

Overview

It is useful to think of the Australian Legal System as having three different types of law - Civil Law, Criminal Law and Administrative Law.

Criminal Law

Criminal Law is the law relating to crime or criminal acts. Criminal Law usually involves:

- The Federal or State Government, usually the Police Force, accusing a person of committing a 'crime' or an 'offence.'
- An accusation, known as a 'criminal charge', or 'indictment', is usually made by the Police, although many other government agencies also have the power to charge someone with a crime. This may include a 'Brief' of the evidence the Police say they have that shows a crime was committed.
- The Government agency is generally called 'the Prosecution' and the person accused of the crime 'the Accused.'
- A decision about whether the person accused is able to remain in the community ('on bail') or in Police custody ('on remand') while waiting for a final decision to be made about whether they committed the crime.

- A requirement to prove the accusation to the standard of 'beyond reasonable doubt'.
- An opportunity for the person accused to plead guilty or not guilty in Court.
- For many crimes, the choice for the person accused to have the accusations heard by a Magistrate or by a Jury.
- If the person is found guilty of the crime, a sanction or punishment can be set – e.g. a fine, a community based order ('for treatment or community work'), or a prison sentence.

Examples of Criminal Law include:

- Your client has been charged by Victoria Police with a crime such as assault or theft.
- Your client has received a fines/infringement notices for traffic offences like speeding or driving an unregistered vehicle.



Civil Law

Civil Law is the law relating to disputes between individual members of society, including between people and corporations or businesses. Civil Law usually involves:

- A claim by one person or business that the actions of another person or business has harmed them or has prevented them from enjoying their legal rights;
- A claim that a person has or will suffer injury, loss or damage because of the actions of another person or business;
- A connection of some type between the two individuals or businesses – it could be a contract, or employment, or that they are neighbours or they were involved in an accident;
- Legal documents between individuals, such as Wills, Powers of Attorney or Contracts;
- A requirement to prove the claim to the standard of ‘on the balance of probabilities’ – so more likely than not;
- A requirement to first try to resolve the dispute between the individuals themselves, unless it is urgent or there are safety issues involved;
- If a case is started in a Court, the person making the claim is usually known as ‘the Plaintiff’ and the person defending the claim as ‘the Defendant’;

Examples of Civil Law include:

- **Family Law:** Your client is separating from their partner and they need to make arrangements about joint property and the parenting of their children;
- **Intervention Orders:** Your client feels threatened or unsafe due to the behaviour of another person and needs an Intervention Order to ensure their safety;
- **Motor Vehicle Accident:** Your client is in a car accident and there is damage to their vehicle and/or the vehicle of the other driver;
- **Consumer:** Your client is in a dispute with a business about a product, service, debt or loan;
- **Paternity:** Your client needs to legally prove who is or is not the parent of a child.



Administrative Law

Administrative Law is the law relating to how individuals and businesses interact with Government Agencies. It can be a part of Criminal Law when it involves an accusation of a crime, but it is a part of Civil Law for all other cases. It is useful to think of it as a separate area of law. Administrative Law usually involves:

- A part of the Federal or State Government that makes decisions that affect a person or businesses' rights or interests;
- A decision made in writing that has been communicated to an individual or business;
- Rights to appeal the decision within a specific time limit;
- Review of the decision about whether the decision as a whole was correct, or only whether a fair process was used to make the decision;
- Different requirements of the standard of proof needed depending on the decision that was made.

Examples of Administrative Law include:

- **Child Support:** Your client receives a letter from Child Support Agency about Child Support payments and disagrees with the decision.
- **Centrelink/Services Australia:** Your client receives a letter from Services Australia that they are not eligible for a social security payment, or that they have been overpaid and have to repay a debt.

