

Unit 4: Dispute resolution methods

Reasons for a court hierarchy

- Doctrine of Precedent: due to the hierarchy system, rulings in superior courts are binding on all lower courts in the same hierarchy, which creates consistency and predictability.
- Appeals: appeals occur 'up the hierarchy', when a party is not satisfied with the outcome of their case, it can be reviewed in a superior court. This ensures the potential 'undoing of wrongs' and fair and unbiased hearings.
- Specialisation: courts are divided by the matters they hear, therefore, they become familiar with the cases they hear, procedures to follow and related legislation.
- Administrative Efficiency: justice is streamlined as lower courts hear the minor cases (majority), and higher courts hear major cases (minority).

Court jurisdictions

Magistrates' Court:

- Original Jurisdiction: **Criminal**: All summary offences, minor indictable offences heard summarily, committal hearings, bail applications and the issuing of warrants. **Civil**: All claims up to \$100,000. However, all claims under \$10,000 will go to arbitration, rather than the court.
- Appellate Jurisdiction: None.

County Court:

- Original Jurisdiction: **Criminal**: All indictable offences, except the most serious (e.g. murder). **Civil**: All claims above \$100,000.
- Appellate Jurisdiction: **Criminal**: Appeals from Magistrates against conviction or sentence. **Civil**: None.

Supreme Court: Trial Division

- Original Jurisdiction: **Criminal**: All indictable offences (generally hears most serious). **Civil**: All claims above \$100,000.
- Appellate Jurisdiction: **Criminal**: Appeals from Magistrates on point of law. **Civil**: Appeals from Magistrates and VCAT on points of law.

Supreme Court: Court of Appeal

- Original Jurisdiction: None.
- Appellate Jurisdiction: **Criminal**: Appeals on points of law, conviction or sentence from country and trial division. **Civil**: Appeals on points of law, disputes over facts or an amount of damages from country, trial division and VCAT.

Role of VCAT

Provide accessible, low cost and timely access to justice in civil disputes

Dispute resolution methods used by courts and VCAT

- **Mediation**: encourages cooperation, independent third party does not suggest solution, rather this person 'facilitates' discussion. Decisions reached not legally binding unless agreement is registered. **Strengths**: Cheaper + more informal, thus encouraging future relationship. **Weaknesses**: requires voluntary cooperation + inappropriate when there is a power imbalance.
- **Conciliation**: Same as mediation, only difference is 'conciliator' can impartially suggest solutions to assist a settlement. Not binding unless registered. **Strengths**: Encourages continuing relationship + parties have chosen an agreement therefore more likely to abide by it. **Weaknesses**: Not legally binding

therefore relies on parties to uphold agreement. (this can be mitigated if parties sign an agreement)

- **Arbitration:** 'Arbitrator' (third party) has the ability to make a binding decision through listening to both parties and making a mutually accepted resolution. **Strengths:** can achieve mutually acceptable, yet binding resolution – often courts cannot. **Weaknesses:** can encourage animosity and resentment.
- **Judicial Determination:** judicial officer makes a binding decision after parties present their case. Significantly more formal than other processes. **Strengths:** strict rules of evidence and procedure.

Strengths and weaknesses of courts and VCAT

- **Strengths of VCAT:** low cost (no reliance on legal representation), accessible (informal), timely resolution (short hearings).
- **Weaknesses of VCAT:** its lack of strict formal procedure may dissuade some people from taking this avenue. Similarly there is a limited avenue for appeals.
- **Strengths of Courts:** see "the courts' cheat sheet. Strengths relate back to the process of appeals, formal procedures, application of the doctrine of precedent etc.
- **Weaknesses of Courts:** Relate back to the strengths of VCAT. The court system is costly and expensive. The adversarial nature (win/lose) can also create animosity between parties.