "Justice Statement", May 2004, page 44.

¹⁰ Attorney-General of Victoria, "Justice Statement", May 2004, page 20. These values are explained as follows:

Equality - all citizens should be equal before the law. The chief guarantees of such equality are the independence of the judiciary from the other arms of government, and the freedom of the legal profession to provide independent advice to its clients. Equality is also promoted by respect for human rights and accessible justice.

Fairness - the processes of justice should be fair, incorporating principles of natural justice and proportionate sanctions and remedies.

Accessibility - the justice system should be flexible enough to provide appropriate access for those who are unable to otherwise afford it, and a range of processes appropriate to the issue to be resolved.

government should play in providing for fair and accessible dispute resolution system. It states that policies and practices will be promoted around the following principles: fairness, timeliness, proportionality, choice, transparency, quality, efficiency and accountability.¹¹ Technology is largely agnostic in relation to some of these values. But some of these values are appropriate yardsticks with which to assess where technology is taking courts and tribunals.

- 8 It is possible to consider the extent to which the Law Reform Committee's vision has been realised. I propose to consider the following questions:
- Is technology improving access to justice?
 - Is technology improving the timeliness of the courts and tribunals?
 - Is technology making the justice system more transparent?
 - Is technology reducing the cost of resolving disputes?

Technology and access to justice

- 9 In his groundbreaking work "The Rise of the Creative Class", Richard Florida observes that one of the most enduring myths of the modern age is that technology will liberate us from large, faceless organisations, and somehow give us the lives we want.¹² Techno-utopianism has been around for a long time. In the early 1900s, it was the car that was going to liberate us from dirty, congested cities. In the 1950s, nuclear power was going to make electricity 'too cheap to meter'. We now run the risk that computers, networks and the internet will be relied upon to solve the world's problems, including those of our courts and tribunals.
- 10 In his book Florida observed that technology – measured by innovation and high-tech industry concentration – figures into his model as one of the "3 Ts" needed for growth. But he says:

Talent is the second T – not "human capital" as usually measured (by numbers of people holding higher education credentials) but creative capital, which is talent measured functionally, by the number of

Effectiveness - the justice system should be able to efficiently deliver the outcomes expected of it by the community, and be forward looking in meeting emerging trends and the challenges of the future.

¹¹ Attorney-General of Victoria, "Justice Statement", May 2004, page 35. Most of the principles set out above are self-explanatory. But in relation to the principle of proportionality it is worth quoting from the Statement:

"The cost and complexity of the process should be proportionate to the subject matter of the dispute. Matters involving significant public interest, difficult points of law or large sums of money will require more elaborate processes, while more routine or minor disputes should be resolvable using relatively informal and inexpensive processes. The Government will encourage policies that minimise the cost and complexity of dispute resolution that is appropriate to the nature of the dispute."

¹² Richard Florida, "The Rise of the Creative Class", page 24.

people in creative occupations. The third T is tolerance. Places that are open and tolerant have an edge in attracting different kinds of people and generating new ideas.¹³

- 11 Maybe it could be said: as for cities, as for courts and tribunals. Technology is a necessary element of a modern justice system that is accessible, transparent and efficient; but it is not a sufficient element. More is needed. That “more”, as Florida has observed, requires creative people and tolerant and open society.
- 12 Three of the most significant developments in recent years, which have been brought about by technological change, are the ready availability of legislation, case law and information about dispute resolution: all of which are now readily available on the internet.¹⁴
- 13 In Victoria, the Government has created an excellent website containing parliamentary documents, statutes by year and consolidated statutes.¹⁵ Similar sites exist in all other jurisdictions in Australia. These websites have made a substantial difference to the accessibility of statute law, especially by providing ready access to consolidations of the latest statutory law and to subordinate legislation. They are also so easy to use. For example, the use of searching techniques enables relevant parts to be quickly found. And they are popular. The Victorian site averaged 42,290 hits per day during September 2004.
- 14 In relation to case law, AustLII has continued to provide an outstanding service in bringing case law to the public. It has recently enlarged its data base, simplified searching and continues to provide an array of current information. AustLII is a free access service which is not funded by usage charges or advertisements. Funding is provided by 'stakeholders': a wide range of organisations who have an interest in facilitating access to legal information of particular types. AustLII has been seeking to broaden its range of stakeholders as far as possible so as to lighten the burden on any particular organisation of funding access to legal information. AustLII's current funding and budget is approximately \$1,000,000 per year. Last financial year a number of courts and tribunals throughout Australia, including VCAT, made a financial contribution as a mark of their appreciation of the very important role AustLII plays in bringing case law to the community.
- 15 AustLII receives over 500,000 hits each day. In the 2003 year the Supreme Court of Victoria and the Victorian Civil and Administrative Tribunal ranked 4th and 9th in the total number of hits received on their databases on

¹³ Richard Florida , “The Rise of the Creative Class”, Preface to the Paperback Edition, page xix.

¹⁴ As Victoria’s Attorney-General observed in the Justice Statement: “As people and businesses become used to accessing services over the internet, their expectations of convenient, accessible, fast and customised service will become the benchmark to which the courts and other parts of the justice system must respond.” (At page 18.)

¹⁵ <http://www.dms.dpc.vic.gov.au>

AustLII.¹⁶ It seems evident that it is not just lawyers who are accessing case law on the AustLII site. This can be illustrated by reference to cases decided in VCAT's Planning and Environment List, which is the list which dominates VCAT cases on the AustLII database. These cases are of interest to lawyers; but they are also keenly read by town planners, engineers and like professionals; they are often relied on by local councils and government departments; and are referred to by everyday citizens, who play a substantial role in the determination of town planning questions in Victoria and often represent themselves in planning hearings. In fact a recent survey of all planning cases determined in VCAT in June 2004 showed that only 14.9% of parties were represented by a lawyer. Even for permit applicants, the main choice of advocate was a town planner (44%) not a lawyer (33%).¹⁷

- 16 Most courts and tribunals now have comprehensive web sites that contain a myriad of information about dispute resolution processes. The secrets of each jurisdiction are less and less; and they can be found without needing to be a member of some inner sanctum. Further, government web sites, such as the Victorian Government's "LegalOnline", are playing a greater role in informing ordinary members of the public about their rights and the best method of resolving disputes.¹⁸
- 17 Technology is underpinning a revival in the democratisation of the law and the justice system. Of course the roots of our system are undeniably democratic. The most fundamental decisions made in our justice system, decisions about the guilt of persons charged with serious crimes, have been made by lay persons selected by lot for many centuries. But apart from the involvement of jurors, the public has been squeezed out of real involvement in the justice system by the increasing complexity and inaccessibility of the law. Better public education, broader professional roles and the ready accessibility of information are all playing a part in demystifying the justice system; and allowing an increasing proportion of the system to be effectively accessed without the need to hire lawyers.¹⁹

¹⁶ See Appendix 1 for a list of the top 20 jurisdictions, by number of "hits", for 2003.

¹⁷ *Planning News*, Victoria, September 2004.

¹⁸ 'LegalOnline' is the Victorian Government's legal information website - according to the website it is "the Law made clear and simple. Anytime. You can find the information you need to take the next step. Fact sheets, links to legal practitioners, relevant legislation and agencies are all provided."

¹⁹ In the "Justice Statement", May 2004, the Victorian Government commented, at page 35:

"Lawyers find themselves in competition with providers who have imaginatively synthesized the law with other knowledge sets, such as accounting and finance, into more appealing service products for their traditional clients. In the same way that problem-solving courts are attempting to invoke an interdisciplinary approach to the complex social problems they are dealing with, lawyers and other professional service providers are focusing on interdisciplinary approaches to better meet the multi-faceted business needs of their clients."

Technology and the timeliness of the courts and tribunals

- 18 In general, there is little evidence that technology has made any substantial impact upon the timeliness of the decisions of courts and tribunals. I suppose that some technologies, like video conferencing, can speed up the hearing process by reducing the need to wait for the next circuit hearing. But other technologies can work in the opposite direction. It could be convincingly argued that a running transcript, though no doubt an advantage in advancing justice, actually lengthens the time to hear a matter. We all can remember that promise of the “paperless” office. I can hear the manufacturers of Reflex copy paper laughing all the way to the bank.
- 19 I have no doubt that timeliness is a worthwhile goal for courts and tribunals. But it is an error to regard raw statistics as the be all and end all. For a start, not every matter is urgent. If none of the parties to a civil proceeding wants to push a matter along, why should the timeliness of that proceeding matter?
- 20 There are other circumstances where timeliness is obviously important. Laws concerning bail may require a person charged with a criminal offence to be held in custody pending trial. If the committal hearing and trial are delayed for long periods this will cause a very substantial injustice in the event that the person is acquitted. There are four VCAT lists where timeliness is particularly important, but for quite different reasons:
- Planning and Environment, because of the holding costs imposed upon permit applicants and, consequently, the community;
 - Residential Tenancies, where delay in deciding matters of occupation and the like can impose significant costs on landlords and tenants;
 - Guardianship, where a person’s immediate welfare and care is in issue; and
 - Civil Claims, where the *raison d’etre* of the list is the provision of an inexpensive and quick means of resolving civil disputes arising under fair trading legislation.

In the last year significant steps have been taken to improve the timeliness of VCAT’s Planning and Environment and Civil Claims lists. But the means have not been technological. Rather the key changes have turned on registry practices, listing policies, member skills and morale. Technology has nonetheless played an important role in measuring whether progress is being made.

- 21 VCAT’s Residential Tenancies List may be an example where timeliness is directly related to, and enhanced by, e-filing and advanced case management practices. In the 2003-04 financial year the average time from filing of application to the decision was 20 days. This can be compared with the 1998-99 financial year, when the comparable number was 29 days.

This is a substantial improvement; which, I think, must be attributed to the changed systems that have become possible by reason of the use of new technologies.

Technology and the transparency of justice

- 22 There are a number of important factors that distinguish decisions of courts and tribunals, on the one hand, and decisions of the executive branch of government, on the other hand. Courts and tribunals operate in public.²⁰ Parties are heard before decisions affecting them are made. Courts and tribunals do not determine the subject matter of the cases brought before them: the parties do. Except for jury verdicts, courts and tribunals give reasons for their decisions. And those decisions are subject to appeal.
- 23 Thus decision making by courts and tribunals has always possessed a strong element of transparency. Certainly it has traditionally been far more transparent than most executive decision making. But some elements of judicial decision making can obscure the transparency of public justice. For example, the increased tendency to rely upon written evidence and written submissions can disengage the public unless care is taken to make written documents available for public scrutiny. Occasionally, but much less frequently than was once the case, judgments will require an English and Latin dictionary to decipher. But the factor which will usually be most important in making the courts and tribunals transparent is a simple one: that is, the ready and immediate availability of the primary decision.
- 24 There is no doubt that technology has already made a significant difference to the transparency of justice. In particular, AustLII, combined with the websites of courts and tribunals, has made possible the rapid and widespread dissemination of decisions and the reasons for them.
- 25 Notwithstanding the great strides taken in the publication of court and tribunal decisions on the internet, there is still a substantial problem in conveying the reasons for these decisions to the public. Sentencing decisions may pass through the filter of a “shock-jock” radio presenter or a newspaper, like the Herald Sun in Victoria, whose main focus is “celebrities and battlers”. Controversial town planning decisions may pass to the public through the filter of a Minister or a council; or through a journalist with a passion for a particular type of city, or simply a desire to provoke controversy! I am sure that from time to time many judges and tribunal members become frustrated at the misrepresentation of their decisions. Technology can play a role in addressing this; but it is unlikely to be sufficient. Perhaps controversial decisions could be published on the internet – such as on the website of the court or tribunal in question – at precisely the same time that the decision is handed down. A summary of the decision will often be an additional aid in communicating with the public. Thought could also be given to publishing or republishing other

²⁰ Exceptions, such as authorising warrants, do not change this general proposition.

information, necessary to give a controversial decision context, at the same time the decision is published.

Technology and the cost of justice

- 26 New South Wales Chief Justice Jim Spigelman has observed that the value of efficiency – of getting “value for money” – has in recent times received a greater, and often dominant, salience in competition with other values of government activity, such as accessibility, openness, fairness, impartiality, participation, honesty and rationality.²¹ The courts and tribunals are not completely insulated from this value shift; even though non-pecuniary values are central to any system of justice.
- 27 The Justice Statement notes that new technologies and approaches have enabled increased efficiencies in the caseload management of both criminal and civil courts.²² But it added:
- While technology increases the effectiveness of investigation techniques and streamlines court processes, it also increases the complexity of evidence and expands the opportunities for offending across jurisdictional boundaries. The average length of hearings in the higher courts has jumped from five days in 1982 to 14 days in 2001.
- 28 Some see the advent of various technologies as an opportunity to give effect to a “value for money” philosophy, by reducing the cost of resourcing our justice institutions. But it is important to recognise that any study of the cost of resolving disputes will have significant limitations.²³
- 29 In the first place, the tendency is to concentrate upon the cost *to government* of providing the court or tribunal. The resolution of disputes involves costs in providing a mediator or arbitrator or tribunal or court. These are usually costs to government. But the resolution of disputes also involves costs to the parties, which are often far greater than the costs of providing the dispute resolution function itself. If we are truly concerned with the cost of justice, it is necessary to consider both types of costs.²⁴
- 30 Second, the units of measurement that must be used in any study of costs are problematic. The concept of a “case” seems simple enough; but one can hardly compare a 10 minute claim for recovery of a bond in VCAT’s residential tenancies list with the Esso class action in the Victoria’s Supreme Court. This makes comparisons within a jurisdiction likely to be more reliable than comparison between jurisdictions.

²¹ Honourable James Spigelman AC, Chief Justice of New South Wales, “Judicial Accountability and Performance Indicators”, 10 May 2001.

²² Justice Statement by Victorian Attorney-General, May 2004, page 18.

²³ In his speech “Judicial Accountability and Performance Indicators”, 10 May 2001, Chief Justice Spigelman emphasises that the “value for money” objective may conflict with other important values, such as democracy, justice, freedom and equity; and because a trade-off may be required, there will rarely be a single correct answer to a particular issue about judicial administration.

²⁴ The savings that accrue from video conferencing is a good example of the main savings being in relation to private costs.

- 31 Third, although statistics are likely to be an important tool in understanding all jurisdictions, they are likely to be more relevant in high volume jurisdictions, such as VCAT, than in the supreme courts of each State.
- 32 Another matter worth noting is this. A sound system of civil justice will seek to reduce the overall cost of obtaining justice by providing certainty and predictability; which will reduce the need for further disputation when like circumstances arise. A landmark decision of a higher court, delivered with clarity, can cast a beam of light on a dark or murky terrain. How can the costs saved by such a decision be measured?
- 33 Nevertheless if we confine ourselves to the effect of technology on the cost *to government* of resolving civil disputes, the Victorian Civil and Administrative Tribunal provides a useful case study. The tribunal, which was formed in July 1998 by the amalgamation of 14 former boards and tribunals, now has six years of operational history. Further, as a result of the leadership of inaugural President Justice Murray Kellam , Chief Executive John Ardlie and Principal Registrar Ian Proctor, VCAT has kept excellent statistics on its costs and cases. Also, as a high volume jurisdiction, it is possible to apply a statistical approach to ascertain broad trends; an approach which may not be suitable for low volume jurisdictions.
- 34 VCAT consists of 12 separate lists, which manage a disparate array of cases. In the last financial year the biggest list, Residential Tenancies, used about 29% of the tribunal's resources; but it heard 64,213 cases - almost three quarters of the total number of 86,355 cases. Other substantial lists are Planning and Environment, Guardianship, Civil Claims, Domestic Building and the tribunal's General List.
- 35 Since its commencement VCAT has sought to employ various technologies to enhance its performance. For example:
- Virtually all of the 175 staff, 40 full-time members, and 120 sessional members of VCAT use computers as their basic work tool.
 - Email is used as the principal method of internal communication.
 - All cases are managed using a computer case management system.
 - All hearings in Melbourne are automatically recorded using a digital recording system.
 - VCAT operates an automated call centre, which receives over 200,000 calls per annum.
- 36 The introduction of "VCAT Online" in the tribunal's Residential Tenancies List has dramatically changed the method of *applying* for remedies in this high volume list. Essentially the system enables registered users to make application on line and be given a hearing date, online, within 5 minutes.

VCAT serves online notices to the registered user. Hearings are still held in the conventional way. The use of the system has dramatically increased since it was introduced in year 2000. This is shown in Table 1.

Table 1
VCAT Residential Tenancies Online

	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Total applications	57,457	68,588	71,541	69,191	66,216	64,213
Online application	0	0	5,451	28,489	41,137	46,194
Percentage online	0%	0%	8%	41%	62%	72%
Online notices	0	0	6,454	36,481	50,535	70,887

37 VCAT receives funding from government appropriations and from three trust funds: residential tenancies, domestic building and guardianship and administration. As shown in Table 2, over the last six financial years the total funding has increased from \$18.27 million to \$23.85 million per annum. This represents a funding increase of just over 30% over six years; or an average increase of 5.5% per year.

Table 2
VCAT funding sources (\$M)

	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Appropriations	10.84	11.63	11.24	12.15	13.90	14.49
Residential Tenancies Fund	5.17	6.02	6.31	6.66	6.63	6.97
Domestic Builders Fund	1.46	1.41	1.35	1.49	1.40	1.45
Guardianship and Admin. Fund	0.80	0.90	0.83	0.78	0.80	0.94
Total	18.27	19.96	19.73	21.08	22.73	23.85

38 The funds received are spent on salaries to staff, salaries to members, operating costs and rent, as shown in Table 3. The major cost of running VCAT are salaries; courts and tribunals are labour intensive. During the six year period the tribunal has occupied the same space, but the cost of rent

has increased by reason of market circumstances. As the cost of rent is completely outside the control of those managing VCAT, it will be excluded from the subsequent analysis shown in Tables 4 and following.

Table 3
VCAT expenditure (\$M)

	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Salaries to staff	5.28	6.20	6.30	6.90	6.83	7.23
Salaries to members	7.29	8.20	7.66	8.27	10.10	10.02
Operating costs	4.22	4.25	4.25	4.52	3.93	4.35
Rent	1.48	1.31	1.52	1.39	1.87	2.25
Total	18.27	19.96	19.73	21.08	22.73	23.85

- 39 In order to consider the effect of technology on inputs, it is necessary to adjust for the cost of inputs over the six year period. In the case of operating costs this is best measured by the Consumer Price Index (Melbourne) over the period. Staff salaries have increased at a slightly higher rate than inflation. Member salaries tracked inflation until 2002, when the Attorney-General supported substantial pay rises as a result of a work value study.²⁵ The applicable index numbers are shown in Table 4.

Table 4
Index of VCAT input costs (\$M)

	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Index of staff salaries	100.00	102.23	107.34	111.64	116.10	121.96
Index of member salaries	100.00	105.37	108.85	111.41	134.82	140.57
Index of operating costs (CPI - Melbourne)	100.00	102.65	108.85	111.91	115.55	118.11

²⁵ The salaries of VCAT members are nonetheless modest when compared with comparable salaries in New South Wales. For example a Member of VCAT receives a package (including superannuation) of \$133,400, whereas a Commissioner of the New South Wales Land and Environment Court receives a salary on \$186,435.

- 40 Using the data in Table 3 and Table 4, it is possible to construct a table of VCAT inputs over the last six years, expressed in constant dollars. (The dollar values of 2003/04 have been adopted.) This is shown in Table 5, which sets out the *real* cost of the inputs used in operating VCAT, not including rental payments. It can be seen that the real cost has been remarkably stable over the period; which shows that the labour and operating *inputs* used by the tribunal have changed little over the period.

Table 5
VCAT inputs expressed in 2003/04 \$ values (\$M)

	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Salaries to staff	6.44	7.40	7.15	7.54	7.18	7.23
Salaries to members	10.25	10.93	9.90	10.43	10.53	10.02
Operating costs (except rent)	4.98	4.89	4.61	4.77	4.02	4.35
Total before rent	21.67	23.23	21.66	22.74	21.72	21.60

- 41 Table 6 shows the number of applications made to the tribunal over the six year period. Applications made in the Residential Tenancies List are shown separately, as this is both the list having the highest volume of cases and the list which has been the subject of greatest technological change.

Table 6
Applications made to VCAT

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

- 42 Table 7 shows the average real cost to VCAT of hearing and determining each application over the six year period, expressed in constant 2003/04 dollars. It can be observed that the cost per case has declined over the period by over 16%; or at a rate of 3.5% per annum. I have little doubt that

the use of technology has been a contributing factor in this reduction in cost. But many other factors have been at work: including the development of member and staff skills, improved registry practices, bolder listing practices and the greater use of single member tribunals.

Table 7
Cost to VCAT per application (in constant \$2003/04)

	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04
Residential Tenancies	\$107	\$102	\$97	\$104	\$96	\$98
Other	\$1,030	\$846	\$705	\$753	\$736	\$690
Total	\$299	\$265	\$234	\$253	\$249	\$250

- 43 Perhaps the most surprising feature of Table 7 is that the decline in the real (internal) cost of Residential Tenancies cases has not been less than other cases, even though this is the list that has been subject to the most intensive application of new technologies.²⁶ There are various possible explanations: such as a modification of internal accounting methods over the six year period and the effect of cost lagging technological change. But I think the substantive explanation lies in the fact that a high proportion of the costs of a court or tribunal are fixed labour costs, which cannot be replaced with technology.
- 44 The limited effect of technology in reducing costs may be bad news for a government treasurer, but it is not bad news for an attorney-general, especially one with a strong focus upon the cost of justice to the parties. This is because the real impact of technology on cost is not so much upon internal cost, but upon external cost: that is, the cost to the parties. For example, the introduction of VCAT Online has provided substantial benefits to applicants:
- electronic assistance in lodging applications;
 - instant notification of hearing dates;
 - reduced costs of lodging documents;
 - improved access to VCAT information and

²⁶ The lower real cost of cases in 2000/01 is explained by the substantially higher number of Residential Tenancies cases in that year. This has the effect of generating cost savings per case simply by the effect of economies of scale. Further, because the total number of cases is dominated by Residential Tenancies cases, this has a consequential effect on the cost per case for all cases.

- greater speed in resolving cases.

The largest landlord in Victoria, the Director of Housing, can launch and retrieve information from VCAT Online using its own computer systems; which alleviates the need to re-key information.

- 45 Thus the greater use of technology in the courts and tribunals does offer the prospect of reducing the overall cost of justice - in particular, by reducing the costs to the parties. This does offer the prospect of enhancing access to justice.

Where to from here?

- 46 As the Victorian Law Reform Committee observed in 1999, the adoption, and effective use, of technology is not dependent on what technology itself can achieve.

Rather, it is dependent on organisational and cultural issues. The most sophisticated systems will not ensure that all persons involved in the legal system will use them effectively.²⁷

Technology should be viewed as an enabler, rather than as an end in itself. It enables us to look at our systems and our processes, to see if there are better ways.²⁸

- 47 In the Justice Statement the Attorney-General observes that the Government wishes to preserve the Supreme Court's role as the superior court of record in Victoria with responsibility for hearing the most important matters that are litigated. I would expect that this principle would apply in all States of Australia. Hence the Justice Statement sets out a basic principle in relation to the allocation of jurisdiction: namely that users should be able to commence proceedings in the lowest appropriate jurisdiction.²⁹
- 48 This lays down a particular challenge for jurisdictions such as magistrates' courts and tribunals like VCAT, which will inevitably be required to process a high volume of cases. An awareness of technological opportunities will be necessary to meet that challenge. But it is not so much a matter of where technology will take the courts and tribunals. Rather it is how courts and tribunals will use technology to achieve the real objectives: objectives such as fairness, timeliness, proportionality, choice, transparency, quality, efficiency and accountability. That is the real challenge.

²⁷ Parliament of Victoria, Law Reform Committee, "Technology and the Law", May 1999, paragraph 3.17.

²⁸ Parliament of Victoria, Law Reform Committee, "Technology and the Law", May 1999, paragraph 3.4:

"The benefits technology offers can not be capitalised on unless there is a genuine attempt to examine existing processes with the aim of designing them for the next millennium."

²⁹ Attorney-General of Victoria, "Justice Statement", May 2004, page 37.

Appendix 1

List of top 20 AustLII “hits” in year 2003

- 1 High Court of Australia
- 2 Federal Court of Australia
- 3 Supreme Court of New South Wales
- 4 Supreme Court of Victoria
- 5 Industrial Relations Commission of Australia
- 6 Supreme Court of Western Australia
- 7 Migration Review Tribunal
- 8 Supreme Court of Queensland
- 9 Victorian Civil and Administrative Tribunal
- 10 Commonwealth Administrative Appeals Tribunal
- 11 Supreme Court of South Australia
- 12 New South Wales Consumer, Trader and Tenancy Tribunal
- 13 New South Wales Industrial Relations Commission
- 14 Supreme Court of Tasmania
- 15 Federal Magistrates Court of Australia
- 16 Family Court of Australia
- 17 South Australian District Court
- 18 New South Wales Land and Environment Court
- 19 New South Wales Compensation Court
- 20 Queensland District Court