

# OVERVIEW OF THE COUNTY COURT'S ROLE

This fact sheet gives an overview of the role of the County Court of Victoria in the Victorian legal system. It discusses the history of the Court, the kinds of cases the Court deals with and the laws that the Court must apply in making decisions.

## WHERE DOES THE COUNTY COURT FIT WITHIN THE LEGAL SYSTEM?

In Victoria, like all other Australian states, the legal system is made up of Parliament and the courts. Put simply, Parliament's role is to make law and the role of courts is to apply the law by hearing and making decisions in cases. However, the courts can also make laws and develop existing laws through its decisions.

Within our legal system there is a court hierarchy. This sets out the seniority of each court in terms of the seriousness of the cases that it can hear and whether its decisions can be reviewed by other judges. The County Court of Victoria is the major trial court in Victoria. Its position is in the middle of the court hierarchy, above the Magistrates' Court which hears less serious matters, and below the Supreme Court, which hears the most serious matters and includes the Victorian Court of Appeal.

## HISTORY

In Victoria, county courts have been operating for a long time. The word **county** in this context means a court that covers one or more counties or geographical regions within an Australian state. County courts were first established in 1852 and were based on the English county court model. They operated in various locations throughout Victoria. They were established to provide 'cheap and readily available forums for the quick disposal of small civil claims.'<sup>1</sup> In 1957, the County Court was established by the *County Court Act 1958 (Vic)* in Melbourne as a single court for the State of Victoria. In 1968, the jurisdiction of the County Court was expanded to include criminal matters.

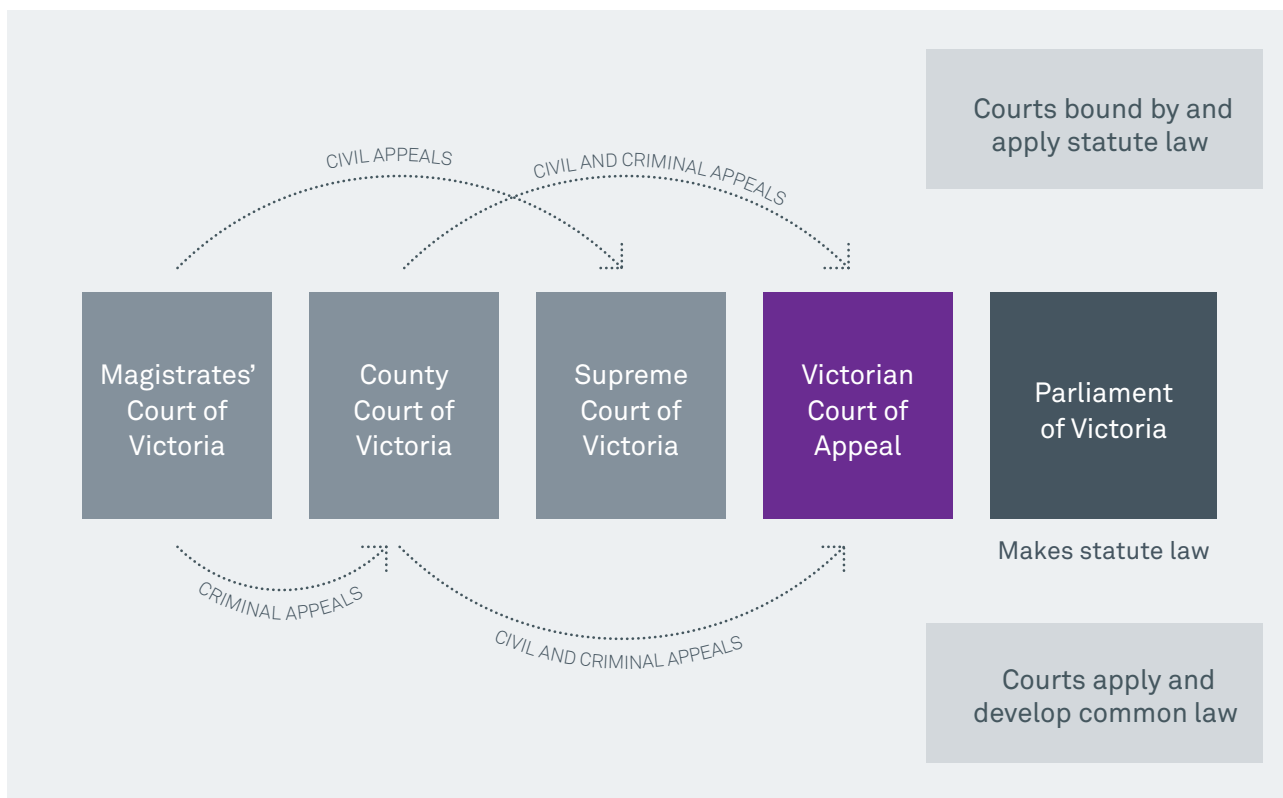
## THE COUNTY COURT'S JURISDICTION

The County Court has **jurisdiction** in civil and criminal cases. Jurisdiction means the different areas of the law where a court has power to hear cases and make decisions. The County Court has **original jurisdiction** and **appellate jurisdiction**.

**Original jurisdiction** means the power to hear a case for the first time. The County Court has original jurisdiction in all civil cases and a broad range of criminal cases.

**Appellate jurisdiction** means the power to review a case that has already been heard by a less senior court to determine whether the court made an error in applying the law or deciding the facts of the case. This is called an **appeal**. The County Court has appellate jurisdiction but this is limited to hearing appeals from criminal cases in the Magistrates' Court as well as a small number of cases from the Children's Court. All decisions of the County Court can be appealed in the Supreme Court Appeals Division, the Victorian Court of Appeal.

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## WHAT KINDS OF CASES DOES THE COUNTY COURT DEAL WITH?

Civil cases involve disputes in commercial and building matters and claims for damages, for example for medical negligence, serious injury and defamation. Civil cases also include matters under specific statute laws, for example in the areas of property, wills and estates, and adoption. The County Court's civil jurisdiction is divided into two Divisions: the **Commercial Division** and the **Common Law Division**, each of which has **lists** to separate the different types of cases that fall within each Division.

Within the Commercial Division, an example of a case heard in the Banking and Finance List is a dispute in relation to a loan of money or sale of a property. An example of a case heard in the Building Cases List is a dispute about the performance of an architect in designing a building.

Within the Common Law Division, an example of a case heard in the Family Property List is a dispute between family members about the distribution of property or money in a person's will. An example of a case heard in the Serious Injury Applications List is a claim brought by an injured person against another person who was at fault in a car accident.

Criminal cases involve the prosecution of all **indictable offences** under Victorian criminal law, except treason, murder and manslaughter. Parliament decides which offences are indictable offences and which offences are **summary offences** (heard in the Magistrates' Court). Indictable offences are more serious crimes, such as physical and sexual assaults, commercial drug offences, and property offences such as armed robbery and arson.

They are usually heard in the County Court. Cases involving prosecutions of these offences involve a jury deciding whether the accused person is guilty or not guilty and a judge imposing sentence on an offender if he or she is found guilty of an offence. The Court also hears matters that are related to criminal charges, such as bail applications.

The Court also has a role in criminal cases once an offender has been sentenced. For example, County Court judges can undertake judicial monitoring of an offender who is serving a sentence in the community and require him or her to report to the Court on regular occasions. The Court is also responsible for dealing with breaches of conditions of a community-based sentence, for example to reside at a particular location or attend drug and alcohol counselling.

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## CIVIL JURISDICTION

### Commercial division

- Expedited Cases List
- Banking and Finance List
- Building Cases List
- General Cases List

### Common Law division

- Applications List
- Defamation List
- Family Property List
- General List
- Medical List
- Serious Injury Applications List
- WorkCover List
- Confiscation List

The County Court also has jurisdiction in cases where an offender has come to the end of his or her sentence but the **Department of Justice and Regulation** has concerns about the ongoing risk that the offender poses to the community. There may be further supervision or detention to manage that potential risk. This area of the law is called **post-sentence supervision and detention**. Although this area of the law deals with offenders who have served sentences under the criminal law, it comes under the civil jurisdiction of the County Court. The County Court makes decisions about whether an offender should be subject to a post-sentence supervision order, the length of any order and the conditions for managing offenders under supervision orders. In 2015, there was an independent review of this area of the law, called the **Harper Review** (because it was led by a former judge called David Harper). The Harper Review recommended many reforms to this area of the law, which are currently being made into law by the Victorian Government.

The Court's Divisions – Common Law, Criminal and Commercial – are each headed by a judge – a **Head of Division**. The Court is headed by the **Chief Judge**, Peter Kidd.

## WHAT LAWS DOES THE COUNTY COURT APPLY?

The law is made up of **statute law** and common law. The **Victorian Parliament**, comprising elected representatives of the Victorian people, makes statute law through Acts of Parliament (referred to as legislation). Statute law is binding on courts, meaning judges must apply it when hearing cases. Judges can also interpret the meaning of statute law when they apply it to the facts of cases. Common law is the law that has developed over time through past decisions of the courts that are written down in judgments and then referred to by other judges. For this reason, sometimes it is called **judge-made law**. Courts must also apply existing common law and can develop common law through its own decisions by applying, clarifying and refining what the law means. This is called the **system of precedent**. Under this system, a court is bound by its own decisions and by the decisions of a more senior court. Therefore, judges of the County Court are bound by decisions made by other County Court judges and by decisions made by judges in courts that are more senior in the court hierarchy, the Supreme Court or the Court of Appeal. Further, decisions of the County Court can be overruled by a decision of the Supreme Court or Court of Appeal. When this occurs in a particular area of the law, this establishes a new precedent that is binding on courts. However, statute law overrules all common law where there is an overlap. The separation between statute and common law is a fundamental feature of our legal system (see **Fact Sheet 2**).

## FOOTNOTES

- 1 Victoria Law Foundation, *About the County Court* (2011) (Brochure produced for the County Court of Victoria) 2.

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