

# **Courts (Case Transfer) Act 1991**

**No. 43 of 1991**

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**Victoria**

**No. 43 of 1991**

## **Courts (Case Transfer) Act 1991**

[Assented to 18 June 1991]

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

### **PART 1—PRELIMINARY**

#### **1. *Purposes***

The purposes of this Act are—

- (a) to establish a new system for the transfer of civil proceedings between courts in order to improve efficiency in the administration of civil justice in Victoria;

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- (b) to alter the jurisdictional limits of the County Court in civil proceedings;
- (c) to provide for the suspension of the pension entitlements of a Reserve Supreme Court or County Court Judge while he or she holds another public office or engages in legal practice anywhere in Australia and to require such a Judge to obtain the consent of the Chief Justice or Chief Judge (as the case requires) before accepting such an appointment.

## 2. Commencement

This Act comes into operation on a day or days to be proclaimed.

## 3. Definitions

(1) In this Act—

“Case transfer rules” means rules made under Part 7.

“Circuit court” means the Supreme Court or County Court sitting at a place outside Melbourne.

“Court” means the Supreme Court, County Court or Magistrates’ Court.

“Designated judicial officer”—

- (a) in relation to the Supreme Court, means a Master of the Supreme Court (as defined in section 3 (1) of the **Supreme Court Act 1986**) designated by the Chief Justice for the purposes of this Act;
- (b) in relation to the County Court, means a Judge or a Master of the County Court designated by the Chief Judge for the purposes of this Act;
- (c) in relation to the Magistrates’ Court, means a magistrate designated by the Chief Magistrate for the purposes of this Act.

“Proceeding” means civil proceeding.

**“Senior judicial officer”—**

- (a) in relation to the Supreme Court, means the Chief Justice;
  - (b) in relation to the County Court, means the Chief Judge;
  - (c) in relation to the Magistrates’ Court, means the Chief Magistrate.
- (2) For the purposes of this Act a court only has exclusive jurisdiction to hear and determine a proceeding if it is wholly or partly of a type that neither of the other courts has jurisdiction to hear and determine, whatever amount or value is either claimed or involved.

**4. Delegation**

- (1) The senior judicial officer of a court may delegate to another judicial officer of that court any of his or her powers or duties under this Act, other than the power to make agreements under section 6 or 24 (1), the power to make case transfer rules and this power of delegation.
- (2) The Council of Judges or magistrates (as the case requires) of a court may delegate to a committee of the Council any of its powers under this Act, other than the power to approve the making of case transfer rules and this power of delegation.

**5. Nature of transfers under this Act**

A proceeding may be transferred under this Act—

- (a) by an order of the court in which it is pending that applies to that proceeding alone (an individual transfer or a transfer under Part 6) or to a number of proceedings of which it is one (a general transfer);  
or
- (b) by an order of the circuit court in which it is pending that applies to that proceeding alone or to a number of proceedings of which it is one (a circuit transfer);  
or

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- (c) by an order of an officer of the court in which it is pending that applies to that proceeding alone (an administrative transfer).

**PART 2—GENERAL TRANSFERS**

**6. *When general transfer may take place***

- (1) A general transfer of proceedings from one court to another may take place if the senior judicial officers of those courts agree that one court is overloaded with pending proceedings relative to the other court and that there should be a transfer of an agreed number of proceedings.
- (2) An agreement under sub-section (1) is of no effect unless it has the approval of the Council of Judges or magistrates (as the case requires) of both courts.
- (3) An approval under sub-section (2) may be given before or after the making of the agreement.

**7. *Registry officer to identify suitable proceedings***

- (1) Following the making and approval of an agreement under section 6 the senior judicial officer of the overloaded court may direct an officer employed in the registry of that court to identify a specified number of proceedings that may be suitable for transfer.
- (2) In identifying proceedings for transfer the registry officer must have regard to any guidelines issued by the senior judicial officer of that court.
- (3) After having identified the required number of proceedings the registry officer must deliver to the designated judicial officer of that court the documents filed in the court in each of those proceedings and a summary of the file of each proceeding.

**8. Designated judicial officers to select proceedings from those identified**

- (1) The designated judicial officers of the two courts concerned must consider the identified proceedings and determine which of them should be transferred.
- (2) A proceeding may only be transferred under this Part if in the opinion of the designated judicial officers—
  - (a) the transferor court does not have exclusive jurisdiction to hear and determine it; and
  - (b) the transferee court has the appropriate skill, experience and authority to hear and determine it having regard to its gravity, difficulty and importance; and
  - (c) it is just and convenient that it be transferred.
- (3) A proceeding must not be transferred to the Magistrates' Court if a party has elected, or the court in which it is pending has ordered, that it be heard and determined with a jury.
- (4) If the designated judicial officers cannot agree about whether a particular proceeding should be transferred or not, the opinion of the officer of the higher court is to be taken to be the determination of both.

**9. Parties to be notified**

The transferor court must cause the parties to the proceedings selected for transfer to be notified of that fact.

**10. Parties may object**

A party to a proceeding selected for transfer may, within the period specified in the case transfer rules, file in the transferor court a notice of objection to the transfer.

**11. Senior judicial officers to consider objections**

- (1) The senior judicial officers of the two courts concerned must consider any objections filed and may permit any

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objecting party to make oral submissions to them in support of the objection.

- (2) After having considered an objection and any oral submission permitted to be made in support of it the senior judicial officers must determine whether the proceeding should be transferred.
- (3) If the senior judicial officers cannot agree, the opinion of the officer of the higher court is to be taken to be the determination of both.

**12. *Transfer order***

- (1) The transferor court (constituted by its designated judicial officer) must, as soon as practicable, make an order transferring to the transferee court—
  - (a) all proceedings selected for transfer by the designated judicial officers and in respect of which no objection was filed; and
  - (b) all proceedings that the senior judicial officers determined should be transferred following the filing of an objection.
- (2) If an order is made under this section—
  - (a) all proceedings to which the order applies are discontinued in the transferor court; and
  - (b) the transferor court must cause the record and all documents relating to those proceedings to be sent to the transferee court.
- (3) An appeal does not lie from an order made under this section.

**13. *Conduct of proceeding after transfer***

- (1) The following apply to a proceeding transferred under this Part:
  - (a) The transferee court (if it is a lower court than the transferor court) has power to grant in the proceeding any relief, redress or remedy and to make any order that the transferor court would



- have had power to grant or make if the proceeding had not been transferred;
- (b) The proceeding is subject to the procedural rules and practices of the transferee court;
  - (c) Unless the transferee court otherwise orders, anything done or omitted to be done in the proceeding under or in accordance with the rules of court that applied to it before the transfer must be taken, so far as possible, to have been done or omitted under the rules that apply in the transferee court;
  - (d) The transferee court must endeavour to ensure that the proceeding is heard and determined no later than it would have been if it had not been transferred;
  - (e) A judgment given or order made by the transferee court in the proceeding has effect and may be enforced or appealed against like any other judgment or order of that court;
  - (f) If the transferee court orders that costs be paid to a party in respect of the conduct of the proceeding in the transferor court in the period before the transfer, that party shall, unless the transferee court otherwise orders, be entitled to costs in respect of that period on the transferor court scale;
  - (g) If the transferee court orders that costs be paid to a party in respect of the conduct of the proceeding in the transferee court in the period after the transfer, that party shall, unless the transferee court otherwise orders or the party has otherwise elected in accordance with the case transfer rules, be entitled to costs in respect of that period on the transferor court scale.
- (2) Sub-section (1) (a) applies even if the transferor court has exclusive jurisdiction to hear and determine the proceeding.

**14. *Only one transfer possible***

A proceeding that has been transferred to a court under this Part or Part 3 is not capable of being transferred under this Part, whether to the original transferor court or to the other court.

**PART 3—INDIVIDUAL TRANSFERS**

**15. *When individual transfer may take place***

A proceeding may be individually transferred from one court to another under this Part if the court in which it is pending so orders under section 21 after it has been referred under section 17 to the designated judicial officers of the two courts concerned.

**16. *Criteria for transfer***

- (1) A proceeding may only be transferred under this Part if in the opinion of the designated judicial officers—
  - (a) the transferor court does not have exclusive jurisdiction to hear and determine it; and
  - (b) the transferee court has the appropriate skill, experience and authority to hear and determine it having regard to its gravity, difficulty and importance; and
  - (c) it is just and convenient that it be transferred.
- (2) A proceeding must not be transferred to the Magistrates' Court if a party has elected, or the court in which it is pending has ordered, that it be heard and determined with a jury.

**17. *Reference to designated judicial officers***

- (1) A judicial or administrative officer of the court in which a proceeding is pending (including the designated judicial officer of that court), or a party to a proceeding, who is of the opinion that the proceeding is or may be suitable for transfer to another court under this Part may refer the matter to the designated judicial officer of the court in which it is pending.

- (2) That designated judicial officer must, in accordance with the case transfer rules, give the parties to the proceeding a reasonable opportunity to make written submissions on the matter.
- (3) That designated judicial officer and his or her counterpart in the possible transferee court must consider the proceeding and any written submissions made in respect of it and determine whether it should be transferred.
- (4) The designated judicial officers may adjourn their consideration of a proceeding—
  - (a) to such times and places; and
  - (b) for such purposes—as they consider necessary or just in the circumstances.
- (5) If the designated judicial officers cannot agree about whether a particular proceeding should be transferred or not, the opinion of the officer of the higher court is to be taken to be the determination of both.
- (6) The designated judicial officers may require an undertaking as to costs to be given by—
  - (a) a party who supports the transfer as a condition of determining that a proceeding should be transferred; or
  - (b) a party who opposes the transfer as a condition of determining that a proceeding should not be transferred.
- (7) The designated judicial officers must not require an undertaking from a party without giving the party a reasonable opportunity to be heard by them.
- (8) A step or further step must not be taken under this section with respect to a proceeding if the court in which it is pending (constituted by a judge or magistrate, as the case requires) has by order declared that it is not in the interests of justice that the proceeding be transferred having regard to the stage to which it has progressed.

**18. *Parties to be notified***

If it is determined that a proceeding should be transferred, the transferor court must cause the parties to be notified of that fact.

**19. *Parties may object***

A party to a proceeding may, within the period specified in the case transfer rules, file in the transferor court a notice of objection to the transfer.

**20. *Senior judicial officers to consider objections***

- (1) The senior judicial officers of the two courts concerned must consider any objections filed and may permit any objecting party to make oral submissions to them in support of the objection.
- (2) After having considered an objection and any oral submission permitted to be made in support of it the senior judicial officers must determine whether the proceeding should be transferred.
- (3) If the senior judicial officers cannot agree, the opinion of the officer of the higher court is to be taken to be the determination of both.
- (4) The senior judicial officers may require an undertaking as to costs to be given by—
  - (a) a party who supports the transfer as a condition of determining that a proceeding should be transferred; or
  - (b) a party who opposes the transfer as a condition of determining that a proceeding should not be transferred.
- (5) The senior judicial officers must not require an undertaking from a party without giving the party a reasonable opportunity to be heard by them.

**21. *Transfer order***

- (1) If no objection is filed or the senior judicial officers determine that a proceeding should be transferred following the filing of an objection, the transferor court (constituted by its designated judicial officer) must, as soon as practicable, make an order transferring the proceeding to the transferee court.
- (2) If an order is made under this section—
  - (a) the proceeding is discontinued in the transferor court; and
  - (b) the transferor court must cause the record and all documents relating to the proceeding to be sent to the transferee court.
- (3) An appeal does not lie from an order made under this section.

**22. *Conduct of proceeding after transfer***

- (1) The following apply to a proceeding transferred under this Part:
  - (a) The transferee court (if it is a lower court than the transferor court) has power to grant in the proceeding any relief, redress or remedy and to make any order that the transferor court would have had power to grant or make if the proceeding had not been transferred;
  - (b) The proceeding is subject to the procedural rules and practices of the transferee court;
  - (c) Unless the transferee court otherwise orders, anything done or omitted to be done in the proceeding under or in accordance with the rules of court that applied to it before the transfer must be taken, so far as possible, to have been done or omitted under the rules that apply in the transferee court;
  - (d) The transferee court must endeavour to ensure that the proceeding is heard and determined no later than it would have been if it had not been transferred;

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- (e) A judgment given or order made by the transferee court in the proceeding has effect and may be enforced or appealed against like any other judgment or order of that court;
  - (f) If the transferee court orders that costs be paid to a party in respect of the conduct of the proceeding in the transferor court in the period before the transfer, that party shall, unless the transferee court otherwise orders, be entitled to costs in respect of that period on the transferor court scale;
  - (g) If the transferee court orders that costs be paid to a party in respect of the conduct of the proceeding in the transferee court in the period after the transfer, that party shall, unless the transferee court otherwise orders or an undertaking required to be given by a party as a condition of the transfer otherwise provides, be entitled to costs in respect of that period on the transferee court scale.
- (2) Sub-section (1) (a) applies even if the transferor court has exclusive jurisdiction to hear and determine the proceeding.

**23. *Only one transfer possible***

A proceeding that has been transferred to a court under this Part or Part 2 is not capable of being transferred under this Part, whether to the original transferor court or to the other court.

**PART 4—CIRCUIT TRANSFERS**

**24. *Circuit transfers***

- (1) A transfer from one circuit court to another of one or more than one pending proceeding may take place if the senior judicial officers of those courts agree that one court has the capacity to deal with it or them and in the particular circumstances it is not convenient for the procedure set out in Part 2 or 3 to be followed.
- (2) A proceeding may only be transferred under this Part if—

- (a) in the opinion of the senior judicial officers the criteria set out in section 8 (2) are met; and
  - (b) the parties to the proceeding consent.
- (3) The transferor court (constituted by its designated judicial officer) must, as soon as practicable, make an order transferring to the transferee court all proceedings that, under sub-sections (1) and (2), are capable of being transferred.
- (4) Sections 12 (2) and (3) and 13 apply to a proceeding transferred under this Part in the same manner as they apply to a proceeding transferred under Part 2.

**25. *More than one transfer possible***

A proceeding that has been transferred to a court under this Part is capable of being again transferred under this Part or under Part 2, 3 or 6.

**PART 5—ADMINISTRATIVE TRANSFERS**

**26. *Certification by plaintiff that proceeding within lower court's jurisdiction***

- (1) The plaintiff to a proceeding in the Supreme Court or the County Court may apply to the Prothonotary of the Supreme Court or the registrar of the County Court (as the case requires) for an order that the proceeding be transferred to a lower court if the plaintiff certifies in accordance with the case transfer rules that the lower court has, or with the written consent of the parties will have, jurisdiction to hear and determine the proceeding, including any counterclaim.
- (2) The Prothonotary or registrar must grant an application under sub-section (1) and make an appropriate order if satisfied—
- (a) that the lower court has, or (by consent of the parties) will have, jurisdiction; and
  - (b) that the requirements (if any) of the case transfer rules are met.

**27. *Certification by defendant that counterclaim exceeds court's jurisdiction***

- (1) The defendant to a proceeding in the County Court or the Magistrates' Court may apply to the registrar of the County Court or the principal registrar of the Magistrates' Court (as the case requires) for an order that the proceeding be transferred to a higher court if the defendant certifies in accordance with the case transfer rules that a counterclaim involves a matter exceeding the jurisdiction of the court and that the plaintiff does not consent to the court having jurisdiction.
- (2) The registrar or principal registrar must grant an application under sub-section (1) and make an appropriate order if satisfied that the requirements (if any) of the case transfer rules are met.

**28. *Consequences of order under this Part***

Sections 21 (2) and (3) and 22 (except sub-section (1) (d)) apply to a proceeding transferred under this Part in the same manner as they apply to a proceeding transferred under Part 3.

**29. *More than one transfer possible***

A proceeding that has been transferred to a court under this Part is not capable of being again transferred under this Part or Part 2 but is capable of being transferred under Part 3, 4 or 6.

**PART 6—OTHER TRANSFERS**

**30. *Other transfers***

- (1) The Supreme Court (constituted by a judge) or the County Court (constituted by a judge) may, of its own motion or on the application of a party to a proceeding pending in that court, order that the proceeding be transferred to a lower court.
- (2) An order may only be made by a court under sub-section (1) if it is satisfied—



- (a) that it does not have exclusive jurisdiction to hear and determine the proceeding; and
- (b) that—
  - (i) the lower court has jurisdiction to hear and determine the proceeding; or
  - (ii) the parties consent to the transfer; and
- (c) that in all the circumstances it is desirable to make the order.

**31. *Consequences of order under this Part***

The following provisions of this Act apply to a proceeding transferred under this Part in the same manner as they apply to a proceeding transferred under Part 3—

- (a) section 21 (2);
- (b) section 22 (1) (b), (c), (e) and (f);
- (c) section 22 (1) (g) with the omission of the expression “or an undertaking required to be given by a party as a condition of the transfer otherwise provides.”

**32. *This Part additional to other Parts***

The provisions of this Part are additional to, and do not limit the operation of, the other provisions of this Act.

**33. *Only further transfer under Part 4 possible***

A proceeding that has been transferred to a court under this Part is not capable of being again transferred under any other Part of this Act except Part 4.

**PART 7—CASE TRANSFER RULES**

**34. *Power to make case transfer rules***

- (1) The Chief Justice, the Chief Judge and the Chief Magistrate (with the approval of the Council of Judges or magistrates, as the case requires) may jointly make rules for or with respect to the transfer of proceedings under this Act.

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- (2) Rules made under this Act may be made so as to apply—
  - (a) to all three courts generally; or
  - (b) to any specified court; or
  - (c) to any specified court sitting at any specified place or places.
- (3) The rules may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6 (2) of the **Subordinate Legislation Act 1962**.
- (4) Disallowance under sub-section (3) is deemed to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.

**35. Rules prevail over inconsistent rules of court**

Any rule of court that applies to a court or to a proceeding in a court is of no effect to the extent that it is inconsistent with the case transfer rules.

**PART 8—CONSEQUENTIAL AMENDMENTS**

**36. Amendment of Supreme Court Act**

In section 32 of the **Supreme Court Act 1986**—

- (a) in sub-section (1) for “sub-section (3)” substitute “the **Courts (Case Transfer) Act 1991** transferring the proceeding to a court with jurisdiction”;
- (b) sub-sections (2), (3), (4) and (5) are repealed.

No. 110/1986.  
Amended by  
Nos 16/1987,  
55/1987,  
35/1989,  
47/1989,  
57/1989 and  
64/1990.

**37. Amendment of County Court Act**

In the **County Court Act 1958**—

- (a) in section 39 (2) (b) for “section 61 (1)” substitute “Part 3 of the **Courts (Case Transfer) Act 1991**”;
- (b) in section 39 (3) (a) for “section 61 (1)” substitute “Part 3 of the **Courts (Case Transfer) Act 1991**”;

No. 6230.  
Reprinted to  
No. 57/1989.  
Subsequently  
amended by  
Nos 64/1990  
and 92/1990.

- (c) section 51 (2) is repealed;
- (d) Part IV is repealed.

**38. *Amendment of Magistrates' Court Act***

**In the Magistrates' Court Act 1989—**

- (a) in section 101 (1) (b) for "section 108" substitute "Part 3 of the Courts (Case Transfer) Act 1991";
- (b) in section 101 (2) (a) for "section 108" substitute "Part 3 of the Courts (Case Transfer) Act 1991";
- (c) in the heading to Division 4 of Part 5 omit "Transfers,";
- (d) section 108 is repealed.

No. 51/1989.  
Amended by  
Nos 25/1989,  
48/1989,  
54/1989,  
56/1989,  
5/1990 and  
64/1990.

**PART 9—OTHER AMENDMENTS**

**39. *Civil Jurisdiction of County Court***

In section 3 (1) of the County Court Act 1958, in paragraph (b) of the definition of "jurisdictional limit" for "\$100 000" substitute "\$200 000".

No. 6230.  
Reprinted to  
No. 57/1989.  
Subsequently  
amended by  
Nos 64/1990  
and 92/1990.

**40. *Reserve Judges (Supreme Court)***

- (1) In section 80A of the Constitution Act 1975, after subsection (5) insert—
  - “(5A) A Judge who makes an election under this section must not, without the consent in writing of the Chief Justice—
    - (a) hold any office or place of profit under the Crown in right of the Commonwealth or of a State; or
    - (b) engage in the practice of the profession of a barrister or solicitor in any State or Territory of the Commonwealth; or
    - (c) be employed by any barrister or solicitor in connection with the barrister or solicitor's practice in any State or Territory of the Commonwealth.

No. 8750.  
Reprinted to  
No. 55/1988.  
Subsequently  
amended by  
Nos 57/1989,  
2/1990 and  
64/1990.

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- (5B) The doing by a Judge who makes an election under this section of anything referred to in sub-section (5A) without having first obtained the consent in writing of the Chief Justice must be taken to constitute in law the resignation of the Judge from the office of Judge.
- (5C) Unless the Governor in Council by Order otherwise determines in any particular case the right of a Judge who makes an election under this section to a payment under sub-section (5) (a) shall be suspended while—
  - (a) he or she holds any office or place of profit under the Crown in right of the Commonwealth or of a State; or
  - (b) he or she is engaged in the practice of the profession of a barrister or solicitor in any State or Territory of the Commonwealth; or
  - (c) he or she is employed by any barrister or solicitor in connection with the barrister or solicitor's practice in any State or Territory of the Commonwealth.”
- (2) In section 84 of the **Constitution Act 1975**, after sub-section (4) insert—
  - “(5) This section does not apply to a Judge who has made an election under section 80A.”

**41. Reserve Judges (County Court)**

- (1) In section 13 of the **County Court Act 1958**—
  - (a) after “13.” insert “(1)”; and
  - (b) at the end of the section insert—
    - “(2) This section does not apply to a judge who has made an election under section 13A.”
- (2) In section 13A of the **County Court Act 1958**, after sub-section (5) insert—
  - “(5A) A judge who makes an election under this section must not, without the consent in writing of the Chief Judge—

- (a) hold any office or place of profit under the Crown in right of the Commonwealth or of a State; or
  - (b) engage in the practice of the profession of a barrister or solicitor in any State or Territory of the Commonwealth; or
  - (c) be employed by any barrister or solicitor in connection with the barrister or solicitor's practice in any State or Territory of the Commonwealth.
- (5B) The doing by a judge who makes an election under this section of anything referred to in sub-section (5A) without having first obtained the consent in writing of the Chief Judge must be taken to constitute in law the resignation of the judge from the office of judge.
- (5C) Unless the Governor in Council by Order otherwise determines in any particular case the right of a judge who makes an election under this section to a payment under sub-section (5) (a) shall be suspended while—
- (a) he or she holds any office or place of profit under the Crown in right of the Commonwealth or of a State; or
  - (b) he or she is engaged in the practice of the profession of a barrister or solicitor in any State or Territory of the Commonwealth; or
  - (c) he or she is employed by any barrister or solicitor in connection with the barrister or solicitor's practice in any State or Territory of the Commonwealth.”
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NOTES

1. *Minister's second reading speech—*  
*Legislative Assembly: 21 March 1991*  
*Legislative Council: 30 May 1991*
2. The long title for the Bill for this Act was (as amended) "A Bill to establish a new system for the transfer of civil proceedings between courts and for that purpose to amend the **Supreme Court Act 1986**, the **County Court Act 1958** and the **Magistrates' Court Act 1989**, to alter the jurisdictional limits of the County Court in civil proceedings, to make further provision concerning the office of Reserve Judge in the Supreme Court and the County Court and for that purpose to amend the **Constitution Act 1975** and the **County Court Act 1958** and for other purposes."
3. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984**).