

COUNTY COURT WORK AND KEY PERSONNEL

This fact sheet gives an overview of the work of the County Court and the key personnel who are involved or affected by the work of the County Court.

THE WORK OF THE COUNTY COURT

The County Court has the power to hear cases and make decisions in civil and criminal cases and has **original jurisdiction** and **appellate jurisdiction** (see Fact Sheet 1).

In civil cases, the Court is required to hear and make decisions about disputes between people or companies in relation to commercial and building matters or claims for damages. Civil cases also include matters under specific statute laws, for example in the areas of property, traffic accidents, and adoption.

In criminal cases, the Court will hear and make decisions in relation to breaches of the criminal law. Criminal cases involve matters where a person, the accused has been charged with a criminal offence and a decision must be made about whether the accused is guilty or not guilty. Criminal cases also involve other matters. For example, when an accused has been found guilty, a decision must be made about the consequences by way of sentence. Other matters under the criminal law include whether an accused charged with an offence should be given bail to reside in the community or should reside in state custody while their matter goes through the courts. In the County Court, a criminal case could also involve an appeal from a decision made in the Magistrates' Court.

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WHO IS INVOLVED IN THE WORK OF THE COUNTY COURT?

Accused – a person who has been charged with a criminal offence. An accused who has been found guilty of an offence is called an **offender**.

Administrative staff – refers generally to a range of staff at the County Court who provide administrative and executive assistance to the judges and ensure the operation of the Court. They are part of Court Services Victoria, a public service department that supports Victorian courts and tribunals. Judicial services are independent of the **executive** arm of government (such as the Department of Justice and Regulation) and Victoria's courts and tribunals are directly responsible to the **Victorian Parliament**.

Associate – a judge's associate is part of the team that supports a County Court judge, both in court and in their office (called **chambers**). The associate's work involves operational, administrative and technical legal support, including legal research and in-court administrative assistance in hearings. Tasks in court can include preparing documentation, empanelling and swearing-in of juries, taking verdicts, recording orders made by the judge, and maintaining a record of, and safeguarding, exhibits.

Defendant – a party in a case who is defending a civil claim that is being brought against them.

Judge – judges of the County Court are judicial officers who are appointed to hear cases and make decisions that come before the County Court. If a judge and jury hear a case, the judge must direct the jury about the law that applies. In criminal cases, the judge is responsible for imposing sentences if the accused is found guilty of the charge. The County Court has a Chief Judge who is the most senior judge and head of the County Court. **Fact Sheet 13** focuses in more detail on the appointment, role and powers of County Court judges. Judges are independent officers of the court. They must apply the law and follow applicable procedural rules, but they have individual discretion in presiding over cases and making decisions. There are nearly 70 currently sitting County Court judges as well as a number of reserve judges who are called on when needed to hear cases.

Jury – a jury is a group of ordinary citizens (jurors) selected from the community to make findings of guilty or otherwise in criminal matters and findings of fault and remedies in civil matters. Juries do not make decisions about sentencing in criminal cases. When a person is selected for jury service, through a legal document called a summons, they must attend the Jury Commissioner's Office. This group of prospective jurors is called the **jury pool**. For each case where a jury is needed, prospective jurors are randomly selected from the jury pool to form a **jury panel**. The jury for a case is randomly selected from the jury panel.

Lawyers – lawyers are responsible for providing **legal representation** in cases before the County Court. Legal representation is legal advice and advocacy for a person going through the court system. This includes accused people charged with criminal offences in a criminal matter and a person who is a plaintiff bringing a civil claim or defendant who is defending a civil claim. The legal profession provides legal representation and is an integral part of the legal system in Victoria. The legal profession is made up of lawyers who practice as either solicitors or barristers. **Solicitors** are the first port of call for those seeking legal representation. They provide initial advice to clients on a range of legal matters, prepare legal documents, and provide information to barristers who represent the clients in court, called **briefing**. **Barristers** are specialists who represent clients in court and advocate (argue their cases) on their behalf. Generally, clients have to pay for legal representation; however, in some cases, if clients cannot afford to pay for legal representation and depending on the nature of the legal issue, Victoria Legal Aid provides free legal advice and representation. Legal representation is a very important part of the legal system to ensure that criminal and civil cases are conducted fairly and in accordance with people's legal rights and the principles of justice (see **Fact Sheet 5**).

Plaintiff – a plaintiff, or claimant, is a person who brings a civil action against another person or corporation.

Registry – the Registry provides administrative services for the County Court, including managing all listing of the matters that are heard in the Court and assisting people with paperwork and fees that must be paid in connection with their legal matters. The County Court Registry provides counter and telephone services. There are separate civil and criminal registry listing services in the County Court, as well as an additional client services registry for parties in civil cases.

Tipstaff – is a part of the team that support the County Court Judge in court. The tipstaff announces that the court is in session and administers oaths or affirmations to witnesses who have to give evidence. The tipstaff looks after the jury. He or she is responsible for bringing jurors into the courtroom and into the jury room and dealing with any practical matters for the jury.

Victim – a victim in the context of the criminal justice system is a person who has directly suffered harm as a result of the actions of an offender. This could be a person who has been injured or suffered financial loss as a result of the offender's actions. This also includes a parent of a child victim or a family member of a victim of homicide (heard in the Supreme Court of Victoria). In a criminal case, a person is called a complainant prior to the determination of guilt of an accused and is called a victim after an offender has been found guilty of an offence.

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KEY CONCEPTS IN THE WORK OF THE COUNTY COURT

Actus reus – the physical act that constitutes a crime, also referred to as a physical element.

Burden of proof – the responsibility a party has to prove a case in proceedings before a court. In criminal cases, generally the prosecution bears the burden of proof for criminal charges against the accused. This means that the prosecution must prove its case to the jury (or in limited circumstances a judge). The standard of proof required is beyond a reasonable doubt. In civil cases, the plaintiff generally bears the burden of proof. The standard of proof in civil cases is on the balance of probabilities, which means more probably than not.

Breach – a failure to comply with an order of the Court or a condition of a court order. Sometimes this is referred to as a contravention. Orders of a court that may be breached if they are not complied with are conditions of a sentencing order (for example not to consume alcohol), bail conditions (for example a curfew), or conditions of a family violence order (for example, not to contact the person protected by the order). A breach of the order can result in consequences, such as the breaching party being required to come back to court and answer to the judge, or a change in conditions on the order. Breaching a court order can also result in an accused being charged with further criminal offences.

Causation – in the context of civil liability, causation refers to the connection between one person's actions and the loss suffered by another person. To demonstrate causation in tort law (which means the law of civil wrongs), the person who is bringing the claim (the plaintiff or the claimant) must show that the loss they suffered was caused by the defendant (their actions or failure to act).

Mens rea – the mental state of mind that constitutes a crime, also referred to as guilty mind or fault element.

Strict liability – the imposition of criminal or civil liability (responsibility) without proof of any fault element. A strict liability offence is an offence for which mens rea or a guilty mind does not have to be proven in order for a person to be criminally responsible for the physical act that they committed (the actus reus).

Limitation of actions – this refers to the time limit within which a criminal or civil action can be brought.

Loss – in the civil context, loss refers to the damage that has been caused to a plaintiff as a result of a defendant's actions. Loss or damage can include physical or psychiatric injury, damage to or loss of property, or other economic loss. There must be the requisite connection (causation) between the defendant's actions (the wrongful act or omission) and the plaintiff's loss. In a criminal context, loss refers to the harm that has been suffered by a victim of crime as a result of the offence. This can include physical, psychological and economic harm or damage.

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KEY PROCEDURES

Directions hearing – is a hearing as part of the management of cases that are before the County Court. It is often less formal than other types of hearings, such as trials and sentencing hearings. The main purposes of directions hearings are to make sure that the case is being prepared as it should be and that the case is ready to proceed to trial. This includes witnesses being available to give evidence, expert reports having been prepared, and the accused having legal representation. Directions hearings are also opportunities for judges or judicial registrars to make necessary orders or to direct the lawyers to follow up on any issues that need to be addressed.

Plea – the accused's response to a charge of a criminal offence. An accused is presumed to be innocent until proven guilty. An accused person is entitled to enter a plea of not guilty to the charge. If he or she exercises this right, the prosecution must prove the charge against them in a trial before a jury beyond a reasonable doubt. An accused may also decide to admit responsibility for the offence, meaning the charge does not have to be proven in a trial. If an accused is found guilty by a jury or pleads guilty, they will be sentenced by a judge.

Post-sentence supervision order hearing – a hearing where the Court decides whether an offender who has served his or her sentence ought to be under further supervision in the community at the completion of that sentence. These hearings occur at the request of the Department of Justice and Regulation if it has concerns about the ongoing risk that the offender poses to the community and further supervision or management is needed to manage that potential risk. At these hearings, the Court must decide whether to impose a non-custodial supervision order, which requires the offender to be under supervision in the community and comply with certain conditions, such as where he or she lives, a curfew, or to be assessed for treatment services. If the Court makes a post-sentence supervision order, there are follow up hearings where the Court can monitor the progress of the offender, consider whether the conditions should be changed, or decide whether to stop or continue the order.

Sentencing hearing – a sentencing hearing occurs after an offender has been found guilty of an offence (either by a jury verdict or by pleading guilty). During a sentencing hearing the judge hears **submissions** (arguments) from both parties, the prosecution and the defence about what sentence should be imposed. The parties must make submissions on:

- the facts that the sentence should be based upon;
- the relevant principles that the judge should apply under sentencing law; and
- what sentences have been imposed in other cases compared to the case before the court.

Verdict – a verdict is when the jury delivers its decision in open court in a criminal case in relation to the accused's guilt or otherwise. In criminal trials, when a verdict is taken, the judge's associate reads out the charges and asks the jury (through a represented spokesperson called the **foreperson**) to give their verdict. A jury can only give a verdict of **guilty** or **not guilty** in response to each charge. In civil trials, the judge's associate asks the foreperson for their decision in relation to the plaintiff's claim, and whether the jury finds in favour of the plaintiff or the defendant. In some cases, the jury may also give a decision on the amount of damages to be awarded as a remedy for wrongdoing against the plaintiff.

Trial – a hearing to determine a case before a court. In the County Court, criminal and some civil trials are decided by a jury and presided over by a judge. The jury's job is to make findings of guilty or otherwise in criminal matters and findings of fault and damages in civil matters.

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KEY OUTCOMES

Appeal – when one party to a case before a court asks a higher court to review the original court’s decision. A case can be appealed to determine whether the original court made an error in applying the law or in deciding the facts of the case. The County Court has appellate jurisdiction but this is limited to hearing appeals in criminal cases from 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’s Appeals Division, called the Victorian Court of Appeal.

Conviction – a record in relation to a finding of guilt. When a conviction is recorded it forms part of a person’s criminal record. Convictions can have consequences for an offender in future criminal cases or in other areas of their life. Relevant prior convictions can lead to a more severe sentence or can prevent a person from getting some forms of work or travelling internationally.

Finding of fault – a finding in a civil trial that one party (usually the defendant) infringed a legal right or committed a wrongful act that resulted in loss to the plaintiff. If a person is found to be at fault they may be required to do something to remedy the loss, such as pay money in compensation or comply with a contract.

Finding of guilt – a finding in a criminal trial that the accused committed the offence and is criminally responsible for it. A finding of guilt can be made as a result of a jury verdict of guilty or a plea of guilty. If a person is found guilty of an offence, he or she can have a conviction recorded and be sentenced.

Remedy – a remedy or relief is how the court recognises and enforces a legal right. In the civil jurisdiction, this can include a financial remedy (such as money paid in damages or compensation) or some other form of relief (such as returning property or enforcing a contract).

Sentence – a sentence is the consequence for an offender for their criminal behaviour. Responsibility for sentencing in Victoria is divided between parliament, the courts and government organisations. The **Victorian Parliament** makes sentencing laws through Acts of Parliament. Courts apply and interpret statute laws and decide on the actual sentence to be imposed on an offender in each case. Their collective decisions also form part of the common law. Government organisations are responsible for the administration and operation of sentences, for example supervising offenders on sentences that are served in the community or being responsible for the management of offenders in prison or collecting fines.