



The Court System

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Introduction

Most courts deal with both civil and criminal matters.

Criminal cases are usually prosecuted by the police or a government official, and result in either an acquittal or a conviction and the imposition of a penalty such as a fine, imprisonment or probation. Criminal convictions may result in a person having a criminal or police record.

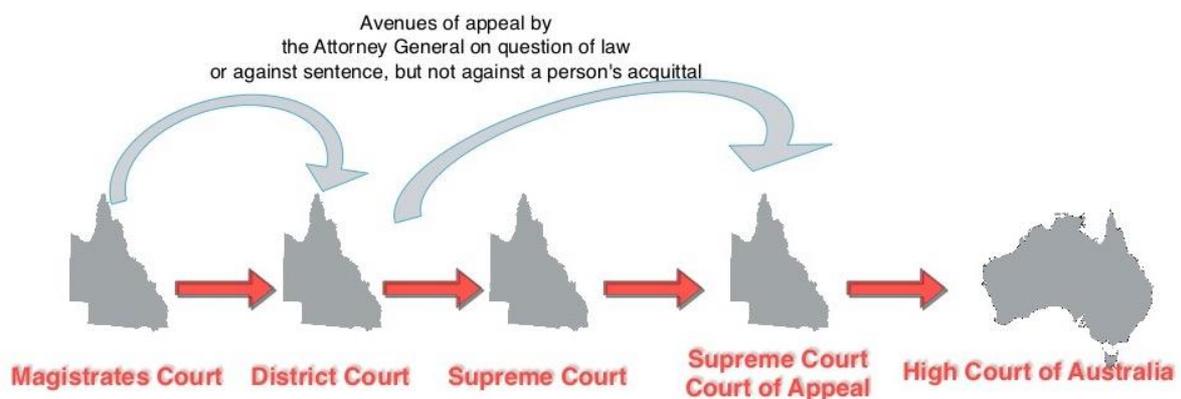
Civil cases involve one person (the plaintiff or applicant) claiming damages or seeking some order against another person (the defendant or respondent). Civil cases do not result in a person having a criminal or police record.

Courts that hear both civil and criminal cases are called courts of general jurisdiction.

Courts such as the Family Court of Australia, the Childrens Court and Land Court deal solely with specialised legal problems.

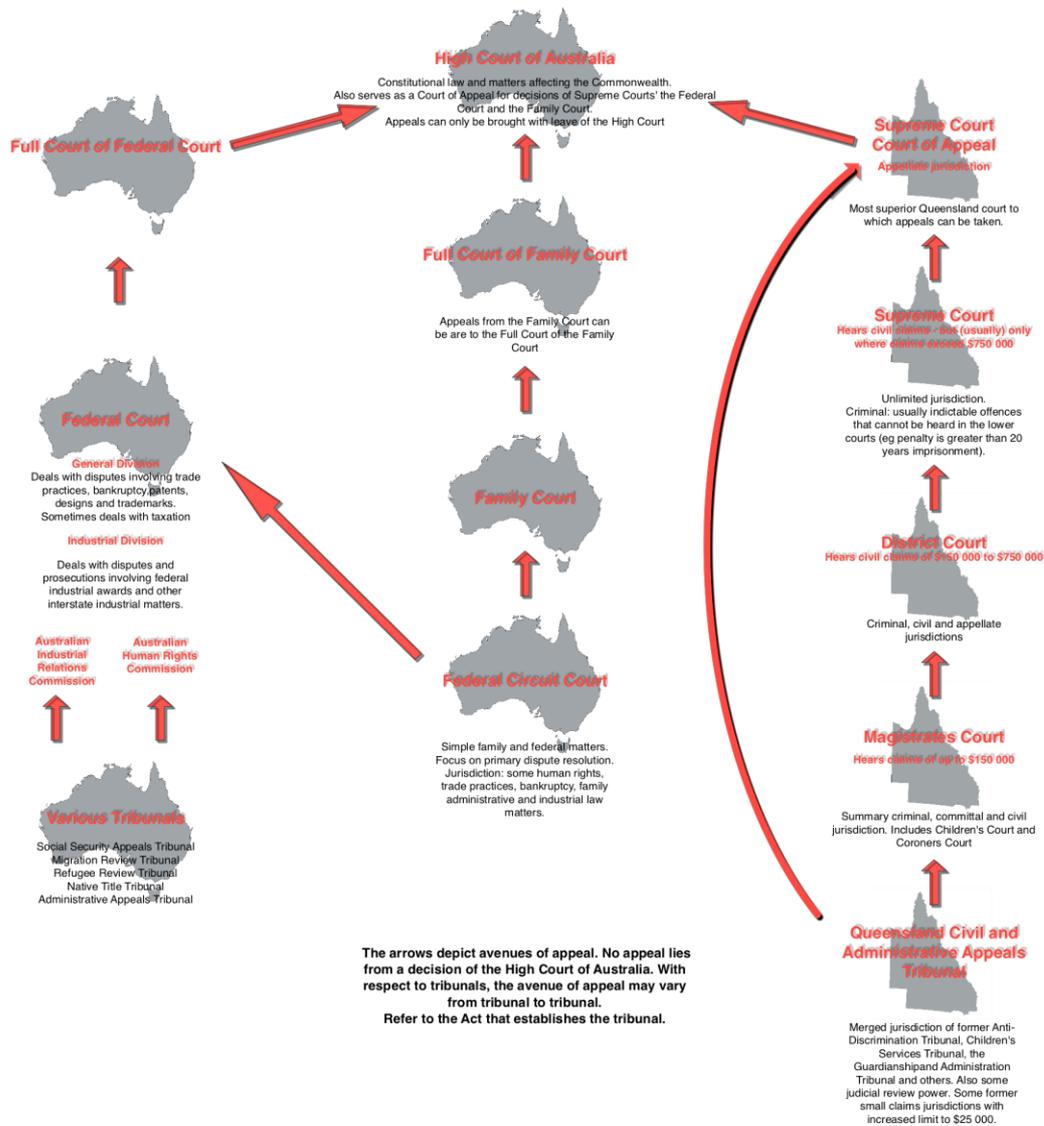
Tribunals and commissions such as the Administrative Appeals Tribunal and the Queensland Civil and Administrative Tribunal hear and make decisions about particular cases that come before them.

The criminal court structure



The red arrows depict avenues of appeal.
No appeal lies from a decision of the High Court of Australia

The Australian court structure



Jurisdiction of a Court

The types of matters that a court or tribunal can deal with are known as its jurisdiction. In effect, the jurisdiction of a court or tribunal is the power or authority to hear cases and make decisions in all of the areas that the court can deal with. Usually, the jurisdiction of the court or tribunal is set down in the Act of parliament that established that court or tribunal. For example, the Family Court has power to deal with family law matters arising under the *Family Law Act 1975 (Cth)* (Family Law Act). The Family Court of Australia could not, however, deal with environmental law matters because it has no jurisdiction to do so under the Family Law Act.

In the state court system, the court's civil jurisdiction is generally limited by how much money the claim is for, and a court's criminal jurisdiction is generally limited by penalty or simply by the type of offence as designated by law. Further, a Magistrates Court will generally only hear matters which have occurred within its district or area unless, in criminal matters, on a plea of guilty. For example, the Sandgate Magistrates Court will normally only hear matters that occur in the Sandgate Magistrates Court district.

Many courts and tribunals are usually open to the public. However, some courts (e.g. the Childrens Court) conduct closed hearings to protect the identity of the people appearing before the court or tribunal.

In Queensland, there are two jurisdictions of courts and tribunals:

- state courts and tribunals, which deal with matters involving the laws of Queensland
- Commonwealth courts and tribunals, which deal with the laws of the Commonwealth (e.g. family law and bankruptcy).

The Queensland Magistrates Court

The Magistrates courts of Queensland are established under the *Magistrates Courts Act 1921* (Qld) (Magistrates Courts Act) and the *Justices Act 1886* (Qld) (Justices Act). It is the first tier of the Queensland courts system and is the busiest of all Queensland courts. There are Magistrates courts in over 100 locations around Queensland.

A Magistrates Court is usually constituted by one magistrate sitting alone (s 16 Magistrates Courts Act). Magistrates are appointed under the Magistrates Courts Act, which details the qualifications of magistrates, how they are appointed, the role of the Chief Magistrate and their general functions.

Each Magistrates Court has three kinds of jurisdiction (i.e. matters it has power to deal with). Generally, all criminal matters will commence in the Magistrates Court and proceed either through the court's summary jurisdiction or committal jurisdiction.

Summary criminal jurisdiction

Under s 3 of the *Criminal Code Act 1899* (Qld) (Criminal Code), there are two categories of offences:

- crimes
- regulatory offences.

Criminal offences include crimes, misdemeanors and simple offences. That same provision and s 22A of the Justices Act provide a Magistrates Court with jurisdiction to hear minor criminal offences. The Magistrates Court hears simple offences including traffic offences and public order offences such as disorderly behaviour and drunkenness. The *Regulatory Offences Act 1985* (Qld) creates a further class of minor offences called regulatory offences and gives magistrates the jurisdiction to deal with them. Regulatory offences include shoplifting (as opposed to a charge of stealing) and minor wilful destruction of property.

Magistrates may also hear some more serious criminal offences (i.e. crimes and misdemeanors). This is usually dependent upon the type of criminal offence. There are some criminal offences that can be

dealt with in the Magistrates Court only by the choice of either the defendant or the prosecutor, and the magistrate agreeing for the case to be heard in the Magistrates Court. There are also a number of more serious offences (mostly property offences) that, regardless of any election by prosecution or defence, must be dealt with in the Magistrates Court, provided the magistrate agrees or exceptional circumstances exist (ss 552BA, 552D Criminal Code). One such category of offences that must be dealt with summarily is any offence where the maximum penalty is not more than three years imprisonment. Thus many more serious offences will now be determined in the Magistrates Court. The rules governing this are contained in ss 552A–552J of the Criminal Code.

Committal jurisdiction

All criminal offences other than simple offences and regulatory offences are indictable offences. Although some indictable offences may be heard in the Magistrates Court, indictable offences can result in charges that are heard by a judge and jury in the District Court or the Supreme Court. An accused person has no longer the inherent right to be tried by a jury for many serious offences.

When a matter is not to be determined in the Magistrates Court and before it proceeds to the District or Supreme Court for a judge and jury to hear the matter, a committal hearing is held in the Magistrates Court. During this hearing, the prosecution must establish that the defendant charged with an indictable offence has a case to answer. The committal hearing is not a full hearing of the evidence. Instead it allows the accused person to be fully informed of the evidence against them. A magistrate must consider whether there is enough evidence to send the matter to a judge and jury for a full hearing of all the facts (for more information see the *Court Processes* chapter).

Civil jurisdiction

Magistrates can decide cases when the amount in dispute or damages claimed does not exceed \$150 000 (s 4 Magistrates Courts Act). In certain circumstances, it may be possible for the Magistrates Court to hear a claim of more than \$150 000 where the parties agree in writing (s 4A Magistrates Courts Act). A claim may also be heard where one party chooses to reduce the original claim to the prescribed limit or less (s 5 Magistrates Courts Act).

In addition, magistrates can make orders in relation to various other matters under particular Queensland and Commonwealth laws. For example, a magistrate can hear cases arising under:

- family law—a magistrate can deal with contested maintenance matters, uncontested parenting orders and uncontested property matters with the consent of the parties. A magistrate can also deal with certain child support matters but cannot grant a divorce. In contested cases involving children or property, the matter is normally transferred to the Family Court for a decision
- legislation concerning fences—a magistrate can make orders in respect of fences between adjoining properties, although where the dispute is under \$25 000, the Queensland Civil and Administrative Tribunal also has jurisdiction
- domestic violence applications
- peace and good behaviour orders
- applications for child protection orders.

Appeals from the Magistrates Court

Appeals against decisions of magistrates, in both criminal and civil matters, are heard in the District Court.

In criminal matters, one may appeal against conviction (the sentence imposed such as severity or leniency) or on a question (or interpretation) of law without permission from the courts or other parties (i.e. 'as of right'). The prosecution may appeal against the dismissal of the charge of a simple or regulatory offence. Dismissal of charges for indictable offences may not be appealed (s 222(2)(b) Justices Act). There is also no appeal against a conviction where a defendant has entered a guilty plea (s 222(2)(c) Justices Act). Both the defendant and prosecution can appeal against a decision of a magistrate to deal with a criminal charge in the Magistrates Court.

In civil matters, where the property in dispute is worth \$25 000 or more, an appeal to the District Court lies as of right. If the amount involved is less than \$25 000, leave to appeal must be obtained from a District Court judge (i.e. the appellant must ask the District Court for permission to appeal). Leave or permission will only be granted if some important point of law or issue of justice is involved (s 45 Magistrates Courts Act).

An appeal from a magistrate exercising family law jurisdiction lies to the Family Court and is an appeal as of right. Such an appeal will be heard *de novo* (i.e. anew), allowing the matter to be reheard in full and new evidence to be led.

The District Court of Queensland

The District Court is established by the *District Court of Queensland Act 1967* (Qld) (District Court Act). The District Court sits in limited locations in Brisbane, Maroochydore, Townsville, Rockhampton, Cairns, Beenleigh, Ipswich and Southport as well as on circuit at Gympie, Maryborough and various other locations.

The District Court is generally constituted by one judge sitting alone, although in some civil proceedings and almost all criminal proceedings a jury is involved. The District Court Act also sets out the qualifications for the appointment of District Court judges.

The District Court has three types of jurisdiction.

Criminal jurisdiction

The District Court usually hears indictable offences (crimes or misdemeanors) that carry a maximum penalty of 20 years imprisonment or less (s 61 District Court Act).

The District Court can also deal with a limited number of criminal offences carrying maximum penalties of life imprisonment including arson, burglary, armed robbery and rape (s 61(2) District Court Act).

Section 614 of the Criminal Code permits criminal trials to be heard by a judge alone in certain circumstances.

Civil jurisdiction

Civil actions can be heard in the District Court if the amount in dispute or the value of the property in dispute does not exceed \$750 000 (s 68 District Court Act).

Appellate jurisdiction

The District Court has power to hear certain appeals from decisions of the Magistrates Court (s 113 District Court Act).

The Supreme Court of Queensland

The Supreme Court is governed by the *Supreme Court of Queensland Act 1991* (Qld) (Supreme Court Act). It is the superior court in the Queensland legal system and sits in Brisbane, Rockhampton, Townsville and Cairns, as well as on circuit in Longreach, Mackay, Maryborough and various other locations.

The Supreme Court is also constituted by one judge sitting alone, although in some civil and almost all criminal proceedings, a jury is involved.

The Supreme Court has jurisdiction to hear all cases necessary for the administration of justice in Queensland. In other words, the Supreme Court has the jurisdiction to hear all matters relating to Queensland law including those that fall within the District and Magistrates courts' jurisdiction. In reality, the Supreme Court exercises a much more limited jurisdiction.

Criminal jurisdiction

The Supreme Court has jurisdiction in respect to all criminal offences in Queensland. However, the court only hears those indictable offences that cannot be heard in the Magistrates or District Court (usually offences where the penalty is greater than 20 years imprisonment or which otherwise cannot be heard in the District Court). Trials in the Supreme Court are permitted to be heard by a judge alone in certain circumstances (s 614 Criminal Code).

Civil jurisdiction

The Supreme Court can hear civil cases involving unlimited amounts of money and property. However, it can remit matters to the District Court if they fall within that court's jurisdiction. In reality, the Supreme Court will only hear matters where the amount of money or value of property in dispute is in excess of \$750 000.

The Queensland Court of Appeal

The Court of Appeal is actually a part of the Supreme Court and is established under the Supreme Court Act. As its name suggests, the Court of Appeal is Queensland's most superior court to which appeals can be taken. The court itself is comprised of the president and at least three but no more than five judges (who are called judges of appeal). Any three judges of appeal sitting together at one time will constitute the Court of Appeal.

Civil matters

The Court of Appeal can hear appeals from decisions of the District Court in its original and appellate jurisdiction in any civil action in which the amount claimed or the property in dispute exceeds the Magistrates Court jurisdictional limit as it applies from time to time (\$150 000 at present). When a lesser sum is involved, an appeal can be made with the leave of the Court of Appeal or Judge of Appeal (s 118 District Court Act). An appeal can be brought against any order, no monetary or other limits apply.

The Court of Appeal can also review decisions of single Supreme Court judges and decisions that are made by a judicial member of the Queensland Civil and Administrative Tribunal.

Criminal matters

Criminal cases heard by the District Court and the Supreme Court can be reviewed by the Court of Appeal.

A person convicted of an indictable offence in either a District Court or a Supreme Court may appeal as of right (without permission) in respect of any question of law. With the court's leave (permission), a convicted person may appeal in respect of any finding of fact or against sentence (s 668D Criminal Code).

The Attorney-General may appeal on a question of law or against a sentence imposed on a person, but cannot appeal against a person's acquittal.

Appeals from the Court of Appeal

All appeals from decisions of the Court of Appeal lie to the High Court of Australia. However, the High Court must grant leave to a person who is seeking to appeal a decision of the Court of Appeal.

Queensland's Specialist State Courts

The Childrens Court

The Childrens Court is established by the *Childrens Court Act 1992* (Qld) and deals with both criminal matters (for children under 17 years of age) and non-criminal matters (e.g. child protection orders issued for children under 18 years of age).

While the Magistrates Court is empowered to deal with children charged with simple offences and less serious indictable offences, the Childrens Court generally deals with most offences involving children, particularly where the charges are for serious indictable offences (offences which, if committed by an adult, would make the adult liable for imprisonment for more than 20 years). However, children charged with serious indictable offences have the right to choose to have the matter heard by a judge and jury in the District Court or Supreme Court.

Childrens Court judges (i.e. a District Court judge sitting as the Childrens Court) are also able to quickly review the sentencing decisions of magistrates, hear bail applications for serious offences and review bail decisions made by magistrates.

Hearings in the Childrens Court are usually closed to the public, though there are exceptions to this especially in the criminal jurisdiction (for further information see the *Children and the Criminal Law* chapter).

The Mental Health Court

The Mental Health Court is established by the *Mental Health Act 2000* (Qld) and, amongst other things, decides on the state of mind of people charged with criminal offences.

A criminal case can be referred to the Mental Health Court if it is believed that the alleged offender:

- is mentally ill
- was mentally ill
- has an intellectual disability
- at the relevant time was deprived of a relevant capacity (s 27 Criminal Code).

The court also hears appeals from the Mental Health Review Tribunal and inquires into the lawfulness of patients' detention in authorised mental health facilities.

The court is constituted by judges of the Supreme Court, and the court is advised by two assisting psychiatrists who advise the court on the meaning and significance of clinical evidence and issues relating to the treatment and detention needs of people.

The Coroners Court

The Coroners Court is established under the *Coroners Act 2003* (Qld). It is the State Coroner's function to ensure that reportable deaths are properly investigated. Reportable deaths include those where the:

- identity of the deceased is not known
- death was violent, unnatural or suspicious
- death was not reasonably expected to be the outcome of a health procedure
- death occurred while the deceased was in custody or in care.

The Industrial Court and the Queensland Industrial Relations Commission

Chapter 8 of the *Industrial Relations Act 1999* (Qld) establishes a regime of courts, commissions and magistrates to deal with industrial disputes. The Industrial Court consists of a Supreme Court judge who, in this specialist capacity, is called the President of the Industrial Court. The Industrial Court has original jurisdiction to hear proceedings for serious industrial offences and other matters, such as the suspension or deregistration of a union.

The Industrial Court has appellate jurisdiction in respect of matters decided by the Queensland Industrial Relations Commission and industrial magistrates.

The Queensland Industrial Relations Commission is a body that determines disputes between employers and employees.

The Industrial Magistrates Court hears proceedings for less serious offences and claims for wages due under awards or industrial agreements.

The Land Court

The Land Court established by the *Land Court Act 2000* (Qld) consists of a president and other members as appointed. Members are not judges. Most powers of the Land Court can be exercised by a single member.

The Land Court has jurisdiction to determine matters relating to Crown leases and special matters relating to land under other Acts. For example under the *Acquisition of Land Act 1967* (Qld), the Land Court hears disputes about compensation for land compulsorily acquired by government bodies.

An appeal lies from the Land Court to the Land Appeal Court. The Land Appeal Court consists of a Supreme Court judge and two members of the Land Court, but does not include the member who made the decision under appeal. Appeals from the Land Appeal Court go to the Court of Appeal.

The Planning and Environment Court

The Planning and Environment Court is established by the *Sustainable Planning Act 2009* (Qld) and is constituted by a District Court judge. The Planning and Environment Court hears appeals against council town planning decisions.

Appeals from the Planning and Environment Court are heard, subject to leave, by the Court of Appeal (for further information see the *Laws Affecting the Environment* chapter).

The Queensland Civil and Administrative Tribunal

The Queensland Civil and Administrative Tribunal (QCAT) has jurisdiction to hear and determine matters on a range of issues including:

- anti-discrimination matters
- minor civil and consumer disputes
- dividing fences disputes
- children and young people matters including blue card reviews
- adult guardianship matters
- residential tenancy dispute
- building disputes
- occupational regulation matters
- retail shop lease matters
- disciplinary action in relation to a number of professions.

The Queensland Civil and Administrative Tribunal also has the power to review a number of governmental decisions that were previously reviewed by the Supreme or District Court (its review jurisdiction).

The jurisdiction of QCAT can vary depending on which type of matter it is hearing. However, there is a monetary limit of \$25 000 for minor civil disputes and dividing fences.

Outside of the Brisbane metropolitan area, QCAT sits at local Magistrates courts, and matters are heard by the local magistrate who sits as a QCAT member. Parties are generally not permitted to be represented by lawyers.

If a non-judicial member makes a QCAT decision, an appeal can be made to the QCAT Internal Appeal Tribunal. If a judicial member makes the decision, an appeal can be made to the Court of Appeal (see above).

The High Court of Australia

The High Court of Australia was established by the Australian Constitution, and the power to administer its own affairs is governed by the *High Court of Australia Act 1979* (Cth). It is the highest court in Australia and comprises a Chief Justice and six other judges.

The High Court hears a range of matters of Australian law. The subject of such matters include arbitration, contract, company law, copyright, insurance, personal injury, trade practice and family law. In particular, the High Court deals with matters involving the interpretation of the Constitution, where the court may be invited to depart from one of its previous decision or where the principle of law involved is one of major public importance (refer to the High Court of Australia website).

It also serves as a Court of Appeal for parties to cases decided by state supreme courts, the Federal Court of Australia and the Family Court of Australia.

An appeal can be brought only with the leave of the High Court. Before it will give leave, the High Court must be convinced that an important point of law or serious injustice is involved.

The appellate jurisdiction is exercised by the Full Court of the High Court of at least two justices. For applications for leave to appeal and less important appeals, the bench may consist of only two judges. Normally, all seven judges sit to hear cases of constitutional importance. The High Court of Australia is based in Canberra, but it does visit state capitals to hear appeals and uses video links in some instances.

The Federal Court of Australia

The Federal Court of Australia was established under the *Federal Court of Australia Act 1976* (Cth) and has a broad jurisdiction involving civil matters, some summary criminal law matters and matters arising under the Australian Constitution. Section 39B(1A)(c) of the *Judiciary Act 1903* (Cth) provides that the Federal Court's civil jurisdiction includes causes of action created by federal statute. The subject of some matters within the court's jurisdiction include judicial review of most administrative decisions under Commonwealth legislation, appeals of questions of law from the Administrative Appeals Tribunal, copyright, patents, trademarks and designs, native title matters,

maritime claims under the *Admiralty Act 1988* (Cth), bankruptcy, industrial relations and corporations law.

Appeals from a single judge of the Federal Court are made to the Full Court of the Federal Court, which is constituted by three or more judges.

The Family Court of Australia

The Family Court of Australia was established under the Family Law Act and has jurisdiction to hear divorce applications and related matters, and property settlement applications where the parties were or are married or de facto partners, including homosexual partners, but only where the de facto partners separated on or after 1 March 2009. It also has jurisdiction over issues such as whom the child lives with, spends time with and communicates with regardless of the marital status of the parents.

An appeal from the decision of a single judge of the Family Court can be made to the Full Court of the Family Court of Australia. Normally, the Full Court comprises at least three Family Court justices.

The Administrative Appeals Tribunal

The Administrative Appeals Tribunal (AAT) is not strictly a court. Established by the *Administrative Appeals Tribunal Act 1975* (Cth), the AAT reviews various Commonwealth administrative decisions made by ministers, official authorities, agencies, tribunals and other authorities. In limited circumstances, it also reviews decisions by some state government and non-government bodies. The tribunal reconsiders decisions to determine whether they are correct and may vary, set aside or confirm the original decision.

The AAT website provides details regarding its specific jurisdiction, conferred by various pieces of legislation.

The Social Services and Child Support Division of the AAT conducts merit reviews of decisions made under social security law, family assistance law, paid parental leave law and child support law.

Legal Notices

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