

Active Case Management in the County Court of Victoria and Supreme Court of Victoria - Summary of Lapsing Program Evaluation

October 2023



1 Introduction

In the financial year (FY) 2021/22 budget cycle, the County Court of Victoria (CCV) received \$9.626 million over three years to expand Active Case Management (ACM) in its Criminal Division (CCV Criminal) and introduce ACM to civil proceedings in the Commercial (CCV Commercial) and Common Law (CCV Common Law) Divisions. In the same financial year, the Supreme Court of Victoria (SCV) received \$1.293m over three years to continue ACM in the Criminal Division. These were both funded as part of Court Services Victoria's (CSV) 'Securing the proven benefits of innovation and service delivery reform' multi-initiative business case.

In the 2022/23 budget cycle, ACM was funded for an additional divisional lawyer in the CCV receiving \$0.394 over two years. This was funded as part of CSV's 'Backlog reduction program – Magistrates', County and Supreme Courts'.

The funding for ACM in both courts is due to lapse as of 30 June 2024. In 2022/23 CCV reprioritised \$0.162 million over two years to conduct an evaluation of the CCV's ACM program. CSV engaged Deloitte to undertake a lapsing evaluation of ACM at the CCV and the SCV (the lapsing evaluation). The lapsing evaluation was completed on 30 October 2023.

This document provides important background as well as operating context for ACM and details the approach and findings of the lapsing evaluation.

2 Background to ACM

ACM seeks to address the growth in volume and complexity of cases driven by a growing population, broader justice and social legislative reforms and multiple, dynamic socio-economic influences. Increasing volume and case complexity has caused significant capacity issues for the judiciary. The larger and more complex caseload resulted in delays and bottlenecks, which ultimately impacted justice outcomes for court users. In addition, COVID-19 caused severe interruptions to Court operations, including the suspension of criminal jury trials due to lockdowns, which resulted in further backlogs and resource pressures.

These challenges are still present for both CCV and SCV. There are (and will likely continue to be) a higher volume of cases for the judiciary to hear and determine. Appointing greater numbers of judges is cost prohibitive for government and therefore cost-effective alternatives that mitigate the societal impacts that arise from an inefficient justice system are needed.

ACM is a service model that enables the courts to actively manage cases to create efficiencies across the Victorian justice system.

Across both courts ACM shares common features, including earlier intervention in cases, the deployment of registry-based lawyers to liaise directly with parties and the preparation of summaries and other materials to assist judges. This allows for a more targeted use of judicial time so that cases can be managed more efficiently with less-risk and issues can be identified and resolved as early as possible. At the same time, ACM is flexible and is deployed in each Division in a way that best suits the circumstances and nature of its cases.

2.1 ACM in the CCV Criminal Division

The CCV is the principal criminal trial court in Victoria and deals with most serious indictable offences committed in Victoria. ACM resourcing has been used to create roles which support the infrastructure around the end-to-end case management of all criminal trials in the County Court.

In response to the challenges outlined in 2 above and recognising the importance of supporting an efficient and high-quality court system, a pilot of ACM was launched in late 2019 in the CCV Criminal Division. To address the evolving situation brought about by COVID-19, CCV introduced an Emergency Case Management (ECM) initiative to manage vacated criminal jury trials.

The creation of the division lawyer role has provided the judiciary with a suitably skilled non-judicial resource to whom they can delegate administrative work which the judiciary was typically undertaking themselves. Division lawyers are authorised to conduct case management tasks, providing practitioners with timetables for document filing requirements,

advise parties of court directions and monitor parties' compliance. ACM is now a fully integrated service delivery model for the Criminal Division, utilising division lawyers and case administrators to support the judiciary in earlier intervention and targeted management of cases.

2.2 ACM in the CCV Commercial Division

CCV Commercial aims to provide fast, cost-effective, and fair resolution of commercial disputes and manages cases which raise factually and legally complex issues. Cases involve claims for repayment of loans, property disputes, building disputes, tax and superannuation matters, family trusts, and claims for breach of contract.

For the CCV Commercial, ACM centres on the role of the division lawyers. They support proceedings across the division, from the initiation of the proceeding to the trial. Division lawyers undertake the following management measures on a case: case management conference, mediate interlocutory (procedural) issues or whole cases, send emails or conduct phone calls to case manage and resolve disputes, draft and propose orders to case manage, facilitate expert conclaves, assist special referees or experts assisting the Court with alternative dispute resolution and provide direction to registry staff and associates so that they can take steps (emails/phone calls/draft orders) to case manage.

2.3 ACM in the CCV Common Law Division

CCV Common Law has a broad jurisdiction that includes personal injuries arising out of workplace accidents, transport accidents and medical negligence, accidents in a public setting, defamation and claims by a beneficiary under a will. A large amount of Common Law cases settle prior to trial, in part, because the Court requires the parties to undergo mediation.

For the CCV Common Law, ACM centres on the role of the division lawyers, who are principally responsible for pre-trial management of cases in the General List. All proceedings listed for trial in the General List are required to attend private mediation, and are listed for a Post Mediation Administrative Mention approximately 6 weeks before trial so that the parties can inform the Court if the proceeding resolved at mediation, or if they will be proceeding to trial, and also advise if there are any outstanding issues. The division lawyers manage the cases that have not resolved to ensure readiness for trial, working with the legal practitioners to resolve or narrow issues in dispute, engaging the judiciary when required.

On the day of trial, if the proceeding is unable to be allocated to a judge, the proceeding will be placed on the reserve list and called over by the division lawyer. At this stage, the division lawyer will assess the readiness of the proceeding and manage the case until a judge becomes available.

2.4 ACM in the SCV Criminal Division

The Criminal Trial Division of the SCV hears and determines the most serious criminal matters in Victoria including murder, manslaughter, attempted murder, treason as well as some complex terrorism offences.

The focus of ACM in the SCV is to support applications made under the *Bail Act 1977*, *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* ('CMIA') and the *Serious Offenders Act 2018* ('*Serious Offenders Act*'). Bail applications are made when the applicant wishes to be released from custody under the *Bail Act 1977* (*Bail Act*). Applications under the CMIA generally relate to the supervision of individuals who have been found unfit to stand trial or not guilty by reason of mental impairment. Serious offender applications relate to post-sentence detention and supervision orders made under the *Serious Offender Act 2018* ('*Serious Offender Act*').

For SCV, ACM centres on the role of the application lawyers. They sit within a broader case management service model within the Criminal Division of the SCV. They provide end-to-end case management and support by conducting legal research and analysis, deconstructing complex materials and drafting comprehensive memoranda for the judiciary in handling the aforementioned applications. In addition, the application lawyers also enable increased correspondence with the parties and early identification and resolution of issues in relation to bail applications.

3 Evaluation approach

The evaluation followed the guidelines of the Department of Treasury and Finance's (DTF) Resource Management Framework and assessed the extent to which the proposed benefits of ACM have been realised and the overall effectiveness of implementation.

An evaluation plan was developed with CSV, CCV and SCV to inform the activities to be undertaken as part of the lapsing evaluation. The evaluation plan included the six evaluation domains as defined by the RMF with corresponding key evaluation questions and sub-evaluation questions.

The inputs used to inform the findings of this evaluation included the following:

3.1 Stakeholder consultation:

This involved individual and group semi-structured interviews with key internal and external stakeholders including relevant external legal practitioners and organisations, the judiciary, division lawyers and the broader case management delivery teams.

3.2 Court hearings observation:

This involved the observation of directions hearings, a case conference, a case assessment hearing and a General Crime List hearing.

3.3 Quantitative data analysis:

Case data was provided by CCV and SCV including extracts on case initiations and finalisations from FY2018/19 to FY2023/23 as well as pre-trial and trial event data from this period.

3.4 Document review:

Review of provided materials including business case extracts, practice notes, ACM process materials and ACM case studies.

3.5 Desktop research and literature review:

This included research on case management practices and service delivery models. Legislation relating to criminal and civil procedures was also reviewed.

3.6 Economic analysis:

Economic analysis was conducted to assess the benefits of ACM relative to the investment funded by Government. A cost-benefits analysis approach was used for CCV Criminal, however, due to limitations on available data and feasibility of quantifying the full range of benefits, a break-even analysis (BEA) approach to economic analysis was used for CCV Commercial, CCV Common Law and SCV applications. To determine the costs and benefits of delivering ACM, benefits were quantified in terms of avoided costs relative to the reduction in the frequency and duration of court events and/or the reduction in time required by the judiciary to progress cases out of court.

4 Findings of the evaluation

This section sets out the findings of the evaluation against each of the domains in the DTF Resource Management Framework.

DTF Resource Management Framework domains	Findings
Justification/ Problem	<ol style="list-style-type: none"> 1. The justification for investment in ACM continues to exist due to increased volumes of new case initiations, persistent backlogs of pending cases and further complexities in progressing matters to resolution. 2. Government is responsible for funding the Courts in Victoria and current legislation establishes the directive to manage an efficient court system and ensure timely access to justice. 3. ACM is well established in the CCV and SCV and is an appropriate model to manage cases and enable the optimal use of judicial time.
Effectiveness	<ol style="list-style-type: none"> 4. ACM has supported increased operational efficiency in both the CCV and the SCV. This is through the introduction of additional court resources, more comprehensive processes and events to ensure court time is used in the most efficient and effective way. 5. ACM has helped to optimise judicial time through delegation of relevant tasks to the teams of registry-based lawyers. 6. ACM has realised benefits for community members accessing the court. This includes improved access to justice for victims and their families and cost savings from avoided legal costs. 7. There are data limitations across all divisions because of the difficulty of efficiently capturing key consequences of ACM in existing case management systems. There is quantitative evidence that ACM has helped reduce delays and bottlenecks in the court system and supported more timely access to justice, but the available quantitative data cannot demonstrate the extent of the positive impact of ACM. 8. (a) For CCV Criminal, the benefits gained through ACM, as estimated in this report, outweigh the costs needed to support implementation of it. (b) For CCV Common Law and CCV Commercial and in SCV applications, it is highly likely that the benefits gained through ACM outweigh the costs needed to support implementation of it. 9. Where ACM applies targeted events prior to trial, effectiveness is maximised when direction is provided from the judiciary and the likely position of the Court is understood by all parties to the case.
Funding/ Delivery	<ol style="list-style-type: none"> 10. ACM has delivered expected activities in line with the intended program design and has adapted to the needs of the specific Court and policy context. 11. ACM implementation challenges varied across divisions. The extent to which they were overcome was reliant on the availability of resources and capacity of the Court to adapt implementation models. A range of these challenges continue to exist.

Efficiency	12. The implementation of ACM has met agreed timeframes and has mobilised CCV and SCV resources efficiently towards the achievement of intended outcomes.
Risk	<p>13. If funding for ACM were ceased, there is a risk of:</p> <ul style="list-style-type: none"> i. Reducing the efficiency of case management and timely access to justice in the Courts. ii. Reducing the capacity of the Courts to effectively manage growing volumes of more complex cases. iii. Reputational damage regarding government commitments to addressing efficiency in the Courts and achievement of access to justice outcomes. iv. Weakening the relationships that have been built with external stakeholders. v. Not meeting overarching case management obligations under the Civil Procedure Act for CCV Common Law and CCV Commercial. vi. Negative impact on wellbeing of judicial resources as a result of increased workload, stress and pressure
If funding is continued	<p>14. There is a case to support increased resources for ACM, which could accelerate the achievement of outcomes. Additional resources could meet an increasing demand by scaling ACM and/or enabling more productive involvement from dependent external parties.</p> <p>15. A monitoring and evaluation plan is needed to better understand the benefits and impact of ACM across all Courts. This would include the collection of appropriate data, including indicators for court users and external legal practitioners.</p>

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