

COUNTY COURT AND LAW REFORM

This fact sheet introduces the concept of law reform and discusses the role that the County Court of Victoria and other key organisations have in the law reform process. It discusses how law reform affects the Court and gives some examples of recent law reforms. The fact sheet also discusses the important related issue of how the County Court communicates with the media and the community.

WHAT IS LAW REFORM?

In order to understand the County Court's role in law reform, it is important to have a clear understanding of what we mean when we say **law reform**. In simple terms, law reform means making changes to the law. However, when we think about it in the context of our legal system and how it works, law reform means more than just change.

LAW REFORM IN THE ENCYCLOPAEDIC AUSTRALIAN LEGAL DICTIONARY...

This definition suggests that law reform means that not only is the law changed, but that it is changed for the better. There could be a need to change the law to reflect changing views or practices in our community or developments in technology or to ensure that the law operates as intended and consistently with the **principles of justice** (see Fact Sheet 5).

Law reform is the modernisation of the law by bringing it into accord with current conditions; the elimination of defects in the law; the simplification of the law and the adoption of new or more effective methods for the administration of the law and the dispensation of justice.

WHO REFORMS THE LAW?

Many parts of the legal system and different government organisations contribute to law reform in Victoria.

The Victorian Parliament has the primary responsibility for law reform through its role in making statute law (see Fact Sheet 1). The government minister who is responsible for the legal system and advising the government about any changes to the legal system is called the **Attorney-General**.

The **Department of Justice and Community Safety** is the department in the Victorian public service that supports and advises the Attorney-General in this work. There are other government organisations in the Victorian public service that contribute to law reform, such as the **Victorian Law Reform Commission** and the **Sentencing Advisory Council** (see Fact Sheet 4). These organisations research and consider whether different areas of the law should be changed and may seek input from people and organisations who have experience in the operation of the law, as well as the community.

The **Victorian Parliament** considers recommendations for law reform from the Attorney-General. This includes recommendations on whether and how statute law should be reformed. Recommendations can involve making changes to existing Acts of Parliament, or to introduce new Acts of Parliament.

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WHAT IS THE COUNTY COURT'S ROLE IN LAW REFORM?

The County Court has a role in law reform in a number of different ways.

The County Court does not have the power to change statute law nor can it directly make recommendations to change statute law. However, it contributes to the law reform process by providing information or assistance to the Department of Justice and Community Safety when it is supporting and advising the Attorney-General to make recommendations for law reform. For example, the Department may request information or expertise from the Court to assist the Department to understand the practical implications of a potential law reform recommendation. The Court also provides input to the law reform process by participating in research done by organisations such as the Victorian Law Reform Commission or the Sentencing Advisory Council. For example, County Court judges may discuss their experience of a particular part of the law in operation or the Court may provide information, such as data on cases that come before the Court.

The County Court can also contribute to the development of the law through common law, through its own decisions by applying, clarifying and refining what the law means, known as the **system of precedent** (see Fact Sheet 1). Development of the law through precedent could occur if the Court is required to apply an existing common law rule to a new set of circumstances, giving rise to a new set of legal principles that other judges in the County Court or a lower court will refer to in future decisions. Development of the law through precedent could also occur if the Court is required to interpret a new Act of Parliament when applying it in a case that comes before it. Another way in which the County Court could contribute to law reform is if a judge's decision identifies or highlights an issue or inconsistency in the operation of the law, which the Attorney-General may decide to address or resolve by making changes to the relevant statute law.

THE RELATIONSHIP BETWEEN THE COUNTY COURT AND THE PARLIAMENT OF VICTORIA

Just as there is a fundamental distinction between **statute law** and **common law**, there is an important separation in the relationship between the County Court and the Parliament of Victoria in their roles in law reform.

Members of the **Victorian Parliament** are elected representatives of the Victorian people. They are elected to govern the people of Victoria, a key part of which is to make statute law through Acts of Parliament that are binding on individuals, organisations and companies. Judicial officers are not elected by the people of Victoria. They are appointed by the government of the day and their duty is to apply the statute law enacted by the Victorian Parliament, independent of the parliament and in accordance with existing common law that has developed over time through previous court decisions. The County Court and its judges, as with any other court in Victoria, cannot make recommendations to change statute laws. However, it can provide input into changes being considered by the Victorian Parliament to ensure that any changes made to the law are for the better and improve the operation of the law. The County Court also directly contributes to the development of the law when it applies existing statute and common law in the cases that come before it.

HOW LAW REFORMS AFFECT THE COUNTY COURT

Law reforms have a direct and often substantial effect on the County Court. Reform to the law changes Acts of Parliament, the statute laws that County Court judges apply in the cases before it. A change to the *Sentencing Act 1991* (Vic) to increase the **maximum penalty** for an offence affects one of the factors the judge must take into account in determining the sentence length for that criminal offence. A change to the *Sentencing Act 1991* (Vic) to remove a **sentencing order** that was previously available as an option to the judge will prohibit him or her from imposing that sentencing order on an offender. Changes to the *Civil Procedure Act 2010* (Vic) will change the procedure that County Court judges follow in a civil **trial**. In some cases, law reforms can affect how the County Court goes about its work. For example, there can be changes to the procedures for managing particular cases, meaning that the Court has to implement new policies or approaches for dealing with such cases. Reform to the law can also affect the County Court in other ways. For example, a change to the *County Court Act 1958* (Vic) that governs how judges are appointed could affect who is selected to be a judge of the County Court (see Fact Sheet 13).

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SOME EXAMPLES OF RECENT LAW REFORMS

An example of a recent law reform are changes to the law when children are required to give evidence in a criminal trial. The changes were made to the *Criminal Procedure Act 2009 (Vic)* to recognise that children are particularly vulnerable to being traumatised by the court process and that they need support to give their best evidence. One change is that children can give their evidence from a separate room to the courtroom where they do not have to see the accused and where they can have the support of a case worker. Additionally, children are only required to give evidence once (rather than multiple times in the committal hearing and the trial). In the County and Supreme Courts, a video recording of a child victim's police interview may be used as their main evidence in court. Chief Judge Peter Kidd and former Chief Justice Marilyn Warren published an [article](#) in *The Age* in March 2017 outlining the significant reforms courts have made to minimise trauma in abuse trials. Further reforms to the process for child victims who are giving evidence have been considered after a decision made by the Victorian Court of Appeal in a case called *Ward (A Pseudonym) v The Queen* [2017] VSCA 37 (3 March 2017) (note that this case involves sexual offences and contains content that may be distressing to some readers). This includes the use of 'intermediaries', who are skilled communication specialists, to help vulnerable witnesses like children communicate and assist them to give their best evidence. The Victorian Government is trialling the Intermediaries Pilot Program in the County Court and other courts.

THE JUDICIARY, THE MEDIA AND THE COMMUNITY

It is common for the media to report on decisions that are made in the County Court. This could include newspaper articles, TV or radio news stories, TV or radio interviews, or current affairs TV shows. It is in the public interest that the media use accurate information about issues and cases that are being dealt with by the Court.

Generally, County Court judges do not directly communicate with representatives of the media. It is important that judges retain their independence and do not make comments about individual cases, matters of policy, or on the merits of particular laws outside of their judicial duties.

However, the County Court has a number of methods for communicating with the media and the broader public about its work. One of the most important methods of communicating with the community is through the publication of judgments and decisions that County Court judges make in the cases that come before it. Social media is another important tool for communicating with the community. The County Court also uses Twitter (@CountyCourtVic) to communicate about its work and connect with community members and other organisations who are interested in its work. Other ways include dedicated programs, such as the County Court's Schools Program with VCE Legal Studies students and Law Week, and speeches at events and conferences.

Not all information about matters before the Court can be published or disclosed to the public. For example, it may be against statute law to directly or indirectly identify people who are the victims of sexual assault. County Court judges (and judicial officers in other Victorian courts) may also prevent the publication of certain information in a case before it, by making an order called a **suppression order**. The *Open Courts Act 2013 (Vic)* sets out the law around when this may occur. If a person does not obey a suppression order, they may be charged with an offence called **contempt of court**. This could happen if the media publishes certain information that could identify a person in a case where a judge has made a suppression order or in a case involving a sexual assault (see Fact Sheet 12).

The County Court also has a policy on accessing court records, which sets out the required procedures for members of the public to request access to information in court records.