

ACCESS TO JUSTICE AND DISPUTE RESOLUTION

This fact sheet explains the importance of access to justice, a principle that is fundamental to the Victorian legal system. It explains the key elements of access to justice and the barriers that some people in the Victorian community face that prevent them from accessing justice. It concludes with a discussion of some of the County Court’s measures aimed at ensuring access to justice for people who are involved in proceedings before the Court.

THE IMPORTANCE OF ACCESS TO JUSTICE

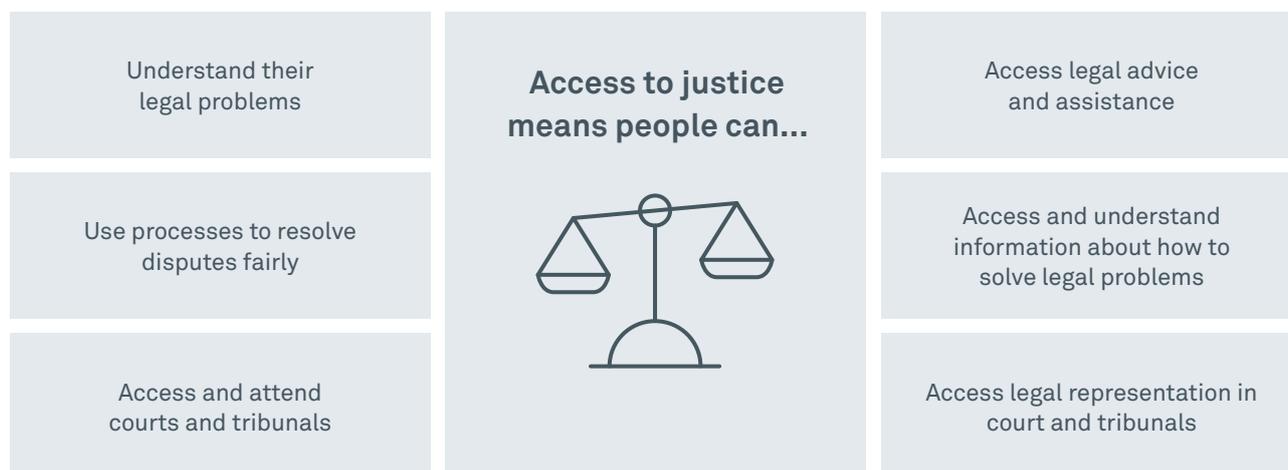
Access to justice is a key principle underpinning the Victorian legal system, of which the County Court is a part. This principle is about ensuring that people have an understanding of their rights under the law and an ability to pursue their case and receive the support they need when engaging with the law and the justice system. Access to justice is also connected to the principle of equality and all people having an equal opportunity to present their case or defend a case against them.

Some members of our community may find it harder to gain access to the justice system than other people, particularly people who are disadvantaged or vulnerable. They may be prevented from accessing advice and services due to language barriers or geographical location, economic disadvantage or social isolation or abuse. Victorians from Aboriginal and Torres Strait Islander backgrounds may be particularly at risk of not being able to gain access to legal assistance and support.

Access to justice is an issue for the legal system in Victoria and more broadly in Australia. In 2015, the Victorian Attorney-General requested that the Department of Justice undertake a review of access to justice in Victoria. The report on the **Access to Justice Review** was published in 2016. It contains 60 recommendations to improve access to justice for Victorians with everyday legal problems and to ensure that disadvantaged and vulnerable community members can get the help and support that they need when they come into contact with the law and justice system.

The Law Council of Australia is undertaking a national and comprehensive review of the state of access to justice across the Australian justice system. The review is called the **Justice Project** and is overseen by former High Court Chief Justice Robert French. The project has a particular focus on the barriers to justice for the most vulnerable and disadvantaged people in Australia.

KEY ELEMENTS OF ACCESS TO JUSTICE



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KEY BARRIERS TO ACCESS TO JUSTICE

A key issue in access to justice is identifying who in our community is not able to access justice and what the barriers that prevent them from doing so are. There is a significant focus on identifying the common factors¹ or particular groups² in our society who tend to face such barriers.

| FACTORS IN GROUPS WHO FACE BARRIERS | GROUPS WHO FACE BARRIERS |
|-------------------------------------------------|-----------------------------------------------|
| Socio-economic disadvantage | Aboriginal or Torres Strait Islander people |
| Aboriginal or Torres Strait Islander background | Asylum seekers |
| Low income | Children and young people |
| Low education | Homeless people |
| Single parenthood | LGBTI people |
| Unemployment | Older people |
| Having a disability | People experiencing economic disadvantage |
| Belonging to an ethnic minority | People who experience family violence |
| Non-English main language | People who have been trafficked and exploited |
| Living in a remote area | Prisoners and detainees |
| | People who have recently arrived in Australia |
| | Regional, rural and remote Australians |

ACCESS TO JUSTICE MEASURES IN THE COUNTY COURT

The County Court has a number of processes that are aimed at ensuring access to justice for people who are involved in proceedings.

Access to information about how to solve problems and access courts and tribunals

The County Court has information on its website for people who are preparing for a court hearing – for example as a victim of crime or a witness in a case. There is also detailed information for people who do not have a lawyer for their case, referred to as **self-represented litigants**. Most self-represented litigants appear in the Court's civil jurisdiction, although sometimes people in the criminal jurisdiction are also not represented. The Court's website includes detailed information for self-represented litigants to help them navigate the court process, which can be complex for people without specialist legal skills. The County Court also has specialist staff to assist self-represented litigants, providing information about timeframes, fees and what is required in order to complete documents under the Civil Procedure Rules 2008 and Criminal Procedure Rules 2009.

The County Court, like other Victorian courts, publishes on its website the lists of the cases that are heard each day. These lists are accessible by any member of the public and include daily criminal and civil lists, monthly civil lists and yearly sitting dates. You can look at the different lists on the County Court's website.

Process to resolve disputes fairly

A key strategy in improving access to justice is diverting people from civil litigation to alternative methods of resolving the dispute, called **alternative dispute resolution**. Civil litigation means the case is argued in court before a County Court judge and is more time consuming and costly. Alternative dispute resolution is commonly understood to refer to processes that are less formal than court and tribunal processes. They 'involve the presence of an impartial and independent third party; and sometimes involve the third party assisting the other parties to reach a decision, or making a decision on their behalf.'³ Some forms of alternative dispute resolution can lead to a decision that may be binding on both parties, and others can result in non-binding decisions, meaning that the parties are not strictly legally obliged to comply with them.

There are many forms of alternative dispute resolution processes. They can be used at three different stages of the process when a person has a grievance under civil law.

ACCESS TO JUSTICE AND DISPUTE RESOLUTION

USE OF ALTERNATIVE DISPUTE RESOLUTION

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|---------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| 1. A preventative tool to manage complaints before they become a disputed matter between the plaintiff and the defendant. | 2. A mechanism to attempt to resolve the dispute before it reaches a court or tribunal. | 3. Technique as part of the court and tribunal process while the matter is before the court or tribunal. |
|---------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|

In Victoria, the term **appropriate dispute resolution** is used and defined in section 3 of the *Civil Procedure Act 2010 (Vic)* as 'a process attended, or participated in, by a party for the purposes of negotiating a settlement of the civil proceeding or resolving or narrowing the issues in dispute.' One form of dispute resolution that is used extensively in Victoria is called **mediation**. Mediation is a process that seeks to reach agreement between the parties and is non-determinative, meaning the outcomes are not binding on the parties. Before a civil dispute reaches the point of a trial it has usually had one or more mediations to try and resolve it. The County Court (as well as the Supreme Court and Magistrates' Court) can order mediation, even if the parties do not consent. The County Court encourages mediation at the first directions hearing in most cases and provides **information on mediation services**. Court-ordered mediation has long been part of County Court practice in its civil jurisdiction.

The County Court uses a form of judicial mediation called a **judicial resolution conference**. The Court uses this in wills and estates cases where the matter relates to a claim for family provision under a will. Matters in the Commercial List can also be referred to mediation under a judicial resolution conference by a **judicial registrar** (see **Fact Sheet 11**). Mediation can assist parties to come to a resolution of the dispute themselves with the assistance of a mediator (a judge or a judicial registrar). Parties can identify issues, develop and consider options, or alternative options, and try to reach an agreement without parties having to make arguments and the judge making a decision about the dispute.⁴

Access and attend courts and tribunals

The County Court's principal court house is located in Melbourne in the central business district. For regional, rural and remote Victorians, it also has 12 courts in the major regional centres of Victoria. These courts are referred to as **circuit courts** as the County Court judges will travel to and hear cases in these locations at specific periods throughout the year. The locations of the 13 courts of the County Court are shown in this map prepared by the County Court.



FOOTNOTES

- 1 Department of Justice and Regulation, *Access to Justice*, Volume 1 Report and Recommendations (2016, State Government of Victoria) <<https://engage.vic.gov.au/accesstojustice>>.
- 2 Law Council of Australia, *The Justice Project*, 'Consultation Papers: The Justice Project' <<https://www.lawcouncil.asn.au/justice-project/consultation-papers>>
- 3 Department of Justice and Regulation, *Access to Justice*, Volume 1 Report and Recommendations (2016, State Government of Victoria) <<https://engage.vic.gov.au/accesstojustice>> 196.
- 4 Department of Justice and Regulation, *Access to Justice*, Volume 1 Report and Recommendations (2016, State Government of Victoria) <<https://engage.vic.gov.au/accesstojustice>> 196, 197, 202.

County Court of Victoria
250 William Street
Melbourne Victoria 3000
countycourt.vic.gov.au



Authored by Nina Hudson for the County Court of Victoria. Published by the County Court of Victoria.