



The Magistrates' Court of Victoria

The Magistrates' Court is the busiest court in Victoria, sitting at 52 different locations around Victoria and handling approximately 90% of all cases which come before Victorian courts each year. The Court deals with about 250,000 criminal and civil cases every year.

Magistrates' Court of Victoria
www.magistratescourt.vic.gov.au



HISTORY OF THE MAGISTRATES' COURT

The origins of the Court can be traced back to early colonial times when, in 1836, settlers appointed an arbitrator to settle disputes. Later that year, a Police Magistrate was appointed by the Governor of New South Wales.

A Court of Petty Sessions was established in 1838 and sat in Melbourne and towns all over Victoria. This court was renamed the Magistrates' Court in 1970. The Court has both criminal and civil jurisdictions.

CIVIL JURISDICTION

The civil jurisdiction of the Magistrates' Court deals with disputes arising from claims for damages, debt and other monetary demands, and applications for intervention orders. These are decided by a Magistrate at a hearing or arbitration. General civil matters include claims for debts, damage to property or injury (e.g. motor car collisions) and damages for breach of contract. The civil jurisdiction also deals with neighbourhood disputes, such as disputes about fences.

The Magistrates' Court can decide most disputes over money or property up to the value of \$100,000, including damages for personal injury.

Before finding in favour of a plaintiff in a civil matter, the Magistrate must be satisfied that the claim has been established on the balance of probabilities. This means that, on balance, the plaintiff's case must be more convincing than that of the defendant.

The Magistrates' Court considers applications for intervention orders under the Crimes (Family Violence) Act 1987. An intervention order is designed to protect people from violence by a member of their family or household, someone with whom they have had a close relationship, or from stalking, and will include conditions that prohibit a person from behaviour such as approaching, telephoning or contacting the person who needs the intervention order. Applying for an intervention order is a civil procedure, however breaching an intervention order is a criminal offence.

CRIMINAL JURISDICTION

The Court deals with all summary offences and some indictable offences (see definitions below). It also conducts committal hearings in relation to more serious indictable offences to be listed for trial in the County or Supreme Courts. It deals with prosecutions by police and by other agencies, such as VicRoads, local councils, and Corrections Victoria.

Summary offences are those of a less serious nature and are always heard in the Magistrates' Court. They include traffic offences, minor assault, property damage and offensive behaviour, some of which can be heard in the absence of the defendant.

Indictable offences are more serious offences than summary offences. Some indictable offences, including burglary and theft, can be dealt with by a Magistrate, if the defendant consents. More serious indictable offences, such as murder and rape, must be heard in the County or Supreme Courts. Before a Magistrate finds a person guilty of a criminal offence, he or she must be satisfied beyond reasonable doubt of the person's guilt, on the basis of the evidence presented by the prosecutor. A defendant may also plead guilty at any stage of the proceedings.

MAIN TYPES OF CRIMINAL HEARINGS

Mention: This is the first date on which the matter is listed before the Court. The defendant can plead guilty and have the matter dealt with immediately. Or he/she may have it adjourned to a later date if pleading not guilty or for another reason such as needing time to seek legal advice.

Contest Mention: At this hearing the defendant is pleading "not guilty". The Magistrate and the parties determine the issues in dispute, the required witnesses and the length of the proposed hearing. The case will then proceed to a contested hearing at a later date.

Contest: When the defendant pleads not guilty to the charge(s), both parties present their case to the Court at a contested hearing. A Magistrate will find the charge(s) proven or not proven. That is, the defendant will be found guilty or not guilty. If found guilty, the Magistrate will then impose a sanction.

Committal Mention: Indictable offences that are not proceeding summarily (not being heard by a Magistrate) are listed for a committal mention. The Magistrate may grant leave to the defendant to cross-examine prosecution witnesses. At this hearing, the case may be set for a committal hearing at a later date.

Committal Hearing: A Magistrate hears the prosecution's case and decides whether there is sufficient evidence for a properly instructed jury to convict the defendant. If so, the matter will be sent for trial before a judge and jury at either the County or Supreme Court. Many committal proceedings are heard by way of a "hand-up brief", for which written statements are used, instead of witnesses having to attend in person to give evidence.

COURT PERSONNEL

Magistrate

The role of a Magistrate is to decide matters of fact and law and to reach a verdict or final decision in each case. In criminal cases, he or she then decides on the punishment for guilty defendants. Magistrates act alone, as juries are not used in this Court.

Judicial officers are appointed by the Governor in Council on the recommendation of the Attorney-General. Magistrates are required to have a law degree and must be qualified to practise as a barrister or solicitor in Victoria. Unlike judges, they do not wear wigs or robes. They are addressed in court as "Your Honour".

Judicial Registrar

The role of Judicial Registrars is to hear and determine some civil matters and less serious criminal matters such as council and minor traffic prosecutions, and other applications such as driver's licence restorations. The first appointments to this position were made in March 2006.

Registrar

A registrar is responsible for the general administration of the court which involves a variety of tasks including organising and coordination of court proceedings, maintaining court records, preparing and issuing documents in both civil and criminal jurisdictions, and swearing affidavits. Registrars also perform certain quasi judicial functions such as making instalment orders and conducting pre-hearing conferences.

Bench Clerk

Each court room has a bench clerk sitting in court to assist the Magistrate with documentation, administration and recording the outcome of cases. The clerk also swears in witnesses.

SENTENCING

If a person pleads guilty or is found guilty by a magistrate, a sentence will be imposed. The magistrate will take into account:

- the seriousness of the offence;
- the reasons for committing the offence and whether the offender is remorseful;
- whether the defendant has a drug dependency or illness;
- the defendant's financial situation;
- the range of penalties available to be imposed for the offence;
- whether or not the defendant has been found guilty of any previous offences;
- any other relevant matters.

The Magistrate may also listen to any other matter that the defendant or their lawyer believes should be taken into account when considering the appropriate penalty.

Types of Penalties

There are various penalties which can be imposed by Magistrates. Many can be imposed with or without a conviction being recorded. If a conviction is recorded this can have long-term effects on employment and other matters, so the court has some discretion to decide not to record a conviction. Some of the most commonly imposed penalties are:

Cancellation of licence or permit: These are most commonly used for traffic offences, often in conjunction with a fine;

Adjourned Undertaking: The court adjourns the hearing provided that the offender agrees to be of good behaviour for a period of up to 60 months. Special conditions, such as seeking psychiatric treatment or contributing to the Court Fund may also be imposed. The court may also combine the adjourned undertaking with a fine.

Monetary Penalty: These include fines, compensation, costs and the Court Fund. The Court Fund distributes money to community organisations and charities to provide assistance to the community. Monetary penalties may be used in combination with other penalties. The offender may be given time to pay or may be permitted to pay in instalments.

Community Based Order (CBO): This can be imposed if an offender has been convicted of an offence punishable by imprisonment or a prescribed fine. This order usually requires unpaid community work for a set number of hours or attendance at an educational or other program. Offenders are assessed for suitability for such an order and must consent to participating.

Intensive Correction Order (ICO): This type of order can be used when a person is convicted of an offence and a term of imprisonment for not more than 12 months is imposed. Rather than sending the offender to prison, the court may order that the sentence be served by way of intensive correction in the community. This will include 12 hours of supervision per week, usually in unpaid community work, and may also require attendance at counselling or treatment designed to address offending behaviour.

Suspended Sentences: These allow a Magistrate to impose a prison sentence but 'suspend' all or some of the sentence. This means the sentence time is not necessarily spent in gaol. However if a further offence is committed during this period the prison sentence may be re-imposed.

Imprisonment: Can be ordered by a Magistrate for a maximum term of two years for one offence or an aggregate (total) sentence of five years for multiple offences. Some defendants, who are under the age of 21 but at least 18, may be ordered to be detained in a Youth Training Centre.

SPECIALIST COURTS

The **Koori Court** was established to help overcome the over-representation of Koori people within the criminal justice system. The Koori Court aims to increase participation by the Koori community in the Court process, encourage defendants to appear in Court and reduce re-offending.

The Koori Court is responsible for the sentencing of Koori defendants who plead guilty and who choose to have their matter heard in the Koori Court. The same laws and sentencing options are applied as for all defendants. However, the Koori Court is less formal than a traditional court, and more tailored to the cultural needs of Koori defendants and their community. Hearings are conducted with everyone seated around a large table. The court is presided over by a Magistrate who is assisted by one or more Koori Elders or Respected Persons, bringing a cultural perspective to the sentencing process. A Koori Justice Worker, a corrections officer, the Police Prosecutor, the defendant's lawyer and family members or supporters are also present, and everyone, including the offender, is free to speak during the hearing.

The **Victims of Crime Assistance Tribunal** acknowledges and provides financial assistance to victims of crimes that are committed in Victoria. The Tribunal can be accessed at all of the Magistrates' Courts.

The Tribunal may provide financial assistance with expenses relating to injuries occurring as a direct result of the crime and/or expenses to assist recovery. For further information go to www.vocat.vic.gov.au

The **Family Violence Court Division** is a division of the Magistrates' Court, operating at the Magistrates' Courts at Ballarat and Heidelberg, as a pilot program until 30 June 2007. It aims to make access to the Magistrates' Court easier for persons who have experienced family violence, to promote the safety of victims of family violence, to increase accountability of people who have used violence and abuse against their partner and families and to better protect children exposed to family violence.

The **Drug Court** is responsible for sentencing and supervising the treatment of drug or alcohol dependent offenders who have committed an offence when affected by drugs/alcohol, or to support their drug/alcohol habit. Offenders are sentenced to a Drug Treatment Order (DTO), with a custodial component and a treatment and supervision component. The Drug Court commenced in May 2002 and is located at Dandenong Magistrates' Court.

PROGRAMS

C.R.E.D.I.T. (Court Referral & Evaluation for Drug Intervention & Treatment)

Bail Support Program

This program provides support for defendants with substance abuse problems by providing access to drug treatment and rehabilitation, accommodation and other supports. The Program aims to increase the likelihood of a defendant being granted bail and successfully completing the bail period.

Criminal Justice Diversion Program

This program provides mainly first-time offenders with the opportunity to avoid a formal criminal record by undertaking various activities, such as tendering an apology to the victim, attending counselling, performing voluntary work, payment of compensation to the victim, or other appropriate activities. Diversion can be recommended where the offence is within the Magistrates' Court's jurisdiction, the defendant admits the facts of the offence, there is sufficient evidence to gain a conviction and where it is appropriate in the circumstances.

Court Integrated Services Program

This Program links a number of existing support services within the Court, including the C.R.E.D.I.T./Bail Support Program, the Aboriginal Liaison Service and the Disability Coordinator to provide a coordinated, team approach to the treatment of defendants. This Program is currently available at the Sunshine, Melbourne and Latrobe Valley Magistrates' Courts.

OTHER SERVICES

Court Network volunteers, the Salvation Army and various local community organisations provide support services to court users. Services provided include listening to the client's concerns, explaining the court process and providing non-legal advice and referral.

Further information on The Magistrates' Court can be found at: www.magistratescourt.vic.gov.au



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