

**Version No. 002**  
**Sheriff Act 2009**  
**No. 9 of 2009**

Version incorporating amendments as at 16 December 2009

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**Version No. 002**  
**Sheriff Act 2009**  
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**The Parliament of Victoria enacts:**

**PART 1—PRELIMINARY**

**1 Purpose**

The main purpose of this Act is to provide a legislative framework for the appointment of the sheriff, the deputy sheriff and sheriff's officers and their functions, powers and duties.

**2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 January 2010, it comes into operation on that day.

**3 Definitions**

In this Act—

*appropriately trained justice employee* has the meaning given by section 4;

*civil proceeding* means a proceeding other than a criminal proceeding;

*civil warrant* means—

- (a) any of the following issued by a court and directed to the sheriff—
  - (i) a warrant of seizure and sale;
  - (ii) a warrant of possession;

- (iii) a warrant of delivery;
- (iv) a warrant to seize property under section 111 of the **Magistrates' Court Act 1989**; or

- (b) any other warrant issued by a court and directed to the sheriff relating to the enforcement of a judgment or order of the court in a civil proceeding;

*court and enforcement legislation* means—

- (a) this Act;
- (b) the **Supreme Court Act 1986**;
- (c) the **County Court Act 1958**;
- (d) the **Magistrates' Court Act 1989**;
- (e) the **Infringements Act 2006**;
- (f) the **Crimes Act 1958**;
- (g) the **Sentencing Act 1991**;
- (h) any other prescribed Act;
- (i) regulations made under this Act, an Act referred to in paragraphs (b) to (g) or a prescribed Act under paragraph (h);
- (j) a rule of court;

*criminal proceeding* means—

- (a) a prosecution for an offence; or
- (b) a proceeding that is related to or associated with a prosecution for an offence—

but does not include—

- (c) a claim for compensation; or
- (d) a proceeding under the **Confiscation Act 1997**;

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*criminal warrant* means—

- (a) a warrant to arrest issued by the Supreme Court or County Court and directed to the sheriff;
- (b) any of the following warrants issued under the **Magistrates' Court Act 1989** and directed to the sheriff—
  - (i) a warrant to arrest under section 61 of that Act;
  - (ii) a warrant to imprison under section 68 of that Act;
  - (iii) a warrant to seize property under section 73 of that Act;
- (c) a warrant to arrest issued under section 62 of the **Sentencing Act 1991** and directed to the sheriff;
- (d) an infringement warrant directed to the sheriff;
- (e) any other warrant relating to a criminal proceeding issued by a court and directed to the sheriff;

*delegated enforcement function or power* means a function, power or duty of the sheriff specified in an instrument of delegation under section 9(1);

*deputised person* means a person appointed under section 8;

*deputy sheriff* means the person employed under section 10;

*enforcement function or power* means a function, power or duty referred to in section 7(1) or (2)(a);



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*enforcement order* has the same meaning as in the **Infringements Act 2006**;

*enforcement order notice* has the same meaning as in the **Infringements Act 2006**;

*infringement warrant* has the same meaning as in the **Infringements Act 2006**;

*money warrant* means—

- (a) a civil warrant (other than a warrant of possession) directed to the sheriff; or
- (b) an infringement warrant directed to the sheriff; or
- (c) a warrant to imprison issued under section 68(b) of the **Magistrates' Court Act 1989** directed to the sheriff; or
- (d) a warrant to arrest issued under section 62 of the **Sentencing Act 1991** directed to the sheriff; or
- (e) a warrant to seize property issued under section 73 of the **Magistrates' Court Act 1989** directed to the sheriff;

*motor vehicle* has the same meaning as in the **Road Safety Act 1986**;

*payable amount* means the amount specified in a money warrant as being required to be paid by the person named or described in the money warrant;

*police gaol* has the same meaning as in the **Corrections Act 1986**;

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*premises* include—

- (a) land;
- (b) any structure, building or place (whether built on or not), and any part of such structure, building or place;

*prison* has the same meaning as in the **Corrections Act 1986**;

*proceeding* means a proceeding in a court and includes an interlocutory or similar proceeding;

*property* includes real property, personal property and money;

*recoverable property* means property specified in a warrant that may be lawfully seized under the warrant;

*Secretary* means Secretary to the Department of Justice;

*seven day demand* means—

- (a) a demand referred to in section 62(7) of the **Sentencing Act 1991**; or
- (b) a seven-day notice within the meaning of the **Infringements Act 2006**;

*sheriff* means the person employed under section 6;

*sheriff's officer* means a person employed under section 11;

*warrant* means a criminal warrant or a civil warrant;

*warrant costs* means the costs and expenses of the sheriff described in section 32.

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#### **4 Meaning of appropriately trained justice employee**

An appropriately trained justice employee is a person employed in the Department of Justice under Part 3 of the **Public Administration Act 2004** who the sheriff considers has the necessary competence, training or experience to perform or exercise a delegated enforcement function or power.

#### **5 Crown to be bound**

This Act binds the Crown, not only in right of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all of its other capacities.

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**PART 2—THE SHERIFF, THE DEPUTY SHERIFF AND  
SHERIFF'S OFFICERS**

**Division 1—The sheriff**

**6 The sheriff**

There is to be employed under Part 3 of the **Public Administration Act 2004** a sheriff—

- (a) for the purposes of court and enforcement legislation; and
- (b) to assist in the administration of justice in Victoria.

**7 Functions, powers and duties of the sheriff**

- (1) The sheriff has the functions and powers conferred, and duties imposed, on the sheriff by—
  - (a) court and enforcement legislation; or
  - (b) a warrant.
- (2) In addition, the sheriff—
  - (a) has all the functions, powers and duties at law that the sheriff employed under section 106(a) of the **Supreme Court Act 1986** had immediately before the commencement of section 58(1) that are not inconsistent with a function, power or duty referred to in subsection (1); and
  - (b) may perform any other function or duty, or exercise any other power, that he or she is authorised to perform or exercise under any other law.

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**8 Sheriff may appoint certain Department of Justice employees as deputised persons**

- (1) The sheriff, by instrument, may appoint as a deputised person any of the following persons employed in the Department of Justice under Part 3 of the **Public Administration Act 2004**—
- (a) a person employed as an executive employee (within the meaning of that Act);
  - (b) a person employed as a non-executive employee (within the meaning of that Act) at a level of Grade 5, Grade 6 or Senior Technical Specialist.
- (2) The sheriff may only appoint a person as a deputised person under subsection (1) who the sheriff considers has the necessary competence, training or experience to perform or exercise a delegated enforcement function or power.
- (3) A deputised person has the functions and powers conferred on him or her, and duties imposed on him or her, under an instrument of delegation under section 9(1).
- (4) In addition, the deputised person may perform any other function or duty, or exercise any other power, that he or she is authorised to perform or exercise under any other law.

**9 Delegation of sheriff's enforcement functions and powers**

- (1) Subject to this section, the sheriff, by instrument, may delegate a function or power conferred, or duty imposed, on the sheriff by court and enforcement legislation (other than this power of delegation) or a warrant to—
- (a) a deputised person; or
  - (b) a sheriff's officer or class of sheriff's officer;  
or

- 
- (c) an appropriately trained justice employee or class of appropriately trained justice employees.
  - (2) An instrument under subsection (1)—
    - (a) must state the name of the person or describe the class of person to whom the sheriff's functions, powers or duties under court and enforcement legislation or a warrant are delegated; and
    - (b) must specify the function, power or duty that is being delegated; and
    - (c) may include a condition or limitation; and
    - (d) may include an expiry date.
  - (3) As soon as practicable after making an instrument under subsection (1), the sheriff must notify, in writing, the person or the persons belonging to the class of person to whom that instrument applies.

### **Division 2—The deputy sheriff**

#### **10 The deputy sheriff**

- (1) There is to be employed under Part 3 of the **Public Administration Act 2004** a deputy sheriff.
- (2) Subject to the direction of the sheriff, the deputy sheriff may exercise or perform an enforcement function or power of the sheriff (other than a function or power under section 9).
- (3) In addition, the deputy sheriff may perform any other function or duty, or exercise any other power, that he or she is authorised to perform or exercise under any other law.

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**Division 3—Sheriff's officers**

**11 Sheriff's officers**

- (1) There are to be employed under Part 3 of the **Public Administration Act 2004** sheriff's officers to assist the sheriff—
  - (a) in performing his or her functions and duties; and
  - (b) in exercising his or her powers.
- (2) A sheriff's officer has the functions and powers conferred on him or her, and duties imposed on him or her, under an instrument of delegation under section 9(1).
- (3) Subsection (2) does not limit the functions and powers that may be conferred, or the duties that may be imposed, on a sheriff's officer under another law.

**12 Appointment of sheriff's officers as bailiffs**

- (1) The sheriff, by instrument, may appoint a sheriff's officer as a bailiff for the purposes of the **Supreme Court Act 1986** or **County Court Act 1958**.
  - (2) The sheriff may only appoint a sheriff's officer under subsection (1) who the sheriff considers has the necessary competence, training or experience to be a bailiff.
  - (3) An appointment under subsection (1) is for the term, and subject to the conditions, specified in the instrument of appointment.
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**PART 3—THE SHERIFF'S ENFORCEMENT FUNCTIONS  
AND POWERS**

**Division 1—Execution of warrants and other processes**

**13 Execution and return of warrants and other processes**

- (1) The sheriff must execute and return every warrant or other process directed to the sheriff as soon as practicable after receiving the warrant or other process.
- (2) When executing a warrant or other process, the sheriff may only perform or exercise enforcement functions and powers that are reasonably necessary to execute the warrant or other process.

S. 13(1)  
amended by  
No. 87/2009  
s. 12.

**14 Execution of warrants that are in electronic form**

- (1) For the purposes of court and enforcement legislation, the sheriff may execute a warrant that is not in paper form if—
  - (a) the sheriff, before executing the warrant, verifies, by electronic means, that the warrant has been received by the sheriff; and
  - (b) the sheriff, before executing the warrant, gives to the person named or described in the warrant, specified warrant details; and
  - (c) where a seven day demand relating to the warrant has been served on the person named or described in the warrant—
    - (i) the period specified in the demand has expired; or
    - (ii) the person named or described in the warrant has agreed to waive the operation of that period; and



(d) the sheriff, at the same time as executing the warrant, gives the person named or described in the warrant a copy of the warrant powers summary.

(2) In this section—

*electronic means* means accessing a database on which details of warrants received by the sheriff are stored;

*specified warrant details*, in relation to a warrant, means—

- (a) the name of the person named or described in the warrant; and
- (b) the address appearing on the warrant of the person named or described in the warrant; and
- (c) the date on which the warrant was issued; and
- (d) any other prescribed details;

*warrant powers summary* means—

- (a) a description of the type of warrant; and
- (b) the provision of the court and enforcement legislation (if relevant) under which the warrant was issued; and
- (c) a summary of the sheriff's powers in relation to the warrant.

## **Division 2—Power to arrest**

### **15 General power to arrest persons**

The sheriff may arrest—

- (a) a person named or described in a criminal warrant that authorises that person's arrest;

- 
- (b) a person as provided by the relevant court and enforcement legislation.

**Division 3—Power to restrain**

**16 Power to temporarily restrain person hindering execution of warrant**

- (1) The sheriff may restrain a person who is hindering the execution of a warrant.
- (2) A person restrained under this section must be released as soon as the activity that the person was hindering has been completed.
- (3) Nothing in this section affects the operation of section 47 or 48 or the powers of the Supreme Court in relation to contempt.

**Division 4—Powers to enter and search**

**17 Power to enter premises for the purpose of serving seven day demand**

- (1) This section applies if the sheriff reasonably believes that a person named or described in a warrant, in respect of which a seven day demand is required to be given, is at particular premises.
- (2) Subject to section 21(2), the sheriff may enter the premises, in accordance with the relevant court and enforcement legislation, for the purpose of serving the person with the seven day demand.

**18 Power to enter and search premises in order to arrest person**

- (1) This section applies if the sheriff suspects that a person named or described in a criminal warrant that authorises the arrest of that person is at particular premises.

(2) In the execution of a warrant that authorises the arrest of the person, the sheriff may, in accordance with the relevant court and enforcement legislation—

- (a) break and enter the premises at which the person is suspected to be for the purpose of searching for that person; and
- (b) after entering those premises, search for that person in the premises for the purpose of arresting the person.

**19 Power to enter and search premises for recoverable property**

Subject to this Division, in the execution of a warrant that authorises the seizure of property the sheriff may, in accordance with the relevant court and enforcement legislation—

- (a) enter for the purpose of searching for and seizing recoverable property—
  - (i) premises occupied by the person named or described in the warrant; or
  - (ii) premises at which the sheriff reasonably suspects there is property of the person named or described in the warrant that is recoverable property; and
- (b) after entering the premises, search for recoverable property for the purpose of seizing it.

**20 Power to enter and take possession of real property**

In the execution of a warrant of possession, the sheriff may, in accordance with the warrant, enter premises owned by the person named or described in the warrant for the purpose of taking possession of those premises.

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**21 Use of reasonable force and assistance to enter premises**

- (1) Subject to section 22, the sheriff may use any force and assistance that is reasonably necessary to enter premises for the purpose of exercising a power under—
  - (a) court and enforcement legislation; or
  - (b) a warrant.
- (2) The sheriff must not use any force to enter premises for the purpose of serving a seven day demand.

**22 Requirements in relation to entry to premises to execute civil warrants**

- (1) This section applies if the sheriff intends to enter premises for the purpose of executing a civil warrant, other than a warrant of possession.
- (2) The sheriff may enter the premises only if he or she believes on reasonable grounds that there is or may be at the premises personal property of the person named or described in the warrant that is recoverable property.
- (3) The sheriff must request the owner or occupier of the premises for consent to enter the premises.
- (4) The sheriff may use force and assistance to enter the premises if the owner or occupier of the premises unreasonably withholds his or her consent.
- (4A) Despite subsection (3), the sheriff may use force and assistance to enter the premises if—
  - (a) the sheriff, after reasonable attempts to do so, cannot contact the owner or occupier of the premises; or

S. 22(4)  
substituted by  
No. 87/2009  
s. 13(1).

S. 22(4A)  
inserted by  
No. 87/2009  
s. 13(1).

S. 22(5)  
amended by  
No. 87/2009  
s. 13(2).

- (b) the sheriff reasonably believes that the owner or occupier of the premises is avoiding being contacted by the sheriff.
- (5) If the sheriff decides to use force and assistance as provided under this section to enter premises that are residential premises, he or she must only use that force and assistance between the hours of 9 a.m. and 5 p.m.

### **Division 5—Powers to seize, sell and deal with property**

#### **23 Sheriff may seize recoverable property**

The sheriff may seize or take possession of recoverable property in accordance with the relevant court and enforcement legislation or a warrant that authorises the seizure of property, regardless of who has possession of the recoverable property.

#### **24 Sheriff may sell or otherwise deal with seized property**

Subject to this Act, the sheriff may—

- (a) sell property seized in accordance with the relevant court and enforcement legislation, or a warrant that authorises the seizure of property, for the purpose of applying the proceeds of the sale to the payment of a payable amount; or
- (b) deal with property seized in accordance with a warrant that authorises the seizure of property.

#### **25 Buyer of property sold by sheriff acquires good title**

- (1) A person who buys property sold by the sheriff under this Division acquires good title to the property if the person buys the property—

- 
- (a) in good faith; and
  - (b) without notice of any defect or want of title.
- (2) The sheriff is not liable in respect of the sale of property under this Division unless it is proved that the sheriff had notice, or might, by making reasonable enquiry, have ascertained, that the property was not the property of the person named or described in the warrant under which that property was seized.
- (3) Nothing in this section limits or affects any right or remedy that the previous owner of property sold under this Division has or may seek otherwise than—
- (a) against the property sold; or
  - (b) against the sheriff in the exercise of a power of sale under this Division.

### **Division 6—Powers to demand and receive payment**

#### **26 Sheriff may collect enforcement order payments**

- (1) This section applies if—
  - (a) the sheriff is about to execute a money warrant against a person; and
  - (b) an enforcement order has been made against that person and an enforcement order notice in respect of the enforcement order has been sent to that person.
- (2) Before executing the money warrant, the sheriff must inform the person that the person may make a payment in accordance with the enforcement order to the sheriff, if the person wishes to do so.

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**27 Sheriff may demand and receive payment in relation to money warrants**

- (1) The sheriff, in the execution of a money warrant, may demand from a person named or described in the money warrant the payment of the payable amount.
- (2) Subject to this section, the sheriff may receive money as payment of the payable amount or a part of the payable amount from—
  - (a) the person named or described in the money warrant; or
  - (b) another person who is present at, or resides at, the premises that the sheriff has entered to execute the money warrant (a *third party*).
- (3) The sheriff may receive the whole of the payable amount, or a part of the payable amount, in the case of—
  - (a) an infringement warrant; or
  - (b) a civil warrant.
- (4) The sheriff may only receive the whole of the payable amount in the case of—
  - (a) a warrant to imprison issued under section 68(b) of the **Magistrates' Court Act 1989**; or
  - (b) a warrant to seize property issued under section 73 of the **Magistrates' Court Act 1989**; or
  - (c) a warrant to arrest issued under section 62 of the **Sentencing Act 1991**; or
  - (d) a warrant of delivery.

S. 27(4)(b)  
amended by  
No. 87/2009  
s. 14(1).

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- (5) The sheriff may receive payment of the payable amount, or a part of the payable amount, under a money warrant that is a criminal warrant from a third party unless the person named or described in the warrant informs the sheriff that he or she does not consent to the making of the payment by the third party.
- (6) The sheriff must not receive payment of the payable amount, or a part of the payable amount, under a money warrant that is a civil warrant from a third party unless the person named or described in the warrant informs the sheriff that he or she consents to the making of the payment by the third party.
- (7) In order to assist a third party to pay the payable amount or a part of the payable amount, the sheriff may inform the third party of the payable amount.
- (8) The sheriff must not give a third party any other information about a money warrant.
- (9) As soon as practicable after receiving a payment from a third party under this section, the sheriff must serve on the person named or described in the money warrant a notice that—
- (a) specifies—
    - (i) the name of the third party; and
    - (ii) the date of the payment; and
    - (iii) the amount paid; and
  - (b) states that, in the case of a money warrant that is a criminal warrant, the person may apply, within 28 days after service of the notice, to the court that issued the money warrant for a reinstatement of the warrant under section 28.

S. 27(9)(b)  
amended by  
No. 87/2009  
s. 14(2).



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**28 Reinstatement of certain money warrants after whole of payable amount has been paid by third party**

(1) In this section—

*executed money warrant* means a money warrant that is a criminal warrant in respect of which the sheriff has received the whole of the payable amount from a third party in the absence of the person named or described in the warrant;

*third party* has the meaning given by section 27.

- (2) The court that issued an executed money warrant may, on the application of a person named or described in the executed money warrant, reinstate that warrant as a money warrant.
- (3) A person may make an application under this section within 28 days after being served with a notice under section 27(9).
- (4) If the court reinstates an executed money warrant as a money warrant, the amount paid by the third party must be refunded to the third party and—
- (a) if the amount has been paid into the Consolidated Fund, the Consolidated Fund is, to the necessary extent, appropriated accordingly; or
  - (b) if the amount has been paid into another fund or account, the amount is to be refunded from that fund or account.
- (5) An executed money warrant may only be reinstated once under this section.

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**Division 7—Power to request name and address**

**29 Power to request name and address for purpose of executing warrant**

- (1) This section applies if the sheriff believes on reasonable grounds that a person may be the person named or described in a warrant to be executed by the sheriff.
- (2) The sheriff may request the person to state his or her name and ordinary place of residence or business.
- (3) In making the request under subsection (2), the sheriff must inform the person of the grounds for his or her belief in relation to the person's identity.
- (4) A person, in response to a request under subsection (2), must not—
  - (a) without a reasonable excuse, refuse or fail to comply with the request; or
  - (b) state a name that is false in a material particular; or
  - (c) state an address other than the full and correct address of his or her ordinary place of residence or business.

Penalty: 5 penalty units.

- (5) A person who is requested under subsection (2) to state his or her name and address may request the sheriff to state, orally or in writing, his or her name, position and place of business.

**Note**

The sheriff may delegate his or her duty under subsection (5) to a sheriff's officer: see section 9(1).

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- (6) The sheriff, in response to a request under subsection (5), must not—
- (a) without a reasonable excuse, refuse or fail to comply with the request; or
  - (b) state a name or position that is false in a material particular; or
  - (c) state an address other than the full and correct address of his or her ordinary place of business.

Penalty: 5 penalty units.

- (7) If a person states a name and address in response to a request made under subsection (2) and the sheriff suspects on reasonable grounds that the stated name or address may be false, the sheriff may request the person to produce evidence of his or her name and address.
- (8) A person must not, without reasonable excuse, refuse or fail to comply with a request under subsection (7).

Penalty: 5 penalty units.

- (9) It is not an offence for a person to fail to comply with a request made under subsection (2) or (7) if the sheriff did not inform the person, at the time the request was made, that it is an offence to refuse or fail to comply with the request.

#### **Division 8—Performance and exercise of enforcement functions and powers at police road checks**

### **30 Performance and exercise of enforcement functions and powers at police road checks**

- (1) This section applies if—
- (a) a member of the police force exercises a power conferred (whether expressly or by implication) by the **Road Safety Act 1986**

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- and requests or signals the driver of a motor vehicle to stop the vehicle; and
- (b) the sheriff is at the place where the vehicle stops.
- (2) In order to enable the sheriff to determine whether the driver, or any person accompanying the driver, is named or described in a warrant, the sheriff may direct the driver of the vehicle—
- (a) to keep the vehicle stationary; or
  - (b) to drive the vehicle to a designated spot; or
  - (c) to produce his or her driver licence document or permit document; or
  - (d) to comply with any other reasonable direction of the sheriff.
- (3) A person who is given a direction under subsection (2) must not, without reasonable excuse, refuse or fail to comply with the direction.
- Penalty: 5 penalty units.

### **Division 9—Other enforcement powers**

#### **31 Power to direct a person to do something**

- (1) For the purpose of executing a warrant or other process, the sheriff may direct either of the following to do something—
  - (a) the person named or described in the warrant or other process;
  - (b) a person the sheriff considers is resisting or hindering the execution of the warrant or other process.
- (2) A direction under subsection (1) must be reasonable.

- (3) A person must not, without reasonable excuse, refuse or fail to comply with a direction under subsection (1).

Penalty: 5 penalty units.

Pt 3 Div. 10  
(Heading)  
substituted by  
No. 87/2009  
s. 15.

### **Division 10—Costs and expenses of execution of warrants**

S. 32  
(Heading)  
substituted by  
No. 87/2009  
s. 16.

#### **32 Sheriff may recover reasonable costs and expenses of execution**

- (1) The sheriff may recover all costs and expenses that the sheriff incurs in executing a warrant that are reasonable.
- (2) Costs and expenses referred to in subsection (1) include costs and expenses incurred in engaging an agent to sell property seized under a lawfully executed warrant.
- (3) Despite anything to the contrary in this Act, another Act or at law, costs and expenses referred to in subsection (1) may be recovered by the sheriff before—
- (a) the proceeds arising from the sale of any property seized under a lawfully executed warrant are applied to the payment of a payable amount; or
  - (b) money received for the payment of a payable amount under a lawfully executed warrant is applied to the payment of a payable amount.

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**Division 11—Miscellaneous matters**

**33 Sheriff's duties on receipt of money to satisfy debt or on seizing property**

- (1) This section applies if the sheriff—
    - (a) in accordance with Division 5, seizes recoverable property; or
    - (b) in accordance with Division 6, receives an amount of money from a person.
  - (2) The sheriff, without delay, must give a receipt to, as the case requires—
    - (a) the person who was in possession of the property seized;
    - (b) the person who—
      - (i) made a payment in respect of an enforcement order in accordance with section 26; or
      - (ii) paid an amount or part of an amount stated in a money warrant under section 27.
  - (3) In addition, the sheriff, without delay, must take all necessary steps to obtain in respect of that amount the effectual discharge of the debt owed by the person named or described in the money warrant.
  - (4) If the sheriff does not comply with this section, the sheriff is liable to pay any damage incurred by, as the case requires, the person against whom the enforcement order was made or the person named or described in the warrant in consequence of the non-compliance.
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**PART 4—EXECUTION OF MULTIPLE WARRANTS**

**Division 1—Execution of more than one warrant at the same time**

**34 Definitions**

In this Division—

*community-based order* has the same meaning as in the **Sentencing Act 1991**;

*instalment order* has the same meaning as in the **Sentencing Act 1991**;

*time to pay order* means an order of a court under section 54 of the **Sentencing Act 1991**.

**35 All warrants in a multiple warrant situation must be executed at the same time**

Subject to section 13 and this Division, if the sheriff has more than one warrant to execute against the same person, the sheriff, in accordance with the relevant court and enforcement legislation, must execute all of the warrants at the same time.

**36 Execution of warrants with related seven day demands**

- (1) This section applies if—
- (a) the sheriff has more than one warrant to execute against the same person; and
  - (b) at least 2 of the warrants require that a seven day demand be given to that person; and
  - (c) the period in respect of at least one of the seven day demands has expired.

S. 35  
amended by  
No. 87/2009  
s. 17.

- (2) The sheriff, in accordance with the relevant court and enforcement legislation, may execute all of the warrants at the same time if the person consents, in writing, to waive the operation of the unexpired periods of the other seven day demands.

**37 Execution of warrant of seizure and sale or to seize property and warrant to imprison**

- (1) This section applies if the sheriff has to execute against the same person—
- (a) a warrant of seizure and sale or a warrant to seize property issued under section 111 of the **Magistrates' Court Act 1989** (a *property seizure warrant*); and
  - (b) a warrant to imprison.
- (2) The sheriff, in accordance with the relevant court and enforcement legislation, must execute the property seizure warrant before executing the warrant to imprison.

**38 Execution of warrant to imprison and infringement warrant**

- (1) This section applies if the sheriff has to execute against the same person a warrant to imprison and an infringement warrant.
- (2) The sheriff, in accordance with the relevant court and enforcement legislation—
- (a) must execute the warrant to imprison; and
  - (b) must not execute the infringement warrant unless—
    - (i) the person has been arrested under the warrant to imprison; or

S. 38(2)(b)  
substituted by  
No. 87/2009  
s. 18.



- (ii) the person is in a police gaol in the legal custody of the Chief Commissioner of Police or in a prison in the legal custody of the Secretary.

**Note**

Division 2 of Part 12 of the **Infringements Act 2006** applies to the person against whom the sheriff executes an infringement warrant referred to in this section.

**39 Execution of warrant to imprison and warrant to arrest**

- (1) This section applies if the sheriff has to execute against the same person a warrant to imprison and a warrant to arrest.
- (2) The sheriff, in accordance with the relevant court and enforcement legislation—
  - (a) must execute the warrant to imprison; and
  - (b) must not execute the warrant to arrest—
    - (i) unless a seven day demand relating to the warrant to arrest is served on the person before the warrant to imprison has been received by the sheriff and—
      - (A) the period under that seven day demand has expired and no liability discharge event has occurred before the warrant to imprison is executed; or
      - (B) the operation of the period under that seven day demand has been waived by the person; or
    - (ii) unless the person is released from the legal custody of the Chief Commissioner of Police or the Secretary (as the case requires) and—

S. 39(2)(b)  
substituted by  
No. 87/2009  
s. 19.

- (A) the period under a seven day demand relating to the warrant to arrest and served on the person has expired and no liability discharge event has occurred; or
- (B) the operation of the period under that seven day demand has been waived by the person.

(3) In this section—

*liability discharge event* means—

- (a) the person has paid the fine or instalment under an instalment order to which the warrant to arrest relates, or any part of the fine or instalment, together with all warrant costs; or
- (b) the person has obtained an instalment order or time to pay order; or
- (c) the person has consented to the making of a community-based order.

#### **40 Execution of warrant to imprison, warrant to arrest and infringement warrant**

- (1) This section applies if the sheriff has the following warrants to execute against the same person—
  - (a) a warrant to imprison;
  - (b) a warrant to arrest;
  - (c) an infringement warrant.
- (2) The sheriff, in accordance with the relevant court and enforcement legislation—
  - (a) must execute the warrant to imprison; and

**s. 40**

**S. 40(2)(b)**  
**substituted by**  
**No. 87/2009**  
**s. 20(1).**

(b) must not execute the infringement warrant unless—

- (i) the person has been arrested under the warrant to imprison; or
- (ii) the person is in a police gaol in the legal custody of the Chief Commissioner of Police or in a prison in the legal custody of the Secretary; and

**S. 40(2)(c)**  
**substituted by**  
**No. 87/2009**  
**s. 20(2).**

(c) must not execute the warrant to arrest—

- (i) unless a seven day demand relating to the warrant to arrest is served on the person before the warrant to imprison has been received by the sheriff and—
  - (A) the period under that seven day demand has expired and no liability discharge event has occurred before the warrant to imprison is executed; or
  - (B) the operation of the period under that seven day demand has been waived by the person; or
- (ii) unless the person is released from the legal custody of the Chief Commissioner of Police or the Secretary (as the case requires) and—
  - (A) the period under a seven day demand relating to the warrant to arrest and served on the person has expired and no liability discharge event has occurred; or
  - (B) the operation of the period under that seven day demand has been waived by the person.

(3) In this section—

*liability discharge event* means—

- (a) the person has paid the fine or instalment under an instalment order to which the warrant to arrest relates, or any part of the fine or instalment, together with all warrant costs; or
- (b) the person has obtained an instalment order or time to pay order; or
- (c) the person has consented to the making of a community-based order.

**Division 2—Application of proceeds from executed money warrants**

**41 Division does not affect the operation of Part 7 or Part 11 of the Infringements Act 2006**

This Division does not affect the operation of Part 7 or Part 11 of the **Infringements Act 2006**.

**42 Definitions**

In this Division—

*apply*, in relation to combined proceeds, means to pay to the person entitled, or required, to be paid under a money warrant;

*combined proceeds* means—

- (a) proceeds from the sale of property seized by the sheriff under money warrants executed at the same time;
- (b) money received by the sheriff as payment of the payable amounts, or parts of payable amounts, specified in money warrants executed at the same time.

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**43 Priority of application of proceeds of executed warrants**

The sheriff must apply combined proceeds for the payment of payable amounts in the order of priority specified under this Division unless there has been disentitling conduct in relation to the money warrant to which a payable amount relates.

**Note**

See also section 32(3).

**44 Payable amounts under warrants to imprison to be applied first**

- (1) If combined proceeds held by the sheriff include money received in respect of a payable amount under a warrant to imprison, the sheriff must apply that money before the sheriff applies any other money or proceeds from the combined proceeds.
- (2) If combined proceeds held by the sheriff include money received in respect of payable amounts under more than one warrant to imprison, the sheriff must apply that money—
  - (a) before the sheriff applies any other money or proceeds from the combined proceeds; and
  - (b) in order of receipt by the sheriff of the warrants to imprison.
- (3) Once money from combined proceeds held by the sheriff as payment of payable amounts under all warrants to imprison has been applied, the sheriff must—
  - (a) first, apply any money received by the sheriff as payments of payable amounts under any warrant to arrest or, in accordance with subsection (4), warrants to arrest; and

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- (b) secondly, apply any remaining combined proceeds in order of receipt by the sheriff of the warrants to which those proceeds relate.
  - (4) If the sheriff has received money in respect of more than one payable amount under more than one warrant to arrest, the sheriff must apply that money—
    - (a) before the sheriff applies any other money or proceeds from the combined proceeds; and
    - (b) in order of receipt by the sheriff of the warrants to arrest.

**45 How payable amounts under warrants to arrest and other non-imprisonment warrants are to be applied**

- (1) This section applies if combined proceeds held by the sheriff comprise money and proceeds in respect of warrants other than warrants to imprison.
- (2) If combined proceeds held by the sheriff include money received in respect of a payable amount under a warrant to arrest, the sheriff must apply that money before the sheriff applies any other money or proceeds from the combined proceeds.
- (3) If combined proceeds held by the sheriff include money received in respect of payable amounts under more than one warrant to arrest, the sheriff must apply that money—
  - (a) before the sheriff applies any other money or proceeds from the combined proceeds; and
  - (b) in order of receipt by the sheriff of the warrants to arrest.
- (4) Once money from combined proceeds held by the sheriff in respect of payable amounts under all warrants to arrest has been applied, the sheriff must apply any remaining combined proceeds in

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order of receipt by the sheriff of the warrants to which those proceeds relate.

**46 How payable amounts under other money warrants are to be applied**

- (1) This section applies if combined proceeds held by the sheriff comprise proceeds in respect of warrants other than warrants to imprison or warrants to arrest.
  - (2) The sheriff must apply those combined proceeds in order of receipt by the sheriff of the warrants to which those proceeds relate.
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**PART 5—GENERAL**

**Division 1—Offences**

**47 Offence to resist sheriff, deputy sheriff, sheriff's officer or justice employee**

A person must not resist the sheriff, the deputy sheriff, a sheriff's officer or an appropriately trained justice employee in the execution of a warrant or other process.

Penalty: 6 months imprisonment.

S. 47  
(Heading)  
substituted by  
No. 87/2009  
s. 21(1).  
S. 47  
amended by  
No. 87/2009  
s. 21(2).

**48 Offence to assault sheriff, deputy sheriff, sheriff's officer or justice employee**

(1) A person must not assault—

(a) the sheriff while the sheriff is performing or exercising an enforcement function or power; or

(b) the deputy sheriff while the deputy sheriff is performing or exercising an enforcement function or power; or

(c) a sheriff's officer while the sheriff's officer is performing or exercising a delegated enforcement function or power; or

(d) an appropriately trained justice employee while the appropriately trained justice employee is performing or exercising a delegated enforcement function or power.

Penalty: 6 months imprisonment.

(2) This section does not affect the powers of the Supreme Court in relation to contempt.

S. 48  
(Heading)  
substituted by  
No. 87/2009  
s. 22(1).

S. 48(1)(c)  
amended by  
No. 87/2009  
s. 22(2).

S. 48(1)(d)  
inserted by  
No. 87/2009  
s. 22(3).



s. 50

S. 49  
(Heading)  
substituted by  
No. 87/2009  
s. 23(1).  
S. 49  
amended by  
No. 87/2009  
s. 23(2).

**49 Offence to escape from lawful custody of sheriff, deputy sheriff, sheriff's officer or justice employee**

A person must not escape from the lawful custody of the sheriff, the deputy sheriff, a sheriff's officer or an appropriately trained justice employee.

Penalty: 6 months imprisonment.

**50 Offence to rescue or attempt to rescue goods**

S. 50(1)  
amended by  
No. 87/2009  
s. 24.

- (1) A person must not rescue or attempt to rescue any property lawfully seized by the sheriff, the deputy sheriff, a sheriff's officer or an appropriately trained justice employee.

Penalty: 6 months imprisonment.

- (2) This section does not affect the powers of the Supreme Court in relation to contempt.

**51 Offence to impersonate sheriff, deputy sheriff, sheriff's officer or justice employee**

S. 51  
(Heading)  
substituted by  
No. 87/2009  
s. 25(1).  
S. 51  
amended by  
No. 87/2009  
s. 25(2).

A person must not impersonate the sheriff, the deputy sheriff, a sheriff's officer or an appropriately trained justice employee.

Penalty: 6 months imprisonment.

**Division 2—Information collection**

**52 Definitions**

In this Division—

*Council* has the same meaning as in the **Local Government Act 1989**;

*law enforcement agency* has the same meaning as in the **Surveillance Devices Act 1999**;

*public sector body* has the same meaning as in the **Public Administration Act 2004**;

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*required information*, in relation to a person—

- (a) in respect of whom a warrant has been received and is to be executed by the sheriff; or
- (b) whose property is the subject of a warrant received and to be executed by the sheriff—

means the name and address of the person that is held by a specified agency;

*specified agency* means—

- (a) a public sector body; or
- (b) a Council.

**53 Sheriff may request required information from specified agency for purpose of executing warrants**

- (1) For the purpose of executing a warrant against a person, the sheriff may request in writing to a specified agency that it provide to the sheriff required information in relation to the person.
- (2) The sheriff may request required information under subsection (1) only if he or she has made all reasonable attempts to execute a warrant against the person without success.
- (3) A request under subsection (1) must include only information that is sufficient to enable the specified agency to identify the person to whom the request relates.
- (4) Without limiting subsection (3), a request under subsection (1) may include—
  - (a) the name of the person to whom the required information relates; and
  - (b) the date of birth of that person; and
  - (c) the last known address of that person.

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- (5) A request under subsection (1) must not include information about, or that identifies, a warrant that has been received by the sheriff.

**54 Specified agency must comply unless certain cases apply**

- (1) A specified agency must comply with a request under section 53(1) within 14 days after receiving the request unless—
- (a) the specified agency is a law enforcement agency; or
  - (b) the public sector body Head (within the meaning of the **Public Administration Act 2004**) of the public sector body or chief executive officer of the Council, as the case requires, certifies in writing that exceptional circumstances apply that require the agency not to provide the sheriff with the required information.
- (2) Despite subsection (1)(a), a law enforcement agency may comply with a request under section 53(1).
- (3) A certificate referred to in subsection (1)(b) must be given to the sheriff within 14 days after receiving a request under section 53(1).

**55 Restriction on sheriff in relation to use of required information**

The sheriff may use required information provided to him or her under this Division only for the purpose of executing a warrant against the person to whom the required information relates.

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### Division 3—Regulations

#### 56 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
  - (a) fees or charges payable in respect of anything done by the sheriff in or in relation to the execution of any warrant or other process, including—
    - (i) the issue or execution of a warrant or other process; or
    - (ii) the amendment, alteration or variation of a warrant or other process; or
    - (iii) the supply of a duplicate copy of a warrant or other process;
  - (b) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to the Act.
- (2) A power conferred by subsection (1)(a) to make regulations providing for the imposition of fees or charges may be exercised by providing for all or any of the following matters—
  - (a) specific fees or charges;
  - (b) maximum fees or charges;
  - (c) minimum fees or charges;
  - (d) fees or charges that vary according to value or time;
  - (e) the manner of payment of fees or charges;
  - (f) the time or times at which fees or charges are to be paid.

- (3) The regulations may—
- (a) be of general or of limited application;
  - (b) differ according to differences in time, place or circumstance;
  - (c) confer a discretionary authority or impose a duty on a specified person or a specified class of person.
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**PART 6—AMENDMENTS, SAVINGS AND TRANSITIONALS**

**Division 1—Amendment of Supreme Court Act 1986**

**57 Amendment of definition**

In section 3(1) of the **Supreme Court Act 1986**, in paragraph (d) of the definition of *court official*, for "any sheriff or" **substitute** "the sheriff or any".

See:  
Act No.  
110/1986.  
Reprint No. 6  
as at  
28 April 2006  
and  
amending  
Act Nos  
48/2006,  
24/2007,  
8/2008, 9/2008,  
23/2008 and  
24/2008.  
LawToday:  
www.  
legislation.  
vic.gov.au

**58 Powers to employ sheriff and deputy sheriffs in Supreme Court Act 1986 repealed**

- (1) In section 106(a) of the **Supreme Court Act 1986**, for ", a registrar of probates, a sheriff" **substitute** "and a registrar of probates".
- (2) In section 106(b) of the **Supreme Court Act 1986**, for ", assistant registrars of probates and deputy sheriffs" **substitute** "and assistant registrars of probates".

**59 Certain office holders to be deputies**

- (1) In section 107(1) of the **Supreme Court Act 1986** **omit** "or a deputy sheriff".
- (2) In section 107(2)(b) of the **Supreme Court Act 1986** **omit** "or deputy sheriff, as the case requires".

## 60 Powers of deputies

- (1) In section 108(1) of the **Supreme Court Act 1986** omit "or deputy sheriff".
- (2) In section 108(2) of the **Supreme Court Act 1986**—
  - (a) omit "or deputy sheriff";
  - (b) omit "or sheriff";
  - (c) for "a deputy's" substitute "the deputy's".

## 61 Appointment of bailiffs and assistant bailiffs

- (1) For section 109(1) of the **Supreme Court Act 1986** substitute—

"(1) The Governor in Council may appoint a person other than a sheriff's officer to be a bailiff for the purposes of this Act.

### Note

In relation to sheriff's officers as bailiffs, see section 12 of the **Sheriff Act 2009**.

- (1A) A person appointed under subsection (1) need not be an employee in the public service."
- (2) After section 109(3) of the **Supreme Court Act 1986** insert—
  - "(4) In this section—  
*sheriff's officer* has the same meaning as in the **Sheriff Act 2009**."

## 62 Functions of sheriff

Section 115(1) and section 115(2) of the **Supreme Court Act 1986** are repealed.

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**63 Sheriff may sell property without auctioneer's licence**

Section 116 of the **Supreme Court Act 1986** is repealed.

**64 Receipt for warrant**

Section 117 of the **Supreme Court Act 1986** is repealed.

**65 Duties on receipt of debt to Crown**

Section 118 of the **Supreme Court Act 1986** is repealed.

**66 Powers of sheriff**

Section 121 of the **Supreme Court Act 1986** is repealed.

**67 Power to temporarily restrain**

Section 121A of the **Supreme Court Act 1986** is repealed.

**68 Fees**

Section 122 of the **Supreme Court Act 1986** is repealed.

**69 Offence to assault an officer or rescue goods**

Section 124 of the **Supreme Court Act 1986** is repealed.

**70 Offence to fail to assist sheriff**

Section 126 of the **Supreme Court Act 1986** is repealed.

**71 Regulations**

In section 129(1)(b) of the **Supreme Court Act 1986** omit "the sheriff or".



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**Division 2—Amendment of County Court Act 1958**

**72 Appointment of bailiffs and assistant bailiffs of County Court**

See:  
Act No.  
6230.  
Reprint No. 12  
as at  
28 April 2006  
and  
amending  
Act Nos  
22/2006,  
50/2006,  
24/2007,  
26/2007,  
28/2007,  
8/2008,  
23/2008,  
24/2008 and  
51/2008.  
LawToday:  
www.  
legislation.  
vic.gov.au

(1) For section 23(1) of the **County Court Act 1958** substitute—

"(1) The Governor in Council may appoint a person other than a sheriff's officer to be a bailiff of the County Court at any place.

**Note**

In relation to sheriff's officers as bailiffs, see section 12 of the **Sheriff Act 2009**.

(1A) A person appointed under subsection (1) need not be an employee in the public service."

(2) After section 23(4) of the **County Court Act 1958** insert—

"(5) In this section—

*sheriff's officer* has the same meaning as in the **Sheriff Act 2009**."

**Division 3—Amendment of Magistrates' Court Act 1989**

**73 Requirement to give name and address**

See:  
Act No.  
51/1989.  
Reprint No. 14  
as at  
21 August  
2008 and  
amending  
Nos 77/2004,  
51/2006,  
12/2008,  
34/2008,  
38/2008 and  
52/2008.  
LawToday:  
www.  
legislation.  
vic.gov.au

Section 82G of the **Magistrates' Court Act 1989** is **repealed**.

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#### **74 Power to temporarily restrain**

Section 82H of the **Magistrates' Court Act 1989** is **repealed**.

#### **75 Power to assist police at road checks**

(1) In section 82I(2) of the **Magistrates' Court Act 1989**—

(a) **omit** ", the sheriff";

(b) after "**Supreme Court Act 1986**" insert  
"(other than a bailiff who is a sheriff's  
officer)".

(2) At the foot of section 82I(2) of the **Magistrates' Court Act 1989** insert—

**"Note**

See section 30 of the **Sheriff Act 2009** for the power of the sheriff, and by delegation, sheriff's officers, at police road checks."

#### **76 Regulations**

(1) In section 140(1)(a) of the **Magistrates' Court Act 1989** **omit** "or in respect of the execution by the sheriff of any warrant issued in default of payment of a fine or of any instalment under an instalment order".

(2) Section 140(1)(ba) of the **Magistrates' Court Act 1989** is **repealed**.

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**Division 4—Amendment of Interpretation of Legislation  
Act 1984**

**77 Definitions**

See:  
Act No.  
10096.  
Reprint No. 9  
as at  
6 March 2007  
and  
amending  
Act No.  
30/2008.  
LawToday:  
www.  
legislation.  
vic.gov.au

In section 38 of the **Interpretation of Legislation Act 1984** insert the following definition—

**"*sheriff*** has the same meaning as in the **Sheriff Act 2009**;"

**Division 5—Savings and transitionals**

**78 Definition**

In this Division—

***commencement day*** means the day on which section 6 comes into operation.

**79 Saving of office of sheriff**

On the commencement day, the person who immediately before that day was employed as the sheriff in accordance with section 106(a) of the **Supreme Court Act 1986** is to be taken to be employed as the sheriff under section 6 of this Act on the same terms and conditions as that person was employed immediately before that day.

**80 Saving of office of deputy sheriff**

On the commencement day, the person who immediately before that day was employed as a deputy sheriff in accordance with section 106(b) of the **Supreme Court Act 1986** is to be taken to be employed as the deputy sheriff under section 10 of this Act on the same terms and

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conditions as that person was employed immediately before that day.

**81 Savings provision—sheriff's officers**

On the commencement day, a person who immediately before that day was employed under the **Public Administration Act 2004** as a sheriff's officer is to be taken to be employed as a sheriff's officer under section 11 of this Act on the same terms and conditions as that person was employed immediately before that day.

**82 Transitional provision—deputised persons**

On the commencement day, a person who immediately before that day was declared by an Order made under section 107 of the **Supreme Court Act 1986** to be a deputy sheriff is to be taken to be appointed as a deputised person under section 8 of this Act.

**83 Transitional provision—sheriff's officers who are bailiffs for purposes of Supreme Court Act 1986**

On the commencement day, a sheriff's officer who immediately before that day was appointed by an Order made under section 109 of the **Supreme Court Act 1986** to be a bailiff is to be taken to be appointed as a bailiff under section 12 of this Act.

**84 Transitional provision—sheriff's officers who are bailiffs of the County Court**

On the commencement day, a sheriff's officer who immediately before that day was appointed by an Order made under section 23 of the **County Court Act 1958** to be a bailiff is to be taken to be appointed as a bailiff under section 12 of this Act.

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**85 Application of Act to a warrant and other process issued but not executed before commencement day**

On and after the commencement day, this Act applies to a warrant or other process that the sheriff has received for execution before that day but has not yet executed.

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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 9 October 2008*

*Legislative Council: 4 December 2008*

The long title for the Bill for this Act was "A Bill for an Act to provide a legislative framework for the appointment of the sheriff, the deputy sheriff and sheriff's officers and their functions, powers and duties and to amend the **Supreme Court Act 1986**, the **County Court Act 1958**, the **Magistrates' Court Act 1989** and the **Interpretation of Legislation Act 1984** and for other purposes."

The **Sheriff Act 2009** was assented to on 24 March 2009 and came into operation on 1 October 2009: Government Gazette 1 October 2009 page 2539.

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| Endnotes |
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## 2. Table of Amendments

This Version incorporates amendments made to the **Sheriff Act 2009** by Acts and subordinate instruments.

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### **Justice Legislation Miscellaneous Amendments Act 2009, No. 87/2009**

*Assent Date:* 15.12.09

*Commencement Date:* Ss 12–25 on 16.12.09: s. 2(1)

*Current State:* This information relates only to the provision/s amending the **Sheriff Act 2009**

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**3. Explanatory Details**

No entries at date of publication.