Smarter Data

The use and utility of administrative data in Victorian courts and tribunals

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Foreword

This is the second instalment in our foundational work on mapping the data landscape for civil justice in Victoria. The first in this series looked at the legal assistance sector, and part three will focus on complaints and other dispute resolution bodies.

This report on the use and utility of data in Victorian courts and tribunals adds a critical dimension to our understanding of the data environment, and through it, the opportunities and challenges in its effective application.

Predictably we found that administrative data was collected and used primarily to facilitate operations and to report outputs. How many cases? What kinds of matters? How are the stages of the process managed? This is an entirely appropriate use, but its limitations become clear if a further aspiration is to see and understand access to and experience of justice.

What the data doesn't currently reveal consistently is much about who is coming to the court or tribunal, why, and whether they resolve their dispute satisfactorily.

Civil legal matters are difficult to track end-to-end in courts and tribunals. Disputes can be stopped or settled or otherwise mediated – so the outcomes are not always easily identified. Participants in actions can change if legal advisors are swapped mid-stream or dropped all together – so who is involved can also shift through the life of the matter.

So the nature of civil actions, coupled with limited scope of administrative data as it is currently configured, means we have patchy understanding of the experience for Victorians of civil justice in our courts and tribunals. As a result, we have an inadequate evidence base to inform different and potentially more effective responses to their legal needs.

We did find that there was significant appetite in court and tribunal staff and leadership for more and better data; and that collection and use of data has improved substantially over the last 15 years, supported by better data and IT systems. There are some good examples of targeted data collection and application to improve both the functioning of the jurisdiction and the experience for the user. We also found that every court and tribunal is at a different stage and use several different systems.

There is growing recognition across the sector that data can deliver powerful insights about how justice is done. Courts and tribunals have great potential to contribute to this picture. Considered amendment to their administrative data collection, and a willingness to share information in appropriate contexts would significantly enrich our understanding.

Efficient performance of courts and tribunals is vital, but so is effective access to the machinery of justice. Administrative data has a role to play in shedding light on both.

Lynne Haultain
Executive Director

Executive Summary

This report

In 2019 Victoria Law Foundation (VLF) commenced the Data Mapping Project to investigate the current state of data across key parts of the Victorian civil justice system.

The project examines the use and utility of Victoria's civil justice administrative data and looks at what data is available; its accuracy and consistency; how data is currently used; and what needs to be done to improve its ability to answer access to justice questions.

The project aims to better understand the legal and related needs and experiences of Victorians to provide evidence for better policy and practice.

The project is in three stages, which together map the administrative data landscape of the Victorian civil justice sector. The first explores the administrative data available in the Victorian legal assistance sector. The second looks at courts and tribunals and the third, other dispute resolution and complaint bodies.

Findings from stage one were published in *Apples, Oranges and Lemons: The use and utility of administrative data in the Victorian legal assistance sector*[1], covering what legal assistance services are being provided, to whom, and for what types of legal matters.

This report is the second in the series, and examines the data collected by Victorian courts and tribunals.

What was found

What civil justice data is available?

The key observation from our analysis of data recorded by Victorian courts and tribunals is one of variation – variation in the approach to data collection, what is collected, its use, and ultimately its utility.

The data typically collected and used included basic litigant or user information, legal matter type, stage, outcome and manner of disposal. This was generally used for operational and reporting requirements.

The extent to which user-focused data was collected, such as parties' legal representation, demographic and other personal information, varied significantly across Victorian courts and tribunals. Collection depended on the case management system being used, and the data entry practices.

As a consequence, there were substantial gaps in what was known about the parties to civil matters in Victorian courts and tribunals and their experience in courts and tribunals. This was evident in each of the categories below.

Legal matter type

While legal matter type was typically recorded, the way it is recorded varied across Victorian courts and tribunals.[2] This depended on the categories available in the court or tribunal system, and data entry practices.

Change to administrative systems typically meant opportunity to improve the way legal matter type was recorded, including categories used, structure and whether there was capacity to record other characteristics for each matter or case.

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1   See McDonald et al. (2020).
2   Beyond variations that would be reasonably expected due to differences in the areas of work of different courts and tribunals.

Stage, outcomes and manner of disposal

Legal matter outcomes (finalisation, manner of finalisation etc.) whether matters were finalised and type of finalisation) were recorded by all courts and tribunals for civil matters. However, terms of resolution may be unknown or unrecorded, such as where parties resolve material privately after action has been commenced. This is a frequent feature of civil legal matters. The nature of the details recorded by a court or tribunal depended on the administrative system in use and varied between courts and tribunals. This has consequences for data analysis and can require cross-referencing multiple sources of data to derive data points.

Legal representation

In theory, information on legal representation was commonly recorded by courts and tribunals. In practice, courts and tribunals varied significantly in how this data was recorded, how easily a categorisation such as 'self-representation' could be derived, and how informative data was. Reliable data on legal representation was desirable, both to analyse the impact on court operations, and to understand the differential experience of court users based on their legal representation.

Demographic and personal information

The demographic and personal information collected for parties in civil matters was basic for the majority of courts and tribunals. It tended to be the minimum required for operational purposes, though some further demographic data was collected by specialist courts and tribunals for some civil matters.

There were no courts or tribunals routinely collecting a broad range of demographics covering sex and gender, disability, homelessness, Indigenous, marital and mental health status, and indicators of financial disadvantage.

The ability to identify parties and repeat users throughout administrative data systems also varied and was not routine.

Data systems improvement

There was no single administrative or case management system used across Victorian courts and tribunals, and many case management systems are being replaced, upgraded or modified to provide greater functionality, data linkage and customisation.

Data quality and consistency

Strong data practices were essential to the integrity of administrative data. Where data quality assurance practices were well established, it resulted in more accurate and consistent collection and reporting of data. Confidence in data quality was enhanced where there was a high level of vetting and reviewing of the data, with staff formally responsible for data practices and quality. However, data was prone to a far greater degree of data entry error until good practices had been established.

What is the data used for?

Data is currently used for reporting, planning, performance measurement, operational purposes, research, monitoring and evaluation, development of business cases, forecasting and demand modelling. Although data was currently used for a range of functions, there was potential for its utility to be substantially improved for these and other functions.

How might the data be used in future?

Many interviewees reported interest in improving data collection and use, including collecting and using additional data points to improve understanding of factors affecting court and tribunal operations, performance as well as user journeys and experiences.

What can be done to enhance data use and utility?

Interviewees indicated that further improvement in data utility was limited by the scope of the data points routinely collected and available for analysis. They felt more needed to be known about how court and tribunal operations are affected by different types of people and matters. Collection of additional data points would provide richer data for analysis and insight, such as collection of litigant demographics and factors showing matter complexity.

In addition, collection of consistent measures would facilitate data integration and analysis within and across Victorian courts and tribunals.

Data support, governance and infrastructure

Over the last 15 years, Victorian court and tribunal data use and utility has improved substantially. This stems from improved data support, governance and infrastructure. Support from Court Services Victoria, overseen by the Courts Council, has been key to improved data capability. Adoption of new and improved data systems, performance measures, and the International Framework of Court Excellence were found to be vital to improved data use and utility, and effective and efficient court operations and outcomes.

Data developments

Each court and tribunal were found to be on a data improvement journey, although they were at different stages of development. Recognising the limitations of existing data points, many interviewees reported a strong appetite for improvement and identified efforts and opportunities to further enhance data use and utility.

A way forward

Better data and analysis can provide significantly greater operational insights, improving court and tribunal functioning and access to justice.

Victorian courts and tribunals have been working to improve data quality, use and utility in a bid to unlock new insights into factors affecting court and tribunal operations, and to design effective strategies to support access to justice. However, there are opportunities to go further.

If you can't see people in the data, you can't tailor to their needs. Understanding the experience of diverse cohorts experiencing different types of civil justice matters is only possible with the collection of demographic information.

Currently, however, data utility is limited by the scope of the demographic data points routinely collected and available for analysis, as well as by a lack of unique identifiers capturing the multiple points at which the same person interacts with the justice system. Improved understanding of court and tribunal performance and particularly user experience and outcomes would be greatly aided by more comprehensive, consistent, and standardised demographic data.

Understanding the performance of courts and tribunals, as well as the experience of those using them, are both critical. They are not mutually exclusive, they go hand in hand.

Improving court and tribunal operations and user experience ultimately requires capacity to differentiate experiences and outcomes; identify and plug gaps; appropriately respond to diverse user needs; identify potential downstream impacts of upstream change; and determine what works.

However, with growing data capability across Victorian courts and tribunals, investment in new technology and commitment to improved data practices and capability, as well as growing understanding of the data needed to unlock access to justice, the Victorian civil justice system is well positioned.

Strategic leadership and investment are necessary to realise the opportunities created by advanced information technology systems. Doing so can usher in a new era of civil justice and further improve day-to-day court and tribunal operations, user experience and optimal use of scarce civil justice resources.

1. Introduction

1.1 Victoria Law Foundation Data Mapping Project

In 2019 Victoria Law Foundation (VLF) undertook to investigate the current state of data across key parts of the Victorian civil justice system.

The Data Mapping Project aims to provide evidence about the use and utility of Victoria's civil justice administrative data and examines:

- what civil justice data is held by Victorian legal assistance, courts and tribunals, and other complaint and dispute resolution institutions

- the form the data is in, including its accuracy and consistency

- what the data is currently used for

- how it might be used in the future

- what might need to be done to enhance its use and utility to improve access to justice, and

- what access to justice research and policy questions it can and can't answer.

The project aligns with VLF's statutory objectives and research aims, focused on understanding the legal and related needs and experiences of Victorians to provide evidence for better policy and practice.

The project consists of three stages, which together map the administrative data landscape of the Victorian civil justice sector:

- **Stage 1** – the legal assistance sector

- **Stage 2** – courts and tribunals

- **Stage 3** – other dispute resolution and complaint bodies.

This report is the second in the series, looking at courts and tribunals.

Background

The data mapping work responds to a priority research need in the Victorian civil justice sector. In 2018, in establishing the research function, the VLF conducted a series of roundtables with stakeholders and experts to explore opportunities for empirical legal research.

Understanding the current state of administrative data was identified as an important first step – in revealing gaps, weaknesses and opportunities for improvement; as well as better understanding how existing data can be harnessed to answer access to justice questions.

More broadly, the Data Mapping Project builds on calls for improved evidence to inform civil justice policy - to make

civil justice more appropriate, accessible, effective and efficient. Farrow and Jacobs recently characterised civil justice around the world as 'in crisis' and called for a new era of access to civil justice, better informed by evidence and data.[3] This and similar calls articulate the need for people-centred data to measure and inform access to civil justice.[4]

Empirical research in this area makes it clear that civil justice is strongly patterned by legal matter and demographic characteristics. This includes who experiences civil justice matters; what they tend to do; which civil justice institutions are likely to be involved; and what happens.[5]

To build civil justice systems which cater appropriately to diverse community need and capability, we need to know more about how different people engage with and experience civil justice. To this end, we need to be able to identify different people and track what happens to them. One place where there is opportunity to see people is in data.

To build on the Victorian civil justice evidence base, it is necessary to first examine what data exists, how it is used and its potential. The Data Mapping Project focuseses specifically on administrative data, interrogating its current coverage and quality, and identifying ways to improve its use and utility in the future.

What is administrative data?

As the name suggests, administrative data is typically used or generated for administrative and operational purposes. Administrative data has a range of recognised benefits and can be used on its own, or most effectively, in conjunction with other sources of data, such as surveys and observational data. For instance, administrative data can be augmented by periodic collection of additional qualitative and quantitative data points, such as point in time or 'snapshot' data and can often be linked to other datasets.[6]

Administrative data typically provides a count of activities and a record of events or outputs. It is usually recorded or entered in organisational databases through a mix of manual, paper-based, electronic and automatic forms of data collection and entry. Data may be clicks, images, inquiries, geographic location, sales, text, video, voice, as well as user and client feedback, log and transaction files etc.[7]

Administrative data can also be a form of 'big data'. As part of the so-called 'big data revolution', business and organisations are encouraged to treat such data as a valuable asset, holding insights which can be uncovered and used to make intelligent, data-driven decisions.[8]

Compared to other forms of data, administrative datasets are often large and can provide information about entire populations of transactions, such as all those using courts and tribunals. Using administrative data can also be relatively fast and inexpensive compared to the cost of amassing new experimental and observational data.[9]

New business intelligence software and data visualisation tools enhance the potential of administrative data. Technology has transformed data storage, access, analysis, and visualisation within sectors such as health and education.[10] Where administrative data might have only been reviewed periodically, such as quarterly or for annual reports, modern software and analytical techniques can provide near real-time information. The demand for such technology will continue to grow in line with increasing reliance on data-driven decision making.[11]

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3 Farrow and Jacobs (2020).
4 See McDonald (2021). See also Chapman et al. (2021).
5 See OECD/Open Society Foundations (2019) for a review.
6 Jones et al. (2019).
7 Big data also includes open-source data made available by government departments, agencies and public services. For example, transport agencies commonly make public bus, ferry, train, tram etc. GPS data available to allow real time tracking.
8 Big data is distinguished by the so-called 'five V's': volume, velocity, variety, veracity, and value. As the name implies, one of the defining features of big data is its size. As computer storage got cheaper, business and organisations began collecting and keeping more and more data. Big data is also distinguished by its velocity, often being available in real-time, and providing near instantaneous point in time and change over time information. Variety is another characteristic of big data in that it can have many different sources and take many different forms. Veracity refers to the quality and value of the data. Notably, data quality can vary and affect reliability and value. Big data must have sufficient quality and reliability for its analysis to have value. Value is measured by the worth of the information and insights produced by processing and analysis, and by comparison with the value of the insights produced by other forms of data. See Monroe (2013) and Hadi et al. (2015).
9 See Wallgren and Wallgren (2007) and Goerge (2018).
10 See, for example, Mettler and Vimarlund (2009) and Drake and Walz (2018).
11 Administrative data from different sources can also be adapted, processed and integrated for analytical and statistical purposes, subject to consistency, quality and coherence of variables and measurement units. See Wallgren and Wallgren (2007) and Drake and Walz (2018).

One common use of administrative data is to monitor change and performance. Where administrative data is collected over a period, trends can be monitored. Change seen in administrative data can reflect change in both internal and external actions, circumstances, and events. While administrative data may shift directly in response to internal reforms, change in the external environment may require other sources of data and analysis to determine the cause and impact of any observed changes.

Administrative data has several advantages and potential uses for research and evaluation. It can facilitate examination of 'hard to reach' groups - those which can be challenging to find and engage in surveys and interviews. Access to administrative data can also significantly reduce burdens of experimental and observational data collection on research subjects, participants and researchers.

Administrative data is, however, qualitatively different to experimental and observational forms of data, designed and collected for research and evaluation. For researchers, it is typically found rather than made, with its use and utility depending upon its nature, content, form, and quality.[12]

Stage 1 findings: the legal assistance sector

The first stage of the Data Mapping Project looked at administrative data in the legal assistance sector. Findings from Stage 1 were published in *Apples, Oranges and Lemons: The use and utility of administrative data in the Victorian legal assistance sector.*[13]

The report noted that successive inquiries and national legal assistance policy had emphasised the need to build up the civil justice evidence base, including legal assistance service data.[14]

The report found that Victoria's legal assistance services were working to improve data practices and cited several examples of beneficial and innovative data-focused work. However, there was also much to do to improve the nature, quality, and utility of legal assistance service data and expand what it can be used for. In short, reliable quality data in, is a prerequisite for reliable analysis and evidence out.

The findings highlighted the magnitude of the challenge in building a meaningful and reliable evidence base, including that:

- **data practice was variable.** Data collection and counting methods varied considerably across the Victorian legal assistance sector.

- **data quality was variable.** Notwithstanding efforts to improve legal assistance data practice, there was evidence of variation in data quality, accuracy and consistency.

- **variation in data quality and practice has implications.** Variation in practice undermines meaningful and reliable data aggregation and analysis. Sector-level comparative analysis must first assess data quality, accuracy, and consistency issues, or risk making inappropriate and inaccurate conclusions.

- **data capability varied but was universally constrained by resourcing.** Practices and capability varied but resourcing issues and lack of funding were the greatest barrier. This was something all service providers faced. In addition, polarisation of data capability exacerbated variation in data practice and quality, and further undermined meaningful and reliable sector-level analysis and use.

- **innovative data practice was constrained by database limitations.** Evidence of innovative data use was widespread, but data system inflexibility (and other limitations) constrained what was collected and how it was used.

- **capturing complex clients and services requires complex data.** Available data did not adequately reflect the complexity of clients' circumstances and needs, nor the extent of problems faced, and services provided. Other complementary sources and data collection methods are needed to capture the need, impact, value, and outcomes of legal assistance more fully.

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12   Connelly et al. (2016), McDonald et al. (2020).
13   See McDonald e al. (2020).
14   See, for example, Council of Attorneys-General (2019); National Strategic Framework for Legal Assistance; Department of Justice and Regulation (2016); National Legal Assistance Partnership (2020); Pleasence et al. (2014); Productivity Commission (2014); Urbis (2018).

- capturing outcomes and quantifying impacts presents additional challenges. There was widespread interest in moving beyond output and activity counts to measuring service outcomes. However, measuring outcomes and impact presented further practice and resource challenges.

Apples, Oranges and Lemons noted a worldwide shift in access to justice research and policy. Focus on 'top down' operation of institutions has been replaced with 'bottom-up' concern with peoples' ability to access institutions and assistance to resolve their civil justice problems.[15]

The key feature of this shift is that it examines access to justice from a people or user-centred approach and examines whether and how people can make effective use of the civil justice system. Critically, where policy shifts and priorities reshape, data collection practices and systems also need to shift.

Apples, Oranges and Lemons concluded that legal assistance service data was not currently meeting its potential, and consequently that its use in answering access to civil justice questions remained limited. Accuracy, consistency, and quality, together with the nature and coverage of data measures, needed to be improved to enhance the use and utility of legal assistance service data.

1.2 Court and tribunal administrative data

Stage 2 of the Data Mapping Project focuses on the administrative data generated by Victorian courts and tribunals. Victorian court and tribunal administrative data are a rich source of information about the operation and performance of a vital part of the civil justice landscape. They have the potential to make an important contribution to our understanding of access to civil justice.[16]

Court and tribunal data is indispensable in monitoring and assessing performance.[17] It is used both to manage and to monitor court and tribunal activities, such as appearances and hearings. It provides information about the number of matters that have been filed, what stage they are at, and the disposal of matters. Performance measures, such as caseload, backlogs, and average matter duration, provide information about trends and change in court and tribunal performance.[18]

There have been international efforts to standardise performance indicators. For example, performance is variously assessed against measures such as the number of applications or matters lodged; the number and average number of adjournments per matter; how many and at what stage matters are resolved or disposed of; and average time from lodgement to disposal.[19] Standard performance measures provide a more credible basis for comparison.

The International Consortium for Court Excellence, for example, which includes several Victorian courts, has set out a framework of eleven core performance measures comprising administrative and questionnaire measures: court user satisfaction; access fees; case clearance rates; on-time case processing; duration of pretrial custody; court file integrity; trial date certainty; court employee engagement; compliance with court orders; and cost per case.[20]

Court and tribunal administrative data also provide baseline information for monitoring, evaluation, research, and an empirical context for interrogating and explaining change. As noted above, data peaks and troughs in court and tribunal administrative data may indicate the impact of exogenous or endogenous factors. For instance, where legal assistance and duty lawyer eligibility tightens through the actions of an external organisation, the numberof unrepresented litigants may increase.[21] This may have flow-on impact on the number of adjournments, matter

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15 An increased focus on legal capability, see Pleasence and Balmer (2019), McDonald (2021).
16 See Sackville (2011).
17 McDonald (2021), p.735.
18 For instance, increasing caseloads and backlogs may reflect rising community legal need, court and tribunal performance or resourcing issues.
19 See Palumbo et al. (2013).
20 See International Consortium For Court Excellence (2020).
21 Note that impact of legal assistance eligibility and self-representation status has proven difficult to establish with existing data. Despite widely held perceptions of a link, research has been unable to demonstrate a clear-cut link using available data. See Richardson et al. (2018). See also McDonald et al. (2017); Department of Justice and Regulation (2016), p.473; Productivity Commission (2014); Law Council of Australia (2018).

duration, and case backlog. This can provide evidence of the close interrelation of the justice system, where change in one part can affect other parts, and how upstream changes can have downstream consequences.

One distinguishing feature of civil justice courts and tribunals is the wide-ranging nature and inconsistency of matters and parties.[22] Compared to criminal courts, civil courts and tribunals routinely face significantly greater combinations of parties, disputes, proceedings, and disposals.[23]

Put simply, diversity in matter and party characteristics mean that what is counted in court and tribunal administrative data often varies significantly. Without measures to account for such diversity, analysis and comparison will be limited and difficult, as simple counts of activity do not necessarily enable comparison of like with like. For example, not all debts are alike. Actions to sue for a debt can vary widely in terms of the nature of the parties, their legal circumstances, the nature and size of the debt, and the court or tribunal jurisdiction.

In understanding who attends courts and tribunals there are further challenges. Courts and tribunals have historically been disinterested in collecting detailed litigant demographics and characteristics and compared to many other public institutions, information about the users of courts and tribunals is scant.[24]

A notable dimension of courts and tribunals and their place in the justice system, is the role they play in the rule of law and how that is understood. Courts and tribunals appropriately cleave to fundamental notions of justice, such as 'equality before the law' and 'equal protection under law', where 'justice is blind'. Such ideals are understood as essential to upholding the rule of law and safeguarding independence, fairness, objectivity, and impartiality – that court and tribunal adjudication should turn on law alone. This is seen by some as contrary to further investigation of the demography, experience, and capability of court users.

Administrative data is "often fragmented and partial, principally serving day-to-day operational needs".[25] It focuses on outputs (e.g., counts of matters, events, activities) rather than measures of impact and outcomes, and this can limit what court and tribunal data can be used for. Recent research has also found that justice system data 'has evolved messily over time' rather than as the result of purposive design.[26]

The utility of administrative data to answer broader access to justice questions in the future rests on the nature and quality of data collected.[27] As with any data, the use and utility of court and tribunal data will be limited by inconsistent definition and practices, either within or across courts and tribunals. Inconsistency can frustrate aggregation, and comparison can mislead when taken out of operational context.[28]

So administrative data provides one important window through which to see what is happening in courts and tribunals, who is there and what for. It can significantly enhance our understanding, and can answer critical access to justice questions, but has several limitations. As such, it is most effective when used in conjunction with other types and sources of data, contributing to a more in-depth understanding of how legal matter and demographic characteristics affect civil justice experience, behaviour, and outcomes.[29]

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22   Genn (1997), p.160.
23   See Genn (1997), p.160.
24   See Genn (1997), Farrow and Jacobs (2020).
25   McDonald (2021), p.735.
26   Townend and Wiener (2021), p.2.
27   For example, court and tribunal data provides a measure of certain forms of express legal need but cannot shed light on civil justice matters handled informally or resolved beyond the purview of courts and tribunals.
28   McDonald (2021), p.735.
29   See OECD/Open Society Foundations (2019), McDonald (2021).

1.3 Civil justice and the role of courts and tribunals

The functionality of courts and tribunals is central to how we understand the health of our justice system. Genn's observations, made almost 25 years ago about civil justice and courts in England and Wales, seem just as relevant today:

> *Concern about the 'failure' of the civil justice system is everywhere. It is argued that the courts are too slow, too expensive, too complicated, and too adversarial to provide litigants with what they want ... Apparently simple questions such as who is using the courts, for what kinds of cases, with what value, at what cost, and with what rate of success are currently unanswerable.*[30]

One place to start to examine the use and utility of court and tribunal data, and the civil justice context in which they operate, is what is already known from previous inquiry, review and research into civil justice.

Perception and use of courts and tribunals

Recent VLF survey research demonstrated that public perception of the accessibility and relevance of courts varies by demographic and legal matter characteristics; personal experience, attendance and contact with courts; perception of the fairness of the process; and exposure to positive or negative anecdotal accounts of court proceedings.[31]

The Legal Australia-Wide (LAW) Survey research of 2008 demonstrated that court and tribunal proceedings had or were likely to occur, for only one in ten legal problems experienced by Victorians.[32]

Rather than 'rush to law', research has consistently shown that most civil issues resolve without formal court and tribunal adjudication, or involvement with courts at all. Courts and tribunals deal with only the tip of the civil justice iceberg.[33]

Yet courts and tribunals are undoubtedly faced with heavy caseloads. Courts and tribunals are called upon to adjudicate and resolve both high volumes of relatively low-level matters, as well as the most serious, where the stakes can be very high.[34]

Predictably, courts and tribunals are significantly more likely to be involved in substantial legal problems, that is, problems with at least a moderate or severe impact on a person's everyday life.[35] However while legal need survey research found that courts and tribunals were involved in more than 15 per cent of the substantial legal problems reported in Victoria, courts and tribunals were identified as the manner of finalisation for only five per cent of these problems.[36]

These findings cohere with other research reporting the propensity for civil legal matters to be abandoned or settled between the parties, even after legal action has been commenced.[37] So data from courts and tribunals is critically a moment in time and cannot be relied upon alone to illuminate resolution.

Empirical legal studies continue to point to access to justice barriers with respect to courts and tribunals, and there are many important civil justice knowledge gaps that remain. Who makes use of courts and tribunals? And who doesn't? What are they used for? Who starts and abandons actions? Who fails to appear and why?

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30   Genn (1997), pp.155–159.

31   Balmer et al. (2019).

32   The Legal Australia-Wide Survey found that in Victoria 9.5 per cent of legal problems involved court or tribunals proceedings. Across Australia the percentage was 8–12 per cent. See Coumarelos et al. (2012).

33   OECD/Open Society Foundations (2019), Sandefur (2019).

34   See the Law and Justice Foundation of New South Wales's Data Insights in Civil Justice series: http://www.lawfoundation.net.au/research.

35   Coumarelos et al. (2012).

36   Coumarelos et al. (2012). Substantial legal problems were most commonly finalised by the respondent deciding not to pursue the matter (31.3%) and through agreement with the other side (28.0%). Other finalisation methods that were more prevalent than courts and tribunals included finalisation through another agency such as a government department, insurance company and police (11.1%), through the help of a lawyer or someone else (7.7%), and where the other side deciding not to pursue the matter any further (6.4%).

37   Coumarelos et al. (2012), McDonald (2021).

Administrative data can provide vital information to address some of these gaps, although its utility will depend upon data quality, accuracy and consistency, as well as the nature of the data points available and how they can be used in analyses.

Digital transformation

Courts and tribunals sit on the cusp of long-envisioned digital transformation.[38] Technology offers new ways of operating, and new data platforms enable routine collection and analysis of more data than ever before.

The promise of digital transformation of civil justice, particularly online courts and tribunals, has been tempered in recent times by concerns about the quality of user participation; impact on dispute resolution and outcomes; and the impact on access to justice.

Digital transformation of courts and tribunals raises myriad access to justice questions.[39] On the one hand, digital courts and tribunals offer efficiency, participation and accessibility advantages; but on the other risk amplifying and entrenching inequality and injustice, including, paradoxically, access to justice.[40]

Administrative data has been identified as both means and barrier to assessing access to justice consequences from digital justice. For instance, in the context of reforms to move courts in England and Wales online, Byrom examined what type of data was needed to evaluate the impact of the reforms, and to determine "the impact of changes on people's access to, and fairness of, the justice system".[41] Her review found that while existing administrative data and the available indicators were useful, they did not readily map onto existing definitions of access to justice, nor did they provide measures that could be easily used to assess access to justice.[42] In particular, additional demographic measures and information about court users was required to analyse and assess the impacts of digital transformation on access to justice.[43]

Court and tribunal administrative data could provide critical information to monitor and assess the effects of digital innovation on access to justice, provided available measures make it possible to identify different user cohorts.

1.4 About this report

This report investigates the use and utility of Victorian court and tribunal administrative data, covering -

- what civil justice data is available across Victorian court and tribunals

- the form the data is in, including its accuracy and consistency

- what the data is currently used for

- how it might be used in the future

- what might need to be done to enhance its use and utility.

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38   Long envisaged digital transformation is now beginning to reshape the civil justice system, with courts, tribunals and various forms of online dispute resolution processes that are grafted on to courts and tribunals or sit independently. This transformation is widely predicted to expand and accelerate in the near future. See further McDonald (2021).

39   McDonald (2021); Byrom (2019); Byrom et al. (2020); McDonald et al. (2019); Denvir (2018); Legg (2016); Susskind (1998, 2019); Allsop (2019); Department of Justice and Regulation (2016), p.122.

40   Denvir and Selvarajah (2021), Donoghue (2017).

41   Byrom (2019), p.6.

42   Byrom (2019), p.7.

43   Thirteen additional data-points were recommended to provide information about user characteristics: age, disability, employment status/income, English as a foreign language, fear or distress connected with the case (e.g. domestic violence/abuse, in detention, survivor of trafficking/trauma etc.), gender reassignment, highest level of education (proxy for literacy), postcode (to identify whether permanent address, in a care home, homeless, in an area of low internet coverage etc.), pregnancy or maternity, race, religion or belief, sex, sexual orientation.

The project methodology is described in Chapter 2.

Chapter 3 sets out the civil justice landscape of the Victorian courts and tribunals that participated in this report and overviews the number of civil matters handled each year.

Chapter 4 sets out the research findings.

Chapter 5 summarises the findings and discusses ways to further enhance data utility, benefits of doing so, and strategies to realise those benefits as well as the limitations.

The report also provides three case studies illustrating how administrative data can be used to fill out court and tribunal data gaps and improve understanding of their operations and user needs.

1.5 Acknowledgements

2. Method

This chapter outlines the methods used in this project: participant organisations; how information was collected and analysed; and the parameters and limitations of the research.

2.1 Overview

Semi-structured interviews were conducted with staff from five Victorian courts and tribunals about the data they collect and use for civil matters. We also reviewed documentation supplied by participants and publicly available documents, such as annual reports and strategic plans. For each participant court and tribunal, annual reports and other material was collected for the two-year period June 2019 to June 2021.

Australian and international literature was reviewed to identify access to civil justice questions; the role of administrative data in monitoring and answering those questions; and to canvas developments in court and tribunal administrative data practices.

Chapter 3 provides a description of the courts and tribunals interviewed and the nature and volume of civil justice matters they deal with.

2.2 Data collection

Interviews and document collection

Interviews commenced in November 2019 and continued till 2021, which coincided with the COVID-19 pandemic and substantial disruption to court and tribunal operations. Consequently, this project was suspended for periods during 2020, and again early in 2021.

Semi-structured interviews of up to 90 minutes were conducted, based on an interview schedule (see Appendix 1), with a mix of closed and open-ended questions, and follow-up questions. The questionnaire comprised the following:

- Part 1 asked about the data collection system used
- Part 2 explored what data is collected and how
- Part 3 questioned the flexibility and consistency of the data and whether it is linked to other systems
- Part 4 asked about the accuracy and quality of data quality
- Part 5 focused on how the collected data is used
- Part 6 examined the data collection process, including staff training, and
- Part 7 canvassed possible or envisaged future data use.

Interviewing was initially conducted in-person before fieldwork was temporarily suspended, and later moved online when COVID-19 restrictions eliminated the possibility of face-to-face interviews. Interviews were recorded, transcribed and analysed qualitatively.

Interviewees were nominated by their organisations and included those with experience of the data management systems, knowledge of data collection, storage and use.

In addition, we reviewed documentation made available by participating organisations, together with annual reports and other publicly available documents. These included evaluation reports; examples of data fields and collection forms; and other reporting documents and templates.

Case study interviews were also conducted, using a modified questionnaire, with Court Network, Neighbourhood Justice Centre and the Victorian Civil and Administrative Tribunal's (VCAT) Koori Support Team. Each of these case studies was identified by interviewees as an example of the way in which additional data about court and tribunal users had been incorporated into administrative systems providing further valuable insights. The case studies are reported in Chapter 4.

The number of interviewees at each interview ranged between one and six, and in total, 24 people.

2.3 Analysis process

Qualitative analytical techniques were used to examine the use and utility of court and tribunal administrative data. It is important to note that no court or tribunal administrative data was collected, reviewed, or analysed. The findings are based on the analysis of the interviews, annual reports and the other documentary materials collected.

Responses to both closed and open-ended interview questions were summarised and reviewed. Interview transcripts were analysed to identify dominant and consistent themes in the responses to questions. Analysis also examined similarities and differences in participant responses to interview questions. The other collected material was analysed to provide contextual information and triangulate the analysis of identified themes.

2.4 Limitations

This report is limited to exploring collection and use of data by participating courts and tribunals, based on interview information and document collection and analysis. Other research questions and methods, such as the collection, review and analysis of court and tribunal administrative data, may have yielded other insights, but were beyond the scope of this project.

While the interview sample included key Victorian courts and tribunals, not every court or tribunal with a civil jurisdiction operating in Victoria elected or were able to participate. Accordingly, the findings are limited to the participating courts and tribunals and the analysis and that emerged from interview and document analysis.

While COVID-19 meant that interviews were conducted over a prolonged period of time and interviews were conducted both in-person and online, we are confident that neither the time period nor interview mode substantially affected the material that was collected, or the analyses.

3. Victorian court and tribunal landscape

This chapter provides an overview of the participating Victorian courts and tribunals. It focuses on their respective civil jurisdictions and matters handled each year.

Victorian courts and tribunals handle hundreds of thousands of civil legal matters each year and in doing so collect substantial administrative data. The material below provides important empirical context about the scope, type and volume of civil matters handled by Victorian courts and tribunals each year.

Magistrates' Court of Victoria

The Magistrates' Court of Victoria is the first level of the Victorian court system. It sits at 51 locations across the state and hears 90 per cent of the criminal and civil cases that come before Victorian Courts. The Magistrates' Court hears criminal, civil, family violence and personal safety order matters, and operates several specialist courts and programs. With respect to criminal matters, the Magistrates' Court hears summary offences, some indictable offences, and conducts committal hearings for criminal matters that will be determined in the County and Supreme courts.[44]

The Magistrates' Court has a general civil jurisdiction to hear matters where the amount in dispute or sought in relief does not exceed A$100,000. Such civil matters may relate to debts, damages claims and other monetary disputes or claims for equitable relief. In addition, the Court has jurisdiction to hear matters arising from "decisions of the Victorian Workcover Authority, an authorised insurer, an employer, a self-insured or conciliation officer".[45] The Court also has jurisdiction to hear matters related to the interpretation and application of awards and other instruments that govern worker entitlements and rights, including the determination and imposition of penalties in relevant matters.[46]

The Magistrates' Court also operates specialist courts, programs and tribunals. These include the Neighbourhood Justice Centre, a multi-jurisdictional centre for residents in the City of Yarra, which aims to address the underlying causes of offending; and the Victims of Crime Assistance Tribunal, which provides financial assistance to those who have been the victim of violent crime.[47]

The Magistrates' Court also provides dispute resolution processes with the aim of facilitating the "just, efficient, timely and cost-effective resolution of civil disputes".[48] These include pre-hearing conferences, mediation, and early neutral evaluation.[49]

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44   Magistrates' Court of Victoria (2020a), p.6.
45   Magistrates' Court of Victoria (2020a), pp.7–8.
46   Magistrates' Court of Victoria (2020a), pp.7–8.
47   Magistrates' Court of Victoria (2020a), pp.7–8.
48   Magistrates' Court of Victoria (2020a), p.21.
49   Magistrates' Court of Victoria (2020a), p.21.

Number of matters each year

The Magistrates' Court in Victoria is one of the busiest jurisdictions in Australia. It handles almost 200,000 new criminal and civil matters, and some 70,000 to 80,000 family violence and personal safety intervention order matters each year.[50] Criminal matters comprise the overwhelming majority, with 145,000 to 160,000 new criminal cases initiated, and some 600,000 to 715,000 hearings related to criminal matters each year.[51]

On top of its large criminal workload, the Magistrates' Court handles a substantial number of civil, family violence and personal safety matters. The Magistrates' Court received some 35,000 to 40,000 new civil complaints over each of the last three financial years, with between 7,000 to 8,500 civil defences filed, and 11,500 to 16,000 civil claims finalised. In addition, the Court also handles around 73,500 to 81,500 family violence and personal safety order matters (see Appendix Table B1).[52]

Children's Court of Victoria

The Children's Court of Victoria is a specialist court that deals with cases involving children and young people.[53] It has two divisions: the Family Division and the Criminal Division. The Children's Koori Court operates as part of the Criminal Division. The Family Division handles applications relating to the care and protection of children and young persons at risk, as well as applications for intervention orders. The Court also handles the Children and Young Persons Infringement Notice System (CAYPINS), a system specifically designed for children and young people who fail to pay infringement notices. CAYPINS is a separate system from the Infringements Court in the Magistrates' Court, which deals with these matters for adults.

Number of matters each year

More than half of the matters the Children's Court finalises each year are in the Family Division (see Appendix Table B2).[54] While there was a small decrease in the number of matters finalised by the Court in 2019–20 as a result of COVID-19, there was a small increase in the overall number of Family Division matters finalised.

The Children's Court finalises around 2,500 to 3,000 intervention orders each year, resulting in one or more orders in each. In total the Family Division of the Children's Court makes about 85,000 procedural orders each year associated with child protection issues (see Appendix Table B3).[55]

Victorian Civil and Administrative Appeal Tribunal (VCAT)

VCAT hears and decides on a wide range of disputes in Victoria. It was established by the *Victorian Civil and Administrative Tribunal Act 1998,* which amalgamated 14 boards and tribunals (and added a fifteenth soon after), to create one destination for people seeking remedies for disputes.[56]

The civil and administrative disputes determined here include residential and retail tenancies, property and domestic building matters; equal opportunity; racial and religious vilification; guardianship, legal practice; owners' corporations; goods and services; health and privacy information; decisions made by the Mental Health Tribunal; property.[57] VCAT is structure in five divisions: Civil, Administrative, Human Rights, Residential Tenancies, and Planning and Environment.[58]

While less formal than a court VCAT is a legal process, and many participants obtain legal advice or information, even if they choose to present their own case. Tribunal users are encouraged to resolve disputes through alternative dispute resolution such as mediation and compulsory conferences.

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50   Magistrates' Court of Victoria (2020a), p.41.

51   Magistrates' Court of Victoria (2020a), p.33.

52   One reason for the variation in different types of matters in the Magistrates' Court across the last three financial years was a lower number of matters for 2019–2020, coinciding with the onset of the COVID-19 pandemic and restrictions. See further Magistrates' Court of Victoria (2020a), pp.38–41.

53   The court deals with matters involving children and young people up to the age of 18, and in some cases 19.

54   Children's Court of Victoria (2020), p.34.

55   Children's Court of Victoria (2020), p.34.

56   Victorian Civil and Administrative Tribunal (2019), p.10.

57   Victorian Civil and Administrative Tribunal (2019), p.11.

58   Victorian Civil and Administrative Tribunal (2019), p.11.

Number of matters each year

VCAT receives more than 80,000 new cases each year. Note that for 2019–2020, lodgements and clearance rate figures were slightly down, associated with the COVID-19 pandemic and suspension of non-urgent matters (See Appendix Table B4).[59]

Case numbers at VCAT vary by division and list (see Appendix Table B5).[60] The Residential Tenancies Division accounts for more than 60 per cent of the cases lodged in VCAT, with the Human Rights Division (particularly cases in the Guardianship list) comprising the next most frequent matter type. VCAT's Civil Claims list has the third highest volume of cases, with disputes arising from everyday consumer transactions to large commercial matters. There is no limit on the value of goods or services in dispute, or the amount of payment or compensation that can be claimed.[61]

Victims of Crimes Assistance Tribunal (VOCAT)

VOCAT supports the recovery of victims of violent crime. It administers a legislative scheme that provides financial assistance to victims to aid their recovery and cover expenses incurred as a result of crime.[62] The amount provided is not intended to compensate a victim for their loss, but rather "provide a level of targeted assistance for a victim's recovery, and an expression of the community's sympathy for and recognition of, victims' suffering".[63]

Established by the Victims of Crimes Assistance Act 1996, VOCAT operates in the 51 Magistrates' Court venues in Victoria and is headed by the Chief Magistrate. Although VOCAT is located within the Magistrates' Court, it is not a court and the processes followed are less formal. Judicial officers hearing VOCAT applications "can investigate, inquire, and gather any information needed to help make a decision, in the way they think is most appropriate to the circumstances of the application".[64]

Number of matters each year

VOCAT received 7,000 to 8,000 applications for financial assistance in each of the last three financial years. It finalised over two-thirds of applications within 12 months of lodgement. In 2019-20, for example, VOCAT finalised 8,492 claims (see Appendix Table B6).[65]

VOCAT operates a dedicated Koori list that enables it to respond appropriately to Koori applicants in a culturally informed way. To promote access to assistance and engagement, VOCAT collects information from applicants on Indigenous status and engages the community through Aboriginal and Torres Strait Islander events and organisations.[66]

County Court of Victoria

The County Court of Victoria sits above the Magistrates' Court and below the Supreme Court in the court hierarchy. The County Court hears civil and criminal matters; as well as appeals from the criminal jurisdiction of the Magistrates' Court, and the Criminal and Family divisions of the Children's Court. The Court's civil jurisdiction comprises the Common Law and Commercial divisions. The Commercial Division has no monetary limit, meaning its civil jurisdiction overlaps that of the Supreme Court.[67]

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59   Victorian Civil and Administrative Tribunal (2020), p.17.
60   Victorian Civil and Administrative Tribunal (2019), p.17.
61   Victorian Civil and Administrative Tribunal (2020), p.56.
62   Magistrates' Court of Victoria (2020a), p.7.
63   Magistrates' Court of Victoria (2019), p.23.
64   Victims of Crime and Assistance Tribunal (2019), p.21.
65   Victims of Crime and Assistance Tribunal (2020), p.38.
66   Victims of Crime and Assistance Tribunal (2019), pp.20–21.
67   The Common Law Division operates ten lists: Adoptions, Surrogacy and Name Changes; Appeals and Post Sentence Applications; Confiscation; Defamation; Family property; General; Medical; Self-represented litigants; Serious injury; and WorkCover. The Commercial Division has four lists: Banking and Finance; Building cases; General; and Expedited. See further County Court of Victoria (2020).

Number of matters each year

Around 10,500 to 11,500 new matters are commenced each year in the County Court (see Appendix Table B7).[68] Civil and criminal cases each comprise about half of the new matters. This figure includes roughly 5,000 to 6,000 new criminal cases (including appeals), although new criminal cases dropped to 4,020 in 2019–2020.[69]

The County Court handles around 6,000 new civil matters each year, with about 4,000 in the Common Law Division and about 2,000 in the Commercial Division (see Appendix Table B8).[70]

Supreme Court of Victoria

The Supreme Court of Victoria is the highest court in Victoria. It has two divisions: the Trial Division and Court of Appeal. The Trial Division has a Criminal Division, Common Law Division and Commercial Court.

It hears some of the most serious cases, including civil cases involving significant injuries and large monetary claims ($200,000 and above). The Court hears matters relating to probate and urgent applications for injunctions, as well as appeals from Victorian courts and tribunals through the Trial Division and Court of Appeal. Only the High Court of Australia can review its decisions.

Number of matters each year

Each year the Supreme Court receives approximately 6,000 new criminal and civil cases in the Trial Division, while the Court of Appeal receives some 350 to 450 appeals. In addition, the Probate Office in the Supreme Court receives over 20,000 applications a year.[71]

Overall, civil cases make up more than 90 per cent of new cases in the Trial Division.[72] About one third of cases initiated in the Court of Appeal are civil case actions, compared to criminal case actions (see Appendix Table B9).[73]

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68   Data for the total cases of the Criminal, Criminal trials and Pleas, Criminal Appeals and Trial Adoption list are available at County Court of Victoria (2020), p.7.
69   County Court of Victoria (2020), p.7.
70   Tables are drawn from County Court of Victoria (2020), p.7 and County Court of Victoria (2019), p.7.
71   Supreme Court of Victoria (2020a), p.54.
72   Civil cases in the Trial Division are handled by the Supreme Court's Commercial Court and Common Law lists. The Commercial Court has seven lists, with the Corporations List handling the overwhelming majority (93–94%) of Commercial Court Cases in the last two financial years. Other Commercial Court lists are the Technology, Engineering and Construction List; Taxation List; Arbitration List; Insurance List; Admiralty List; Intellectual Property List. The Common Law Division has 13 lists: Civil Circuit List; Confiscation and Proceeds of Crime List; Dust Diseased List; Employment and Industrial List; Judicial Review and Appeals List; Institutional Liability List; Major Torts List (including Group Proceedings and Class Actions); Personal Injury List; Professional Liability List; Property List; Testators Family Maintenance List; Trust, Equity and Probate List; and Valuation, Compensation and Planning List. The Personal Injury List receives the highest number of new cases of the Court's Common Law lists, followed by the Testators Family Maintenance List, Trust, Equity and Probate List and Property List.
73   For example, in 2018-19 there were 450 total case actions initiated in the Court of Appeal and of that, there were 153 civil case actions initiated. In 2019-20 there were 361 total case actions initiated in the Court of Appeal and of that, 121 civil cases initiated. See further Supreme Court of Victoria (2020), p.17.

4. Findings

This chapter explores the form, quality and consistency of civil justice data available from Victorian courts and tribunals. It outlines how data is currently used and how it might be used in future. It describes the institutional support and governance of data collection, the frameworks which guide data collection and how and what data measures are used to measure court and tribunal performance. The chapter also looks at data system developments and what might be done to improve the utility of court and tribunal data in Victoria.

4.1 Overview

This chapter presents findings from analysis of the interviews and documentary materials as follows:

Section 4.2 reports key themes drawn from analysis of the interviews addressing the research questions.[74] Interviewees were asked a series of questions about the data collection practices and systems in their court or tribunal: what data is collected; how it's used now and how it may be used in future; and what can be done to enhance data use and utility.

Section 4.3 reports on Victorian court and tribunal data support and governance, and the role and of administrative data in key performance measures and strategic plans.

Section 4.4 reports on key data developments and challenges faced by Victoria's courts and tribunals, including new systems, user engagement efforts, impact of COVID-19 and digital transformation and developments.

Section 4.5 presents three case studies examining benefits of collecting user and client demographic information.

4.2 Interview findings

What civil justice data is available?

Data recorded for civil matters in court and tribunal administrative and case management systems typically includes information about legal matter type, as well as process information, such as stage of the proceeding, outcomes, and manner of disposal.

Information collected about parties' legal representation, demographic and other personal information varied across Victorian courts and tribunals, as did the administrative data systems that they used.

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74   Appendix A reports the schedule of questions canvassed at interview.

Legal matter type

Court and tribunals commonly collect information on type of legal matter. Distinctions are drawn between broad areas of law, such as civil, crime and family law; and also at a more fine-grained level, between legal matter sub-groups. This information is primarily used for operational purposes – to allocate each case to the right division, list or process.

Each court and tribunal groups similar matters in divisions or lists. For example, VCAT's Residential Tenancies list handles around 50,000 disputes each year between renters and rental providers under the *Residential Tenancies Act 1997.* A dedicated list provides some efficiencies of scale and enables operations and processes to be tailored to resolution of residential tenancies matters.

The way legal matter types are recorded varied across Victorian courts and tribunals. Several interviewees explained that this depended on the categories available in their system, and data entry practices. Some systems only allowed one matter type to be recorded, where others allowed multiple types. Change to new administrative systems also typically meant opportunity to improve the way legal matter type was recorded, including categories used, structure and whether there was capacity to record multiple types for each matter or case.

Stage, outcomes and manner of disposal

Administrative and case management systems are also used to record the stage a matter has reached. Administrative systems primarily allow court and tribunal staff to look up particular cases, to see what has happened, and what is scheduled. Depending on the matter, and the case management and dispute resolution practices in the particular court or tribunal, this can include various procedural stages to move a case to hearing or resolution.

Legal matter outcomes were recorded by all courts and tribunals for civil matters. These were procedural outcomes covering things such as whether matters were finalised or still pending and the manner of finalisation. Interviewees explained that recording matter outcomes was often more complex for civil matters than criminal, as matters could resolve at more stages, and often did so beyond the purview of the court or tribunal. Because civil matters often settle and are withdrawn, interviewees explained that determining outcomes could involve having to combine and analyse multiple data fields in their administrative systems.

When a matter is determined by a court or tribunal and orders are made to finalise it, these details are frequently recorded. Depending on the administrative system however, this might be the type of order that was made, rather than details of the actual order made. In some systems, order details were recorded separately from matter type. This has consequences for data analysis and can require multiple sources of data to be extracted.

Legal representation

Interviewees reported that information on legal representation was commonly recorded by courts and tribunals, although how that information was recorded and used varied. Higher courts record whether or not parties are represented by legal practitioners, and also whether legal representatives change; and some kept records identifying the stage in the process where legal representation changed or was dropped. Such details, however, were primarily to manage correspondence about the case, rather than for other analysis.

Administrative data systems varied in how legal representation status was recorded and how easily such information could be used to identify parties who were self-represented. Where legal representation status was recorded or a code for self-represented litigants was used, identification, monitoring and analysis of self-represented litigants was straightforward. Not all systems did this however, and some interviewees described having to run complex queries to determine whether parties were self-represented.

Some courts and tribunals have specialist staff to support self-represented litigants and help them initiate and manage litigation. These staff sometimes have a role in capturing information about self-represented litigants, but the way in which they do so, and what administrative systems they use, varies.

Some courts and tribunals also reported recording the type of legal representative. Capacity to record the name of the law firm representing a party was common, however some courts and tribunals also recorded features such as

'in-house counsel', and some noted whether representation was funded by Victoria Legal Aid.

Interviewees also explained that some types of matters involved many legal representatives, such as care and protection matters in the Children's Court, where each parent and child can have separate legal representation, as well as representatives for the Minister. How administrative systems managed such complexity depended on their features.

It was also noted that while people frequently approached the court or tribunal seeking information and help, only scant information may be recorded unless they subsequently decide to commence an action or make an application. This meant that while information about number of inquiries is often recorded, little or no information may be recorded about the nature of the legal matter or demographic characteristics of the person making the inquiry.

Several interviewees reported a key interest in the rate of self-represented litigants, and their impact on court operations and resolution. This was especially so for civil matters. Being able to easily identify and analyse matters with a self-represented party, and potentially different combinations of legally and self-represented parties, was clearly desirable and reported by one interviewee as the subject of a current project.

Demographic and personal information

Interviewees were asked whether demographic and other personal information was collected about the parties in civil matters, and once again, this varied. Where demographic information was recorded, interviewees frequently described how demographic information was better covered in some administrative data systems, whereas others did not have the functionality to routinely collect detailed demographic and personal information. Generally, there were substantial gaps in the demographic information collected, and consequently, what was known about the parties to civil matters in Victorian courts and tribunals.

The demographic and other personal information collected by Victorian courts and tribunals varied significantly. This included how area of law and nature of the matter were coded and recorded.

Demographics

Interviewees reported that the demographic and personal information collected for parties in civil matters was 'very basic' and was primarily used for operational reasons such as correspondence with the parties and arrangements and dates for hearings.

Name, address, postcode

Information such as party name, address and postcode (enabling geographic analysis) were often collected, as was information about whether or not an interpreter was required, although the stage at which such information was collected and recorded varied.

Age and sex/gender

Other demographics which were consistently collected also varied, including basics such as age and sex/gender.[75] For instance, some courts reported recording age for criminal accused, but in civil matters only when a party was under 18 years. Others reported routinely collecting information about party age. There was also variation in how demographics were recorded for particular types of matters. For example, while such information was typically collected with respect to family violence and personal safety orders, it may not be systematically collected with respect to the parties in many types of civil matters.[76]

Indigenous status

Indigenous status[77] was another characteristic where collection practices varied significantly. Apart from VCAT,

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75   Note that many legacy administrative data systems commonly use outdated terminology with respect to 'sex' and 'gender'.

76   Interviewees explained that following recommendations of the Royal Commission into Family Violence, family violence status or risk of family violence was now routinely collected in the Magistrates' Court and VCAT.

77   The Australian Bureau of Statistics (ABS) promotes the consistent identification and collection of information about Aboriginal and Torres Strait Islander people through the ABS Standard Indigenous Question: 'Are you of Aboriginal or Torres Strait Islander origin?' which has the following response categories: 'No', 'Yes, Aboriginal', 'Yes, Torres Strait Islander'. The ABS provides further guidance on how this question can be adapted

Aboriginal and Torres Strait Islander status was generally not routinely or systematically collected with respect to parties in civil matters. Some Victorian courts were however reviewing practices, and the Magistrates' Court was working on best practice and culturally safe approaches to doing so.

<u>Financial disadvantage</u>

When asked if any indicators of financial disadvantage or income were routinely collected, interviewees other than VCAT indicated this was not the case. Some interviewees further explained that information about fee waiver was one way of gaining insight about matters involving low-income parties.[78]

Courts frequently have different fees payable by different types of parties: whether the party is a corporation, individual or an individual who is a concession holder, provided some information about financial disadvantage.

This was one example of how administrative data collected for one purpose, could potentially be used as a proxy measure or indicator for another.

<u>Other indicators of heightened vulnerability</u>

Demographic categories associated with heightened vulnerability and access to justice needs – disability status, homelessness status, marital status, mental health status, and sexual orientation – were not routinely collected.[79]

Unique party identifier

Whether the administrative data systems used by Victorian courts and tribunals had unique identifiers for parties, and how they were used, varied, and affected data utility. This affected whether interactions with parties could be identified over time, such as who frequent litigants were. While the Magistrates' Court and Children's Court currently do not use unique party identifiers, their new case management system will have this feature. This will enable new analysis and insights about parties and their points of contact with the Victorian justice system, including, for example, identification of frequently re-occurring parties.

Corporation or natural person

It was common for courts and tribunals to record whether a party was a corporation or a natural person.[80] This was mainly used to determine the rate at which fees were payable, as corporations are generally charged higher user fees than individuals.

Demographic variation by area of law and processes

Interviewees observed that more demographic information tended to be collected or known about the accused in criminal matters than parties in civil matters. One reason for this was that when criminal matters were initiated, there was demographic and other information which came through police, such as the information contained in charge sheets. For civil matters, however, there was less demographic information overall, though more demographic information tended to be collected for specialist courts and programs, and in certain types of court and tribunal lists.

Section 4.5 sets out three case study examples illustrating the use and utility of collecting additional demographic information.

What form is the data in?

Data collection practices and procedures were found to affect the nature of the administrative data available across Victorian courts and tribunals.

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for use in different data collection approaches and circumstances. ABS notes that accurate and time comparable statistics are needed to understand and measure wellbeing of Australia's Indigenous peoples and to help formulate and deliver policies to plan, promote, provide and evaluate essential services to achieve positive social and economic outcomes for Aboriginal and Torres Strait Islander peoples. See further Australian Bureau of Statistics (2014).

78   Parties may be eligible for fee reduction or waiver depending on the court and tribunal and type of civil action.

79   See, for example, Byrom (2019); Coumarelos et al. (2012); OECD/Open Society Foundations (2019).

80   A natural person is an individual human being as opposed to a legal person which may be a private or public organisation.

Electronic and paper records

All Victorian courts and tribunals had a combination of electronic and paper-based case files and records. Electronic systems have long been used as the main system for recording and interrogating administrative and operational information, although what information is recorded and available depends on the information technology system. For example, older administrative data systems may only record the location of a paper-file rather than provide a record of the information in the file.

All Victorian courts and tribunals described having a main administrative or case management system. For some, the system was either in the process of being replaced or was approaching the end of its operational life, with plans to upgrade to new systems with greater functionality and customisation.

Data fields

Interviewees reported that Victorian court and tribunal administrative systems contain a mix of coded fields, such as numeric and drop-down menu fields, as well as open text fields. Each had benefits and drawbacks for data entry, retrieval, and analysis.

Coded fields made entry, monitoring and analysis easier, as information was already grouped and structured. However, coded fields were limited by existing input categories. One example cited by interviewees as a limitation of their system was provision to record only a single legal matter category for each case, notwithstanding civil matters frequently involve multiple causes of action.

Open-text fields enable notes and further details to be recorded. However, interviewees reported that extracting open-text fields and analysing them was problematic and laborious. Extracting open-text fields typically returned a 'big blob of data' for analysis. While some systems supported searching by key words, this was described as a 'fishing expedition' and a 'last resort' to interrogate and analyse open-text data.

Data collection practice

Only collect what's needed

Several interviewees reported that their court or tribunal only collected what was 'absolutely needed' to operate. This was typically because there was either limited resources to collect more, or information was only collected for the fields required by the administrative and case management system and other reporting requirements. Interviewees reported that data collection always had resource and staffing implications, and that there was a tension between resources available for data collection, data systems and other administrative tasks.

Others explained that courts and tribunals did not have extensive data collection capacity, and that while it could be useful to know more about the types of people making use of courts and tribunals, there were several reasons why such data wasn't usually collected.

Interviewees reported that there was a widespread view that collecting demographic information about parties or users would be 'off-putting', create access to justice barriers, and require additional resources. Some interviewees reported concerns that people would not provide demographic and other personal information for confidentiality and privacy reasons. It was also reported that some people would fear being treated differently depending on the information provided. Interviewees described this as at odds with the operation of courts and tribunals which sought to 'treat everyone equally'.

In addition, some interviewees reported there was staff resistance to collecting additional party information, where experience had shown sensitivities around some issues, such as collection of family violence information. Some interviewees also reported concerns that unless demographic and other party information was collected widely and consistently, it would not be very useful and be wasted effort.

Some interviewees reported that court and tribunal data collection was already too onerous and required too much information to be provided. Requiring additional demographic or party information would only increase the burden: on users, on registry staff, on administrative data systems, and for data monitoring, evaluation and reporting.

Interviewees felt that where additional data collection was required, it needed to be properly funded and resourced. They noted that this would typically require external funding and resourcing, since it was not something that could easily be achieved within existing appropriations. Put simply, "money to do it will have to come from somewhere".

Variable classification and entry

Some interviewees were aware of variation between courts and tribunals on classification and recording of information on civil legal matters. Some were aware of different practices having worked in other jurisdictions, or from projects which used data from multiple courts and tribunals. Interviewees again provided several explanations.

Administrative record keeping reflected the operational needs of each court and tribunal. Sometimes the processes used simply reflected the historic way of doing.

Courts and tribunals also tended to operate independently. While Court Services Victoria worked across jurisdictions and provided some data support and coordination, practices were siloed. Some interviewees were of the view that because courts are a separate arm of government, it was essential to the rule of law that they maintained independence.

Further, different data practices necessarily reflected different administrative and case management systems. Interviewees again explained that practices were largely driven by operational business needs, and strategic priorities. In particular, there was a widespread view that substantial effort, reform and resources would be required to standardise 'front end' administrative date practices. As a consequence, data practice experts in each court and tribunal sometimes needed to be called on to make sense of particular court and tribunal data.

Varied practices also inevitably resulted from different courts and tribunals undergoing reform at different times. For instance, interviewees explained that courts and tribunals had implemented new administrative and case management systems at different times, and that consequently, this tended to silo technology and practices. When courts and tribunals moved to new information technology systems, it was the latest technology available. Since courts and tribunals upgraded at different times, this meant misalignment in the sophistication of administrative systems, their features, and what they can be used for.

Data systems improvement

There is no single administrative or case management system in use in Victorian courts and tribunals, however significant efforts are underway to improve the utility of the separate systems. For example, a new case management system is being developed and implemented for the Magistrates' Court and the Children's Court.

New case management system

This reform is part of the Victorian Government's whole-of-government response to the Royal Commission into Family Violence. The new case management system will replace Courtlink, currently used in the Magistrates' and Children's Courts, and several other database platforms used to manage case listings and other activities in specialist courts and programs of the Magistrates' Court, Children's Court and VOCAT.[81]

The 2017-18 Victoria State Budget allocated $89.2 million to Court Services Victoria for this new case management system. Funding was allocated to address "critical information gaps between the courts … and enable the courts to more effectively manage demand".[82] Consistent with other inquiries highlighting limitations of the available data, the Royal Commission into Family Violence found that outdated and ineffective information technology systems were a major barrier to timely information sharing.[83]

Submissions to the Royal Commission by the Magistrates' Court and the Children's Court highlighted the inadequacies of the IT systems in use. These included the lack of visibility of related cases across all divisions; the lack of data links between Courtlink and other systems which limited information sharing between agencies;

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81   For example, Courtlink is supplemented by several database systems to variously manage case listing and user information, including Platypus, Lizard, Praise, including some further modification of these systems for use within specialist courts and program functions.
82   Department of Treasury and Finance (2016), p.114.
83   State of Victoria, Royal Commission into Family Violence (2016), p.176.

inefficiencies which had developed to manage system limitations; and system incapacity to meet increasing demands for data to support operating requirements.[84]

The new system will provide comprehensive case management functions, and facilitate greater data extraction and insight, providing for both greater configuration and data linkage.

In early 2020, in response to the impact of COVID-19 restrictions, the system rollout was amended to fast-track electronic document lodgement and document management components (called eDocs) ahead of schedule.[85] This was done to support continued operations through a digital operating model.

The case management project is expected to be completed in 2022.[86]

System age and function

The main administrative systems used by Victorian courts and tribunals varied in their age, function and which court and tribunal used them. The Magistrates' and Children's courts use the same system (which is currently being replaced), while the Supreme Court, County Court and VCAT each have their own systems.[87]

While each has their main administrative system, it is common for a few different systems to be used in one court or tribunal, together with other databases and systems to record and manage particular activities. Interviewees commonly reported that some information and data was recorded using additional systems and spreadsheets.

When asked why some information was collected in additional data systems, interviewees often explained that this was due to system limitations and shortcomings, such as the availability of data fields; inability to record file notes and other case information; and the time, resources and difficulty of adapting the main case management system.

Interviewees also reported a distinction between the data used for statutory and organisational reporting and monitoring, and other administrative information collected and used to support the day-to-day administrative functions. Virtually all the information formally reported is drawn from the main case management system.

Data entry

Interviewees reported that data entry was performed by people working in a range of roles. This included judges, magistrates, tribunal members, judges' associates, registrars, registry staff, and other court and tribunal staff, as well as applicants, respondents, and their legal representatives.

Registry staff record and oversee certain information with respect to court and tribunal operations. Interviewees explained that registry staff were highly trained in both administrative data systems and court or tribunal operations. They had responsibility for arranging case listings and rosters, which were usually organised according to the divisions in the court or tribunal.

This diverse range of people also tended to have different roles in data entry at different stages. For example, registry staff typically receive and input applications or review the details of online applications, whereas magistrates, tribunal members and judge's associates had a larger role in recording finalisation and outcome information.

Courts and tribunals now routinely provide multiple methods to commence actions or make an application, including through self-completed online forms and applications lodged electronically, as well as paper-based forms and applications that can be lodged with a court or tribunal registry. As a result, sometimes data entry involved manual input from paper forms, while others use automated online forms and application processes.

Interviewees explained that unlike criminal matters, which were typically started by Victoria Police, initiating information in civil matters was provided by the plaintiff or applicant, which were sometimes government agencies, and often a business or company. While many civil matters were lodged by legal practitioners, it is now common for matters to be commenced by self-representing individuals, particularly in VCAT and the Magistrates' Court.

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84   State of Victoria, Royal Commission into Family Violence (2016), p.153.
85   Court Services Victoria (2020a), p.26.
86   Court Services Victoria (2018), p.25; Magistrates' Court of Victoria (2020a), p.18.
87   The Coroner's Court of Victoria uses the same system as the Supreme Court, CourtView, while VCAT has two case management systems, Tribunal Management System (TMS) used to manage its residential tenancy and guardianship lists, and Caseworks, used to manage its other lists.

Data quality, accuracy and consistency

Interviewees reported that, on the whole, the data collected and reported was accurate and consistent. One reason for their confidence was the level of vetting and reviewing of the data. Quality assurance practices were well established, with staff dedicated to data quality, as set out in the job descriptions of registry and other staff.

Also, as data collection and reporting has become more of a focus and data use and requests increased over time, interviewees explained that commitment to data quality, accuracy and consistency had also increased. The adoption of the International Court Excellence Framework over the last 15 years had underscored the importance of data reporting. The framework is discussed in further detail in Section 4.3.

Some interviewees observed that a rise in data importance and use was reflected in institutional practices, with data reporting, performance measures, data governance and data security evolving. Others detailed procedures and practices established to ensure data quality.

Some interviewees pointed to operational and reputational risks of poor quality, inaccurate and inconsistent data. Poor data could misrepresent work, efficiency and resource needs of a court or tribunal. Data error could underreport or overreport caseloads and backlogs. Inaccurate and inconsistent practices could undermine assessment of performance over time, and consequently have a detrimental effect on planning. This then could affect both internal provision of funding as well as government funding arrangements.

Some interviewees described in detail the internal data checking, review, cleaning and assessment to ensure that all data reported externally was high quality, accurate and consistent.

A few interviewees also noted that they were confident that data was sound because the recorded data tended to be relatively simple output data, drawn from relatively narrow data fields. This did not mean that there was no data recording error, but as reported below, these were offset by well-established data quality assurance practices.

Electronic filing and lodgement

Some aspects of data collection were, however, more vulnerable to error. For example, data generated from electronic filing (e-filing) and lodgement (e-lodgement) is known to be vulnerable to data entry error.[88]

Like case management systems, different courts and tribunals use different e-filing systems and practices. To assist legal practitioners and litigants to file documents electronically, guides and training are typically available, however interpretation of criteria and options can vary. For instance, where users are asked to complete data fields, they are often presented with a list of options. Data inconsistency can occur when people select different available options to record what should be the same thing. In some cases, both actions may be technically correct, such as recording a matter as either a tort or negligence, but where negligence would be the more precise category. Data inaccuracy also occurs when a user selects an option that does not fit their circumstances as intended in the system.

Legal matter type is one data field known to be vulnerable to data entry inconsistency and inaccuracy.[89] This can result in the nature of the legal matters that a court or tribunal handles being misunderstood and misreported. Users are typically asked to nominate a legal matter type in electronic filing and lodgement. As noted above, data error and inconsistency can result from users classifying the same type of legal matter differently, as a result of a misunderstanding of legal matter categories and legal terminology, or simply from entry error.

One interviewee explained, however, that because electronic filing was known to generate data error, there were established procedures to check and correct, and that even with this corrective process, the benefits of electronic filing and lodgement greatly outweighed the negatives. Another interviewee explained that in their court registry, staff vetted all electronic filing before they were accepted as having been 'logged' in the system. This meant that staff were reviewing and applying consistent interpretation and data entry practice.

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88   Electronic filing and lodgement allows solicitors and self-represented litigants to file documents online, although, depending on the matter, self-represented litigants may have to deal directly with the court.

89   For example, research has shown that the way in which legal matter type is recorded in administrative data systems can lead to mistaken understanding of the type of matters that are frequently litigated. See further Forell et al. (2016a and 2016b). For further analysis of court and tribunal data in New South Wales see the Law and Justice Foundation of New South Wales's Data Insights in Civil Justice series: http://www.lawfoundation.net.au/research.

Others explained that substantial effort went into data cleaning and assessment, including checking paper file and electronic records, as part of file integrity audits. Some of these practices were attributed to standards in the International Framework for Court Excellence, and the importance it placed on high quality and reliable data for monitoring performance and court operations.

Quality data practices

In addition to vetting electronic filing and lodgement, interviewees described other practices to support data quality. These included monitoring data exceptions and reasons (i.e., changes to data records); automated procedures to identify incomplete or missing records; and producing monthly data error reports to monitor and improve practice. Making certain data fields mandatory and setting up data validation processes were other techniques used to ensure that data was complete and data entry error minimised.

Data checking

Like in all administrative data systems, court and tribunal data entry error can easily occur, and inconsistent practices can develop over time. One interviewee described practices established to oversee the data entry of judge associates. These positions turn over regularly, and most associates required training on data entry systems, including the importance of consistency and accuracy. In a similar vein, another interviewee explained that data quality issues crept in when data entry tasks were not routine and that it was important to make data checking and review practices part of routine workflows.

Interviewees explained that where there were court and tribunal staff who were responsible for data collection and reporting, data practices tended to be well-established. This, however, was not necessarily the case for the full range of all court and tribunal activities. For example, some lists, programs, and activities do not have staff whose job responsibilities include data collection, but rather, data collection fell to people who had other responsibilities.

Some court and tribunal divisions and lists were reported to collect and maintain higher quality data than others. This reflected both the nature of the data collected and the data collection systems that were used. Again, interviewees identified that well-established data expectations and practices delivered higher data quality, and that the converse was also true, where new or modified activities would be more prone to data entry error until practices were well-established. It follows that establishing strong data practices across the board is essential to high quality administrative data.

Documentation, training and user guides

Data system documentation, training and user guides were common, but some interviewees explained that those working with data did not necessarily have cause to use them for day-to-day activity. For example, some interviewees were of the view that while having a 'thick technical manual' was a useful resource, they were a rather old-fashioned and out-dated approach to data systems and software platforms. Rather, modern systems were intuitive, guided and directed users, and were best supported by short, simple hardcopy material.

Thorough induction and ongoing training and monitoring, particularly for new registry and other staff undertaking data entry and review, was another strategy reported by interviewees to enhance data quality. This was said to be essential where there was staff turnover. Some interviewees described a 'feedback loop' with training, monitoring and review of data practices, where data entry errors were identified and addressed through further training and monitoring.

Some interviewees also reported current efforts to improve workflow and data collection, or improved documentation and guides in line with recent data system changes to support consistent and accurate data practice. Data documentation and guides were also characterised as being useful for building understanding of what underpinned data collection and what measures meant. This was identified as having wider data literacy benefits, particularly where registry staff were able to see anecdotal evidence being reflected in the data and how the data was beneficial for wider organisational understanding. This was also said to build understanding of why accurate, consistent quality data entry work is essential.

Expert staff

Other practices identified as supporting data quality included having specialist registries and registry staff to handle the work of particular court and tribunal divisions and lists. Where data entry decisions such as legal matter type, can depend upon interpretation, having staff with that specialist knowledge could improve data quality.

Application of data

Another factor contributing to data quality suggested by interviewees, was the growing focus on data over the last ten to 15 years. Interviewees reported that as interest in the analysis and use of data had increased, so had data quality. For example, data dashboards, visualisations and business intelligence tools were widely used, and provided an immediate, real-time picture of court and tribunal operations. This had also led to increased interrogation of underlying information.

Data system use

The administrative data systems used by courts and tribunals also varied in their functionality. This appeared to reflect the age of the data systems, with more modern systems having greater functionality and features. Interviewees explained that older, 'legacy' systems required technical expertise that typically had to be obtained externally.

System functionality

Compared with modern software, the administrative systems used by Victorian courts and tribunals were described by interviewees as not being as intuitive or easy to use. For instance, a significant drawback of the Courtlink system in the Magistrates' Court and Children's Court was its limited functionality and the difficulty in modifying the system.

In other courts and tribunals, interviewees generally described greater functionality, but adapting and customising what and how things were recorded often required external software programmers or the system vendor to provide services.

While administrative systems remained largely the same, changes had been made to data fields and definitions over time. Interviewees explained, however, that system stability remained the primary operational priority, and that there was hesitation in making extensive changes given previous experiences when systems had gone down.

Given data system requirements, particularly of older legacy systems, interviewees explained that because data system modification was so difficult, changes tended to be made to reflect organisational priorities and policy changes.

Making system improvements could be expensive, 'costing thousands and thousands' and taking valuable time. Changes also needed to be prioritised and resourced with some interviewees describing a 'shopping list' or 'wish list' of desirable improvements.

Storage and retrieval

Interviewees also indicated that data storage and how data could be extracted and analysed depended on the features and functions of the administrative data system used.

Some interviewees explained working to improve internal data capability by developing internal data warehouses, to populate data dashboards, and other data visualisations. These dashboards were capable of drawing information from multiple, separate data systems.

In addition, court and tribunal data was also stored in Court Services Victoria's enterprise data warehouse.

Data linkage and integration

Depending on the system, interviewees reported that some administrative data could be linked across internal systems using software modules such as Red Crest in the Supreme Court's CourtView system, or CRM Bridge in the Children's Court. However, data linkage and integration beyond court and tribunal systems only tended to occur with respect to criminal matters, such as committals and appeals from the Magistrates' Court proceeding to the County Court.

One feature of the new case management system for the Magistrates' Court and Children's Court will be its capacity to be linked with other administrative data sets.

What is the data used for?

Interviewees reported that data had become essential to reporting, planning, performance, and operations.

Reporting

Court and tribunal administrative data is widely reported in court and tribunal annual reports. Data is also provided to the Australian Bureau of Statistics (ABS) to inform justice system reporting; to the Productivity Commission for the Report on Government Services (known as ROGS); for reporting against key performance indicators associated with the Victorian Government's budgetary process[90]; and under agreements with entities and funding agencies, such as the Department of Justice and Community Safety, Consumer Affairs Victoria, and the Department of Treasury and Finance.

Courts and tribunals have statutory obligations to produce annual reports.[91] This requires reporting activities and expenditure, along with plans or forecasts for the next year. Interviewees reported that they used their administrative data systems to report on matter numbers and types; number of finalisations; and number of outstanding matters in their annual reports. (Information on the number of civil matters handled by different courts and tribunals is reported in Chapter 3.)

Interviewees explained that reporting requirements were often straightforward. For example, ROGS reporting typically involved filling out a template report that was coordinated by Court Services Victoria.

Beyond external reports, interviewees also reported that there was extensive internal data reporting to managers, leadership teams and executives. Administrative data was used to report performance measures as part of monthly, quarterly and annual reporting.

Planning, performance and operations

All interviewees described how administrative data was used for planning, performance measures and monitoring operations. Several described how forward planning had become important, and how ideally, courts and tribunals would be able to design programs and operations based on making a timely response to changing user demand.

With more sophisticated case management technology becoming available, more detailed information became available to measure performance and analyse operations. Several interviewees cited signing up to the International Framework for Court Excellence and other performance measures as having had significant impact on the way performance was monitored, and how using global measures had demonstrated a serious commitment to performance measures and data. For example, one interviewee explained that administrative data which had been used to compile outputs once a year, was now continuously monitored and front of mind due to the adoption of global measures.

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90   Key performance indicators are reported as part of Budget Paper No.3. Some of the measures and indicators reported as part of ROGS and Budget Paper No.3 processes include average cost per case, clearance rates, court file integrity, and on-time case processing. Note that although these indicators and measures have similar names and descriptions, methodological differences between the reports may result in different figures being published (see Department of Treasury and Finance (2021), p.384 and Productivity Commission (2021) at https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/justice/courts (accessed 2 August 2021)).

91   See for example, section 15(3) of Magistrates' Court Act 1989 (Vic).

Data dashboards and business intelligence tools had changed the nature and timeliness of administrative data. This in turn had affected understanding of performance and operations, with greater insight prompting new initiatives and ways of working to lift performance.

Another interviewee explained that, over time the move from annual to quarterly reporting had become monthly, and that daily monitoring was now possible. This was another reason data quality, governance, and security issues had become important – as it became easier to access data, and get insights in real time, it was even more important that any use of that data and any decisions based on it be founded in reliable data.

Research, monitoring and evaluation

Administrative data was also commonly and widely reported by interviewees as being used for research, monitoring and evaluation. Although the way in which such activity occurred varied somewhat across courts and tribunals, depending on available internal resources and capacity.

One interviewee described the current drive for improved monitoring and evaluation as prompting review of whether the right data was being collected for the right purpose. For instance, cost efficiency, and greater understanding of factors 'affecting where the money goes' were cited as something that would elevate business cases for reform, although this was said to be easier with respect to criminal justice issues than many civil justice issues.

Some interviewees described how research, monitoring and evaluation was increasingly important, especially with respect to new initiatives. Where courts and tribunals had well-established data practices and capability there was more opportunity and interest in accessing and using administrative data for evaluation.

Monitoring performance

Interviewees reported that one of the ways in which administrative data was used was to test ideas for reform based on anecdotal observation. For example, where registry staff reported increasing numbers of self-represented litigants filing certain types of legal matters, this can be checked against administrative data where information about self-representation is recorded.

Others characterised monitoring and evaluation as hand-in-hand with performance measures and key indicators, and how monitoring and evaluation had become an iterative process that often led to further investigation and new questions.

As courts and tribunals became more data aware, they also tended to become more data driven. For instance, fundamental questions had been put as to the rationale for specialist lists or programs. While data sometimes gave pause to question why things were done in a particular way, interviewees also explained that data and evaluation practice was also cultural and influenced by strategic direction and available resources.

Interviewees explained how monitoring and evaluation often informed important discussions about how courts and tribunals operated, and how they prioritised resources. When asked if the available administrative data could provide insights for such purposes, some interviewees explained that data helped to contextualise issues. It was also used to interrogate anecdotes, to 'myth bust' and 'debunk' assumptions. However, the type of data required to answer particular evaluative questions was often beyond the limits of existing data systems, requiring additional data collection and analysis. There were limits to what available data could be used for, reinforcing the role of administrative data as one of several data sources required to address key policy question.[92]

Monitoring and evaluation depended on internal expertise and resource capacity, and the nature of the evaluation to be conducted. High profile evaluation, for example, might require independent evaluation conducted by external consultants, whereas more routine monitoring and evaluation might be handled by program managers or other staff. Evaluative work was also something Court Services Victoria's research unit provided to help support courts and tribunals.

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92   Additional sources of data and information relative to understanding court and tribunal performance includes user and legal needs data bearing on issues such as satisfaction and accessibility. See McDonald et al. (2020) for further discussion of sources of additional and complementary data in the context of legal assistance service data.

Data requests

In addition to internal research and data requests, interviewees reported that courts and tribunals commonly received requests for access to administrative data from a range of external agencies and other bodies, although capacity to respond differed.

One interviewee characterised their court as having limited resources to respond to external data requests, as the data team was already fully occupied managing and responding to internal requests and reporting requirements. Others noted that processes to manage frequent data requests had been established.

Another issue raised by interviewees with respect to requests for data was legislative requirements preventing disclosure or sharing of party information. Interviewees described some confusion about requirements across different courts and tribunals: exactly what could and could not be disclosed, at what level of abstraction, as well as conflicting requirements and processes.

This confusion extended to relationships and processes with other government departments and agencies. Growing interest in data linkage and integration was said to have increased the number of and complexity in assessing data requests. Consequently, some interviewees thought that streamlined procedures and clear guidelines would be beneficial.

Government agencies, universities, researchers and consultants working on projects were identified as frequently requesting data. Interviewees reported that it was common for government to seek information about the likely effects of proposed legislative reforms.[93]

Data requests were also frequently received for inquiries and law reform. Some recent examples cited included the Royal Commission into Family Violence, and the Royal Commission into Victoria's Mental Health System, as well as Victorian Law Reform Commission inquiries.

Workloads

Some interviewees reported that administrative data was used to monitor staff workloads, review caseloads and, for some staff, their mix of cases. For example, case mix was relevant to staff development and career paths, as well as for flagging those who may be carrying a larger than usual workload.

Business cases, forecasting and demand modelling

Several interviewees described how efforts to improve case management systems and data practices were also intended to support improved forecasting, business cases and demand modelling.

One key aspect of improved business cases and demand modelling reported by interviewees was the need to improve prediction of civil matter resolution, including what factors affected progress and resolution at different stages. Some interviewees thought that this required richer case management data to provide greater insight about factors which facilitate or constrain resolution.

Some interviewees also explained that while there was leadership and management interest in predictive analytics, improved forecasting and demand modelling, this had to be progressed incrementally as it required particular data, such as factors driving demand.

Another noted that, as for other activities and projects, a business case for improved analytics, forecasting and modelling had to be built. This was described by interviewees as a challenge where the benefits 'are still theoretical' rather than demonstrated. Demonstrating the benefit was however a Catch-22: demonstrating utility of better data depended on improved data capability, which depended on resources to collect additional data.

Administrative data was widely used to build and evidence business cases. Strong business cases, however, require costs, impact and outcome data. This type of data was generally not available in administrative data systems.

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93   The Sentencing Advisory Council was identified by interviewees as conducting research and publishing statistics on offences sentenced in the Magistrates', County and Supreme Courts, and that Crime Statistics Agency Victoria did research and published statistics on crime data. Crime Statics Agency also publishes the Family Violence Data Portal, established in response to the Victorian Royal Commission into Family Violence. The portal includes data on family violence measures form the Magistrates', Children's and Coroners Courts.

For example, interviewees explained that monitoring and evaluation had become an organisational focus and played an increasingly important role in developing and supporting Expenditure Review Committee (ERC) bids in the Victorian budgetary process, and other business cases for funding and reform. Again, this was demand was identified as having significantly increased over the last decade.

How might data be used in the future?

When asked if there were things that interviewees and others wanted to know from data that were not currently available, or whether there were plans to extend data utility in the future, interviewees cited a range of examples. This included predictive analytics, forecasting and demand modelling as noted above, as well as new case management systems, additional data collection and new data measures. This is explored further under Data developments and challenges, at 4.4.

Available data and data resources

How data can be used in the future depends on the data practices and systems as well as strategic leadership and available resources. Where data availability and data systems are limited, this inevitably limits data capability.

A recurrent theme in interviews was how resource and capacity issues constrained data collection and use. Responses pointed to an appetite for additional data and information that exceeded available resources and capacity. Interviewees reported keen interest in enhancing data collection and measures to provide additional business intelligence about issues affecting costs, performance and efficiency. Available resources, however, only went so far and interviewees described 'wish lists' for improved data utility and functions that often had to be addressed incrementally. Examples included improved features of data system platforms, as well as the collection of new measures and indicators.

Some interviewees pointed to a tension in balancing the amount of work required to collect data and the value of the information. Views were mixed as to that balance. For example, one interviewee submitted that there were things that were well known that couldn't "easily be proved by data". Others indicated that there were things that would be simple to collect that could potentially provide important empirical insight, but would need staff time or additional money to resource.

Optimising resources

One interviewee described how tracking which court users required 'light, medium and intensive interaction' could provide insights on effective use of resources, and had potential to drive efficiency gains by matching level of staff interaction to need. This could further optimise expenditure of finite court and tribunal resources.

Less known about civil matters

On civil matters, interviewees commonly noted that there tended to be much less known about civil than criminal matters. They reported frequent questions about the performance of the civil justice system with respect to timeframes, delay, case backlogs, resolution and outcomes. While there were measures in place for each, less was known about what and how other factors, such as party matter and type, affect court and tribunal activity and performance.

Interviewees commonly pointed to ongoing interest in issues concerning case management and self-represented litigants, and initiatives to support quicker resolution of civil cases. For example, several interviewees reported that a greater level of granularity was required to better understand resolution of civil cases, to better inform case management and understand those types of parties and matters that consume more mentions and hearing time. There was also a view that efficiencies could be achieved by changed practices for some combinations of matters and parties, such as early access to legal information and mediation.

Another interviewee reported growing interest in party compliance with orders made in civil justice matters. This included whether there were things that might be done at an earlier stage to avoid litigants returning to court seeking to enforce orders.

Data capability

Future use of data relies on organisational data capability. One of the main benefits of increasing interest in data as described by interviewees, was growing data literacy and capability amongst court and tribunal staff. As data and data use became a part of routine operations and tasks, and as more staff become involved and trained in data work, what staff were able to do with data had increased. This, in turn, had benefits for data use and utility. For example, one interviewee observed how growing data interest had led to more frequent and sophisticated questions which tested the limits of data utility. This was said to have elevated organisational data understanding and capability and provided a vision for how data capability might be extended in the future.

Others pointed to interest in streamlining and automating some functions, processes, and workflow to 'free up staff time' for other data activities.

What can be done to enhance data use and utility?

Interviewees reported several ways in which data use and utility could be enhanced.

Integrated data systems

A common view of interviewees was that the work being done on a new case management system for the Magistrates' Court and Children's Court could lead to expansion to other courts and afford new opportunities for data integration and insights.

While eventually moving to more integrated case management and data systems was attractive and may have benefits for system-level understanding, interviewees also stressed that their systems and practices needed to meet their individual operational needs. Whatever the system, it needed "to do what we need it to do". Variation in practices, operations, and approaches consequently presented barriers to data system integration.

Richer and more meaningful data

When asked whether interviewees thought the administrative data available to them adequately captured what occurred and what they needed to know, there were mixed views.

One issue identified as likely to benefit from additional measures and richer data was the question of which factors caused delay. Although there was widespread and ongoing interest in delay, and well-established measures for matter duration and backlog, there was less ability to determine the interplay between factors causing delays and backlogs, and to determine their impact. As a result, proposed solutions were not backed by strong evidence or cases for reform and investment.

Others responded that there were always additional things to do and know. Some thought the systems they had now, or the improvements they were currently making, were sufficient.

System understanding

Views also tended to reflect how recently the administrative practices had been reviewed and reformed in each court and tribunal. Beyond that, however, there was a common view that at a system level, there was much more that needed to be known about how the different parts of the civil justice system affected each other, and how change in one part affected others. For example, reforms to civil procedures to improve one part of the system, may have unknown downstream impacts. Consequently, there is significant interest in having consistent, integrated data capable of providing insights at a system level.

Data linkage

Interviewees explained that there were efforts to better link administrative data to show a user's journey and offer system level insights. While this was critical in terms of understanding and designing systems from a user perspective, interviewees also noted that the more data was linked, the more data practices needed to be standardised.

Improved ability to 'tag and trace' different types of matters and people through courts and tribunals would provide new understanding.

Costs data

Costs was also a key area where some interviewees thought better information would benefit operational reform and planning. For example, cost measures enable analysis to inform resource allocation. Interviewees reported that at present, several costs assumptions had to be made in analysis.

Matter or case complexity

Several interviewees identified growing interest in matter or case complexity as a key factor affecting court and tribunal operations, with some involved in efforts to identify and measure complexity. This interest was attributed to observations that the work of courts and tribunals was becoming increasingly complex over time, and that performance trends were potentially misleading if they did not adequately account for it.

Anecdotal observation attributing a rise in the number of case events and a decline in finalisation rates to increasing complexity, had prompted interest in examining the issue of complexity empirically. This involved looking at how administrative data measures might indicate matter complexity, and which might be implemented to gauge it.

Some interviewees explained how complexity could be inferred, such as measuring the number of applicants and defendants in a case, number of expert witnesses, and proportion of self-represented litigants in different lists.

Barriers and constraints

Several interviewees reported barriers and constraints to improved data use and utility, including projects they thought should be completed to improve data capacity. Some thought more needed to be done to build data practices and culture, while others pointed to issues such as accountability, governance, and funding allocation.

Improvements to the use, collection and analysis of data was sometimes limited by competing strategic priorities. Some interviewees identified a lack of internal agreement concerning the purpose of collecting further data as a barrier to extending data use and utility.

Even where data existed and provided insights, responses and actions still required agreement. Interviewees explained that a wide range of factors such as, time, resources and competing priorities sometimes meant that data insights were not acted upon.

There was also some cynicism about what was required to make justice system data a priority. One interviewee noted that data integration had been spoken of since the early 2000s but was still a work in progress. Another observed that government was 'always asking questions' but declined to invest in improved data capability when told that the required measures were not available. Some suggested that Royal Commissions were sometimes needed as a catalyst for reform.

The siloed way in which courts and tribunals tended to operate was also identified as a barrier to collaboration and improved understanding of factors affecting performance. Some observed that another reason courts and tribunals may not cooperate and collaborate on projects was that everyone was 'protective about their data' and the 'interpretation it might be given'. Each court and tribunal were said to have 'data experts' as well as particular 'subject matter experts' with respect to different divisions or lists or legal matter types.

Consequently, this level of nuanced insight and expertise can be lost when data is aggregated and compared by others. For example, interviewees reported that attempts to combine civil justice data in the past have been undermined by something as simple as different courts and tribunals classifying civil matter types differently.

A few interviewees said that while they reported what was required, for 'scientific and evaluation' purposes, investment in more sophisticated studies was needed to demonstrate impacts and outcomes of different approaches. With respect to overcoming barriers and constraints, common themes centred on technology, management, leadership, and resources.

4.3 Data support and governance

Interviewees frequently referred to the support provided by Court Services Victoria, the governance of the Courts Council, and the performance measures of the International Framework for Court Excellence. They also frequently referred to annual reports, strategic and other planning documents framing the use and role of court and tribunal administrative data. This section largely draws on those documentary materials.

Courts Council and Governance

Courts Council governs and provides leadership to Court Services Victoria. Chaired by the Chief Justice of the Supreme Court, it comprises the heads of jurisdiction of Victorian courts and VCAT and up to two independent members. Courts Council decision-making is informed by several judicially led committees.[94]

The Courts Council is responsible for directing the strategy, governance and risk management of Court Services Victoria. In 2020 the Courts Council approved a new strategic plan for Court Services Victoria, which is noted below with respect to implications for data systems, collection and use.

Court Services Victoria

Court Services Victoria provides administrative and facilities management services to Victorian courts and VCAT, and supports them to undertake performance reporting requirements, including assistance with extraction, review and reporting of performance figures for annual reporting; the Report on Government Services (ROGS) requirements; and the Victorian Government budgetary process.

A data governance framework, developed by the Court Data Working Group, sets out Court Services Victoria role and data support for Victorian courts and tribunals. This includes data governance roles and responsibilities under relevant legislation, and policies and principles that guide Court Services Victoria's data operations and reporting.[95] The data governance framework also guides several initiatives to improve administrative data operation and capability. This includes information technology upgrades for courts and tribunals administrative and in-court activities, and a new case management system for the Magistrates' Court and Children's Court. Court Services Victoria is accountable to the Courts Council, and works with Victorian courts and VCAT to "pursue innovative approaches to justice into the future supported by collaborative leadership and excellence in court administration".[96] Its strategic priorities are judicial independence; supporting the administration of justice; responsible management and accountability; and excellence in court tribunal and judicial support.[97] Its role includes support for administrative data, and other functions and innovations, such as the implementation of system-wide reforms and digital transformation strategies.[98]

Court Services Victoria is guided by the principles of the International Framework for Court Excellence, the Australia and New Zealand Tribunal Excellence Framework and the International Framework for Judicial Support Excellence.[99] Designed to help courts improve performance, Court Services Victoria reports on four performance measures in the International Framework for Court Excellence for civil matters in Victorian courts and VCAT: average cost per case; case clearance rate; court file integrity; and timeliness of case processing.[100]

The table below collates figures reported by Court Services Victoria on the number of initiated and disposed civil matters in Victorian courts and tribunals for the last three financial years. These figures, drawn from court and tribunal administrative data, allow calculation of the clearance rate performance measure.[101]

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94   See Court Services Victoria (2020a), p.8. Courts Council appoints the Court Services Victoria Chief Executive Officer (CEO) and the CEOs for each court and VCAT.
95   Court Services Victoria (2019), p.25.
96   Court Services Victoria (2020b), p.1.
97   The strategic priorities are consistent with the Court Services Victoria Corporate Plan, 2018-2022, see Court Services Victoria (2020a) p.17.
98   Court Services Victoria (2019), p.17.
99   Court Services Victoria (2019), p.17.
100 See Court Services Victoria (2019), p.29.
101 Each court and tribunal have an estimated clearance rate of 100 per cent for civil matters, meaning that it aims to dispose of as many matters as are initiated. The clearance rate is the number of cases disposed divided by the number initiated.

Table 4.1 Civil case clearance rate 2017/18 to 2019/20

Civil case clearance rate (%)									
	2017–18			2018–19			2019–20		
	Disposed	Initiated	Rate %	Disposed	Initiated	Rate %	Disposed	Initiated	Rate %
Supreme Court	28,278	28,211	100.2	26,830	26,825	100.0	28,608	28,358	100.9
County Court	6,004	5,999	100.1	5,761	6,038	95.4	5,770	6,476	89.1
Magistrates' Court	57,065	61,784	92.4	60,747	65,348	93.0	55,373	69,081	80.2
Children's Court Family Division	18,461	20,149	91.6	19,214	22,097	87.0	19,754	22,531	87.7
Family violence intervention orders*	35,307	38,022	92.9	36,928	38,641	95.6	34,801	43,566	79.9
VCAT	83,424	85,191	97.9	83,414	85,850	97.2	76,245	80,423	94.8

Note: All courts and tribunals had a target estimated clearance rate of 100 per cent. Clearance rate = (disposed/initiation) x 100. Clearance rate for the Supreme Court of Victoria includes Probate Office matters. *The family violence intervention order row represents combined family violence intervention orders in the Magistrates' Court and Children's Court.

Table 4.1 shows that VCAT and the Magistrates' Court handle the highest number of civil matters amongst Victorian courts and tribunals. VCAT receives some 85,000 new cases a year and disposes of nearly as many. The Magistrates' Court receives around 60,000 new civil cases a year and has a clearance rate of more than 90 per cent.

Overall, excluding family violence intervention orders, the Magistrates' Court and VCAT handle approximately 70 per cent of the civil matters initiated in Victorian courts and tribunals each year. For the overwhelming majority of Victorians who have had contact with the Victorian courts and tribunals for civil matters, their experience will most frequently have been with the Magistrates' Court and VCAT.

Table 4.1 also shows that during 2019–2020, a year affected by COVID-19, the number of cases initiated in VCAT and the Magistrates' Court, were down on those in the previous two years. A similar pattern is also evident in the County Court, the Family Division of the Children's Court, and for family violence orders in the Magistrates' Court and Children's Court. The only court that recorded an increase in the number of initiated civil cases over the two previous years was the Supreme Court. Note that the figures for the Supreme Court include around 22,000 Probate Office matters.

Overall, more than 225,000 civil cases are initiated in Victorian courts and tribunals each year. This translates to roughly 3–4 per cent of the Victorian population making a civil claim or application in a Victorian court or tribunal each year.

Managing its data warehouse and coordinating reporting activities are key functions of Court Services Victoria. The data warehouse holds more than 1.4 billion records. Court Services Victoria supports courts, VCAT and others to draw data insights. For example, Court Services Victoria manages more than a hundred requests for data each year and facilitates the provision of data to the Productivity Commission for the Annual Report on Government Services (ROGS), to the Sentencing Advisory Council, and Australian Bureau of Statistics.[102] Court Services Victoria's research and analysis work is done under the direction of the Courts Council.[103]

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102 Court Services Victoria (2020a), p.24.
103 Court Services Victoria (2019), p.17.

Court Services Victoria Strategic Plan

Collection and analysis of data is central to several strategic priorities outlined in Court Services Victoria's *Strategic Plan: Delivering excellence in Court and Tribunal Administration 2020–2025 (CSV Strategic Plan)*. It also sets out the challenging operating environment faced by Victorian courts and VCAT, including growth in case backlog due to COVID-19; ageing technological and physical infrastructure; and ongoing pressure to maintain and improve frontline services in the face of budgetary limitations.[104]

Digital transformation can support improved experience and better access to justice for those coming to Victorian courts and VCAT, and improved capacity to use data and technology to inform decision-making.

Data analysis and sound evaluation will be important tools in demonstrating effective and efficient use of resources, and also in advocating for funding for strategic priorities.

Reliable, integrated and innovative technology and digital capabilities will be critical to delivering on the commitment "to invest in data and analytics systems and capabilities to improve data governance and support improved data-driven decision making", as set out in the CSV Strategic Plan.[105]

The CSV Strategic Plan specifies a 'digital first' approach to transformation of court and tribunal processes, and engaging court users "to understand what accessibility and contemporary services looks like to them" and guide how "experiences can be improved".[106]

Court Services Victoria Self-determination Plan

Court Services Victoria identifies several initiatives to support appropriate services to the Koori community in its *Self-determination Plan: Action Plan 2021–2025 – Yaanadhan Manamith Yirramboi: Striving for a Better Tomorrow* (Self-determination Plan). This forms part of the response to the *Burra Lotjpa Dunguludja Aboriginal Justice Agreement.*

The Self-determination Plan details the Courts Council and Court Services Victoria support for self-determination and a range of initiatives across Victorian courts and VCAT.[107]

Improved data collection, monitoring and analysis are specified as key actions to improve self-determination by several courts and VCAT. For example, one action area for the Supreme Court is improving data collection and monitoring to establish benchmarks and better support evaluation.[108] Similarly, an action area for the County Court is to monitor and provide data and information regarding participation and access to court programs.[109] The Magistrates' Court's action areas include review of current practices concerning how the standard question to measure Indigenous status is administered, and identify how to improve current practice in a manner the promotes cultural safety.[110] VCAT ensures data on Koori Community member use of VCAT is captured, and that this data is used to inform specific engagement activities and service improvements. Other VCAT actions include a dedicated Koori Engagement team to support Koori users and promoting awareness of VCAT's role and function in providing civil justice to the Koori Community.[111]

The case study reported below in Section 4.5 reports the work of VCAT's Koori Support Team and how standardised collection of information on the Indigenous status of VCAT users has enabled a comprehensive approach to engagement, awareness raising and support.

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104   Court Services Victoria (2020b), pp.1,10.
105   Court Services Victoria (2020b), p.6.
106   Court Services Victoria (2020b), p.9.
107   See Court Services Victoria (2021a, 2021b). The Plan draws on the Victorian Aboriginal Affairs Framework 2018–2023 setting a direction for how government will plan, act, measure and evaluate to progress change, address inequity and deliver strong outcomes for, and with Aboriginals Victorians. Court Services Victoria's Dhumba Murmuk Djerring (CSV Koori Unit) also provides advice and guidance to Victorian courts and VCAT on the best ways to provide culturally responsive services including collection of data on First Nations' people, support to transform court and tribunal systems and services so that Aboriginal Victorians can be part of decision-making processes, as well as implementation and evaluation of Koori programs and policies.
108   Court Services Victoria (2021a), p.18.
109   Court Services Victoria (2021a), p.19.
110   Court Services Victoria (2021a), p.21.
111   Court Services Victoria (2021a), p.24.

Aboriginal and Torres Strait Islander status was also collected with respect to care and protection matters in the Children's Court, for VOCAT matters, and for several specialist courts and programs in the Magistrates' Court.

International Framework for Court Excellence

Court Services Victoria notes that performance measures are linked to court and tribunal measures and objectives, and that output measures are increasingly linked to the International Framework for Court Excellence (the Framework).[112]

The Framework is an initiative of the International Consortium for Court Excellence (Consortium), of which the Magistrates' Court, the County Court, and the Supreme Court are members. The Framework is intended to support courts and tribunals "to work towards the delivery of quality court services which are essential to fulfilling their role in providing access to justice".[113]

The most recent version of the Framework provides new guidance on several issues that courts and tribunals around the world are grappling with. These include new guidance on using data to deliver better court services; security and data integrity of data records; and use of alternative dispute resolution, therapeutic and problem-solving approaches in suitable cases.

The Court Excellence Framework is also intended 'as a guide for court excellence' while acknowledging the particular needs and unique roles and functions across members.[114] Based on broad international agreement on the core values courts apply in successful functioning[115] - the Framework sets out values, concepts and tools for courts and tribunals to improve the quality of justice and judicial administration.[116] It also specifies seven areas of court excellence that provide a holistic approach to measurement and assessment of performance: court leadership; strategic court management; court workforce; court infrastructure, proceedings and processes; court user engagement; affordable and accessible court services; and public trust and confidence.

While the Framework identifies some court performance measures, it recommends a process of continuous evaluation, where courts and tribunals develop and implement their own measures and improvement plans through a process of self-assessment. This cycle involves courts and tribunals collecting and collating data and other information to assess, analyse, implement and evaluate performance.[117]

The Court Excellence Framework provides that, at an individual court and tribunal level:[118]

> *[I]t is important that the data relied upon is of a high quality, reliable and the integrity of the data is guaranteed. A successful and well-managed court requires data that focuses not only on inputs, but also informs about outputs, outcomes, and the extent to which service delivery is actually achieved. Excellent courts should use court management information systems and case management systems that make it possible to monitor and evaluate the court performance regularly.*

Other guidance in the Framework details the importance of having common definitions and standards for performance measures to make it possible to compare performance and determine progress over time.[119] The Magistrates' Court's strategic priorities for 2020–2022, set out in its *Our vision, values and strategic priorities* document, highlight successful implementation of the Court Excellence Framework as a priority for setting, monitoring and reporting performance measures, developing technological and other efficiency-based solutions, and refining and assessing court plans and policies.[120]

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112 Court Services Victoria (2020a), p.30. The International Framework for Court Excellence is a quality management framework intended to help courts to improve their performance and achieve excellence. See further https://www.courtexcellence.com.
113 International Consortium for Court Excellence (2020), p.5.
114 International Consortium for Court Excellence (2020), p.4.
115 These are accessibility; certainty; equality before the law; fairness; impartiality; independence; integrity; timeliness, and transparency
116 International Consortium for Court Excellence (2020), p.4.
117 International Consortium for Court Excellence (2020), p.9.
118 International Consortium for Court Excellence (2020), p.37.
119 International Consortium for Court Excellence (2020), p.37.
120 Magistrates' Court of Victoria (2020b), p.2

In addition to the commitment to the Framework from the courts, VCAT is informed by its standards and measures to drive operational improvements, deliver more services and resolve disputes more quickly.[121] VCAT has developed success measures on performance and impact including collecting data on user satisfaction; perceptions of fairness and ease of access; number of complaints, website visitors, online transactions, and users assisted by VCAT's support services; average time from application to hearing; case clearance rate (i.e. cases resolved compared to cases initiated); proportion of cases resolved through alternative dispute resolution; and overall staff satisfaction and perception of support and being valued.

Activity and performance reporting

The administrative data collected by courts and tribunals provides valuable information about their performance and, as noted above, is variously reported in the Productivity Commission's Report on Government Services,[122] Victorian Government's Budget Paper 3,[123] and court and tribunal annual reports.

Courts and tribunals report performance against some measures of the International Framework for Court Excellence into court and tribunal management in their annual reporting.[124] As part of this framework, global measures have been developed to be used as a guide for policy makers and practitioners to improve the performance of courts and tribunals.[125] The data for these reports are primarily drawn from administrative data, although not all activities and performance measures are available for all courts and tribunals. Table 4.2 sets out the performance measures detailed in the Report on Government Services, the Victorian Government's Budget Paper 3, and Global Measures of Court Performance.

Table 4.2 Activity and performance measures

Report on Government Services	Budget Paper 3 performance measures	Global Measures of Court Performance
*Access to interpreters	Average cost per case	Court user satisfaction
Judicial officers	Case clearance rate	Access fees
Backlog	Court file integrity	Case clearance rate
On-time processing	On-time case processing	On-time processing
Attendance	Total output cost	Duration of pre-trial custody
Clearance		Court file integrity
Fees paid by applicants		Case backlog
*Court file integrity		Trial date certainty
Judicial officers per finalisation		Employee engagement
FTE staff per finalisation		Compliance with court orders
Cost per finalisation		Cost per case
*Perceptions of court integrity		

Table note: *Data not yet available for reporting against these indicators.

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121   Victorian Civil and Administrative Tribunal (2018), p.5.

122   Report on Government Services includes data from the Federal Court, the Family Court of Australia and the Federal Circuit Court, the criminal and civil jurisdictions of the supreme courts, the district/county courts, the magistrates' courts (including children's courts), coroners' courts and the Family Court of Western Australia. See further https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice

123   https://www.budget.vic.gov.au/budget-papers.

124   Court Services Victoria (2019).

125   These performance measures relate to each of the values underpinning the framework, being equality before the law, fairness, impartiality, independence of decision-making, competence, integrity, transparency, accessibility, timeliness and certainty. See further International Consortium for Court Excellence (2020).

4.4 Data developments and challenges

A dominant and consistent finding from the interviews and review of Annual Reports and Strategic Plans was that Victorian courts and tribunals are all on their own data journeys but face similar challenges and opportunities. This section sets out the developments and challenges faced by Victoria's courts and tribunals, the impact of COVID-19, and plans for further improvement. It demonstrates the diversity of systems, resources, need and capability, and underscores the challenges to be addressed in moving to more contemporary approaches. It also illustrates the difficulty in integrating or aligning data for the purposes of higher-level systemic review.

Administrative and case management systems

All courts and tribunals were working to improve the accessibility and meaningfulness of the data they collect. This includes what data is collected, how it is used, the way it is stored, retrieved and integrated.

Case management systems are core to this effort. They provide the backbone to courts and tribunals and are central to the collection of data. The data collected through this intake and management process is then used to improve systems, processes and to give a vital insight into the effectiveness and impact of the justice system in Victoria.

The courts and tribunals in Victoria work on a number of different case management systems, developed and updated at different times.

New systems

Magistrates' Court, the Children's Court and Victims of Crimes Assistance Tribunal (VOCAT), in partnership with Court Services Victoria, are currently involved in the development of a new case management system to replace the legacy Courtlink system, which has been in place since the 1980s.[126]

In their joint submission to the Victorian Law Reform Commission in 2018, VOCAT, the Magistrates' Court and Children's Court identified significant gaps in data on factors affecting demand and other systemic issues.[127]

For VOCAT, deficiencies in data for specific victim cohorts were also noted by stakeholders, who submitted that effective collection and recording of data would enable better monitoring of the scheme in the future.[128]

This new system will change the way administrative data is collected, analysed and used in these jurisdictions. A modern case management system is seen as vital for improved monitoring and evaluation of court operations, understanding costs and efficiency, and addressing critical information gaps between the courts and other justice agencies. This will provide a foundation to improve community access to court services and provide information to better manage growing demand.[129]

The new case management system will enable new analysis and insights, including on people appearing in the Courts, and will also support information sharing with other government agencies where appropriate. Other agencies might include Victoria Police, Corrections Victoria and the Department of Health and Human Services.[130] This is particularly relevant for the Magistrates' and Children's Courts, potentially opening new opportunity for insights on the crossover between those experiencing civil, criminal and family violence legal and related needs, and the impact and performance of the courts.

The Supreme Court uses the CourtView case management system. First implemented in 2009 as part of the Integrated Courts Management System project, CourtView was originally intended as a template for a new case management system for all courts.[131] This consolidation proved to be more complex and expensive than anticipated, with courts continuing on separate data journeys.[132]

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126   Department of Justice and Regulation (2016).
127   Victorian Law Reform Commission (2018), p.505.
128   Victorian Law Reform Commission (2018), p.505
129   Department of Treasury and Finance (2016), p.114.
130   See https://www.courts.vic.gov.au/projects/case-management-system-project (accessed 14 July 2021).
131   Victorian Auditor-General's Office (2009), p.1.
132   See Victorian Auditor-General's Office (2009) for further context.

While not specially designed for the Supreme Court, CourtView has been adapted and customised to its needs within available resources.

CourtView data is used extensively for reporting, performance management, and planning, including development of business cases and demand modelling. The Supreme Court was the first Australian court to join the International Consortium for Court Excellence[133], and regularly assesses its performance against the Court Excellence Framework using administrative and other data.

Interest in the Supreme Court's data has grown over time and data plays an increasing role in the routine analysis and monitoring of the Court's activities. Activity dashboards provide staff with improved access and interface with available data.[134]

The Supreme Court has also embarked on a substantial program to 'reimagine' Registry Services.

The Court's Future Model of Registry Services was finalised in June 2019, identifying six key reform projects for the next three years.[135] Projects likely to impact how the Supreme Court registry services collect and use administrative data include:

- Self-representation service pilot

- Building data analytics capabilities within registries

- Data Governance Framework and Roadmap

- Identifying case complexity indicators

- Mathematical programming of courtroom bookings and trial listings

- User Experience Design – Frontline Service Delivery.[136]

Improved data analytics is key to "better, and more rapidly, tailor[ing] services to the needs of the Court and court users".[137] Efforts to improve data analytics capability are intended to improve insights from existing data and better inform data practices and court operations.

VCAT has two separate legacy case management systems: the Tribunal Management System (TMS), designed and developed inhouse and used specifically for the residential tenancy and guardianship lists; and the Casework Management System (CMS), used for other types of matters.[138]

These systems manage the way data is collected, stored and used and have been changed over time. As VCAT has built its data collection and capability, it has made several substantial operational improvements. This includes, for example, development of performance dashboards in real time which are used by tribunal members and alternative despite resolution and reporting teams

User engagement

All courts and tribunals in Victoria are engaged in efforts to improve their understanding of and response to the people who use their services. The work in this area varies in emphasis and scope depending on the jurisdiction. Below are some examples, though it is by no means a comprehensive list of activity in our courts and tribunals.

Surveys and engagement

Guided by the Court Excellence Framework, the County Court conducts periodic court user surveys to help improve the experience of court users. For all court users, the surveys and research are intended to make

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133   See https://www.supremecourt.vic.gov.au/about-the-court/how-the-court-works (accessed 20 August 2021).
134   Supreme Court of Victoria (2020a), p.49.
135   Supreme Court of Victoria (2020a), p.47.
136   Supreme Court of Victoria (2020a), p.48.
137   Supreme Court of Victoria (2020a), p.48.
138   Victoria Civil and Administrative Tribunal (2020), p.24.

information more accessible; improve efficiency and effectiveness of systems; reduce complexity and time and cost for users; and improve services to support self-represented litigants.[139]

VCAT also uses customer satisfaction surveys on a range of access to justice and operational issues, including user language needs; physical access; website comprehension; clarity of forms; and perceptions of safety and fairness in how their case was handled. Collection of such measures are intended to help "identify where VCAT is doing well and opportunities for service improvements".[140] Survey data is analysed, and the findings used to monitor and respond to change in user satisfaction. User satisfaction is one of the indicators VCAT use to "help us track the impact of new initiatives and get us closer to achieving our target of at least 90 per cent satisfaction across all measures".[141]

The Supreme Court is moving to adopt user-centred design approaches. To this end it engages users in multiple ways, including user group meetings, forums, and reference group meetings. This provides mechanisms for feedback from users about various topics, such as programs to improve case management and Court practices.[142]

Each division of the Supreme Court seeks feedback from court users on operational issues. For example, the Common Law Division engaged court users and professional body representatives to explore better ways to manage personal injury claims and streamline proceedings where parties have had pre-litigation alternative dispute resolution. This engagement contributed to reforms reducing time to trial and overall matter duration.[143]

Case management

In recent years, the Supreme Court has implemented active case management across different divisions and lists. This results in the delegation of some routine and administrative functions to judicial registrars and registry-based teams.[144] These teams proactively manage cases by identifying and resolving issues early. For example, the team might determine that a matter is suited to mediation, or that some aspect needs to be immediately escalated for judicial intervention.

Active case management also seeks to improve the flow of cases through the Supreme Court and ensure that each courtroom proceeding is both necessary and progresses matters to resolution.[145]

Case management can also generate savings for court users, the Supreme Court and government, by making processes timelier, and supporting more effective and earlier court intervention to progress and resolve matters.[146]

More effective and efficient case management is an issue that has been widely identified and is the subject of reform and innovation in all courts and tribunals.[147]

Self-represented litigants

The County and Supreme Courts, in partnership with the Justice Connect, are piloting a pro bono service to assist self-represented parties in civil matters.[148] In the County Court, the pilot operates in the Commercial Division, where approximately 70 per cent of self-represented litigants appear.[149]

The Self-Representation Service in the Supreme Court provides eligible self-represented litigants a one-hour appointment with a volunteer lawyer or barrister. Individuals are assisted with tasks such as legal paperwork, and receive information and advice regarding making legal arguments, presenting evidence, court procedures and ways to resolve matters. In 2019–20, Justice Connect received 166 requests for assistance and arranged 123 appointments.[150]

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139 County Court of Victoria (2017), p.4.
140 Victorian Civil and Administrative Tribunal (2019), p.20.
141 Victorian Civil and Administrative Tribunal (2019), p.20.
142 Supreme Court of Victoria (2020a).
143 Supreme Court of Victoria (2019), p.35.
144 Supreme Court of Victoria (2019), p.15.
145 Supreme Court of Victoria (2019), p.15.
146 Zammit et al. (2017), p.7.
147 Information about the various case management reforms and innovations in Victorian courts and tribunals can be found in each jurisdiction's latest annual report.
148 County Court of Victoria (2020), p.67.
149 County Court of Victoria (2020), p.9.
150   Supreme Court of Victoria (2020a), p.48.

The Supreme Court also has Self-represented Litigant Coordinators who provide information and procedural advice, and links and referrals to available free legal services, such as the Self-Representation Scheme and the Victorian Bar's Pro Bono Scheme.[151] As part of its self-represented litigant strategy, the Supreme Court is working to improve website content, videos, guides and other general information material specifically designed to support self-represented users.[152]

The Magistrates' Court is leveraging technology to meet the needs of court users and improve wayfinding, particularly for those who are representing themselves.[153]

The impact of COVID-19

All Victorian courts and tribunals have had to find new ways to work during prolonged lockdowns and tight restrictions. In some cases, responding to COVID-19 has increased the use of new tools, in others the circumstances have accelerated the introduction of planned improvements, or driven the development of novel responses to deal with caseloads. Critically, data collection and analysis has been sustained through this period, and moving certain activities online is likely to have a lasting effect on court and tribunal operations.

For example, as Table 4.1 above shows, the number of civil cases handled by Victorian courts and tribunals was lower in 2019/20 compared to the two previous financial years. A period coinciding with COVID-19 and restrictions on the community and court and tribunal operations. This has obscured baseline understanding of the work and activities of Victorian courts and tribunals. As a consequence, analysis of court and tribunal performance must take this into account.

In response to COVID-19, the rollout of the new case management system for the Children's Court and Magistrates' Court was amended to fast-track delivery of electronic document lodgement and management components to enable a digital operating model.[154]

Like other courts and tribunals, the Magistrates' Court rapidly developed and implemented new ways of working, including limiting, suspending and modifying non-urgent hearings in response to COVID-19.[155] Modifications affected nearly all the Magistrates' Court's operations and programs. In the civil jurisdiction, urgent civil applications were prioritised using the Magistrates' Court's telephone and online platforms. All civil pre-hearings were transferred to telephone and non-urgent hearings were adjourned. Resolution of some civil matters also occurred 'on the documents' rather than through in-person hearings and alternative dispute resolution.[156]

In May 2020 the Magistrates' Court launched Online Magistrates' Court. This allowed parties to appear remotely using the WebEx platform.[157]

During the pandemic, the Children's Court prioritised child protection matters which involved children removed from the care of a parent, and children who might be placed on an order due to a substantial and immediate risk of harm.[158]The Supreme Court established a Virtual Hearing Taskforce during the pandemic, which developed procedures to enable the court to conduct virtual hearings. Part of the shift to virtual hearings included acceleration of courtroom technology upgrades, and judicial officers and staff working remotely. In addition, expanded access to electronic filing (eFiling) permits users to access their case information and documents online, and link to the Court's case management system.[159]

The Supreme Court reported that while it would never have wished for change in the way it arrived, "in responding through necessity we have accelerated longer-term projects to continue to modernise the Court and honed our focus on the needs of our Court users".[160]

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151   Supreme Court of Victoria (2020a), p.49.
152   Supreme Court of Victoria (2020a), p.49.
153   Magistrates' Court of Victoria (2020b), p.2.
154   Children's Court of Victoria (2020), p.55.
155   Magistrates' Court of Victoria (2020a), p.16.
156   Magistrates' Court of Victoria (2020a), p.16.
157   Details of the COVID-19 response are outlined in Magistrates' Court of Victoria (2020a), pp.15–16.
158   Children's Court of Victoria (2020), p.6.
159   Supreme Court of Victoria (2019), p.15.
160   Supreme Court of Victoria (2020a), p.11.

VCAT underwent a profound change to the way it operated during COVID19 restrictions, moving from in-person to audio and video hearings. Face-to-face hearings ceased, and telephone hearings were arranged for guardianship and residential matters.[161] All other matters were adjourned as VCAT established a new listing approach.

VCAT drew on its data to identify cases where urgent hearings were required, so they could be prioritised for telephone or videoconference hearing.[162] A moratorium on rental evictions and rent increases was introduced, as well as a new dispute resolution process for rent disputes involving money.[163] VCAT subsequently reported that the amount of pending residential tenancies matters increased substantially.[164]

In the County Court, matters were moved online, with significant restrictions on face-to-face operations, web-based lodging of evidence, virtual hearings, the elimination of most courtroom appearances and suspension of all new jury trials.[165] The Court also undertook technological upgrades to reduce reliance on paper documents and improve information security. Many of these measures are expected to continue.[166]

To deal with the disruptions posed by COVID-19, VOCAT developed a new online approach. Previously a largely paper-based system, VOCAT implemented online lodgement of applications and provided for further submissions by email. Directions hearings were conducted by telephone and WebEx.[167]

Digital transformation

The impact of COVID-19 restrictions has further highlighted the importance of digital transformation and demonstrated the need for modern, adaptable information technology systems to shock proof the judicial system into the future. All courts and tribunals have recognised for some time that digital transformation is vital to future function, particularly to improve services and user experience, as well as increasing efficiency and productivity in a time of increasing demand. Data collection and analysis are central to this.

All courts use data to build strong evidence-based business cases to fund new initiatives to respond to anticipated growing caseloads, and increased case complexity associated with changes to government policy, laws, and an expanding number of self-represented litigants.[168]

In recent years the County Court has piloted and expanded the use of electronic court books in its civil divisions, and piloted eHearings in the Common Law Division.[169] The Court is also upgrading in-court technology as well as the information and educational materials provided on its website. Some of these reforms were brought on as a result of the COVID-19 pandemic, and the Court's shift to virtual hearings and web-based approach to lodging evidence.[170] The County Court is also looking to develop a modern end-to-end case management system and improved business intelligence and data analytics capabilities.[171]

The Magistrates' Court is working to implement the Court Excellence Framework to improve performance measures, administration and data capability.[172] This is also seen as being an important, foundational step to providing "data for legal needs analysis and research into the justice system of Victoria".[173]

In addition to extensive reforms associated with a new case management system, the Magistrates' Court has expanded the audio-visual capacity of its courtrooms. and furthering the Magistrates' Court's respond to COVID-19.

The Supreme Court's 2020–2025 Strategic Statement provides that it will be a leader in innovation and embracing changes in technology and court process, while respecting the traditions that serve the Court and community

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161 Victoria Civil and Administrative Tribunal (2020), p.18.
162 Victoria Civil and Administrative Tribunal (2020), p.51.
163 Victoria Civil and Administrative Tribunal (2020), p.18.
164 Victoria Civil and Administrative Tribunal (2020), p.70.
165 County Court of Victoria (2020), p.9.
166 County Court of Victoria (2020), p.9.
167 Victims of Crime and Assistance Tribunal (2020).
168 See County Court of Victoria (2017), p.6. and County Court of Victoria (2017), p.4.
169 County Court of Victoria (2020), p.9.
170 County Court of Victoria (2020), p.9.
171 County Court of Victoria (2017), p.5.
172 Magistrates' Court of Victoria (2020b), p.2.
173 Department of Justice and Regulation (2016), p.85.

well.[174] The Supreme Court has recently invested in end-to-end digitisation of case workflow to improve court accessibility and efficiency.[175]

In 2018 VCAT embarked on a digital transformation journey: piloting, refining and implementing digital services to provide "faster, cost-effective dispute resolution for the community".[176] VCAT launched several digital initiatives in mid-2019: an online dispute resolution service; and an online guardianship portal. A new online application to support self-represented parties involved in consumer disputes was launched, initially to support civil claims, and is expected to serve as a model to inform the development of applications for other matters.[177] The Guardianship portal provides a platform to assist staff such as social workers and hospital coordinators make and manage applications about guardianship, administration, medical treatment and powers of attorney in Victoria.[178] VCAT report that the Guardianship portal has been a 'game changer', allowing people to 'submit, track and receive notifications about their case using a central portal' with information stored and readily accessible in the one place.[179] More recently, VCAT has commenced digitisation of the Planning and Environment Division.

Further data developments

The combination of planned digital and data projects, and the likely lasting effects of COVID-19 driven change, only serves to underscore the need to build contemporary, accurate and flexible systems into the future. Victorian courts and tribunals have identified key questions which stronger data collection and analysis can answer, to improve access to justice and a better experience of our legal system.

The new case management system in the Children's and Magistrates' Courts is expected to enable significantly improved data insights.

The Children's Court is particularly interested in user-centric design and practice.[180] One area where it is anticipated that improved data capability will afford new insights is in program design and evaluation. The evaluation work conducted will explore the benefits of specialist court programs for children, with an emphasis on outcomes.[181]

With improved data capability, the Magistrates' Court envisages opportunities to identify the impacts and benefits of reform and use data to inform and design programs and services.

The Magistrates' Court also reported particular data needs and insights associated with the operation of specialist courts and programs. Specialist courts and programs often used additional data systems to record additional data relevant to their users and operations. The case study on the Neighbourhood Justice Centre (NJC) in the next section explores how specialist operations collect and make use of additional administrative data.

The County Court is exploring how further data collection can provide more insights into court operations and reform. For example, it is reviewing what other data might be collected to help identify whether and how matter complexity may be changing, and factors associated with matter finalisation.[182]

The County Court is also investing in technology and infrastructure to improve data capability. Its new data warehouse and upgraded business software will support the design and evaluation of business improvement initiatives and increase understanding of its operations.[183]

Similarly, the Supreme Court is continuing to further expand its data capability by harnessing new information technology. The Court's Business Intelligence team is consolidating available data in a data warehouse to improve

174   Supreme Court of Victoria (2020b).
175   Das (2018).
176   Victorian Civil and Administrative Tribunal (2019), p.16.
177   Victorian Civil and Administrative Tribunal (2019), p.18; Victorian Civil and Administrative Tribunal (2020), p.26.
178   Victorian Civil and Administrative Tribunal (2020), p.27.
179   Victorian Civil and Administrative Tribunal (2020), p.19.
180   Children's Court of Victoria (2019), p.3.
181   Children's Court of Victoria (2019), p.6.
182   County Court of Victoria (2017).
183   County Court of Victoria (2020), p.14.

reporting capabilities.[184] A suite of business intelligence tools will provide real-time information about court operation.[185]

VCAT is seeking to replace its legacy case management systems and paper-based processes, and further improve online dispute resolution practices and tools, including self-directed alternative dispute resolution and online mediation through virtual hearings.[186]

Like others in the civil justice system, VCAT would like improved data and capability to undertake "predicative analytics and demand modelling".[187] They have identified the need for informative, good quality data and consistent practices. VCAT also intends to continue digitisation reforms, improve information available to users, the automation of some manual processes, and, ultimately, redirect resources to further assist tribunal users.[188]

VOCAT's operational model is being reviewed following recommendations made by the Victorian Law Reform Commission (VLRC) in its 2018 Review of the Victims of Crime Assistance Act 1996: Report.[189]

The VLRC recommended establishing a new state-funded financial and administrative model to aid victims of crime in their recovery. With respect to collection and reporting of data, the VLRC recommended additional data collection to monitor and improve scheme effectiveness. In particular, the VLRC expressed the need for more demographic information to identify people from vulnerable groups or groups that experience discrimination and disadvantage, including family violence victims and victims from culturally and linguistically diverse and Aboriginal and Torres Strait Islander backgrounds to improve scheme effectiveness and accessibility.[190]

A new financial scheme for victims of crime is planned to commence in March 2023. VOCAT has been working to support development and transition to the new scheme.[191]

4.5 Case studies

Some specialist programs in Victoria collect additional demographic information to inform and enhance operations, services, user experience and accessibility. Three of these are described in the case studies below.

These case studies provide examples of improved administrative data, enhancing utility and yielding valuable new insights, ultimately improving both court and tribunal performance and user experience.

As noted above, VCAT staff reported collecting Aboriginal and Torres Strait Islander status as a standard demographic for applicants and respondents. This case study provides further information on why VCAT collects Aboriginal and Torres Strait Islander status, and how it supports those participating at VCAT.

Koori Support Team at VCAT

Who they are

The Koori Support Team were established in 2020 to provide culturally appropriate and safe options for Victoria's Koori community to participate in VCAT proceedings. The Koori Support Team operate a telephone helpline and VCAT webpage dedicated to supporting Koori VCAT participants. It also works with stakeholders and community organisations to raise awareness amongst the Koori Community about civil justice issues, VCAT and the Koori Support Team.

184 Supreme Court of Victoria (2020a), p.49.
185 Supreme Court of Victoria (2020a), p.49.
186 Victoria Civil and Administrative Tribunal (2020), p.26.
187 Victoria Civil and Administrative Tribunal (2020), p.28.
188 Victoria Civil and Administrative Tribunal (2020), p.28.
189 Victorian Law Reform Commission (2018).
190 Victorian Law Reform Commission (2018), p.507.
191 Magistrates' Court of Victoria (2020a), p.25.

What they do

VCAT's Koori Support Team help in many ways, including by assisting with general advice about paperwork and forms, supporting participation throughout the VCAT hearing process, and referral to available legal assistance services such as Victorian Aboriginal Legal Service and other services. Support is available in-person, via telephone and email. The Koori Support Team can also arrange the use of VCAT hearing rooms in Oakleigh, Frankston and Bundoora that have been designed in a culturally sensitive way to promote better engagement with Aboriginal and Torres Strait Islander people. For example, the hearing rooms have been smoked, display Aboriginal flags, artwork and possum skin cloaks to help respondents feel more comfortable during a hearing.

Data developments

Knowledge gap

In 2016 VCAT commissioned PwC Indigenous Consulting (PwC) to examine Aboriginal and Torre Strait Islander experiences at VCAT.[192] The review found that little information or data regarding Aboriginal participation at VCAT was available. In particular, because Aboriginal and Torres Strait Islander status was not being routinely collected, there were gaps about things such as how many Aboriginal people attend VCAT proceedings, what outcomes they achieve, and whether they face difficulties participating in VCAT.

In response to the PwC research, VCAT undertook several initiatives to fill the identified gaps and improve available information, including improving visibility of Aboriginal and Torres Strait Islander people in VCAT administrative data.

Collecting data on Aboriginal and Torres Strait Islander status enables participation rates to be monitored. For example, low attendance rates at VCAT hearings may signal access and participation barriers. PwC reported anecdotal evidence indicating that 80 per cent of Aboriginal respondents in VCAT's Residential Tenancies List did not attend hearings.[193] Attendance was of concern as PwC further reported that attendance at hearings typically contributes to better or more favourable outcomes than non-attendance.[194] These findings echoed concerns previously raised in research about the high prevalence of renting issues faced by Aboriginal and Torres Strait Islander people and low appearance rates at VCAT hearings, and how that resulted in matters being determined without evidence or participation from the tenant.[195]

VCAT's Koori Inclusion Action Plan 2017-18 subsequently sought to improve this data collection.[196]

Use of data

Routine collection of information about Aboriginal and Torres Strait Islander status enables the Koori Support Team to engage and offer support to Aboriginal and Torres Strait Islander people involved in VCAT matters.

Through their telephone helpline and other internal mechanisms that collect information regarding Aboriginal and Torres Strait Islander status, the Koori Support Team can reach out and check with Aboriginal and Torres Strait Islander people involved in matters at VCAT, offer them referral to a number of support services, make arrangements for their matters to be heard in one of the Koori hearing rooms, or provide support at their hearing.

Importantly, information on Aboriginal and Torres Strait Islander status can be applied to VCAT matters retrospectively, allowing the team to engage with Koori people involved in VCAT matters at any stage of the matter. A priority for the Koori Support Team is further improving collection of Aboriginal and Torres Strait Islander status, and work is underway to further standardise how this information is collected.

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192   Victorian Civil and Administrative Tribunal (2017).
193   Anecdotal evidence was sourced from VCAT staff and stakeholders. PricewaterhouseCoopers Indigenous Consulting (2017)
194   PricewaterhouseCoopers Indigenous Consulting (2017).
195   Schwartz et al (2013), p.12.
196   Koori Inclusion Action Plan 2017-18.

Future steps

The Koori Support Team is working to develop a monitoring and evaluation framework and operationalise supporting data collection and measures. The framework will provide new and valuable data insights, to not only monitor the impact of the support provided by the Koori Support Team, but also access to VCAT by the Victorian Koori community, and difference made to VCAT operations.

For example, one insight from the Koori Support Team's work since its inception is how needs and understanding of VCAT and civil legal matters amongst those they engage with and support varies. Some are able to be easily supported to navigate and use VCAT's processes, being well equipped to make use of VCAT website and other information. Others have more complex needs and require more assistance and support. Capturing information about needs and support provided will enable the Koori Support Team to gauge and anticipate demand.

Capturing information about needs and support will also help anticipate the level of assistance likely to be required by different individuals, and for different types of VCAT matters, and inform the development of strategies to cater to user needs:

> *We want to challenge ourselves to adapt because we're always going to be trying to make the best use of our resources to reach the maximum number of people...Part of the challenge [is] that our most vulnerable people, the people who have the most complex needs, take up more time – and we don't apologise for that.*

Tailoring the support service the Koori Support Team provides to individual user's needs is a strategy to benefit both VCAT participants and operations. For example, having more participants who are more aware and better prepared for VCAT hearings is likely to have wide benefits, including potentially decreasing the number of VCAT hearings:

> *As far as the whole tribunal system, if the respondent is not there, then it can lead to the application being reopened in another, subsequent hearing. So as far as a business side goes, attendance does reduce the overall resources required for a matter to be finalised.*

The Koori Support Team are working to develop data measures for use in analyses to determine the difference they make, including whether their work increases attendance at VCAT hearings:

> *One of the big things that I would hope to get out of it is looking at the attendance ... particularly for respondents in residential tenancy matters, and how the Team's development and their support has influenced that attendance, because that really does lead to the more favourable outcomes.*

Data collection for the monitoring and evaluation framework is also intended to provide information to examine what aspects of the Koori Support Team's assistance is working well, who it is working well for, and what else might be required to facilitate and support engagement and participation in VCAT.

One guiding principle that the Koori Support Team is drawing on to develop the monitoring and evaluation framework is capturing user stories and experiences appropriately and respectfully. Qualitative data will add meaningful insight to administrative and other quantitative data. The insights that will be generated from the data collected will provide meaningful and new information about experiences of Koori people at VCAT.

The development of the Koori Support Team has potential to transform the accessibility and experiences of Koori people at VCAT, helping to make people feel safe and willing to exercise their civil rights.

The Neighbourhood Justice Centre is a specialist court operating several programs within the Magistrates' Court of Victoria. The way in which data, including demographic data, is collected and used by the NJC is reported in the following case study.

Neighbourhood Justice Centre

Who they are

Neighbourhood Justice Centre (NJC) is a unique, specialist, place-based community justice initiative, initially modelled on New York's Red Hook Community Justice Center, that has served the City of Yarra local government area for 14 years. NJC hosts a Magistrates' Court, the criminal division of the Children's Court, VCAT's residential tenancies list, VOCAT and a range of community and therapeutic support services.

What they do

Established to develop and test innovative justice programs, NJC seeks to: prevent and reduce criminal and other harmful behaviour; increase community confidence in, and access to, the justice system; and strengthen the community justice model and transfer of practices to other courts and communities. In response to identified community need, NJC undertakes crime prevention, community and stakeholder engagement, and education initiatives.

A notable feature of NJC's operation is its person-centred approach to criminal as well as related civil and other needs. Other key strategies are early intervention, appropriate dispute resolution, local problem solving, community participation and engagement, and one-stop integrated service delivery with a focus on holistic approaches to addressing the underlying causes of offending. NJC is also an International Mentor Court for Community Justice.[197]

Data use and journey

From inception, NJC has been committed to innovation and learning, including innovative data collection and ongoing evaluation efforts. NJC uses administrative data to report operational activities, to monitor, evaluate and learn, and in sharing its expertise with government and others. It is also developing its evaluation and forecasting capability to develop deeper understanding of user demand and outcomes.

NJC has also been on a data journey to improve data practices and capability by building its ability to collect, integrate and interrogate data available in a variety of platforms and from a range of sources. Recognising the bounds of its own administrative data, NJC partners with other relevant organisations and draws on other available data to identify community justice needs. Ultimately, NJC wants to know more about the difference it makes to community justice needs:

> *I would like to see a lot more data around what our current capacity for service provision is, what the demand out there is, whether we're meeting it and then projecting community needs.*

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197 The NJC was awarded this status by the Center for Court Innovation in New York for its unique approach to community justice and crime prevention. For more information, see: https://www.neighbourhoodjustice.vic.gov.au/neighbourhood-justice-on-the-world-stage.

Identifying local community justice need

NJC uses a wide range of data sources to identify change in community need. This includes both NJC data and other, place-based geographic information about the City of Yarra local government area, as well as collaboration and partnership with the City of Yarra and community and social services operating in the area.

One data initiative has been NJC's partnership with the University of Melbourne to build a statistical profile of the City of Yarra, examining demographic trends and factors affecting disadvantage and offending:

> *That modelling is looking back at five-year trends around demographics in the City of Yarra and then forecasting ahead five years. That will give us a model of change, as there's always been this gap in terms of having a good handle on what's been and where things are moving.*

One of the main data challenges NJC is also working to overcome concerns the disjointed nature of the disparate data sources it uses, and the work that needs to be done to 'connect dots.' One advantage of the user and client data system NJC uses for its community and social support services, Trackcare, is its capacity for user-centred analysis. However, getting this database and the current court data system to 'talk' is an ongoing challenge:

> *The client services data show the number of different professionals engaged around the client and what is happening. But then, that doesn't talk that nicely to the courts data. And to get it to talk, there is a lot of manual entry and analysis.*

Another challenge, and a consequence of adopting data-informed practices, is the importance of sound data capture and entry.

In addition, NJC is anticipating overhauling data infrastructure as part of the new database platform being implemented for the Magistrates' Court of Victoria. This provides opportunity to improve and streamline 'data connectedness' and facilitate greater person-centred analysis and insights.

Monitoring, evaluation and learning framework

NJC operates several initiatives that have an ongoing need for information and data for monitoring, evaluation and learning. NJC is building a framework populated by empirical data to support operational reflection and forward planning by providing timely and streamlined access to data. For instance, the framework will assist monitoring, evaluation and learning about the Peacemaking Service, a conflict transformation program for citizens, groups and agencies in the City of Yarra that provides conflict resolution and restorative practices:

> *We will look at things like the Peacemaking Service, and build up the data to look for what activities we've done in the space? Who've we engaged with? What have the outcomes been? And what can we learn from that about our operations and about our community as well.*

Another service change NJC is seeking to learn more about is how the hybrid operational model employed in response to COVID-19, with more activities moving online, has affected user experience:

> *One area I want to look at, is user experience, now we're in a hybrid service model. Because we've had a face-to-face emphasis on service and culture here, and then going online as much as possible during COVID. And now there's a bit of a mix. So what impact that's had on our clients?*

User, client, community and stakeholder feedback

One advantage of place-based initiatives is that investment in community engagement and development can provide greater insight into court users and target communities. NJC does this by collecting user, client and community feedback. It intends to employ co-design approaches and two-way communication through a standing community advisor and consumer panel:

> *The idea of that is not just for feedback, but so that when we're designing new programs, we can do it alongside community members and get their input as we go. But we will also use the same panel for monitoring, evaluation, feedback.*

Creating opportunities for structured, ongoing interrogation of data with local community, stakeholders and other subject experts also helps to test and provide deeper data insights in some areas. This provides opportunity to question what data means and more fully consider what it shows, what is happening, and what is likely to happen in the future. A culture of discussing and using data, including broader community and stakeholder representatives, also enables proactive responses to identified trends.

Aboriginal hearing day

Due to its community and user-centred focus, and specialist court operations, NJC can identify and respond to evolving community and court needs and use data to monitor its responses and innovations.

One example is how NJC drew on observational and administrative data in instituting an Aboriginal Hearing Day, in turn supporting implementation of community engagement and culturally appropriate and safe practices:

> *The initiative for the Aboriginal hearing day came out of not just data, but the number of Aboriginal people not attending and not appearing.*

Future steps

NJC has plans to further improve its data measures and use to provide additional insights about achieved outcomes. For example, NJC is looking to add wellbeing and impact measures that are consistent with its holistic, integrated approach to community justice to measure the difference it makes to court users and the community. The challenge is developing measures beyond those traditionally collected by courts and other justice institutions:

> *What we probably need to do is need to build more capacity to both be able to mine our data and develop standardised measures, and the right foundational measures. There are tools out there for measuring well-being. Some of those indicators, and which of those are going to be relevant, we can operationalise and access from our own data.*

Another organisation that interviewees identified as collecting information about court users, and which plays a different role to Victorian courts and tribunals, was Court Network. Court Network has been on a strategic data improvement journey to increase what it knows about its services and to improve its ability to support Victorians using courts and tribunals. In particular, Court Network has improved their systematic collection of user demographics, which it uses to drive operational improvement and evaluation.

Court Network

Who they are

Established in 1980 in Victoria, Court Network is a frontline not-for-profit community organisation that helps court users to better use and navigate the court system. Court Network services are provided by a pool of more than 500 trained volunteers.

Court Network operates in 28 metro and metropolitan court and tribunal locations in Victoria. They also operate in several Queensland courts and recently established a telephone service which is available to courts users in both states.

What they do

Court Network offers a free, independent information and support service for all applicants, respondents, victims, witnesses, defendants and those attending court with them.

Court Network aims to empower and instil confidence amongst those using the court system and support the more efficient administration of justice. They do this by providing support, information and referrals for people attending court as well as advocating for the needs of court users. They aim to support access to justice for vulnerable and disadvantaged court users experiencing challenges navigating the court system.

Court Network is not a legal assistance service and does not provide legal advice. It does, however, provide information and support to connect those in need with available legal assistance services.

Data journey

Since March 2020, prompted by COVID-19 disruptions, Court Network underwent a profound shift in operations and management and use of data. This shift affected data platforms, methods, and processes as well as the purpose and goals underpinning data collection and management.

Prior to COVID-19 (March 2020) Court Network used a paper-based system for data collection and relied on volunteers completing a tally sheet at the end of their shift in court. The information was collected and collated monthly, and manually entered by staff members. The COVID-19 disruption prompted Court Network to rethink its data use and needs.

Data collection changes

Suspension of face-to-face services in March 2020 accelerated development of a Telephone Support Service, (the Service) launched in May 2020. Established to support court users, the Service provides a range of information to callers, including explaining court processes, what to do next, how to get help with security issues in court, referrals to legal services, and where to get help on other issues such as housing, domestic violence, and mental health. Implementation of the Service prompted questions about data collection and was an opportunity to implement new processes for data collection:

> *...with the establishment of the new service model, the telephone support model, ... that prompted us to obviously look into things differently. And that was an opportunity to start something from scratch with appropriate systems in place. Because we have been pushed into that digital space, that prompted us to think about data collection in a more holistic and more strategic way. And that's when we started having the conversations about having a digital data collection form.*

The new service allowed Court Network to reach court users before they attend court and overcome barriers caused by geography and lack of accessibility.

Data use

The primary purpose of Court Network's data collection is to monitor services, ensure they are sustainable, and acquire and secure funding. The new digital data platform provides a richer data set, and more sophisticated operational insights about Court Network service users:

> *What became really apparent was how rich our service provision was, and we knew it from the storytelling. Our volunteers would provide us with de-identified case studies, or examples of moments where they've been present to a court user and the court users just let something out. That might be a really pressing need around homelessness or family violence, and it may not relate to the matter in court on that day.*

Court Network wanted to know more about their service users, so they implemented systematic collection of more comprehensive service user demographics. For instance, for data collection work in the Magistrates' Court: gender (female, male), client type (applicant, respondent, victim, witness, family/friend, other unknown), jurisdiction (criminal, family violence, civil, other, unknown), who initiated contact (outreach, referral, Orange door), and type of assistance given (information, support, made referral and Orange Door) are recorded.

For the telephone service, and as a new service model, Court Network collects even more information, and captures a wide range of information and feedback to help measure the scope and impact of Court Network's services.

Rich data about users enables trends to be identified and services and training to be improved:

> *We can find really interesting trends, the number of men, who have got legal representation in family violence matters, and women just don't. So, when we're delivering our family violence training, we can talk about [the] trends we're finding [about] the people we're talking to. So, it's fantastic.*

Improved understanding of service users has also identified training needs:

> *It's really important for me to be able to find areas that we need to do further training in. If we have a whole lot of similar matters coming up, maybe we need to enhance our training. Or if our data is telling us that there's a lot of family violence - what else can we put in? Self-care [training and support]. So, it really is helping us to be very responsive to the needs of our volunteers, as well as be really clear on what the needs of court users are.*

Aside from conventional output measures, such as how many people were assisted, Court Network also measure what they achieve in terms of user experience, and how their services help court users navigate court:

> *...we actually know it has a huge impact on court users and other court staff in the court, you know...*

Broader and richer data has also piqued interest and prompted new questions about operations and new data insights, not only with Court Network staff, but also funders:

> *This whole discovery stage...being really curious, in digging deeper, it's quite exciting, because it gives you so much insight into your work and opens up so many possibilities. I think it's now [about us] going to our funders and saying, 'This is what's possible.' And I know that we have already changed the format of some of our quarterly reports that go to funders, and they have a lot richer data.*

New data insights can point to new needs, opportunities and strategies, and also challenges:

> *... this whole data journey discovers so many opportunities, so many needs. But it will definitely be a matter of prioritising, because we simply won't be able to follow up on everything that we discover.*

Future steps

Impact measurement framework

As Court Network continues its data and discovery journey, they are developing a framework to measure the impact, appropriateness, efficacy, and sustainability of their services for court users throughout Victoria.

Collaboration

Court Network is also seeking to use and share data insights and findings with others, to improve the justice system and court user experience. Court Network understand they are uniquely positioned to collect important information about court users due to the independent position they occupy within the court system:

> *I think we are uniquely positioned to collect some data in a very different manner. I know that courts themselves do that, but how we interact with court users, puts us in a in a different position.*

5. Summary and discussion

This chapter summarises the findings and discusses their implications. It then sets out strategies to enhance the usefulness of administrative data in Victorian courts and tribunals.

5.1 Summary of findings

Over the last ten to fifteen years, the administrative data collected and used by Victorian courts and tribunals has improved substantially. Signing up to the International Framework for Court Excellence has set Victorian courts and tribunals on a path of continuous improvement. While data consistency and integration challenges remain, there is strong evidence of improved data quality, capability, and governance.

Each court and tribunal examined was on a data improvement journey. This included data collection, quality, analysis, and other uses. There were examples of step-change development with major investment in new information technology, and strong appetite for better data systems and insights.

Successive civil justice inquiries and reviews have pointed to a lack of civil justice data, and their recommendations to build data capability appear to be bearing fruit.

As our findings indicate however, there are also challenges using administrative data and limits to its utility. Some stem from the capacity of legacy data systems; others relate to the competition for resources in the face of other pressing demands. More broadly, there are also the wider challenges stemming from lack of shared understanding of the utility and value of improved administrative data collection and analyses.

Shared needs but varied systems

At base, all Victorian courts and tribunals use administrative data to meet their operational and reporting requirements. However, they use different systems and employ varied practices to do so.

Operational needs prioritised

Court and tribunal data is typical administrative data – information principally collected and used as part of the everyday function of organisations.[198] As the function of courts and tribunals has evolved, and with growing interest in performance measures and monitoring and evaluation, application of available administrative data has been expanded.

Administrative data nevertheless has limitations. While it has been adapted to measure and report against key performance metrics, its utility for other purposes, such as planning, monitoring and evaluation, research, predictive modelling and forecasting is limited by the available data points.

Notwithstanding rapid advancement in information technology affording unprecedented data capability, court and tribunal data systems have lagged behind other institutions and sectors, such as health, education, and welfare. However, there was evidence that data systems and practices were recognised as a key mechanism to drive

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198   Connelly et al. (2016); Grimes (2010); Jones et al. (2019).

improvement in the way in which courts function and serve their users. While resource constraints also mean that courts and tribunals tend to collect only the minimum data required for operational and reporting purposes, this did not prevent the collected data being used for planning; performance management; research; monitoring and evaluation; forecasting and demand modelling; and business cases.

Ultimately, however, the utility of administrative data for these wider purposes was found to be limited by the nature of the administrative data systems and available measures and metrics. There are clear opportunities to further improve the use and utility of court and tribunal data. These include collection of additional data/data points, linking data and data systems, and seeking opportunities to improve the consistency of data points across courts and tribunals to support system-wide analysis.

Varied systems, practices and measures

Victorian courts and tribunals use different data systems, practices and measures, and this reflected variation in the utility of data. Unsurprisingly, the administrative data consisted largely of administrative records, and was used primarily to generate activity and output counts, although it is also repurposed to report on key performance indicators.

Routinely recorded data included litigant or user information; legal matter type; stage; outcome; and manner of disposal. The ways in which legal matter type was recorded, and what litigant or user information was collected, varied. There was evidence of inconsistency in legal matter type classification and user demographics between courts and tribunals. Whether and how legal representation status was recorded also varied: sometimes litigant representation status was recorded, sometimes self-representation status had to be inferred from other data.

The datasets also lacked demographic measures and matter characteristics, and as a result these variables were not available for operational and performance analyses. Variation limits opportunities to conduct system-wide analysis. Lack of demographic information limits the ability to see people in the data, understand change, and tailor responses to need.

Evidence of data development

In addition to significant system upgrades in some courts and tribunals, others reported periodic modifications to upgrade administrative systems.

Interviewees also frequently described more than a decade of improvement in administrative data quality and use. Business intelligence software, data dashboard visualisation tools and stronger reporting capability, offer unprecedented insights into several aspects of court and tribunal operations. Where previously information about caseload and backlog may have only been calculated for annual reports, such information is now available in almost real time.

There was also evidence of court and tribunal administrative data being used for new analyses such as demand modelling and forecasting. Such insights support data-led approaches to future planning, and identification of strategic actions, but these were constrained by the data points collected.

Quality data but limited scope

The quality of data entry was high where data practices were well established and incorporated strong checking and review practices, including adequate staff resources. Interviewees reported that new or modified data practices, however, were prone to error before such quality assurance practices had been established. The inference is that establishing strong data practices for every data point is essential to increase data quality.

Despite the high quality of data where practices were well established, its utility was again limited by the available data points. Interviewees reported significant appetite to collect additional information to analyse, monitor and evaluate court and tribunal operations and innovations. Several critical factors affecting court and tribunal operations are not currently canvassed in many administrative data systems. This limits the scope and utility of this data.

User and matter characteristics

Where they were collected, demographic and matter characteristics were regarded as important to analysis,

monitoring and evaluation. For example, how Aboriginal and Torres Strait Islander people use and experience civil courts was of particular interest, motivating the introduction of standardised collection of Indigenous Status in VCAT, and plans to do so in other courts. Each of the case studies in this report (VCAT's Koori Support Team, the Neighbourhood Justice Centre, and Court Network), illustrate increased data utility with demographic information, and how this can inform planning and evaluation. The ability to see First Nations users in data is key to responding to their need.

Interviewees also reported that matter complexity was increasingly identified as a factor affecting case management and other aspects of operations and performance.

Approximately 70 per cent of the civil matters initiated each year in Victorian courts and tribunals are in the Magistrates' Court and VCAT. Given both the Magistrates' Court and VCAT have high rates of self-representation,[199] more information about the performance and experience of civil justice at this level would be of significant value.

While there was interest in collecting additional data for use in analyses and generating new insights, there were also measurement and resources challenges in doing so.

5.2 Limitations and opportunities

The findings indicate substantial data improvement in Victorian courts and tribunals over several years. They also point to limitations in the administrative data currently available to Victorian courts and tribunals, and opportunities to increase its use and utility.

Unless thought is given to the data points required to answer critical policy questions at the point of design of new data and case management systems, the utility of data will remain limited.

However, it is clear that Victorian courts and tribunals are on distinct data development journeys and are at different stages of development. Some are reviewing and extending the data points collected to provide new insights. It is also apparent that circumstances are ripe for further work to unlock a fuller understanding of critical factors affecting court and tribunal performance and access to civil justice; and effective and efficient responses to them.

Leadership and co-ordination of the Courts Council, together with support of Court Services Victoria and commitment to continuous improvement under the International Court Excellence Framework, paint a clear picture of Victorian courts and tribunals aspiring to further improve data use and utility.

Limits of administrative data

Administrative data systems are principally designed and intended to serve administrative and operations functions.[200] From a research and evaluation perspective, administrative data is found not made, typically with little input from researchers or evaluators in system design and the data collected.[201] This alongside historical prioritisation of operational needs over insight and understanding has limited the scope and usefulness of the data available to courts and tribunals.

The rise of big data and business intelligence technology has prompted efforts to mine administrative data for new insights,[202] and there are new techniques to link and integrate data to provide new perspectives. However, data remains limited by its historic use, narrow scope and the data points collected and available for analysis.

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199   For example, self-represented people make up a high proportion of VCAT applicants (VCAT (2019), p.46). However, other studies have found a shortage of data on self-represented litigants makes it hard to determine change over time, but that anecdote and matter volume suggests that the Magistrates' Court deals with high volumes of self-represented civil litigants. See also Department of Justice and Regulation (2016), pp.472–473.

200   Connelly et al. (2016); Grimes (2010); Jones et al. (2019).

201   Connelly et al. (2016).

202   Including advances in the ability to process and analyse text (i.e., natural language processing).

Activity and performance reporting

Administrative data is used to count and report Victorian court and tribunal activity against key performance measures, and increasingly to draw organisational insights. High-level summary and performance measures are not, of themselves, informative with respect to many factors affecting performance.

To understand performance more fully, there is a need to measure and account for key factors, for example matter complexity. Activity counts provide only broad-brush information. Interviewees cited how matter complexity affected court and tribunal performance and how new case management approaches had been implemented to address this issue. To date there is limited empirical evidence setting out whether or not new approaches have been a success, although there are indications that targeted case management and systematic triage of matters can improve efficiency.[203] Such evidence is vital and where evaluation is taking place findings need to be shared.

Data deficiency

Successive inquiries and reviews identified deficiencies in the nature and scope of civil justice administrative data available to assess not only performance, but the impact of civil justice reforms. This includes both broad reviews of civil justice arrangements; access to justice; and civil procedure; as well as inquires examining particular areas of law or the role of the justice system in responding to pressing social issues.[204]

Civil justice inquiries and reviews which have sought to use administrative data to investigate and assess civil justice performance, have been frustrated by both the availability and utility of existing data.

One example is the lack of consistent high-quality data on self-represented litigants, which limits the ability to assess their impact on courts and tribunals.[205] Another is the lack of data about family violence survivors. For example, Victoria's Royal Commission into Family Violence found that Victoria did not collect the data necessary to understand how all parts of the family violence and justice systems were responding to family violence.[206] Amongst its recommendations, the Commission highlighted the use of new technology to support improved data collection, analysis and reporting, which was one impetus for substantial investment by the Victorian Government in a new case management system for the Magistrates' and Children's Courts.

Emergent global thinking, initiated by OECD interest in how access to civil justice supports inclusive economic growth, has also identified the limits of available administrative data as a barrier to understanding and assessing court and tribunal operational and performance, and to building the evidence base for reform.[207]

Inquiries have highlighted the improved data collection and use, and more recently point to improved information technology, as the means to increase the utility, reliability and validity of available data as well as the questions it can address. Of course, overcoming civil justice system data deficiency comes at a cost – in time, resources, and expenditure – but can yield significant benefits in optimising processes and making a system responsive to need.

New information systems

New information technology systems provide new capability to change the nature and scope of collected information. They can enhance monitoring and evaluation of performance, as well as better assess the impact of civil justice reform on court and tribunal performance and outcomes for users.

In an era where big data and business intelligence tools afford unprecedented insights, and data driven and technological transformation is wide-ranging in government and the private sector, justice institutions have been characterised as reaching the end of the beginning of transformation.[208]

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203 Clayton (2018).
204 For example, see Australian Law Reform Commission (2000); Victorian Law Reform Commission (2008); Productivity Commission (2014); Victorian Department of Justice and Regulation (2016); Law Council of Australia (2018); State of Victoria Royal Commission into Family Violence (2016) and Royal Commission into Victoria's Mental Health System (2021). See also Australian Law Reform Commission (2000) for review of the previous 20 years of access to justice and civil justice system inquiry in Australia and similar legal jurisdictions.
205 Richardson et al. (2018) p.IV.
206 State of Victoria, Royal Commission into Family Violence (2016), p.13.
207 OECD (2019).
208 McDonald (2021). Also see Smith (2017) and Susskind (2019).

Long-predicted digital transformation of the justice system has now reached courts and tribunals in many parts of the world, and maintaining operations through the COVID-19 pandemic has been a further spur, including in Victoria. Experience in rapidly shifting some types of matters and procedural events to online platforms has generated new practices and raised new questions.[209]

Step-change development and incremental system improvements

The fact that Victorian courts and tribunals use several different administrative and case management systems results in inconsistency in system functionality. Predictably, older systems were more limited in what information was collected and how it could be used than newer systems.

New administrative and case management systems for a particular court or tribunal would be state-of-the-art for the price at that time, with the consequence that courts and tribunals leapfrog each other in their access to contemporary technology. For instance, the new case management system for the Magistrates' Court and Children's Court once implemented will put them ahead of the information technology systems used by other Victorian courts and tribunals.

Between step-change development, the findings also point to periodic and incremental system modifications to improve system function and utility. Court or tribunal specific step-change advances, in combination with ongoing system improvement, pose data co-ordination, linkage and integration challenges, and limit system-level understanding. System-level insights require better coordination of technology and data journeys.

Co-ordination, integration and linkage challenges

While standardisation improves prospects for data integration, the way in which court and tribunal administrative and case management systems have developed, means that there are also variations in practices and capability across Victoria's courts and tribunals.

Data co-ordination, integration and linkage challenges were reported by interviewees. Variation in data practices, collection and classification, make aggregating and integrating data difficult. Where data varies, it may only be meaningful to integrate data to a higher level of abstraction, such as simply aggregating counts of civil legal matters, rather than offering a more detailed taxonomy of civil matter types. Consistent variables and units of measurement facilitates integration and analysis of administrative data.[210]

There are data system and practice challenges to overcome to garner further insights from data integration at more finely grained levels. Improved data co-ordination, integration and linkage also hold the promise of more sophisticated and nuanced understanding at a system level, such as patterns in the type of civil legal matters arising in different courts and tribunals; the parties involved; duration, resolution, and outcomes. It would also increase prospects of identifying how change in one part of the Victoria's civil justice system affects the others.

This would open up a new era of understanding of court and tribunal operation and performance. Doing so requires a clear and shared understanding of the wider purposes of courts and tribunals and improved data capability. It also requires a shared vision, leadership and investment of the resources needed to do so.

Understanding court and tribunal operations

Improved administrative data utility can lead to better understanding of court and tribunal operations, and more powerful insights into the operation of the civil justice system and the accessibility of justice.

There is scope to significantly improve: monitoring and evaluation; demand modelling and future planning; inform human-centred design; digital transformation and other strategies seeking better, cheaper, quicker and easier civil justice, and to make persuasive business cases for investment in reform.

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209   See Byrom et al. (2020), Denvir and Selvarajah (2021) and OECD/Law and Justice Foundation of New South Wales (2020).
210   Wallgren and Wallgren (2007).

Monitoring and evaluation

Monitoring and evaluation in Victorian courts and tribunals is done through performance measures and reporting. Performance measures for Victorian courts and tribunal civil matters include average cost per case; case clearance rate; court file integrity; and timeliness of case processing.[211]

These measures provide limited insights into performance, and there is much more to understand about the factors affecting operation of civil justice; what might be done to improve operation and performance; and whether reform has been successful.

It is common for administrative data, where possible, to be repurposed for monitoring and evaluation because the data already exists and does not require additional collection. But the results are only as good as the data and measures available. Where additional data collection is needed, it will need to be resourced.

While administrative data can often be repurposed and manipulated to provide proxy measures, its utility can also be increased by additional and augmented data collection. This happens frequently when organisations seek new information, or when reporting requirements change. Change in routine administrative data collection, however, will invariably have data system and resource implications. Resourcing is required for collection and input of information, and to reconfigure the data systems in which it is recorded.

Where there are insufficient resources to change and adapt existing administrative systems, additional information for monitoring and evaluation can still be collected as a snapshot. For example, collection of additional information for an identified period can be used to explore additional data points required for monitoring and evaluation.

Some evaluation questions can be answered using administrative data alone, while others require additional alternative forms of data. Depending on the evaluation questions to be investigated, this can include a mix of both quantitative and qualitative measures such as the collection of experiential and observational information. Administrative data, however, can be used in combination, to gauge the scope or extent of phenomena, such as overall number of cases, different types of legal matters, and where possible, different types of parties, users and litigants. Importantly, to gain a full understanding of how courts and tribunals function and respond to the needs of users, administrative and other forms of data should be considered complementary rather than alternatives.[212]

International Framework for Court Excellence

The International Framework for Court Excellence used by Victorian courts and tribunals supports monitoring and evaluation through a self-assessment and a continuous improvement methodology. It provides guidance on performance measures as well as tools and indicators. To date Victorian courts and tribunals have taken on some of these measures, and Court Services Victoria regularly report average cost per case; case clearance rate; court file integrity; and timeliness of case processing.[213] There is also opportunity to go further.

The Framework makes clear that the foundation for planning and performance is "accurate, comprehensive and reliable information and data".[214] This data may be drawn from multiple sources, including administrative and case management systems; financial and registry systems; and surveys of staff, lawyers and other court users. The latest edition of the Framework also identifies excellent courts as 'shifting their data focus from simple inputs and outputs' to court user satisfaction, quality of service, and quality of justice considerations.

One of the features of excellence the Framework promotes is affordable and accessible civil justice. This requires identification and consideration of court user information and access needs. The Framework identifies access to justice considerations as engaging with the wider social context of the court system, and the systemic barriers faced by different members of the community.[215]

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211   Court Services Victoria (2019), p.29.
212   OECD/Open Society Foundations (2019).
213   See Court Services Victoria (2019), p.29.
214   International Consortium for Court Excellence (2020), p.35.
215   International Consortium for Court Excellence (2020), p.32.

This points to the importance of information about the needs and experience of different groups of court users, the barriers faced at different stages of court and tribunal processes, and how the needs of different users affect operational performance.

The Framework sets out these features of court excellence: regular court user feedback to measure user satisfaction and understanding and identify areas of improvement; provision of relevant and useful information to assist litigants-in-person and other court users; language interpretation services; and use of technology to make court processes and services more accessible.[216]

Administrative data provides critical information about court and tribunal activity. Collection of additional demographic and legal matter characteristics could provide further important data on what happens for different groups of court users, and in different types of civil matters. Such information can improve information available to support court and tribunal efforts to continuously improve against several key areas of excellence, including strategic court management; court infrastructure; proceedings and processes; court user engagement; and affordable and accessible court services. It can also inform the design of improved operations.

Human-centred design

Growing interest in how party and user factors affect court and tribunal performance is consistent with a wider shift to human-centred approaches to the design of systems and services. This is also consistent with a strategic shift to client-centric design and provision of legal assistance services in national legal assistance policy, and growing understanding of how access to civil justice affects issues such as economic development and personal wellbeing.[217]

Human-centred design is an iterative process which focuses on user needs and behaviours.[218] One common technique is to identify and describe the spectrum of user needs and preferences, illustrated through user personas and typologies. Different user personas may require different strategies to meet their needs. Application of human-centred design principles that takes proper account of specific needs and behaviours of different users can result in a mix of effective solutions specifically designed for a multitude of legal issues and human experiences.[219]

Although there is no single way of doing human-centred design, approaches are premised on the significant value added by involving human perspectives in all aspects of the problem-solving process, from concept and framing through to options and preferred solutions.[220] Human-centred design is improved by data and information about human behaviour. Administrative data can help contextualise scope and scale, and where measures exist, provide important information about different groups of users.

Better visibility of different user groups in administrative data could improve human-centred design approaches to court and tribunal operation and performance, from identification and testing of potential solutions, through to monitoring and evaluation of the impact of innovation and reform. One example is the work of VCAT to systematically and consistently record Indigenous status, enabling human-centred design in the tribunal's support program.

Data and design-driven approaches to civil justice innovation has recently emerged as a new multidisciplinary field, which seeks to improve accessibility, operations, experience and outcomes in civil justice. For example, Stanford University's Legal Design Lab uses a combination of human-centred design and empirical data to reimagine operation of the legal system, and how new technology, services and policy can bring effective innovation and promote equity and access to the civil justice system.[221]

Digital transformation and COVID-19 recovery

Related to human-centred design, is a growing interest in harnessing communication technology and new online digital platforms to improve operation and access to civil justice provided by courts and tribunals.

In 2019 in the lead up to substantial reform to digitise courts and tribunals in England and Wales, improved

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216   International Consortium for Court Excellence (2020), pp.29–30.
217   McDonald (2021); Pleasence and Balmer (2019); Chapman et al. (2021).
218   Department of Premier and Cabinet (2020).
219   See Perry-Petersen (2018), p.50.
220   Hagan (2018).
221   See, for instance, the Legal Design Lab at Stanford University https://law.stanford.edu/organizations/pages/legal-design-lab/.

collection of demographic information was identified as being critical to measure and analyse impacts, benefits and consequences for different groups of users.[222] Concern was raised about exclusion and barriers for some groups associated with 'digital by default' or 'digital first' strategies, and what the impacts might be for court and tribunal operations and performance. This highlighted the need to establish appropriate data collection to assess digital reform.[223]

There is clear evidence of Victorian courts and tribunals embracing digital technology, and how it was accelerated by the COVID-19 pandemic. While change has been accelerated, the implications of moving some court and tribunal functions and operations online are far from clear.[224]

Administrative data and key performance measures provide critical information in monitoring and assessing significant civil justice transformation projects, including digital. With improved data and measures however, more nuanced analysis is possible, the results of which could inform better practice, procedure and system design.

Early assessment of moving some court and tribunal operations online in overseas jurisdictions points to barriers for certain user groups.[225] Rapid review of the impact of COVID-19 on the civil justice system in England and Wales has once again shown administrative data as both a barrier and solution to improved understanding and assessment.[226]

Byrom, Beardon and Kendrick found that analysis of administrative data was critical in determining the impact of COVID-19 restrictions on court operations and hearings, but it could not provide insights into the effect on different court user populations, or how matter and hearing characteristics affected outcomes.[227]

Against the backdrop of a need to improve the quality and quantity of court and tribunal data generally, Byrom, Beardon and Kendrick found urgent need to capture information on the effect on vulnerable groups and parties during the pandemic, including lay users and self-represented litigants. Analysis of administrative data revealed substantial change in litigation numbers. However, it was not capable of providing information about whether or not there had been change in the types of matters being brought by different types of claimants. While stakeholders provided anecdotal evidence of change:

> *...[T]he absence of accurate, routine data collection on the cases being heard across the civil justice system and the characteristics of those who bring them makes it impossible to confirm these observations. If verified however, these findings would indicate that the proportion of vulnerable people and litigants in person participating in remote hearings may be artificially repressed by COVID-19 measures, with implications for findings regarding the efficacy of remote hearings.*

Such analysis and verification would require modification of administrative data systems to capture additional information about civil matters. The authors recommended also recording information about the online technology and platform being used, as well as key court user information such as date of birth; postcode; English as a foreign language; protected characteristics data;[228] and legal representation status.[229]

Byrom, Beardon and Kendrick's review highlights the potential for new measures to add value and utility to administrative data available to Victorian courts and tribunals with insights about the sub-groups of court and tribunal users. It also shows the importance of having data capable of revealing impacts of substantial changes. The tables in Appendix B show that civil matter initiations in Victorian courts and tribunals declined during the COVID-19 pandemic, but the findings of this report show that the demographic data collected is not sufficient to show how different groups may have been affected.

222 See Byrom (2019).
223 Denvir (2018); Denvir and Selvarajah (2021); Byrom (2019); Smith (2019).
224 Townend and Magrath (2021) found that COVID-19 restrictions in England and Wales had similarly accelerated use of digital technology for civil and criminal hearings, but that limited data collection on hearing and outcomes has prevented data-informed evaluation that would otherwise help improve future design of the justice system.
225 See Denvir and Selvarajah (2021).
226 Byrom et al. (2020).
227 Byrom, et al. (2020).
228 Under the Equality Act 2010 (UK) the protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
229 Byrom et al. (2020), p.83.

Demand modelling and future planning

Use of administrative data for demand modelling and future planning is another area that could be improved by collection of additional user and matter characteristics. In what types of matters, and for what types of users is demand changing? How are demands on courts and tribunals and user needs changing? And what are the appropriate resources to maintain and extend court excellence?

Administrative data also generates critical information to assess accuracy of forecasting and demand modelling. More sophisticated measures and data lead to better modelling and forecasts and more effective future planning.

Better, cheaper, quicker, easier civil justice

Aspirations in civil justice usually centre on how it can be made better, cheaper, quicker, and easier. Related to such questions are broader perceptions that civil justice is 'in crisis' and in need of reform, periodically giving rise to civil justice and access to justice inquiries and reviews.[230] Research demonstrating substantial unmet civil legal need as well as inequality in the use of courts and tribunals across the community raises fundamental questions about their accessibility.

As high-profile civil justice institutions, courts and tribunals are frequently the target of reform efforts to achieve better, cheaper, quicker, or easier justice. Court and tribunal administrative data, however, is limited in its capacity to assess the impact and benefits of such reform.[231]

Assessment of whether court and tribunal reforms have worked, and what impact they have had on court and tribunal performance reforms, would be improved by the collection of additional administrative data points.

There are also calls for investment in other types of data required for more rigorous and robust evaluation. In many respects there is a direct trade-off between the two. The more meaningful administrative data is for assessment and evaluation, the lower the investment required in additional data collection for assessment and evaluation. For example, if one of the goals of a reform is more positive experience for Aboriginal and Torres Strait Islander peoples in courts and tribunals, then being able to easily and reliably identify them in administrative data will reduce the burden of additional data collection for evaluation.

Business Cases

Compared to other institutions and sectors that compete for public funding, and even compared to the criminal justice system, business cases for investment and reform in civil justice are plagued by a lack of available and meaningful data.

There is a long-recognised need to improve the evidence base on what civil justice reforms work.[232] Compared to other sectors such as well-established practice in medicine, evidence of what works remains in its infancy for civil justice.

One of the main challenges in obtaining funding and resources to improve administrative and other data collection is a Catch-22 of lack of supporting data, and anticipated rather than demonstrated benefits.

The findings suggest that the limits of the current administrative data fields are being approached. The case studies demonstrate potential operational and performance benefits of improved understanding about different types of users. These developments also go hand in hand with contemporary user and human-centred approaches. Victorian courts and tribunals will require further investment to extend data utility and to use and unlock a new era of empirical insight.

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230 Farrow and Jacobs (2020); Productivity Commission (2014); Victorian Department of Justice and Regulation (2016).
231 McDonald (2021), p.733.
232 Farrow and Jacobs (2020); OECD/Open Society Justice Initiative (2016); Pleasence et al. (2014).

Factors affecting court and tribunal performance

The focus on operational need in data means that factors which drive demand, and the characteristics of parties and matters which affect case management, resolution, duration, and disposal, are not always clearly revealed. Increasingly, however, party capability and matter complexity have been identified as factors affecting matter resolution and duration.[233]

Stage One of this project found Victorian legal assistance services were increasingly focusing on understanding client and matter complexity in efforts to monitor and evaluate service performance and outcomes.[234] The findings in this report similarly demonstrate Victorian courts and tribunals seeking to understand how party and matter characteristics affect their performance and outcomes.

Self-represented litigants

As noted above, interviewees frequently mentioned that they wanted to know more about self-represented litigants, and their impact on court and tribunal operations, matter duration and resolution. This was especially so for civil matters. While there is a perception of increasing numbers of self-represented litigants, there is little robust evidence to demonstrate this, or regarding who self-representing litigants are and what matters they are involved in.[235] In particular, more information is needed on the diversity of self-representation: who fairs well, who fairs badly, and why? Understanding this goes hand in hand with appreciation of the relationship between self-representation and court and tribunal performance and efficiency.

Studies have shown barriers to collecting accurate data about self-represented litigants include inconsistent definitions, problems with the quality of the data, and organisational failure to value self-represented litigant status as useful operational data.[236] Data about self-represented litigants is more often found in isolated studies rather than featuring in established data collection.[237]

This means that how civil justice reforms affect the rate of self-represented litigants can be hard to gauge. For example, it has been observed that growth in self-represented litigant numbers may follow legislative reform and procedural change.[238] However, evidence on the impact of self-represented litigants varies and the effectiveness of policies, programs and practices responding to self-represented litigants are difficult to determine.[239]

Self-representation status is potentially related to key issues such as the average number of procedural hearings and average matter duration, appeal and enforcement actions.[240] For example, there is some evidence that suggests self-represented litigants are less likely to settle, or else settle later in proceedings.[241] This may contribute to the cost and duration of matters involving self-represented litigants increasing, however there is little or no robust evidence to quantify and explain such a phenomena.[242]

Furthermore, there is limited data on outcomes for self-represented litigants, and research indicates that more needs to be done in a systematic way to understand their court experience.[243] Further data and analysis on the impact of COVID-19 on self-represented litigants, and how access, experiences and outcomes have been affected, would also be beneficial.

In Victoria, as noted above, most courts and tribunals collect some information on legal representation. Here, the issue is one of quality and consistency of measurement paired with lack of complementary data points. Improving

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233 McDonald (2021); McDonald et al. (2020); Pleasence and Balmer (2014, 2019); Pleasence, Balmer and Denvir, 2015.
    See also CLEO (2019).
234 See McDonald et al. (2020), pp.71–78.
235 See also Richardson et al. (2018).
236 Richardson et al. (2018), p.II.
237 Richardson et al. (2018), p.8.
238 Richardson et al. (2018), pp.II–III.
239 Richardson et al (2018), p.III.
240 See also McDonald et al. (2017); Department of Justice and Regulation (2016), p.473; Productivity Commission (2014); Law Council of Australia
    (2018). Note that the link between self-representation status and limited eligibility for free legal assistance has been difficult to establish with
    available data. See further Richardson et al. (2018).
241 Richardson et al. (2018), p.III.
242 Richardson et al (2018), p.3.
243   Richardson et al. (2018).

and standardising measurement of representation/self-representation and capturing who self-represented litigants are would greatly enhance the ability to answer important questions on (changing) rates of self-representation and its relationship to court or tribunal functioning, user experience and outcome.

Demographic sub-groups

The findings demonstrated several Victorian courts and tribunals are using the party and matter data they have available to them for operational and case management purposes. Differentiated approaches, such as tailored case management, build on the established court and tribunal practice of organising matters into different divisions and lists.

These efforts are consistent with access to justice and legal needs research which clearly demonstrates how experience of civil justice is patterned by sociodemographic factors.[244]

Initiatives such as provision of information and support for self-represented litigants, or to engage and support members of the Victorian Koori community, potentially have a positive impact on court performance. Investing additional resources in new active case management may also make a substantial performance difference.

Historically, relatively little has been known about the civil justice experience and outcomes of First Nations peoples because such demographic information was not routinely collected for civil justice matters. The case study on the Koori Support Team and work in the Magistrates' Court, demonstrates how views on the value of such information are changing. Routine and consistent collection of Indigenous status will enable new analyses, monitoring and evaluation, and offer new insights into how experience and outcomes may vary by Indigenous status.

Similarly, greater understanding about which demographic sub-groups have more appearances; who are less likely to resolve matters privately or with mediation; who may fail to appear and subsequently have default judgements; who may benefit from early access to information and support; and who may make repeated or higher demands on court and tribunal staff, could inform more responsive, effective and efficient court and tribunal operations and civil justice processes.

The utility of such information is likely to vary according to the role of each court and tribunal in our civil justice system. For example, given the Magistrates' Court and VCAT handle both the highest volume of civil justice matters and self-represented litigants, there is greater scope for demographic and matter characteristics to influence operations and outcomes there.

Complexity and capability

In addition to demographic and party information, the findings also indicate that Victorian courts and tribunals, like Victorian legal assistance services, were grappling with how party and matter complexity affect court and tribunal operations and performance, and in particular, how it can be more appropriately managed.[245]

Data and measures to better capture complexity, along with how party characteristics affect legal need and capability hold the promise of unlocking new understanding of court and tribunal performance.

Findings from access to justice and legal needs research indicates that complexity is likely to be strongly patterned by legal matter and party characteristics.[246] Relatively simple and straightforward matters can be complicated by party need and capability. Rising complexity has been identified as a feature in the operating environment of courts and tribunals, so accounting for it is going to be useful in better understanding performance.[247]

Change in overall complexity over time may be one factor confounding performance assessment and program evaluation. One explanation is the observed increase in litigants experiencing legal and other social problems, such as family violence increasing vulnerability and complexity of a wide range of civil legal problems.[248]

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244 Pleasence et al. (2014).
245 See further McDonald et al. (2020).
246 Pleasence et al. (2014).
247 County Court of Victoria (2017), p.3.
248 Coumarelos (2019).

Another explanation for increasing complexity is change in the provision of public legal assistance services. Studies have revealed that funding pressures have resulted in grants of legal aid and in-court advocacy becoming increasingly prioritised to those facing incarceration for criminal matters and those experiencing complex, and often intertwined, legal and social needs.[249] As a consequence, more people are falling into the 'justice gap' between those eligible for grants of legal aid and in-court advocacy from public legal assistance services, and those able to afford legal representation privately. As the justice gap grows, so does the number and proportion of people self-representing in courts and tribunals.

Some civil justice reforms have also affected the complexity of matters coming to courts and tribunals. For example, new mediation or case management approaches may successfully help resolve and dispose of certain types of less complex cases earlier. This would have the effect of reducing the number of outstanding matters, increasing resolution rates and reducing matter duration, yet would also increase the overall average complexity of the matters making it to hearing. Thus, it is likely that it is those more complex and difficult to resolve matters that survive, and which are likely to consume more court and tribunal time and resources.

Additional measures to improve data utility

Debate about whether there is a civil justice crisis, whether courts and tribunals are sufficiently accessible, and just what is needed to achieve better, quicker, cheaper and easier justice, frequently centres on questions of empirical evidence and data.

As noted above, civil justice inquiries and reviews have repeatedly found that available data to assess court and tribunal performance and accessibility is deficient, restricting the ability to use such data to explore the extent of any civil justice crisis. Improved data availability and utility has been repeatedly recommended, stretching back more than twenty years.[250]

The Victorian Department of Justice and Regulation (as it then was) in its 2016 Access to Justice Review reported "significant gaps in data, research, and evaluation in the justice system in Victoria", particularly with respect to civil justice issues that hindered attempts to "efficiently and effectively design services to support the legal needs of the Victorian community, especially its most vulnerable and disadvantaged members".[251]

Lack of data was also a barrier to building effective cases for appropriate resource allocation because:

> ... [T]he same limitations of the justice system's current data collection capacity that prevent it from being able to identify and respond to need also inhibit its capacity to demonstrate the value of significant reforms. For example, the Review heard from some senior members of the legal profession that the introduction of the Civil Procedure Act 2010 (Vic) has resulted in greater diversion from litigation, but the lack of data available from courts limits any thorough analysis of whether this perception is borne out in reality.[252]

These observations further point to the need for improved court and tribunal data to provide greater insights about the civil justice system as a whole. Beyond use for individual courts and tribunals, improved data capture of key features across Victorian courts and tribunals would not only assist data integration and linkage but also provide greater insight into dispute resolution across the civil justice system.

The capacity of key justice system actors, including Victoria's courts and tribunals, to 'collect and share appropriate, meaningful information' about the people they serve, was described as underdeveloped.[253] Such observations are not unique to Victorian courts and tribunals. They are consistent with Australian and global recognition of the importance of collecting people-centred justice data to assess and better understand the interface between diverse community groups and key civil justice institutions such as courts and tribunals.

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249 See further McDonald et al. (2017); Pleasence et al. (2014).
250 See in particular Australian Law Reform Commission (2000), Victorian Law Reform Commission (2008), Productivity Commission (2014), Victorian Department of Justice and Regulation (2016), Law Council of Australia (2018).
251 Department of Justice and Regulation (2016), p.52.
252 Department of Justice and Regulation (2016), p.67.
253   Department of Justice and Regulation (2016), p.52.

As noted above, significant improvements in administrative data have been made in Victoria in recent years and continue to be made as systems are updated and augmented. Nonetheless, there is much more to be done to increase the utility of administrative data contributing to critical civil justice challenges.

International perspectives

International interest in access to civil justice, coalescing around the United Nation's Sustainable Development Goal 16.3, and the Organisation of Economic Development (OECD) identifying access to justice as an important factor for inclusive economic growth, highlights the need for improved civil justice data and evidence.[254]

Improved justice data is also seen to help deliver access to justice and protect important principals of open justice, judicial independence and public understanding of the law.[255] The shift to people-centred civil justice policy requires a shift to people-centred justice data.[256]

Critically, this shift has been driven by views that understanding of court and tribunal operations, accessibility, and outcomes, has exhausted the forms of administrative data typically available and that a broader suite is necessary. With greater insight about how access to justice and legal needs vary across the community, and how behaviours are driven by civil legal matter characteristics, and vice versa, the limits of administrative data have been exposed.

Farrow and Jacobs recently cast this as follows:[257]

> *... we have reached the limits of the current access to justice '1.0' moment and now need to move our thinking forward in terms of specific elements and solutions to the access to justice crisis, in order to animate evidence-based reform initiatives in various parts of the justice system ...*

Critically, this includes courts and tribunals. Our findings demonstrate that efforts to improve court and tribunal data are already underway in Victoria, though challenges remain around consistency, comparability, accessibility, and scope.

People-centred justice data

Opportunities and challenges for more meaningful people-centred justice data, to support progress towards equal justice is the focus of recent international efforts.[258] For example, recent comparative research in Australia, Canada, Ireland, England and Wales reported growing appreciation of benefits in capturing user data for analytical rather than operational purposes.[259]

There has been a growing appreciation of the benefit of capturing data for data purposes rather than operational purposes.

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254 See Farrow and Jacobs (2020); OECD (2019); Chapman et al. (2021).
255 Townend and Wiener (2021), p.2.
256 McDonald (2021).
257 Farrow and Jacobs (2020), pp.16–17.
258 See Chapman et al. (2021).
259 Townend and Wiener (2021), pp.23–51.

A World Justice Project and OECD discussion paper in 2021[260] enumerated the requirements to improve civil justice data as follows:

> - *We need good justice data to make progress toward equal access to justice for all.*
>
> - *Improving data collection and use across justice data ecosystems is a priority for advancing people-centred justice.*
>
> - *A coalition of justice actors can contribute to strengthening justice data production, analysis and use.*
>
> - *A new approach to justice data is needed to transform justice systems from providing justice for the few to delivering justice for all.*
>
> - *More can be done to improve people-centered data strategies. Research and evaluation in improving justice data from a wide range of countries have led to the identification of the following three data priorities to strengthen people-centered justice:*
>
>   *1. Understand the scope, nature and impact of justice problems.*
>
>   *2. Design and deliver people-centred justice strategies.*
>
>   *3. Measure what works, then learn and adapt.*

The World Justice Project and OECD paper also stated that the utility of available civil justice system data (usually administrative) is weakened by poor capture of demographics and limited data sharing mechanisms.[261] This is in line with Victorian courts and tribunals undertaking initiatives to better understand and respond to court user barriers and experience. Improved utility of administrative data would also help improve understanding of what strategies and programs improve user experience.

Such observations broadly cohere with the findings of successive civil justice and access to justice inquiries in Australia, as well as the elements of the International Framework for Court Excellence, and strategic directions and data developments that Victorian courts and tribunals have already embarked upon.

Victorian courts and tribunals have been working to improve data quality, use and utility. The findings here demonstrate efforts to grapple with how party and matter complexity affects case management, and what operational performance and access to justice benefits might be realised by early information and support for different user cohorts.

Incorporating people-centred measures into routine court and tribunal administrative data collection is therefore likely to be a sound strategy to unlock new insights about factors affecting court and tribunal operations and performance, and more broadly, design of effective strategies to support access to civil justice.

A weak civil justice data ecosystem, as identified by the World Justice Project and OECD, is one with an overreliance on administrative data that does not adequately capture the intersection of user and matter complexity. Administrative data is most effective when viewed as complementary to other data sources and approaches.[262]

Again, consistent with Australian inquiries, the World Justice Project and OECD paper identified a need for greater expertise and capacity to use data to inform justice strategies.

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260 Chapman et al. (2021), p.4.
261 Chapman et al. (2021), pp.6–7.
262 OECD/Open Society Foundations (2019).

Realising improved administrative data

Victorian courts and tribunals appear to have reached the stage where they will soon exhaust insights available from existing data. As described above, further improvement in data utility is limited by the scope of the data points routinely collected and available for analysis. More needs to be known about how court and tribunal activity is affected by the intersection of different types of people and matters, as well as factors affecting demand, operations and performance.

With improved scope of data (and more data points) comes increased utility. Efforts to improve and expand collection of the Indigenous status of parties to civil justice matters and users of specialist courts and tribunals are a case in point. These lessons also apply equally to other communities and other groups of court and tribunal users.

Understanding the experience of diverse people for different types of civil justice matters is only possible with the collection of demographic information about parties and users. If you can't see people, you can't understand their experience. Improved understanding of court and tribunal performance is only possible by improved insight into the factors affecting it.

Improving court and tribunal operations and user experience ultimately requires capacity to differentiate experiences and outcomes; appropriately respond to diverse user needs; identify potential downstream impacts of upstream change; and determine what works.

The path of continuous improvement is well trodden in other institutions and sectors. The process is simple to describe but challenging to realise: identify, plan, execute, check. Continuous improvement is enhanced at all stages of this process by data and is accelerated by more informative and meaningful data.

With growing data capability across Victorian courts and tribunals, investment and commitment to improved data practices and capability, and greater understanding of how human-centred design and people-centred data can unlock a new era of civil justice and access to justice, the Victorian civil justice system is well positioned to capitalise on further investment. In this sense, data capability is a virtuous circle, with improved data capability improving data insight, which then drives improved data capability.

Further strategic leadership and investment is necessary to realise the opportunities created by advanced information technology systems. Doing so can usher in a new era of civil justice understanding to further improve day-to-day court and tribunal operations, user experience and optimal use of scarce civil justice resources.

Before the COVID-19 pandemic a well-functioning civil justice system had already been identified as a key factor in inclusive economic growth.[263] Our civil courts and tribunals will have a critical role to play in the recovery, and resolution of civil justice matters. New insights into civil justice operation will enable courts and tribunals to better respond to demands in rapidly changing operational environments, and improve ability to identify, plan, execute and review responses to changing demands.

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263   OECD (2019).

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Appendix A: Interview schedule

Part 1: Data collection system

The questions in this section are about the program or system used to collect and store the data this court/tribunal collects and the person/s responsible for managing data collection.

1.   Can you describe the data collection system/program that this court/tribunal uses?

2.   Is this system/program unique to your court/tribunal or it used by other courts/tribunals?

3.   Is the same data system/program used and the same data collected at all court/tribunal locations?

4.   Do you record any other data outside the data collection system, for example, in a spreadsheet? If yes, why?

Part 2: What data is collected and how it is collected

The questions in this section are about the kind of data that is collected.

5.   Do you collect data on demographics of parties to a matter: sex/gender

- sexual orientation

- age

- marital status

- ATSI status

- postcode

- CALD/ESL status

- use of interpreter

- disability status/ and or mental health

- Any others

6.   Do you collect any other indicator data about the parties to a matter:

- family violence

- homelessness

- financial disadvantage

- Any others?

7.   Is legal matter type recorded? If so, how or at what level? (e.g. broad area of law or fine-grained matter type)

8.   Is party representation status recorded (for example, self-represented, private representation, Legal Aid, CLC etc. representation)?

9.   Are the outcomes of matters and their manner of disposal recorded?

10. Are there any party unique identifiers? If so, what are they used for?

11. Can data fields be added or altered, for example, to add additional legal matter types or demographic data?

12. Are the fields all numeric and/or coded or does your data also include text/natural language?

13. When is data entered into the system and who typically does this?

14. If you don't report on this annually, for example in an annual report, how many cases/matters are handled each year?

Part 3: Flexibility and consistency

These questions are about the flexibility of the data you collect and whether the data connects to other any systems.

15. Does the data link to other datasets? For example, the data records of other courts or tribunals?

16. If yes, which ones?

17. How often and why does your data entry system change? For example, does it change in response to policy changes and requirements to collect certain data types (e.g. such as family violence indicators)?

Part 4: Data Quality

These questions are about the accuracy and quality of data collected by this court/tribunal, and any known consequences or impacts of inaccurate or missing data.

18. In your opinion, how would you assess the quality of the data that is collected? E.g. are there frequent errors / missing data?

19. Are there any known consequences of such errors or omissions?

20. How is the accuracy of data assessed? Is it assessed automatically or manually?

Part 5: Use and accessibility

These questions are about how data this court/tribunal collects is used.

21. Do you use your data for any of the following purposes?

    a. Planning?

    b. To review programs or employee workloads?

    c. Monitoring and evaluation of operations?

    d. To conduct your own research?

    e. Giving it to external researchers or bodies for research?

    f. For any inquires, reviews, law reform and the like?

22. Who do you need to report data to?

23. Are there any external organisations or agencies?

24. Are there standard reporting templates for this?

25. Can you think of an example that would showcase or highlight how using administrative data has helped this court/tribunal? For example, to identify needs, monitoring and evaluation, or design new operations? *If yes to* What does the external organisation use this data for?

Part 6: Documentation and technical details

These questions are about how this court/tribunal sets out the process for data collection and storage, including training users.

26. Do you have a guide for the data that the court/tribunal collects (for example, that sets out the kind and type of data you collect) so that others who work in the court/tribunal understand what is being collected?

27. Do you have a user training guide or manual for those who input data?

28. Are staff who input data trained in data entry for the specific program or system?

Part 7: How this court/tribunal uses data and what it needs in the future

These questions are about understanding how this court/tribunal uses data, and what it is currently not using the data for.

29. From your perspective, is there anything that you like to know from your data that you currently don't?

30. What would you like to use your data for that you currently do not?

31. Do you think you are currently fully capturing what occurs in this court/tribunal and who accesses it?

32. What would you need to measure in order to fully capture what occurs in this court/tribunal; and who accesses it?

33. What are the barriers to achieving this?

34. What do you need to overcome these barriers?

35. Is there anything else that you think we should be aware of in doing this project?

Appendix B: Civil caseload

Magistrates' Court

Appendix Table B1 provides an overview of the civil and intervention order matters that the Magistrates' Court handles each year.[264]

Appendix Table B1

Magistrates' Court civil cases and intervention orders			
	2017–18	2018–19	2019–20
Civil cases			
Total civil complaints issued	38,697	40,100	34,131
Total civil defences filed	7,256	7,237	8,387
Total claims finalised	43,968	43,245	41,576
Total applications finalised	13,698	15,640	11,515
Intervention orders			
Total finalised cases with one or more interim orders	26,932	28,800	24,880
Total original matters finalised	43,151	44,608	41,189
Total applications finalised	7,336	7,616	7,479
Total family violence and personal safety matter applications	77,419	81,024	73,548

Table note. These figures represent the family violence and personal safety intervention order figures combined. In intervention order matters, interim orders are commonly made before a final order is made.

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264   See Magistrates' Court of Victoria (2020a), pp.38–41 for further details about how the numbers in Appendix Table B1 are calculated.

Children's Court of Victoria

Appendix Table B2 provides an overview of the cases initiated, finalised and pending in the family, criminal and CAYPINS divisions of the Children's Court from 2017-18 to 2019-20.

Appendix Table B2

Children's Court			
Case actions			
	2017–18	2018–19	2019-20
Family Division			
Initiated	17,591	18,722	19,197
Finalised	16,201	16,429	17,173
Pending	5,088	6,735	8,445
Criminal Division			
Initiated	9,277	9,339	10,154
Finalised	9,530	9,230	8,142
Pending	1,914	2,400	4,512
CAYPINS			
Initiated	3,496	2,887	2,625
Finalised	3,787	2,963	1,955
Pending	166	207	846

Table note. CAYPINS refers to the Children and Young Persons Infringement Notice System, an alternative to court for children and young persons who fail to pay on-the-spot fines and other penalties issued by prosecuting bodies such as Victoria Police and the Department of Transport.[265]

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265   Children's Court of Victoria (2020), p.15.

Appendix Table B3 provides an overview of the number of child protection and associated procedural orders made in the Family Division of the Children's Court.[266]

Appendix Table B3

Family Division orders			
	2017–18	2018–19	2019–20
Child protection orders			
Family Preservation Order	3,389	3,713	3,559
Extension of Family Preservation Order	498	552	446
Family Reunification Order	2,094	2,174	1,772
Extension of Family Reunification Order	578	546	505
Care by Secretary Order	1,074	952	946
Extension of Care by Secretary Order	245	624	410
Care by Secretary Order Conversion	6	3	8
Long-term Care Order	219	330	227
Permanent Care Order	438	457	376
Leave to apply to vary/revoke Permanent Care Order	20	11	1
Undertakings	659	669	822
Interim Accommodation Order	9,823	14,121	15,955
Extension of Interim Accommodation Order	19,204	16,573	15,405
Therapeutic Treatment Order	14	11	21
Extension of Therapeutic Treatment Order	3	3	6
Safe Custody Warrants	6,505	7,983	8,439
Procedural orders			
Appointment – Independent Child Lawyer	418	383	349
Adjournment	14,560	14,128	13,035
Order for Costs	504	416	507
Free Text Order	23,309	24,278	24,156
Total	83,560	87,927	86,995

266   Children's Court of Victoria (2020), p.34.

Victorian Civil and Administrative Appeal Tribunal (VCAT)

Appendix Table B4 represents the number of cases lodged, finalised, pending, and the clearance rate for the last three financial years at VCAT.[267].

Appendix Table B4

VCAT			
Case actions			
	2017–18	2018–19	2019–20
Lodged	85,191	85,850	80,423
Finalised	83,424	83,414	76,245
Cases pending	8,855	9,653	14,656
Clearance rate	98%	97%	95%

Appendix Table B5 shows the number of cases lodged in VCAT by list over the last three financial years.[268]

Appendix Table B5

VCAT			
Cases lodged by list			
	2017–18	2018–19	2019–20
Civil Division			
Building and Property	1,739	2,298	2,295
Civil Claims	8,764	9,488	8,576
Owners Corporations	2,763	3,245	3,445
Residential Tenancies Division			
Residential Tenancies	53,212	52,412	49,022
Planning and Environment Division			
Planning and Environment	2,816	2,652	2,259
Administrative Division			
Legal Practice	98	124	121
Review and Regulation	1,087	1,100	1,034
Human Rights Division			
Guardianship	14,249	14,076	12,981
Human Rights	463	455	510

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267   Victorian Civil and Administrative Tribunal (2020), p.17.
268   Victorian Civil and Administrative Tribunal (2019), p.17.

Victims of Crimes Assistance Tribunal (VOCAT)

Appendix Table B6 sets out the number of applications lodged, finalised and pending, along with case processing times, and the age of pending caseload over the last three financial years at VOCAT.[269]

Appendix Table B6

VOCAT case actions			
	2017–18	2018–19	2019–20
Caseload			
Number applications lodged	7,351	8,067	8,041
Number orders made finalising claims	7,655	7,666	8,492
Number applications pending on 30 June	7,292	8,176	8,169
Case processing times			
Proportion of applications finalised within 9 months of lodgement	51.4%	53.5%	54.8%
Proportion of applications finalised within 12 months of lodgement	67.4%	68.9%	69.8%
Age of pending caseload			
Proportion of applications pending for 9 months or more on 30 June	37.2%	38.9%	41%
Proportion of applications pending for 12 months or more on 30 June	27.1%	27.7%	30.8%

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269   Victims of Crimes Assistance Tribunal, (2020), p.38.

County Court of Victoria

Appendix Table B7 represents the number of cases commenced, finalised, pending, cleared, and the percentage of cases disposed within 12 months in the County Court.

Appendix Table B7

Total County Court case actions			
	2017–18	2018–19	2019–20
Commenced	11,760	11,441	10,496
Finalised	11,274	11,123	10,121
Pending	9,891	9,812	9,497
Clearance rate	96%	97%	96%
% disposed within 12 months	71%	71%	72%

Appendix Table B8 reports the number of civil case actions across the common law and commercial divisions, and the total civil actions commenced, finalised, pending and cleared for the last three financial years in the County Court.[270]

Appendix Table B8

Civil case actions			
	2017–18	2018–19	2019–20
Common Law Division			
Commenced	3,920	3,832	4,434
Finalised	3,733	3,558	3,695
Pending	4,663	4,688	5,441
Clearance ratio	95%	93%	83%
% disposed within 12 months	52%	53%	51%
Commercial Division			
Commenced	2,020	2,152	1,957
Finalised	2,208	2,141	1,989
Pending	2,187	2,123	1,657
Clearance ratio	109%	99%	102%
% disposed within 12 months	53%	54%	61%
Total civil actions			
Commenced	5,940	5,984	6,391
Finalised	5,941	5,699	5,684
Pending	6,850	6,811	7,098
Clearance ratio	100%	95%	89%

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270   Tables are drawn from County Court of Victoria (2020), p.7 and County Court of Victoria (2019), p.7.

Supreme Court of Victoria

Appendix Table B9 represents the total case actions and civil case actions for the Supreme Court, (excluding Probate Office matters).[271]

Appendix Table B9

Supreme Court total case actions						
	2018–19			2019–20		
Actions	Trial Division	Court of Appeal	Total	Trial Division	Court of Appeal	Total
Initiations	6,017	450	6,670	5,968	361	6,543
Finalisations	6,035	372	6,608	6,013	400	6,626
Pending	4,712	316	5,087	4,667	277	4,981
Supreme Court total civil case actions						
	2018–19			2019–20		
Actions	Trial Division	Court of Appeal	Total	Trial Division	Court of Appeal	Total
Initiations	5,575	153	5,728	5,563	121	5,684
Finalisations	5,561	129	5,690	5,608	140	5,748
Pending	4,491	108	4,599	4,446	89	4,535

Table note. Trial Division figures combine Commercial Court and the Common Law Division total civil cases. The figures in the total case actions of the Court of Appeal combine appeal and leave to appeal matters.

271   Supreme Court of Victoria (2020a), pp.8,17.