

LEGISLATIVE ASSEMBLY

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Read 1° 4 June 1991

*(Brought from the Legislative Council)*

**A BILL**

*for*

An Act to amend the **Constitution Act 1975** and the **Constitution (Supreme Court) Act 1989** and for other purposes.

**Constitution (Jurisdiction of  
Supreme Court) Act 1990**

**The Parliament of Victoria enacts as follows:**

**1. *Purpose***

The purpose of this Act is to make further provision relating to the jurisdiction of the Supreme Court.

**5 2. *Commencement***

- (1) Section 6 is deemed to have come into operation on 1 July 1989.
- (2) The remaining provisions of this Act come into operation on the day on which it receives the Royal Assent.

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Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

3. *Principal Act*

No. 8750.  
R printed to  
No. 55/1988  
and  
subs qu ntly  
am nd d by  
No. 57/1989.

In this Act, the **Constitution Act 1975** is called the Principal Act.

4. *Jurisdiction of the Supreme Court*

After section 85 (4) of the Principal Act **insert—** 5

“(5) A provision of an Act, other than a provision which directly repeals or directly amends any part of this section, is not to be taken to repeal, alter or vary this section unless—

(a) the Act expressly refers to this section in, or in relation to, that provision and expressly, and not merely by implication, states an intention to repeal, alter or vary this section; and 10

(b) the member of the Parliament who introduces the Bill for the Act or, if the provision is inserted in the Act by another Act, the Bill for that other Act, or a person acting on his or her behalf, makes a statement to the Council or the Assembly, as the case requires, of the reasons for repealing, altering or varying this section; and 15 20

(c) the statement is so made—  
(i) during the member’s second reading speech; or

(ii) after not less than 24 hours’ notice is given of the intention to make the statement but before the third reading of the Bill; or 25

(iii) with the leave of the Council or the Assembly, as the case requires, at any time before the third reading of the Bill. 30

(6) A provision of a Bill which excludes or restricts, or purports to exclude or restrict, judicial review by the Court of a decision of another court, tribunal, body or person is to be taken to repeal, alter or vary

this section and to be of no effect unless the requirements of sub-section (5) are satisfied.

(7) A provision of an Act which creates, or purports to create, a summary offence is not to be taken, on that account, to repeal, alter or vary this section.

(8) A provision of an Act that confers jurisdiction on a court, tribunal, body or person which would otherwise be exercisable by the Supreme Court, or which augments any such jurisdiction conferred on a court, tribunal, body or person, does not exclude the jurisdiction of the Supreme Court except as provided in sub-section (5).”.

#### **5. *Limitation of invalidity under section 18***

(1) In section 18 (2) (b) of the Principal Act, after “Part III” insert “, except section 85,”.

(2) After section 18 (2) of the Principal Act, insert—

“(2A) A provision of a Bill by which section 85 may be repealed, altered or varied is void if the Bill is not passed with the concurrence of an absolute majority of the whole number of the members of the Council and of the Assembly respectively.”.

#### **6. *Amendment of Constitution (Supreme Court) Act 1989***

In section 4 (1) of the **Constitution (Supreme Court) Act 1989**, for “1 July 1989” substitute “1 July 1991”. No. 22/1989.

#### **7. *Transitional***

(1) This section applies where, before 1 May 1991, a party to a proceeding before a court or tribunal had sought, in the course of that proceeding, to call in question the enactment or validity of an Act enacted or purporting to have been enacted before that date but on or after 1 July 1989 on the ground referred to in section 4 of the **Constitution (Supreme Court) Act 1989**.

*Constitution (Jurisdiction of Supreme Court)*

- (2) A court or tribunal may decide a question referred to in sub-section (1) as if this Act had not been enacted but only in so far as affects the particular facts, matters or circumstances in issue in those proceedings.
- (3) A decision of a court or tribunal under sub-section (2) is not binding on that or any other court or tribunal in relation to any other proceedings. 5