

APPOINTMENT, ROLE AND POWERS OF JUDGES

What exactly does a County Court judge do? What experience or qualifications are needed to be a County Court judge? Who chooses County Court judges?

The *County Court Act 1958* (Vic) governs the establishment and operation of the County Court. This fact sheet explains some key aspects of this statute that are important to the County Court's role in the legal system and administration of justice in Victoria.

IMPORTANCE TO VICTORIAN LEGAL SYSTEM AND PRINCIPLES OF JUSTICE

Laws in relation to the appointment, role, and powers of judges are integral to the Victorian legal system and its underlying principles of justice. Importantly, they reflect the separation of powers. The judicial arm of government (judges) is independent from and separate to the legislative arm (the **Victorian Parliament**), which makes the laws. It is also separate from the **executive**, which comprises the Governor, the Premier, and Ministers, as well as government departments and agencies. The executive manages the administration and operation of law and policy. As judges have the discretion to make independent decisions in applying statute and common law, they must be legally trained and experienced, and be able to perform their judicial duties without legal liability or consequences.

HISTORY OF COUNTY COURTS IN VICTORIA

In Victoria, **county courts** have been operating for a long time. They were first established in 1852 and were based on the English county court model. The word **county** in this context means a court that covers one or more counties or geographical regions within an Australian state. County courts operated in various locations throughout Victoria. They were established to provide 'cheap and readily available forums for the quick disposal of small civil claims'.¹ 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.

ESTABLISHMENT OF THE COUNTY COURT BY STATUTE

Section 4 of the *County Court Act 1958* (Vic) establishes the County Court for the trial of offences and the trial and determination of other criminal and civil matters, including appeals, applications, claims, disputes and other proceedings. The Act also establishes the Koori Court Division, which aims to improve the participation of the Victorian Aboriginal (**Koori**) community in the sentencing process in the County Court (see Fact Sheet 7).

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APPOINTMENT OF JUDGES

The appointment, roles, and powers of judges are governed by Divisions 3, 3A and 3AB of Part I of the *County Court Act 1958* (Vic).

Division 3 of Part I of the *County Court Act 1958* (Vic) governs the appointment and qualification of judges. Judges are appointed by the Governor in Council. The Governor is the Queen's representative and exercises the constitutional power of Head of State in Victoria. The Governor in Council means the Governor making a decision with the advice of the Executive Council, being the Ministers in the Victorian Parliament. The *County Court Act 1958* (Vic) allows for the appointment of as many judges of the County Court as required, and a Chief Judge (section 8). The Chief Judge is the head of the County Court.

To be eligible to be appointed as a judge, a person must be under the age of 70 years and have:

- already been a judge of the High Court of Australia, or a Commonwealth Court (such as the Federal Court) or a state court (such as the Magistrates' Court or the Supreme Court); or
- five years' experience, referred to as **standing**, as a lawyer.

Division 3A of Part I governs the appointment of associate judges. To be eligible to be appointed as an associate judge, the person must have already had judicial or legal experience as above and must be under 70 years old. Associate judges hear and determine issues arising before and after the main hearing of a matter. Associate judges assist in the **general business of the court** (section 17ABA) and the Chief Judge may assign specific duties.

Reserve judges can also be appointed: these appointments are governed by Division 3B of Part I. These are additional judges who can help with the court workload and as many can be appointed as 'necessary for transacting the business of the court' (section 17KA). Reserve judges must have judicial and legal experience and be under the age of 78 years to be eligible to be appointed. Reserve judges are typically former judges of the court who have retired due to turning 70.

Section 10 sets out a judge's entitlement to be a paid a salary. The details of this are set out in another statute called *The Judicial Entitlements Act 2015* (Vic). Section 17AAA also specifically provides for professional development and training, which is provided by the Judicial College of Victoria (see Fact Sheet 4).

ROLE AND POWERS OF JUDGES

County Court judges are judicial officers whose role is to hear cases and make decisions that come before the County Court in the civil and criminal jurisdiction. Their role is to interpret and apply statute and common law. County Court judges are independent in the execution of their duties in applying the law. This means that neither the Victorian Parliament nor the Victorian Public Service agencies can tell them what to do in how they apply the law. A decision of a judge can only be reviewed on appeal to a higher court if permission is sought to appeal on the basis of a factual or legal error by the judge who made the decision (see Fact Sheet 1).

When a new judge is appointed, he or she takes an **oath of office**. As part of this, he or she 'solemnly and sincerely' swears (or affirms) to 'do equal justice to all persons, and to discharge the duties of office according to law, and to the best of their knowledge and ability, without fear, favour or affection'².

Judges are not allowed to engage in legal practice or sit in Parliament. All County Court judges, associate judges, and reserve judges have judicial immunity, meaning they will not be legally liable for their judicial actions. Generally, judges and courts can be criticised by any member of the public; however, a person who makes public criticism during ongoing proceedings can face criminal charges for contempt of the court, called **sub judice contempt**, if there is a risk that the trial will be prejudiced.

CHIEF JUDGE

The *County Court (Chief Judge) Act 1974* (Vic) amended the title of the head of the County Court from Chairman of Judges to Chief Judge. The purpose of the change was to alter the title and status of the so-called **senior judge**, given the increasing work of the Court. The Act also enabled the appointment of a judge as Chief Judge from outside the County Court (i.e. the Chief Judge is a judge of the Supreme Court).

The Chief Judge has administrative responsibility for the **business of the Court**, accompanied by a wide power to do all things necessary or convenient to perform that responsibility. 'The business of the court' is a broad phrase that refers generally to the performance of court's functions.

The current Chief Judge is His Honour Peter Kidd. Chief Judge Kidd was appointed to the role in September 2015. He was previously a Senior Crown Prosecutor with the Office of Public Prosecutions. His earlier experience included working as an International Prosecutor at the War Crimes Chamber of the State Court of Bosnia and Herzegovina, which investigated and tried war crimes, crimes against humanity, and genocide committed during the Bosnian conflict in the 1990s.

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THE COUNCIL OF JUDGES

The *County Court Act 1958* (Vic) requires that a **Council of Judges**, which includes all judges, be formed and meet at least once each year. The responsibilities of the Council of Judges under section 87 of the *County Court Act 1958* (Vic) are directed at ensuring there is a mechanism by which judges have the opportunity to consider practical issues and laws affecting court operations, and to be able to communicate those issues, particularly those that may require legislative amendment, to the Executive.

APPOINTMENTS OF NON-JUDICIAL ROLES

The Act also sets out the process for appointing a number of other important roles in the court. Division 3B of Part I governs the appointment of judicial registrars and Division 4 applies to registrars (see Fact Sheet 11). Section 22A provides for the appointment of Aboriginal Elders and Respected Persons for the Koori Court Division (see Fact Sheet 14). Division 5 of Part I sets out the appointment of bailiffs, who assist the court in its work by serving documents containing orders of the court, such as summonses requiring people to attend court to give evidence, notices of adjournment, and claims.

JURISDICTION OF THE COUNTY COURT

The *County Court Act 1958* (Vic) establishes the criminal and civil jurisdictions of the Court.

The County Court's criminal jurisdiction is set out in section 36A of the *County Court Act 1958* (Vic). It has jurisdiction to inquire into, hear, determine and adjudge all indictable offences, which are serious offences, with the exception of treason, murder and related offences (for example manslaughter and infanticide). The Court can deal with offences under Victorian legislation as well as offences under Commonwealth legislation (this is for practicality due to Commonwealth courts possessing limited functionality for criminal proceedings). The diagram below gives some examples of indictable Victorian offences in the County Court's jurisdiction, and the other criminal-related matters that the Court deals with.

The County Court's civil jurisdiction is set out in section 37 of the *County Court Act 1958* (Vic). The civil jurisdiction is divided into two divisions as shown below.

In the **Commercial Division**, trials are heard by a judge experienced in commercial law. **Interlocutory** steps (that is, steps in the early stages of a proceeding) are generally managed by judicial registrars and associate judges (although the County Court presently does not have an associate judge). There is no monetary limit on the County Court's jurisdiction in civil disputes.

The Court also makes decisions in relation to **post-sentence supervision orders**. Although it deals with offenders who have served sentences under the criminal law, this comes under the civil jurisdiction of the County Court. These cases relate to an offender who has come to the end of his or her sentence but the Department of Justice and Community Safety has concerns about the ongoing risk that the offender poses to the community and there may be further supervision or detention needed to manage that potential risk. 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.

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CRIMINAL JURISDICTION	CIVIL JURISDICTION
<p>Prosecution of indictable offences</p> <ul style="list-style-type: none">◦ serious theft◦ armed robbery◦ drug trafficking◦ sexual offences◦ fraud and dishonesty offences◦ culpable driving◦ serious assault◦ income and sales tax offences <p>Other criminal matters</p> <ul style="list-style-type: none">◦ appeals from the Magistrates' and Children's Court◦ bail applications◦ judicial monitoring of sentences◦ breach of sentence conditions	<p>Commercial division</p> <ul style="list-style-type: none">◦ Expedited Cases List◦ Banking and Finance List◦ Building Cases List◦ General Cases List <p>Common Law division</p> <ul style="list-style-type: none">◦ Applications List◦ Defamation List◦ Family Property List◦ General List◦ Medical List◦ Serious Injury Applications List◦ WorkCover List◦ Confiscation List◦ Adoption and Substitute Parentage List◦ Self-represented Litigants Directions List
	<p>Post-sentence supervision orders</p> <ul style="list-style-type: none">◦ applications for orders◦ review of orders and conditions

FOOTNOTES

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

2 This is an excerpt from the oath of office judges take upon their appointment to the County Court.

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