

## FACT SHEET 18

# Courts - Their Role and Powers

One of the very first institutions of government established by the British in Australia was a court to hear criminal matters and a separate court to determine civil matters. This meant that by Federation, on the colonies becoming States, they already had their own court systems. The Australian Constitution created the federal court system, establishing the High Court of Australia, and provided for the creation of other federal courts by Parliament. The High Court is the final court of appeal from both state courts and federal courts.

## Judicial independence

Courts are made up of independent judges who decide legal disputes by exercising judicial power. To ensure that judges remain independent of the Government, they are given special protection to prevent them from being pressured.

For example, section 72 of the Australian Constitution, which relates to High Court and Federal Court judges, says that a judge's salary cannot be reduced while he or she continues as a judge. Section 72 also provides that a judge can only be removed by the Governor-General after both Houses of Parliament ask for the judge's removal 'on the ground of proved misbehavior or

incapacity'. This means the Government cannot remove a judge simply because it disagrees with his or her judgments.

At the Commonwealth level, judges used to be appointed for life. However, after the 1977 referendum was carried on this issue, the Constitution was changed so that now they are appointed until they turn 70. At the State level, different States have different retirement ages for judges.

## What do courts do?

Courts decide disputes between two or more people or bodies (such as companies, organisations, or governments) about how the law applies and whether it has been breached. Courts do not make policy decisions about what the law should be. Instead, they make legal decisions about what the law is and how it applies to particular facts. A court resolves a dispute by giving an authoritative, binding, and enforceable decision about how the law applies and what are the consequences, which usually involves giving some kind of remedy.

In criminal matters, some of the decision-making role is given to a jury – which is usually comprised of 12 ordinary citizens. The jury decides what the



*The High Court of Australia sitting in Canberra*  
Source: High Court of Australia

facts of a case are after hearing the evidence. The jury then makes the decision about whether on the facts and according to the law as explained by the judge, a person is guilty or not guilty. The judge decides any questions of law that arise and also determines, if a jury reaches a verdict of guilty, what the sentence should be. The aim is to ensure that every accused person is treated fairly, by people independent of what occurred, who are not biased.

For example, if it is claimed that Miriam broke the law by stealing Narelle's car, the court would receive evidence (e.g. from eye-witnesses who saw what happened, CCTV cameras in the vicinity, and fingerprints left on the car) so that it could determine the facts. It would identify the law and how it applies to those facts. The jury would then determine whether Miriam was guilty and, if so, the court would punish her by imposing a sentence of imprisonment (or some other sentence, such as a fine).

Sometimes a court may have to decide whether a Government's actions (e.g. closing a State border in a pandemic) was validly done under a relevant law, or whether a law (e.g. a law banning political protests) is constitutionally valid. Whether something breaches the Constitution or is constitutionally valid are different questions that may have to be considered by the judges. The court will declare whether the law is constitutionally valid or whether Government's actions were taken validly under that law.

Governments are required to obey the decisions of the courts. This is an important aspect of the rule of law, under which everyone, including the Government, must obey the law.

Courts also decide non-criminal matters, which are often described as 'civil' matters. Juries are not often used for civil matters, so ordinarily, it is left to the judge to decide the facts, the law, and the remedy. Civil cases include whether someone has breached a contract or whether someone's negligent actions caused another person to be injured. The court will receive evidence to help it determine the facts, decide how the law applies to those facts, determine whether someone's rights have been impaired, and if so provide a remedy. The remedy might be that a person is required to perform the acts that they agreed to do under a contract or pay compensation to a person for the breach of contract or the injury that they caused. Remedies might also include an order that a person stop doing something, or that they must do something.

## Jurisdiction of different courts

Some courts specialise in particular types of matters, such as family law or environmental matters. Most courts, however, deal with a variety of different matters, but at different levels of seriousness.

Why the difference? When the Constitution came into force in 1901, the States already had full court systems. There was unlikely to be enough federal cases to justify a new federal court system at that time, so the Constitution allowed State courts to be given the power to deal with federal matters. In more recent times, Federal courts were created, but the Constitution does not allow the Parliament to give Federal courts the power to deal with exclusively State matters. It is important to note that Courts don't only have jurisdiction to deal with breaches of Commonwealth laws. There are also differences between Federal and State courts.



*The first Chief Justice of the High Court of Australia, Sir Samuel Griffith | painting by Sir William (Bill) Alexander Dargie  
Source: High Court of Australia*

## State/Territory Courts

State Courts have wider jurisdiction, because they can deal both with cases involving State laws (e.g. most criminal law cases, personal injury cases and cases concerning land) as well as some disputes arising under Commonwealth laws and other federal matters.

**Lower Courts:** Criminal offences that have low punishments, such as a fine or imprisonment up to a maximum sentence of two years, can be dealt with in the local court (also known as the local Magistrates Court). Small claims are dealt with in the local court (or sometimes by tribunals),

**The District Courts:** More serious crimes are dealt with in the District (or 'County') Court.

**The Supreme Court:** The most serious crimes, such as murder, are dealt with in the Supreme Court of a State. Matters involving large amounts of money, or very serious consequences, are also dealt with in the Supreme Court.

## Federal Courts

Federal Courts have jurisdiction (sometimes referred to as 'accrued' jurisdiction) to determine all issues or claims that form part of a matter within federal jurisdiction, including issues involving State laws. Federal courts, such as the Federal Court of Australia, have jurisdiction in cases involving Commonwealth laws (e.g. cases about migration, bankruptcy, and consumer matters) and other federal matters. The Federal Court, for example, can exercise jurisdiction in all the matters listed in [sections 75](#) and [76](#) of the Constitution. Family law matters are generally dealt with by the Federal Circuit and Family Court of Australia.

## Appeals and the High Court

If a party to a case thinks that the court got the answer wrong, they may appeal to a higher court. Appeals may be restricted to questions of law, rather than fact. In some cases there is no automatic right of appeal – the party must seek permission (known as 'leave') for the appeal to be heard. They do this by showing it is a really important point, or that different courts have come up with conflicting answers on the same point, or that there is serious doubt about the correctness of the decision of the lower court.

The highest court in Australia that an appeal can now reach is the High Court of Australia.

The High Court can hear appeals from both State and Federal courts, so it is the one that ultimately decides the law and what is constitutionally valid. The High Court is referred to in [section 71](#) as the 'Federal Supreme Court'. All other courts in Australia must decide their cases consistently with decisions of the High Court. The doctrine of *stare decisis* is a key feature of our common law system. It is a core feature of the appellate structure that all lower courts, every other court in Australia, has to apply High Court precedent.

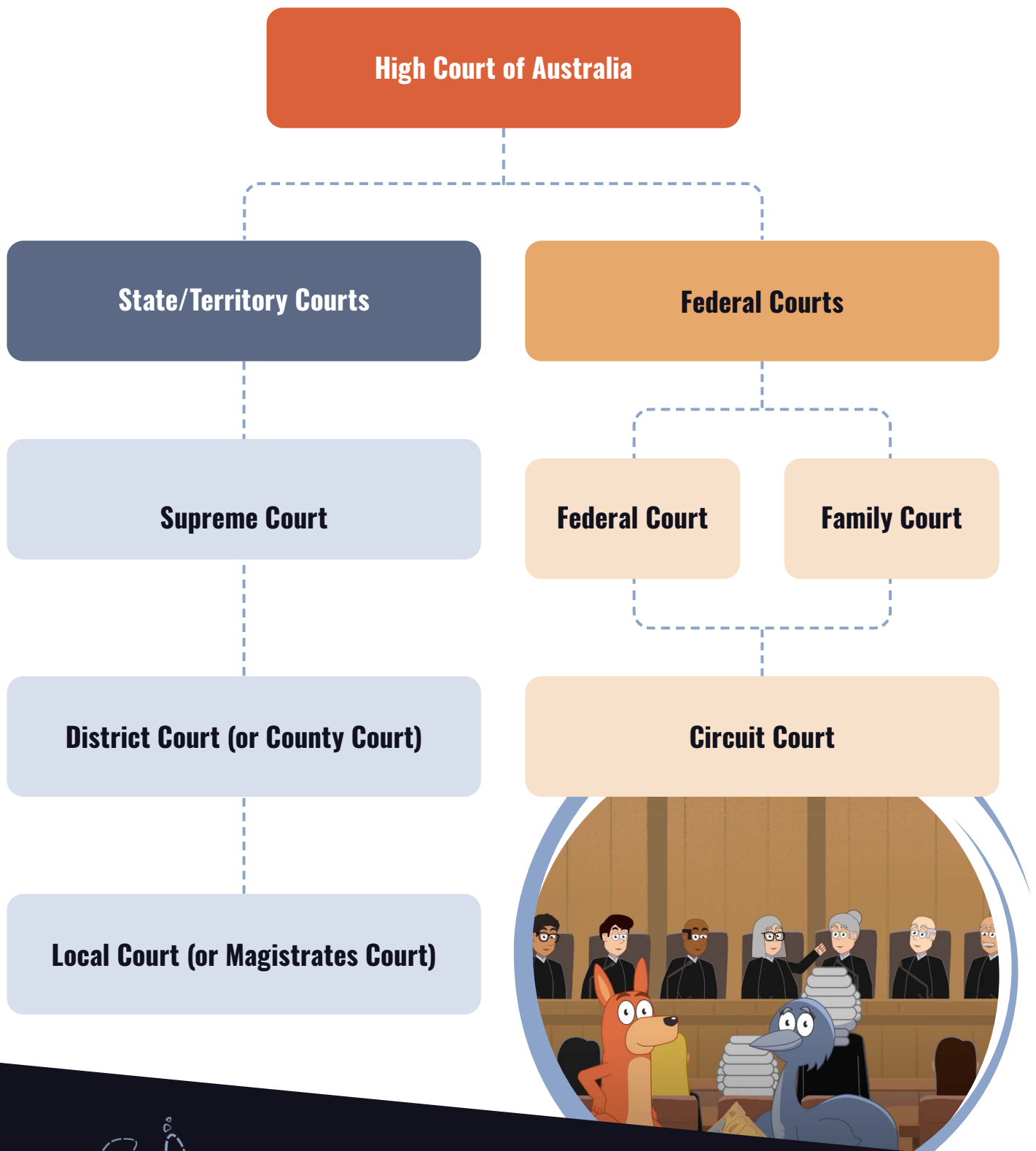


*The High Court of Australia*  
Source: High Court of Australia



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# The Courts of Australia



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