

*Victorian Civil and
Administrative Tribunal
(VCAT) - Aboriginal and
Torres Strait Islander
Engagement Project*

VCAT

*Council of Australasian Tribunals
20 October 2017, Adelaide*



Context and background



Project Scope

VCAT engaged PwC's Indigenous Consulting (PIC) to build a robust evidence base to underpin and guide VCAT's efforts in providing for the needs of Aboriginal people. The key purpose of the project was to build a body of evidence about Aboriginal experiences of VCAT processes and services, in order to determine:

- ① **Whether VCAT is serving the needs of Aboriginal people?**
- ② **What (if any) barriers there are to Aboriginal people participating in VCAT?**
- ③ **How could VCAT improve and effect the inclusion of Aboriginal people as a standard element of its standard service delivery model and day-to-day activities.**

The project was about Aboriginal experiences and perceptions of VCAT. It deliberately did not seek information on the outcome of VCAT matters.

The primary focus of the project was the *Residential Tenancies List*. Opportunities were also taken to consider Aboriginal experiences across three other VCAT lists – *Civil List*, *Guardianship and Administration List*, and *Planning and Environment List*.

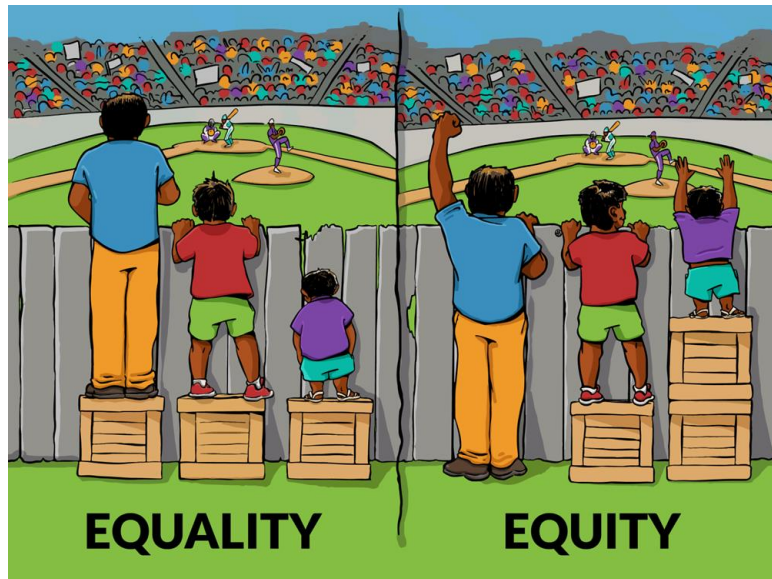
Key context

VCAT's strategic directions, include

- ① *providing fair, efficient justice for all Victorians*
- ② *ensuring that VCAT's services are accessible to all groups*

VCAT did not previously offer any Aboriginal-specific initiatives or processes for Aboriginal parties. VCAT's services to Aboriginal people were provided through VCAT's standard service delivery model.

The project is the first major action of VCAT's Koori Inclusion Action Plan (KIAP). The KIAP is a demonstration of VCAT's commitment to serving the needs of Aboriginal people and includes a series of tangible actions aimed at ensuring VCAT's services enable access to justice for Aboriginal people.



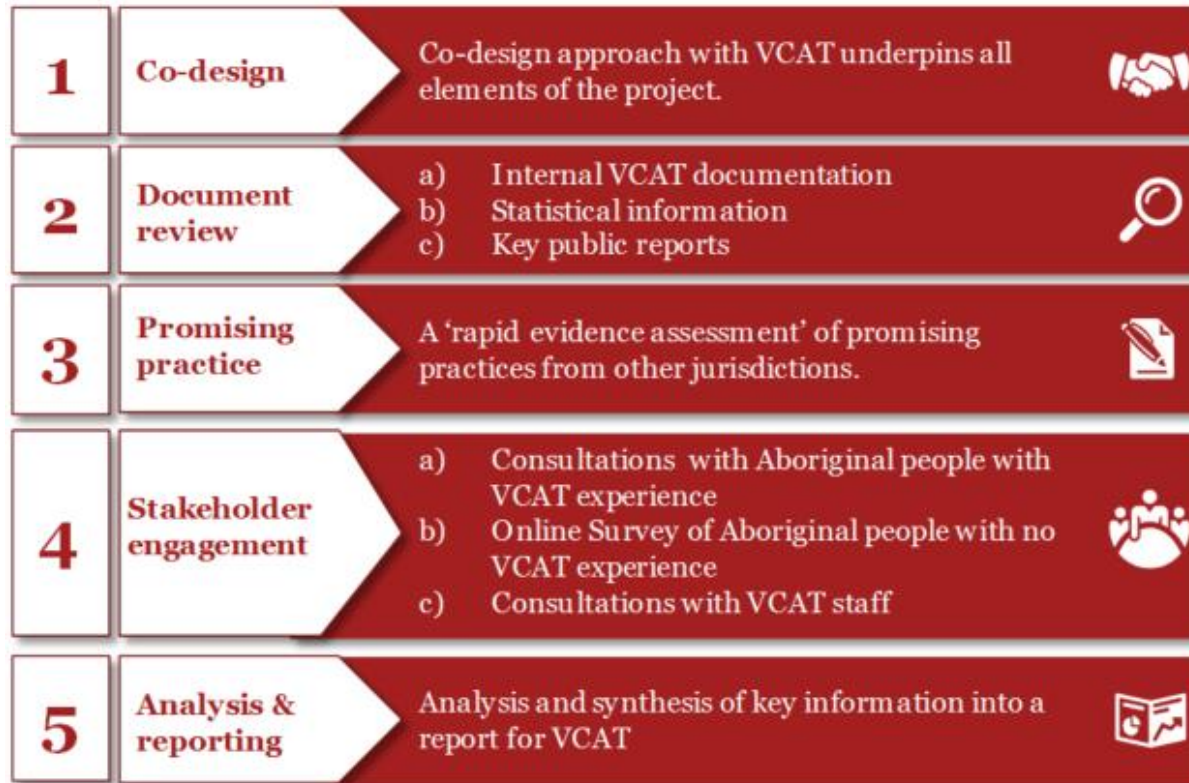
Can our differences and/or history, create barriers to participation?

- **Equality = Sameness** giving everyone the same thing (regardless of their differences).
- **Equity = Fairness** ensuring people get access to the same opportunities /outcomes.

Adapted image, based on original image by Professor Craig Froehle, University of Cincinnati 2012.

Our Approach

Overview of methodology



Consultation approach



Stakeholder engagement included:

- Consultations - 62 people were consulted.** This included: Aboriginal people who had been a party to a VCAT matter ; staff who support Aboriginal clients through, or regularly participate in, VCAT; and VCAT Members and staff.
- Online Survey – 52 Aboriginal people had input** via an online survey.



Key Findings



The need for Aboriginal-inclusive practices – the existing evidence

There was a lack of data and knowledge about Aboriginal participation in VCAT and whether or not Aboriginal people benefit equally from its services.

Recommendation: Improve processes for identifying, recording and reporting Aboriginality:

- Aboriginal participation data is critical to inform effective strategic decisions and resource prioritisation
- identification of Aboriginality is an enabler for the implementation of Aboriginal specific initiatives and processes

However there is considerable research that indicates a likely need for Aboriginal-inclusive practices:

- There is significant evidence at a **cross-sector level across Australia** and Victoria that Aboriginal people do not equitably access, or receive equitable outcomes from, the standard service delivery models of ‘mainstream’ services.
- The **Victorian Government has acknowledged the need for Aboriginal-inclusive practices across a range of sectors** and has committed to action a number of responses, as outlined in public documents such as *the Victorian Aboriginal Affairs Framework*, and the *Victorian Aboriginal Inclusion Framework*.
- There is also substantial existing evidence that there are **structural and procedural barriers across the Victorian justice system** that inhibits equitable access by Aboriginal people including:
 - *Civil and Family Law Needs of Indigenous People in Victoria, 2013*
 - *Access to Justice Review, 2016*
 - *Victorian Aboriginal Justice Agreements*
 - *Koori Inclusion Action Plans*

Aboriginal experiences of VCAT - overview

The most significant evidence of Aboriginal people feeling there are barriers to their full participation in VCAT includes:

57% of people disagreed or strongly disagreed that “I believe the overall VCAT process would produce fair outcomes for other Aboriginal people.”

55% of people agreed or strongly agreed that “the overall VCAT process for my matter was fair.”

70% of people reported that they had little to no understanding of what was expected of them at the hearing.

53% of people found it difficult or very difficult to understand the hearing process.

65% of people felt that they had a high or very high opportunity to put forward their views at the VCAT hearing.

Unanimous agreement across all consulted stakeholders that there were barriers to Aboriginal access and participation embedded in VCAT processes.



Aboriginal experiences of VCAT – overview (continued)

The significant impact of these perceptions and barriers is evidenced by:

- ⊙ Consulted stakeholders advised that **at least 80% of Aboriginal respondents to Residential Tenancies List matters do not attend their VCAT hearing**. These very high non-attendance rates are particularly concerning given that 81% of people reported that they believe that Aboriginal people would get a better outcome when they attend a VCAT hearing.
- ⊙ Evidence to suggest that **Aboriginal people are much more likely to be a respondent to a VCAT matter, rather than the applicant**. That infers that Aboriginal people are less likely to use VCAT as a positive means for resolving disputes, enforcing their rights, and meeting their legal needs.

While these barriers and perceptions exist for Aboriginal people who have participated in VCAT, participating in a VCAT matter actually increases the likelihood that an Aboriginal person will actively participate in a future VCAT matter (should the need arise):

- ⊙ **69% of people reported that their experience with VCAT has made it more likely that they would participate in VCAT in the future as a respondent (if the need arose).**
- ⊙ **72% of people reported that their experience with VCAT has made it more likely that they would raise an application with VCAT in the future (if they had a dispute they could not resolve that was in VCAT's jurisdiction).**



In their own words

“

The decision is fair, based on what is said in the hearing on that day. But the process is not fair.

Most Aboriginal community members do not have the capacity to do everything that is needed to lodge an application, prepare for a hearing, properly represent themselves at the hearing etc; so it is impossible for most community members to get a fair outcome.

A large barrier is that VCAT is seen as just another part of the justice system -and the justice system is something you [many Aboriginal people] try and avoid. Try and avoid because it is confronting and difficult, and traditionally 'against us'. There's no specific effort from VCAT to try and address that and show that they are a safe place for us [Aboriginal people].

There was nothing Aboriginal in there. Not an Acknowledgment of Country, not an Aboriginal flag, not a black face. That would all help in making Aboriginal people feel welcome in there.

VCAT would not produce fair outcomes for other Aboriginal people because it assumes everyone has the same level of competency in regards to reading and writing, computer literacy, time and resources.

Aboriginal clients have a tendency to agree because they are unsure, intimidated, afraid or don't understand. Members don't realise that and sometimes that results in totally unachievable outcomes – such as payment plans to repay \$60 extra a week.

It totally depends on the Member on the day. Some are great and make you feel comfortable and you get a fair outcome. Other Members are difficult and intimidating - you know the difficult ones by name and try to avoid going those days.

”



Awareness of VCAT

VCATs current methods of communication/promotion of its role and services are not effectively reaching Aboriginal audiences – and this is negatively impacting on Aboriginal participation in VCAT.

- ① **50% of online survey participants rated their level of awareness of VCAT’s role and services as ‘low’ or ‘very low’. Only one person rated it as ‘very high’.**
- ① **30% of consulted Aboriginal community members rated their awareness as ‘high’ or ‘very high’.**
- ① **49% of consulted stakeholders reported they had likely had a need to raise a matter with VCAT previously, yet only 5% had.**

“

I didn’t go to my VCAT hearing because I thought I would be sent to prison because of my unpaid rent

”

Recommendation: Develop and implement a strategy to raise awareness of VCATs role and services in Aboriginal community. The strategy should give specific consideration to:

- Developing communications targeted specifically at Aboriginal audiences – both hard copy and online
- Distribution of communications through channels known to be effective at reaching Aboriginal audiences
- Better leveraging the existing Victorian justice frameworks for engaging with Aboriginal communities

Residential Tenancies List

The high number of Aboriginal respondents, low-level of attendance at hearings, and extreme significance of matters under this list - combine to make this the highest priority list for VCAT in improving its Aboriginal engagement.

Pre-Hearing processes

1. Applicants:

Find the online application process difficult to navigate and complete, and do not feel sufficient support is available.

Recommendation: Review current application processes, with a focus on improving accessibility for Aboriginal people:

- Simplify the application form - including removing legal jargon
- Provide greater support to applicants and potential applicants
- Ability to lodge applications verbally where the potential applicant reports literacy issues.

2. Respondents:

One of the most significant barriers to participation is the first contact respondents have with VCAT. VCAT notices are being significantly misinterpreted – and the vast majority of Aboriginal respondents disengage at these stages.

Recommendation: Improve communication with respondents, particularly the Notice to Vacate and Notice of Hearing, with a focus on achieving greater participation by Aboriginal respondents in hearings.

3. Both Parties and Support Services:

Inefficient and ineffective registry processes are a barrier to participation and creating a burden on support services.

Recommendation: Ensure that pre-hearing registry processes are more consistent, efficient and effective. This work should be conducted in partnership with organisations/programs offering support to Aboriginal parties).

I had real difficulty finding the right online form and then found it difficult to complete. I eventually completed the paper work, lodged the application, and a hearing was scheduled.

In attendance on the day was the tenant, a support person, the neighbour and his wife, and myself. The Member then dismissed the matter in 2 minutes, because the paperwork was incorrect.

I felt terrible for wasting everybody's time and lost all credibility with my client. But why didn't something in the VCAT process pick up the error before the hearing day? Why don't we, as workers, get support or training from VCAT in their processes? Why isn't there Aboriginal Liaison Officers to help, like there is in courts and other parts of justice?

Hearing

1. Hearing Process and Members

The most significant barriers to participation are the court-like formality of hearings and absence of procedures to show that the hearing is a culturally-safe place. These barriers are often only overcome with the support of an external support service.

- Members were identified by most stakeholders as the greatest strength of the entire VCAT process. However, some stakeholders reported the conduct of some Members as a large barrier to Aboriginal participation.

I was supporting a client, a female Elder, and I knew she was very nervous and fearful. My client reported later that she did not know what an oath or affirmation was and felt very uncomfortable and embarrassed about having to try and read in front of a crowd – and that the situation brought back lots of bad memories of school and other painful experiences. She got so flustered and upset that she wet herself in the hearing.

Recommendation: Actively encourage greater participation by Aboriginal parties in hearing processes, including by:

- Reducing the formality of hearings
- Ensuring all Members have a suitable level of cultural awareness
- Providing parties with a greater understanding of their roles and responsibilities in hearing
- Demonstrating intention to be a culturally-safe environment.

2. Hearing Venue

Holding hearings in court rooms is a contributing factor to Aboriginal people finding the process overly formal and intimidating.

- 70% of consulted stakeholders reported the venue for their hearing was slightly or very inappropriate.

Recommendation: Hearing venues are deliberately set-up to provide a less formal environment than a court, – including:

- Hearings are held in Koori Court rooms in locations with Koori Courts
- Continue to explore opportunities to hold hearings in neutral venues, rather than court rooms
- All hearing venues show visual recognition of Aboriginal culture and community – such as displaying Aboriginal flags.

Total process

1. Need for support

At each stage there are unintentional barriers, which mean Aboriginal parties frequently require support to participate. This support is being provided primarily by external organisations -many of whom report struggling to cope with the demand.

Recommendation: Provide a greater assistance to external organisations who support Aboriginal clients through VCAT:

- Providing training in VCAT processes to staff of external support organisations
- Providing dedicated contacts at VCAT for staff of external organisations
- Improve the support that VCAT provides to Aboriginal parties, including consideration of:
- Employment of Aboriginal Liaison Officer/s at VCAT to provide support to clients
- Removal of the unintentional barriers that are leading to Aboriginal parties requiring support to equitably access VCAT.

2. Establishment of Koori Residential Tenancies List

There are numerous benefits that could be derived from establishing a Koori List, including:

- ability to target cultural awareness training;
- increased attendance by Aboriginal-specific support services at hearings;
- hearing rooms can be set-up in a culturally-specific way and with the intent of being less formal;
- likely to be of benefit in attracting Aboriginal employees to VCAT

However, careful consideration will need to be given in the planning and development of a Koori List to ensure there are no unintended negative consequences for Aboriginal parties in areas such as timeliness, affordability, confidentiality and consistent quality of service across all VCAT venues.

Recommendation: Undertake a project to more closely investigate the feasibility of establishing a Koori Residential Tenancies List or Lists.



Other VCAT Lists



Aboriginal experiences of other VCAT lists

Similarities across all lists

There were similarities of Aboriginal experiences in the *Residential Tenancies List*, that applied across the other three lists in scope of this project (Civil List, Guardianship and Administration List, and Planning and Environment List) – most notably that:

- ◎ **VCAT documentation (for both parties) is complex and is being misinterpreted.**
- ◎ **Pre-hearing processes are not providing a sufficient level of understanding to allow full participation in hearings.**
- ◎ **Hearings (and hearing venues) create an environment that is often intimidating, and do not include a elements designed to provide a culturally-safe environment for Aboriginal participants.**
- ◎ **Members are seen as the greatest strength of the VCAT process by most stakeholders. However there is a need for greater cultural awareness to be displayed in hearings.**
- ◎ **External support services are frequently supporting Aboriginal parties to navigate unintentional barriers in VCAT processes.**



Overarching opportunities for systemic change

These systemic opportunities are proposed in consideration of:

- **the significant evidence that Aboriginal people feel excluded from fully accessing and participating in VCAT**
- **high importance of the matters that VCAT has jurisdiction over**
- **alignment with current practices in other areas of the Victorian justice system;**
- **and consistency with views expressed by consulted stakeholders.**

Recommendation:

Give highest priority consideration to overarching opportunities to drive systemic change across all VCAT lists and process, including:

- Creating a Manager of Aboriginal Policy and Services position
- Creating Aboriginal Liaison Officer position/s
- Developing an Aboriginal Employment Strategy
- Continuing the roll out of Aboriginal Cultural Awareness Training to all staff and Members
- Establishing monitoring and review mechanisms
- Strengthening partnerships with Aboriginal stakeholders – including engaging key Aboriginal stakeholder organisations in strategic decision making at a system-wide level

How did VCAT respond to the report?

VCAT Koori Inclusion Action Plan 2017-18

This plan outlines how we will encourage Koori participation at VCAT, whether accessing our services or as part of our workforce. We want our everyday work practices to be culturally sensitive and inclusive.

VCAT welcomes your feedback on this plan - please email communications@vcat.vic.gov.au.

Snapshot of initiatives

Koori inclusion

Appoint a new Koori Engagement Project Officer to:

- ▶ manage new programs to increase Koori participation, particularly in Residential Tenancies Division
- ▶ ensure VCAT is actively participating in key Indigenous justice forums, including the Victorian Aboriginal Justice Agreement Forum
- ▶ raise awareness of VCAT's role among Victoria's Koori community
- ▶ strengthen partnerships with key Aboriginal stakeholders.

Establish a pool of culturally competent VCAT members to hear Koori matters, particularly in the Residential Tenancies and Guardianship lists

Continue our program of Koori cultural awareness training for members and staff.

Data collection

Look at ways to gather data on Aboriginal participation to support service improvements. We will:

- ▶ consider the barriers to identification
- ▶ develop strategies to address these barriers

Koori employment and economic participation

Establish a recruitment and employment strategy to encourage Koori employment at no less than 2.5 per cent, including:

- ▶ creating opportunities for Koori employment within existing programs, for example graduate recruitment programs and traineeships
- ▶ strategies to promote VCAT as a Koori-friendly organisation, through our professional development programs.

Communication, engagement and partnerships

Promote NAIDOC and Reconciliation weeks.

Acknowledgement of Country to be given at all significant events and forums.

Further information



Adrian Sculthorpe
Senior Manager, PwC's Indigenous Consulting
Email: adrian.sculthorpe@pwc.com
Telephone: 0408 37 37 90

About PwC's Indigenous Consulting (PIC)

PIC is a national Indigenous Consulting Business that exists to help power positive change for Aboriginal Australia. PIC employs 50 staff in 8 locations across Australia. PIC is majority Aboriginal owned and staffed, and is a member firm of the PricewaterhouseCoopers global network.

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