

Version No. 069B
Supreme Court Act 1986

No. 110 of 1986

Version incorporating amendments as at 16 June 2010

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is—

- (a) to amend and consolidate the law relating to the Supreme Court; and
- (b) to amend the law of Victoria insofar as it relates to the procedure of the Supreme Court.

2 Commencement

This Act comes into operation on 1 January 1987.

3 Definitions

(1) In this Act—

actuary means a fellow or accredited member of the Institute of Actuaries of Australia approved by the Minister;

S. 3(1) def. of *actuary* inserted by No. 19/2001 s. 19.

Associate Judge means an Associate Judge appointed under section 104 and referred to in section 75(4) of the **Constitution Act 1975**;

S. 3(1) def. of *Associate Judge* inserted by No. 24/2008 s. 13(a).

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Part 1—Preliminary

s. 3

S. 3(1) def. of
*Australian
lawyer*
inserted by
No. 18/2005
s. 18(Sch. 1
item 103.1(a)).

Australian lawyer has the same meaning as in the
Legal Profession Act 2004;

S. 3(1) def. of
Chief Justice
amended by
No. 109/1994
s. 18(a).

Chief Justice includes *Acting Chief Justice*, and
in the absence of the Chief Justice and the
Acting Chief Justice means the senior Judge
of the Court for the time being present¹;

S. 3(1) def. of
Costs Court
inserted by
No. 78/2008
s. 3.

costs includes fees, charges and disbursements;

Costs Court means the Costs Court established by
section 17C;

S. 3(1) def. of
Costs Judge
inserted by
No. 78/2008
s. 3.

Costs Judge means an Associate Judge allocated
to the Costs Court as a Costs Judge under
section 17E;

S. 3(1) def. of
costs registrar
inserted by
No. 78/2008
s. 3.

costs registrar means a person employed pursuant
to section 106(ac) who has functions and
powers under Division 2B of Part 2;

Court means the Supreme Court;

S. 3(1) def. of
*Court of
Appeal*
inserted by
No. 109/1994
s. 18(b).

Court of Appeal means the division of the Court
called the Court of Appeal²;

court official means—

- (a) an officer of the Court (except a person who is an officer of the Court only because he or she is an Australian lawyer); or
- (b) any person employed in any of the offices of the Court; or
- (c) any person employed in the chambers of a Judge or Associate Judge; or
- (d) the sheriff or any other person acting in execution of any warrant or other process of the Court;

S. 3(1) def. of *court official* amended by Nos 35/1996 s. 453(Sch. 1 item 80.1(b)), 102/1997 s. 49(Sch. item 5), 18/2005 s. 18(Sch. 1 item 103.1(b)), 24/2008 s. 13(b), 9/2009 s. 57.

defendant includes every person served with any process or served with notice of or entitled to attend any proceeding;

domestic partner of a person means—

- (a) a person who is, or was at the time of the person's death, in a registered domestic relationship with the person; or
- (b) a person to whom the person is not married but with whom, in the opinion of the Minister, the person is, or was at the time of the person's death, living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *domestic partner* inserted by No. 4/2009 s. 37(Sch. 1 item 25.1).

* * * * *

S. 3(1) def. of *Full Court* repealed by No. 109/1994 s. 18(c).³

Judge of Appeal means the Chief Justice, the President, another Judge of Appeal or an additional Judge of Appeal appointed or acting under section 80B of the **Constitution Act 1975**⁴;

S. 3(1) def. of *Judge of Appeal* inserted by No. 109/1994 s. 18(d).

s. 3

S. 3(1) def. of
*Judge of the
Court*
inserted by
No. 24/2008
s. 13(a).

Judge of the Court means a Judge of the Court referred to in section 75(3) of the **Constitution Act 1975**;

judgment includes order;

S. 3(1) def. of
*judicial
resolution
conference*
inserted by
No. 50/2009
s. 3.

judicial resolution conference means a resolution process presided over by a Judge of the Court or an Associate Judge for the purposes of negotiating a settlement of a dispute including, but not limited to—

- (a) mediation, whether or not referred to that person in accordance with the Rules;
- (b) early neutral evaluation;
- (c) settlement conference;
- (d) conciliation;

landlord includes a lessor;

S. 3(1) def. of
Law Institute
repealed by
No. 35/1996
s. 453(Sch. 1
item 80.1(a)).

* * * * *

S. 3(1) def. of
law practice
inserted by
No. 18/2005
s. 18(Sch. 1
item 103.1(a)).

law practice has the same meaning as in the **Legal Profession Act 2004**;

S. 3(1) def. of
*legal
practitioner*
inserted by
No. 18/2005
s. 18(Sch. 1
item 103.1(a)).

legal practitioner means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

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* * * * *

S. 3(1) def. of *Master* substituted by No. 109/1994 s. 18(e), repealed by No. 24/2008 s. 13(c).

* * * * *

S. 3(1) def. of *non-contentious business* repealed by No. 35/1996 s. 453(Sch. 1 item 80.1(a)).

partner of a person means—

S. 3(1) def. of *partner* inserted by No. 4/2009 s. 37(Sch. 1 item 25.1).

(a) in relation to a person who became entitled to benefits under this Act before the commencement of section 3 of the **Constitution Amendment (Judicial Pensions) Act 2008**—

- (i) the person's husband, wife, widower or widow; or
- (ii) a person of the opposite sex who, though not married to the person, in the opinion of the Minister lives with the person, or lived with the person at the date of the person's death, on a bona fide domestic basis as the person's husband or wife;

(b) in any other case, the person's spouse or domestic partner;

party includes every person served with notice of or attending any proceeding, whether named on the record or not;

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plaintiff includes every person claiming any relief (otherwise than by way of counterclaim as a defendant) against any other person in a proceeding;

S. 3(1) def. of *President* inserted by No. 109/1994 s. 18(f).

President means the President of the Court of Appeal⁵;

proceeding means any matter in the Court other than a criminal proceeding;

S. 3(1) defs of *solicitor*, *solicitor-client agreement* repealed by No. 35/1996 s. 453(Sch. 1 item 80.1(a)).

* * * * *

S. 3(1) def. of *spouse* inserted by No. 4/2009 s. 37(Sch. 1 item 25.1).

spouse of a person means a person to whom the person is, or was at the time of the person's death, married;

subordinate instrument has the same meaning as in the **Interpretation of Legislation Act 1984**;

S. 3(1) def. of *super-annuation contributions surcharge* inserted by No. 19/2001 s. 19.

superannuation contributions surcharge means the superannuation contributions surcharge imposed by the Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997 of the Commonwealth;

S. 3(1) def. of *super-annuation contributions surcharge notice* inserted by No. 19/2001 s. 19.

superannuation contributions surcharge notice means a notice issued by the Commissioner of Taxation under section 15(7) of the Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997 of the Commonwealth;

tenant includes a lessee and any other person deriving title under a lease;

the Rules means the Rules of Court made by the Judges of the Court whether under the powers conferred by this Act or otherwise;

total pension entitlement means, on a particular day, the current value of all future pension payments on that day;

S. 3(1) def. of *total pension entitlement* inserted by No. 19/2001 s. 19.

Trial Division means the division of the Court called the Trial Division⁶;

S. 3(1) def. of *Trial Division* inserted by No. 109/1994 s. 18(g).

vessel includes any ship, boat or other vessel used for any purpose on the sea or in navigation.

- (2) In this or any other Act or enactment or any subordinate instrument or other instrument a reference to a rule or decree of the Court is to be taken as a reference to an order of the Court.
- (3) If by this or any other Act or enactment or by any subordinate instrument or other instrument a procedure is prescribed for or in relation to any proceeding in the Court or for or in relation to any step or process in such a proceeding and the Chapter I of the Rules of the Supreme Court prescribe a procedure that is applicable to such a proceeding or step or process, the procedure prescribed by those Rules applies despite the provisions of that Act, enactment, subordinate instrument or other instrument.
- (4) A proceeding to which the Chapter I of the Rules of the Supreme Court apply must, despite anything in any Act or enactment, be commenced and conducted in accordance with those Rules and not otherwise.

S. 3(3) amended by No. 51/2000 s. 11(a).

S. 3(4) amended by No. 51/2000 s. 11(a).

S. 3(5)
amended by
No. 51/2000
s. 11(a).

- (5) A judgment in any proceeding must be enforced in accordance with the Chapter I of the Rules of the Supreme Court and not otherwise.
- (6) In this or any other Act or enactment or any subordinate instrument or other instrument a reference to a writ of prohibition, mandamus, certiorari or ne exeat colonia by which the Court had before the commencement of this Act jurisdiction to grant any relief or remedy is, subject to subsection (7), to be taken as a reference to the judgment or order by which the Court may after that commencement grant that relief or remedy under this Act and the Rules.
- (7) Subsection (6) does not apply to a reference to a writ of habeas corpus.

S. 3(8)
inserted by
No. 4/2009
s. 37(Sch. 1
item 25.2).

- (8) For the purposes of the definition of *domestic partner* in subsection (1)—
 - (a) *registered domestic relationship* has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

4 Abolition of distinction between court and chambers

- (1) The distinction between court and chambers is abolished.
- (2) Nothing in subsection (1) alters the practice and procedure of the Court with respect to business that can be conducted otherwise than in open court.

-
- (3) The business of the Court, whether conducted in court or otherwise, is to be taken to be conducted in court.
 - (4) If by or under this or any other Act in force immediately before the commencement of this Act any jurisdiction, power or authority is vested in a Judge of the Supreme Court—
 - (a) that jurisdiction, power or authority may be exercised in accordance with this Act and the Rules by the Court in all respects as that Judge might have done; and
 - (b) the Court constituted in accordance with this Act and the Rules has jurisdiction, power or authority co-ordinate with the jurisdiction, power or authority of the Judge.
 - (5) If by or under this or any other Act in force immediately before the commencement of this Act any jurisdiction, power or authority is vested in the Court or in any Judge by the use of the words "the Court", "the Court or a Judge", "the Supreme Court or any Judge thereof" or "a Judge of the Supreme Court" or by any words referring to the Court or to any Judge, that jurisdiction, power or authority may be exercised by the Court in accordance with this Act and the Rules.
 - (6) Subsection (5) has effect even if the Act vesting jurisdiction, power or authority in the Court or in any Judge designates the Court or Judge as the court, judge, arbitrator or person appointed to hear and determine any matter and even if the determination is expressed to be final or without appeal, but if the determination is expressed to be final or without appeal an appeal does not lie from a determination of the Court.
-

5 Criminal procedure

Subject to any express enactment to the contrary and to the Rules, the practice and procedure in all criminal proceedings in the Court is that existing immediately before the commencement of this Act.

PART 2—SITTINGS, POWERS AND PROCEDURES

Division 1—Sittings

6 Where Court to be held

No. 6387 s. 50.

- (1) The Court is to be held at such places as the Governor in Council by Order published in the Government Gazette directs.
- (2) The Governor in Council may by Order published in the Government Gazette direct that the Court shall cease to be held at any place and may subsequently direct that it shall be again held at that place.

7 Time and place of sitting

No. 6387 s. 45.

Subject to the Rules, the Court may sit and act at any time and place.

* * * * *

Ss 8, 9
repealed by
No. 109/1994
s. 19.⁷

9A Robing of Judges

All matters pertaining to the robing of Judges of the Court are to be determined by the Chief Justice after consultation with the Council of the Judges.

S. 9A
inserted by
No. 35/1996
s. 453(Sch. 1
item 80.2),
amended by
No. 24/2008
s. 14.

9B Titles of Associate Judges

Subject to this Act, the Chief Justice, after consultation with the Council of Judges, may determine all matters pertaining to the title of any Associate Judge.

S. 9B
inserted by
No. 24/2008
s. 15.

Division 2—Court of Appeal⁸

Pt 2 Div. 2
(Heading and
ss 10–17)
substituted as
Pt 2 Div. 2
(Heading and
ss 10–16) by
No. 109/1994
s. 20.

No. 6387 s. 42.
S. 10
substituted by
No. 109/1994
s. 20.

S. 10(1)(a)
amended by
No. 24/2008
s. 16(1).

S. 10(1)(ab)
inserted by
No. 24/2008
s. 16(2).

S. 10(1)(ac)
inserted by
No. 78/2008
s. 4.

S. 10(1)(c)
amended by
No. 24/2008
s. 16(3).

10 Jurisdiction and powers

- (1) Subject to this Act, the Court of Appeal has jurisdiction to hear and determine—
- (a) all appeals from the Trial Division constituted by a Judge of the Court;
 - (ab) all appeals from the Trial Division constituted by an Associate Judge which the Rules specify are to be heard and determined by the Court of Appeal;
 - (ac) without limiting paragraph (ab), all appeals from the Costs Court constituted by a Costs Judge which the Rules specify are to be heard and determined by the Court of Appeal;
 - (b) all applications for new trials;
 - (c) all appeals from the County Court constituted by a Judge of that Court;
 - (d) all appeals, applications, questions and other matters, whether civil or criminal, which, by or under an Act—
 - (i) immediately before the commencement of section 20 of the **Constitution (Court of Appeal) Act 1994**, were required or authorised to be heard or disposed of by the Full Court of the

Supreme Court (including any such matter pending, but the hearing of which by the Full Court had not commenced, before that commencement); or

- (ii) are referred to or reserved for the consideration of, or directed to be brought for argument before, the Court of Appeal.
- (2) The Court of Appeal has such additional jurisdiction as is conferred on it by or under this Act, another Act or a Commonwealth Act.
- (3) The Court of Appeal may, in proceedings before it, exercise every jurisdiction or power of the Court.

11 Way in which Court of Appeal may be constituted

No. 6387 s. 34.
S. 11
substituted by
No. 109/1994
s. 20.

- (1) Subject to this Act and the Rules, any 3 or more Judges of Appeal constitute, and may exercise all the jurisdiction and powers of, the Court of Appeal.

S. 11(1)
substituted by
No. 64/1996
s. 41(1).

- (1A) If the President of the Court of Appeal so determines in a particular case, 2 Judges of Appeal constitute, and may exercise all the jurisdiction and powers of, the Court of Appeal.

S. 11(1A)
inserted by
No. 64/1996
s. 41(1).

- (1B) The Rules may provide that in particular classes of applications or appeals to or proceedings in the Court of Appeal, 2 Judges of Appeal may constitute, and may exercise all the jurisdiction and powers of, the Court of Appeal.

S. 11(1B)
inserted by
No. 64/1996
s. 41(1).

- (2) More than one sittings of the Court of Appeal may be held at the same time.

S. 11(4)
amended by
Nos 24/2007
s. 10(2),
24/2008 s. 17.

- (3) When more than one sittings of the Court of Appeal are held at the same time, the jurisdiction and powers of the Court of Appeal may be exercised at each sittings.
- (4) The Rules may provide that the jurisdiction and powers of the Court of Appeal may, in particular kinds of applications or proceedings, be exercised by a single Judge of Appeal or an Associate Judge.

S. 11(5)
amended by
No. 64/1996
s. 41(2),
substituted by
No. 24/2007
s. 10(3),
amended by
No. 24/2008
s. 17.

- (5) The Court of Appeal may discharge or vary a judgment, order or direction given or made by a single Judge of Appeal or an Associate Judge.

S. 11(6)
amended by
No. 64/1996
s. 41(3).

- (6) Subject to subsection (5), a judgment, order or direction given or made by a single Judge of Appeal has effect as a judgment, order or direction of the Court of Appeal.

S. 11(7)
inserted by
No. 24/2007
s. 10(4),
amended by
No. 24/2008
s. 17.

- (7) Subject to subsection (5), a judgment, order or direction given or made by an Associate Judge when exercising the jurisdiction and powers of the Court of Appeal has effect as a judgment, order or direction of the Court of Appeal.

No. 6387
ss 36(3), 38.

12 Opinions equally divided

S. 12
substituted by
No. 109/1994
s. 20.

- (1) If an appeal or other matter has been heard by the Court of Appeal constituted by 2 Judges of Appeal and the Judges differ in opinion, the appeal or other matter must be re-heard before the Court of Appeal constituted by more than 2 Judges.
- (2) If an appeal or other matter has been heard by the Court of Appeal constituted by more than 2 Judges of Appeal and the Judges are equally divided in opinion, the judgment of the Court

must be given in accordance with the opinion of the senior Judge of Appeal then present.

13 Judges not to sit on appeal from their own judgments

No. 6387 s. 35.
S. 13
substituted by
No. 109/1994
s. 20.

Except where otherwise expressly enacted, a Judge of Appeal must not sit on the hearing of an appeal from a judgment of the Trial Division constituted by that Judge or on the hearing of an application for a new trial of a proceeding tried before that Judge.

13A When additional Trial Division Judge must not sit on hearing of new trial

S. 13A
inserted by
No. 12/2001
s. 5.

A Judge of Appeal acting as an additional Judge of the Trial Division must not sit on the hearing of a new trial ordered by the Court if the Judge was one of the Judges that constituted the Court of Appeal that ordered the new trial.

14 Power of Court of Appeal on civil appeals

No. 6387
ss 39, 40.

- (1) The Court of Appeal, in hearing and determining an appeal in a proceeding in which there has been a trial by jury, may, despite any enactment or rule of law or practice to the contrary, give any judgment on the appeal that it might have given if the proceeding had been tried without a jury and the findings or verdict of the jury had been the findings of the Judge.
- (2) An order for a new trial of a proceeding, whether the proceeding has been tried with a jury or without a jury, may be limited to the question of damages only or to the question of liability only even if at the trial there was an apportionment under the **Wrongs Act 1958** or any other enactment.

S. 14
substituted by
No. 109/1994
s. 20.

No. 6387
ss 37, 44.

S. 15
substituted by
No. 109/1994
s. 20.

15 Constitution of Court if one Judge of Appeal unable to continue

- (1) If—
 - (a) after the Court of Appeal (including the Court constituted under this section) has started the hearing, or further hearing, of a proceeding; and
 - (b) before the proceeding has been determined—

one of the Judges of Appeal constituting the Court of Appeal dies, resigns as a Judge or otherwise becomes unable to continue as a member of the Court for the purposes of the proceeding, the hearing and determination of the proceeding may be finished by the remaining Judges constituting the Court if at least 2 Judges remain and the parties consent.
- (2) The Court of Appeal constituted under this section may have regard to any evidence given or received, and arguments adduced, by or before the Court of Appeal as previously constituted.
- (3) Any question in the proceeding is to be decided in the same way, and the judgment of the Court of Appeal constituted under this section has the same force and effect, as if the Court were not constituted under this section.

No. 6387 s. 46.

S. 16
substituted by
No. 109/1994
s. 20.

16 Arrangement of business of Court of Appeal

The President is responsible for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal.

Division 2A—Trial Division⁹

Pt 2 Div. 2A
(Heading and
ss 17–17B)
inserted by
No. 109/1994
s. 20.

**17 Business to be disposed of by Trial Division
constituted by a Judge of the Court or by an
Associate Judge**

No. 6387
s. 19A
S. 17
(Heading)
inserted by
No. 24/2008
s. 18(1).
S. 17
substituted by
No. 109/1994
s. 20.

(1) The Trial Division constituted by a Judge of the Court may hear and determine all matters, whether civil or criminal, not required by or under this or any other Act or the Rules to be heard and determined by the Court of Appeal.

S. 17(1)
amended by
No. 24/2008
s. 18(2).

(1A) The Trial Division constituted by an Associate Judge may hear and determine all matters, whether civil or criminal, not required by or under this Act or any other Act or the Rules to be heard and determined—

S. 17(1A)
inserted by
No. 24/2008
s. 18(3).

(a) by the Court of Appeal; or

(b) by the Trial Division constituted by a Judge of the Court.

(2) Unless otherwise expressly provided by this or any other Act, an appeal lies to the Court of Appeal from any determination of the Trial Division constituted by a Judge of the Court.

S. 17(2)
amended by
No. 24/2008
s. 18(4).

(3) Unless otherwise expressly provided by this Act or any other Act or the Rules, an appeal lies to the Trial Division constituted by a Judge of the Court from any determination of the Trial Division constituted by an Associate Judge.

S. 17(3)
inserted by
No. 24/2008
s. 18(5).

s. 17A

17A Restriction on appeals

S. 17A
inserted by
No. 109/1994
s. 20.

- (1) An order made by the Trial Division constituted by a Judge of the Court—
- (a) by consent of the parties; or
 - (b) as to costs which are in the discretion of the Trial Division—

is not subject to appeal to the Court of Appeal except by leave of the Court of Appeal or by leave of the Judge of the Court constituting the Trial Division which made the order.

S. 17A(2)
amended by
No. 24/2008
s. 19(1)(b).

- (2) An order made by the Trial Division constituted otherwise than by a Judge of the Court—
- (a) by consent of the parties; or
 - (b) as to costs which are in the discretion of the Trial Division—

is not subject to appeal to the Trial Division constituted by a Judge of the Court except by leave of the Trial Division constituted by a Judge of the Court or by leave of the person constituting the Trial Division which made the order.

S. 17A(3)
amended by
Nos 24/2008
s. 19(1)(c),
68/2009
s. 97(Sch.
item 116.1).

- (3) Except as provided in Part 6.3 of Chapter 6 of the **Criminal Procedure Act 2009**, an appeal does not lie from a determination of the Trial Division constituted by a Judge of the Court or constituted by an Associate Judge made on or in relation to the trial or proposed trial of a person on indictment.

S. 17A(3A)
inserted by
No. 51/2000
s. 10,
amended by
No. 24/2008
s. 19(1)(d).

- (3A) An order made by the Trial Division constituted by a Judge of the Court or constituted by an Associate Judge on an appeal to the Court—

-
- (a) under section 148(1)(b) of the **Victorian Civil and Administrative Tribunal Act 1998**; or
- (ab) under section 272 of the **Criminal Procedure Act 2009**; or
- (b) under section 109 of the **Magistrates' Court Act 1989**—
- is not subject to appeal to the Court of Appeal except by leave of the Court of Appeal or by leave of the Judge of the Court or Associate Judge constituting the Trial Division.
- (3B) Subsection (3A) applies only to an order made on an appeal instituted after the commencement of section 10 of the **Courts and Tribunals Legislation (Further Amendment) Act 2000**.
- (4) Subject to subsection (4A), an appeal does not lie to the Court of Appeal—
- (a) from an order allowing an extension of time for appealing from a judgment; or
- (b) without the leave of the Judge of the Court or Associate Judge constituting the Trial Division or of the Court of Appeal, from a judgment or order in an interlocutory application, being a judgment or order given by the Trial Division constituted by a Judge of the Court or an Associate Judge, as the case requires, except in the following cases—
- (i) when the liberty of the subject or the custody of minors is concerned;
- (ii) cases of granting or refusing an injunction or appointing a receiver;
- S. 17A(3A)(ab) inserted by No. 68/2009 s. 97(Sch. item 116.2(a)).
- S. 17A(3A)(b) amended by No. 68/2009 s. 97(Sch. item 116.2(b)).
- S. 17A(3B) inserted by No. 51/2000 s. 10.
- S. 17A(4) amended by No. 68/2009 s. 97(Sch. item 116.3).
- S. 17A(4)(b) amended by No. 24/2008 s. 19(1)(e)(i)(ii).

s. 17B

S. 17A(4)(b)(iii)
amended by
No. 44/2001
s. 3(Sch.
item 107).

(iii) a decision determining the claim of a creditor or the liability of a contributory or the liability of a director or other officer under the Corporations Act or the Corporations Law or the **Companies (Victoria) Code** in respect of misfeasance or otherwise;

(iv) a decision dismissing a proceeding for want of prosecution;

S. 17A(4)(b)(v)
amended by
No. 24/2008
s. 19(1)(e)(iii).

(v) such cases prescribed by the Rules as in the opinion of the Judges of the Court making the Rules are of the nature of final decisions.

S. 17A(4A)
inserted by
No. 68/2009
s. 97(Sch.
item 116.4).

(4A) Subsection (4)(b) does not apply to an interlocutory appeal under Division 4 of Part 6.3 of Chapter 6 of the **Criminal Procedure Act 2009**.

(5) An order refusing unconditional leave to defend a proceeding is to be taken not to be a judgment or order in an interlocutory application within the meaning of this section.

(6) An appeal does not lie to the Court of Appeal from an order giving unconditional leave to defend a proceeding.

S. 17A(7)
amended by
Nos 24/2008
s. 19(1)(f),
68/2009
s. 97(Sch.
item 116.5).

(7) Unless otherwise provided by any other Act, an application for leave to appeal may be made without notice to any other party unless the Court of Appeal or the Judge of the Court or an Associate Judge constituting the Trial Division which gave the judgment otherwise directs.

S. 17B
inserted by
No. 109/1994
s. 20.

17B Reference of matters to Court of Appeal

(1) Any case or question in a case which for any reason is deemed fit to be re-argued before decision or to be re-heard before final judgment, may be argued before the Court of Appeal, if the Trial Division so directs.

- (2) The Trial Division constituted by a Judge of the Court or constituted by an Associate Judge may, at the request of one of the parties but (unless the contrary is expressly enacted) not otherwise, reserve any proceeding or question in a proceeding for the consideration of the Court of Appeal, or direct any proceeding or question in a proceeding to be argued before the Court of Appeal.
- (3) If a case, question or proceeding is reserved for the consideration of the Court of Appeal, or is directed by the Trial Division to be argued before it the Court of Appeal and—
 - (a) the Court of Appeal gives leave, the case, proceeding or question may be considered by, or argued before, the Court of Appeal; or
 - (b) the Court of Appeal refuses leave, the case, proceeding or question must be remitted to the Trial Division for determination by it.

S. 17B(2)
amended by
No. 24/2008
s. 19(2).

Division 2B—Costs Court

Pt 2 Div. 2B
(Heading and
ss 17C–17K)
inserted by
No. 78/2008
s. 5.

17C Costs Court established

- (1) The Costs Court is established within the Trial Division of the Supreme Court.
- (2) The Costs Court consists of such Associate Judges as are from time to time allocated to the Costs Court by the Chief Justice.

S. 17C
inserted by
No. 78/2008
s. 5.

17D Powers and functions of Costs Court

- (1) The Costs Court—
 - (a) has jurisdiction to hear and determine the assessment, settling, taxation or review of costs in all proceedings in the Court;

S. 17D
inserted by
No. 78/2008
s. 5.

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- (b) has jurisdiction to hear and determine the assessment, settling, taxation or review of costs in proceedings in—
- (i) the County Court;
 - (ii) the Magistrates' Court;
 - (iii) VCAT—
- if, by or under any Act, the Rules or the Rules of those courts or VCAT, costs are to be assessed, settled, taxed or reviewed by the Costs Court;
- (c) has jurisdiction to hear and determine the assessment, settling, taxation or review of costs in proceedings in—
- (i) the County Court;
 - (ii) the Magistrates' Court;
 - (iii) VCAT—
- if, by any order of a court or VCAT, costs are to be assessed, settled, taxed or reviewed by the Costs Court;
- (d) has jurisdiction to hear and determine the assessment, settling, taxation or review of costs in proceedings in the County Court, the Magistrates' Court or VCAT, as the case requires, in which—
- (i) there is an entitlement to costs by or under any Act, the Rules of the County Court, the Magistrates' Court or VCAT or arising from an order of the County Court, the Magistrates' Court or VCAT; and
 - (ii) the amount of those costs has not been fixed by the court or by VCAT;
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-
- (e) has jurisdiction to hear and determine the assessment, settling, taxation or review of costs in an arbitration, subject to the **Commercial Arbitration Act 1984**;
 - (f) must hear and determine costs reviews under Division 7 of Part 3.4 of Chapter 3 of the **Legal Profession Act 2004**;
 - (g) must hear and determine any reviews under Division 5 of Part 4 of the **Legal Practice Act 1996**;

Note

See clause 3.1 of Part 3 of Schedule 2 to the **Legal Profession Act 2004**.

- (h) has any other jurisdiction in relation to costs given to it—
 - (i) by or under this Act or any other Act;
or
 - (ii) by the Rules; or
 - (iii) by the Rules of another court or of a tribunal.
- (2) The Costs Court has such powers of the Court as are necessary to enable it to exercise its jurisdiction.
- (3) The Costs Court must exercise its jurisdiction with as little formality and technicality, and with as much expedition, as the requirements of this Act, the Rules and the proper consideration of the matters before the Court permit.
- (4) Subject to this Act and the Rules, the Costs Court may regulate its own procedure.

s. 17E

S. 17E
inserted by
No. 78/2008
s. 5.

17E Chief Justice to allocate Associate Judges as Costs Judges

- (1) The Chief Justice must allocate an Associate Judge to be a Costs Judge of the Costs Court.
- (2) The Chief Justice may allocate more than one Associate Judge as a Costs Judge to the Costs Court if the operational requirements of the Costs Court so require.

S. 17F
inserted by
No. 78/2008
s. 5.

17F Costs Judge may direct costs registrars

Subject to this Act or any other Act, the Rules and any order of the Court, a Costs Judge—

- (a) may direct that costs, or costs of a specific class or kind, be assessed, settled, taxed or reviewed by a costs registrar;
- (b) may give general directions as to case management by costs registrars.

S. 17G
inserted by
No. 78/2008
s. 5.

17G Powers and functions of costs registrar

- (1) Subject to the general direction and control of a Costs Judge, a costs registrar may—
 - (a) assess, settle, tax or review costs in accordance with directions under section 17F and the Rules; and
 - (b) exercise the powers of the Costs Court conferred on a costs registrar by or under this Act or any other Act or by the Rules.
- (2) In the performance of his or her duties as a costs registrar and the exercise of the powers of the Costs Court under subsection (1), a costs registrar is not subject to direction or control under the **Public Administration Act 2004** or of any person or body.

-
- (3) Subject to sections 17H and 17J, a determination made by a costs registrar—
 - (a) has effect as a judgment, an order or a direction (as the case requires) of the Costs Court; and
 - (b) may be enforced accordingly.
 - (4) In performing functions and exercising powers under this Division, a costs registrar has the same protection and immunity as a Costs Judge has in respect of the assessing, settling, taxing or review of costs.

17H Review of costs registrar's determination

S. 17H
inserted by
No. 78/2008
s. 5.

- (1) Subject to the Rules, a party who objects to a determination made by a costs registrar in accordance with this Division may apply to the Costs Court constituted by a Costs Judge for a review of that determination.
- (2) An application for review under subsection (1) is to be made—
 - (a) within the time period allowed by the Rules; and
 - (b) otherwise in accordance with the Rules.
- (3) The Costs Court constituted by a Costs Judge, on its own motion, may review a determination of a costs registrar made in accordance with this Division.
- (4) A review under subsection (3) is to be made—
 - (a) within the time period allowed by the Rules; and
 - (b) otherwise in accordance with the Rules.
- (5) A review under this section is to be heard and determined in accordance with the Rules.

s. 17I

- (6) Unless the Costs Court otherwise orders, a review of a costs registrar's determination under this section does not operate as—
- (a) a stay of execution; or
 - (b) a stay of the proceedings under the determination of the costs registrar to which the review relates.

S. 17I
inserted by
No. 78/2008
s. 5.

17I Appeals

Unless otherwise expressly provided for by this Act or any other Act or the Rules, an appeal lies to the Trial Division constituted by a Judge of the Court from a determination of the Costs Court constituted by a Costs Judge.

S. 17J
inserted by
No. 78/2008
s. 5.

17J Costs in proceedings in another court or VCAT

- (1) An order of the Costs Court as to costs made in the exercise of its jurisdiction under section 17D(1)(b), (c) or (d)—
- (a) is taken to be an order of that other court or VCAT; and

S. 17J(1)(a)
amended by
No. 34/2010
s. 51.

(b) may be enforced accordingly.

- (2) In the exercise of its jurisdiction under section 17D(1)(b), (c) or (d), the Costs Court may assess, settle, tax or review costs in accordance with—
- (a) the Rules; or
 - (b) the Rules, including any scales of costs, of the court in which the proceeding to which the costs relate originated or of VCAT, as the case requires.

S. 17K
inserted by
No. 78/2008
s. 5.

17K Transfer of file

If the Costs Court is exercising its jurisdiction in relation to costs in a proceeding which originated in the County Court, the Magistrates' Court or

VCAT, the court in which the proceeding originated or VCAT, as the case requires, must cause the record and all documents relating to the proceeding to which the costs relate to be sent to the Costs Court for the purposes of the hearing and determination of the assessment, settling, taxation or review of costs in that proceeding.

Division 3—Powers

18 Power to close proceedings to the public

- (1) The Court may in the circumstances mentioned in section 19—
 - (a) order that the whole or any part of a proceeding be heard in closed court; or
 - (b) order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding; or
 - (c) make an order prohibiting the publication of a report of the whole or any part of a proceeding or of any information derived from a proceeding.
- (2) This section applies to any proceeding, whether civil or criminal.
- (3) If an order has been made under this section the Court must cause a copy of it to be posted on a door of the court house or in another conspicuous place where notices are usually posted at the court house.
- (4) A person must not contravene an order made and posted under this section.

Penalty: 1000 penalty units or imprisonment for 3 months.

19 Circumstances in which order may be made under section 18

The Court may make an order under section 18 if in its opinion it is necessary to do so in order not to—

- (a) endanger the national or international security of Australia; or
- (b) prejudice the administration of justice; or
- (c) endanger the physical safety of any person; or
- (d) offend public decency or morality; or

S. 19(d)
amended by
No. 8/1991
s. 19(1).

- (e) cause undue distress or embarrassment to the complainant in a proceeding that relates to a charge for a sexual offence within the meaning of the **Criminal Procedure Act 2009**; or

S. 19(e)
inserted by
No. 8/1991
s. 19(1),
amended by
No. 10/1999
s. 25,
substituted by
No. 68/2009
s. 97(Sch.
item 116.6).

- (f) cause undue distress or embarrassment to a witness under examination in a proceeding of any kind relating to a charge for an offence where the conduct constituting the offence consists wholly or partly of taking part, or attempting to take part, in an act of sexual penetration as defined in section 35 of the **Crimes Act 1958**.

S. 19(f)
inserted by
No. 10/1999
s. 25.

20 Offence to publish certain information concerning proceedings

A person must not, in the course of a business of publishing information concerning debtors, publish or cause to be published in any

No. 6387
s. 29A.

newspaper, gazette, journal, periodical circular, newsletter, letter or like document information concerning the commencement of a proceeding for debt so as to identify the defendant before judgment is given in the proceeding.

Penalty: 100 penalty units.

20A Power to act in cases relating to rates and taxes¹⁰

S. 20A
inserted by
No. 109/1994
s. 21.

- (1) A Judge, Associate Judge or officer of the Court is not incapable of acting in any proceeding by reason of being one of a class of ratepayers or one of any other class of persons liable in common with others to contribute to or be benefited by any rate or tax which may be affected by that proceeding.
- (2) In this section *rate or tax* means any rate, tax, duty or assessment, whether public, general or local and includes—
 - (a) any fund formed from the proceeds of any such rate, tax, duty or assessment; and
 - (b) any fund applicable for purposes the same as, or similar to, those for which the proceeds of any such rate, tax, duty or assessment might be applied.

S. 20A(1)
amended by
No. 24/2008
s. 20.

21 Vexatious litigants

No. 6387 s. 33.

- (1) The Attorney-General may apply to the Court for an order declaring a person to be a vexatious litigant.
- (2) The Court may, after hearing or giving the person an opportunity to be heard, make an order declaring the person to be a vexatious litigant if it is satisfied that the person has—
 - (a) habitually; and

S. 21(2)
amended by
Nos 64/1996
s. 42(1),
71/2003
s. 3(1).

-
- (b) persistently; and
- (c) without any reasonable ground—
instituted vexatious legal proceedings (whether civil or criminal) in the Court, an inferior court or a tribunal against the same person or different persons.
- S. 21(3)**
substituted by
No. 64/1996
s. 42(2).
- (3) An order under subsection (2) may provide that the vexatious litigant must not without leave of—
- (a) the Court; or
- (b) an inferior court; or
- (c) a tribunal constituted or presided over by a person who is an Australian lawyer—
- S. 21(3)(c)**
amended by
No. 18/2005
s. 18(Sch. 1
item 103.2).
- do the following—
- (d) continue any legal proceedings (whether civil or criminal) in the Court, inferior court or tribunal; or
- (e) commence any legal proceedings (whether civil or criminal) in the Court or any specified inferior court or tribunal; or
- (f) commence any specified type of legal proceedings (whether civil or criminal) in the Court or any specified inferior court or tribunal.
- S. 21(3)(d)**
amended by
No. 71/2003
s. 3(1).
- S. 21(3)(e)**
amended by
No. 71/2003
s. 3(1).
- S. 21(3)(f)**
amended by
No. 71/2003
s. 3(1).
- S. 21(4)**
substituted by
No. 64/1996
s. 42(2).
- (4) Leave must not be given unless the Court, or if the order under subsection (2) so provides, the inferior court or tribunal is satisfied that the proceedings are not or will not be an abuse of the process of the Court, inferior court or tribunal.
- S. 21(5)**
amended by
No. 64/1996
s. 42(3).
- (5) The Court may at any time vary, set aside or revoke an order made under subsection (2) if it considers it proper to do so.
-

- (6) The Attorney-General must cause a copy of any order made under subsection (2) to be published in the Government Gazette.
- (7) The Court, when exercising a power under this section, must be constituted by a Judge of the Court.
- (8) The Court may, in determining whether to make an order under subsection (2), take into account vexatious legal proceedings (whether civil or criminal) instituted before or after the commencement of the **Supreme Court (Vexatious Litigants) Act 2003**.

S. 21(7)
amended by
No. 24/2008
s. 21.

S. 21(8)
inserted by
No. 71/2003
s. 3(2).

22 Execution of instruments by order of Court

No. 6387 s. 30.

- (1) If a person fails or refuses to comply with a judgment directing that person to execute a document or indorse a negotiable instrument, the Court may, on such terms and conditions as it considers just, order that the document be executed or that the instrument be indorsed by a person nominated by the Court.
- (2) A document or instrument executed and indorsed under subsection (1) operates and is for all purposes available as if it had been executed or indorsed by the person originally directed to do so.

23 Attachment of earnings

No. 6387
s. 24A.

- (1) Subject to and in accordance with the Rules, the Court may make orders for the attachment of the salary, wages or pension of any person.
- (2) Any person who dismisses an employee or injures an employee in the employee's employment or alters an employee's position to the prejudice of the employee by reason of the circumstance that an attachment order has been made in relation to the employee or that the employee is required to

make payments under an attachment order may be dealt with as for contempt of court.

No. 6387 s. 32.

24 Costs to be in the discretion of Court

- (1) Unless otherwise expressly provided by this or any other Act or by the Rules, the costs of and incidental to all matters in the Court, including the administration of estates and trusts, is in the discretion of the Court and the Court has full power to determine by whom and to what extent the costs are to be paid.
- (2) Nothing in this section alters the practice in any criminal proceeding.

S. 24A
inserted by
No. 64/1996
s. 43,
amended by
No. 50/2009
s. 4.

24A Mediation¹¹

Where the Court refers a proceeding or any part of a proceeding to mediation, other than judicial resolution conference, unless all the parties who attend the mediation otherwise agree in writing, no evidence shall be admitted at the hearing of the proceeding of anything said or done by any person at the mediation.

Pt 2 Div. 3A
(Heading and
ss 24B, 24C)
inserted by
No. 50/2009
s. 5.

Division 3A—Judicial resolution conferences

S. 24B
inserted by
No. 50/2009
s. 5.

24B Judicial resolution conference

- (1) If, in any proceeding, the Court orders or directs that a judicial resolution conference be conducted, no evidence shall be admitted at the hearing of any proceeding of anything said or done by any person in the course of the conduct of the judicial resolution conference unless the Court otherwise orders, having regard to the interests of justice and fairness.

- (2) Without limiting section 16 of the **Evidence Act 2008**, a Judge of the Court or an Associate Judge is not compellable to give evidence in any proceeding, whether civil or criminal, of anything said or done or arising from the conduct of the judicial resolution conference.

24C Protection of conduct of judicial resolution conference

S. 24C
inserted by
No. 50/2009
s. 5.

Without limiting any other law, whether written or unwritten, a Judge of the Court or an Associate Judge performing duties in connection with any judicial resolution conference has the same protection and immunity as a Judge of the Court has in the performance of his or her duties as a Judge.

Division 4—Court Rules

25 Power to make Rules¹²

No. 6387 s. 25.

- (1) The Judges of the Court (not including any Judge who has made an election under section 80A(1) or has been appointed under section 80A(3A) of the **Constitution Act 1975**) may make Rules of Court for or with respect to the following:

S. 25(1)
amended by
No. 9/1995
s. 7(5).

- (a) Any matter dealt with in any Rules of Court in force on 1 January 1987;
- (b) The prescription of the proceedings or class of proceedings which may be dealt with by the Court constituted by an Associate Judge;
- (c) Appeals by way of rehearing or otherwise to the Trial Division of the Court constituted by a Judge an associate judge of the County Court;

S. 25(1)(b)
amended by
No. 24/2008
s. 22(1)(a).

S. 25(1)(c)
amended by
Nos 109/1994
s. 22(1)(a)(i)(ii),
24/2008
s. 22(1)(b).

Supreme Court Act 1986
No. 110 of 1986
Part 2—Sittings, Powers and Procedures

s. 25

S. 25(1)(ca)
inserted by
No. 109/1994
s. 22(1)(b).

(ca) applications and appeals to and proceedings in the Court of Appeal;

S. 25(1)(cb)
inserted by
No. 24/2008
s. 22(1)(c).

(cb) appeals by way of rehearing or otherwise from the Trial Division constituted by an Associate Judge—

(i) to the Court of Appeal; or

(ii) to the Trial Division constituted by a Judge of the Court;

(d) The payment of money into and out of court and the investment of that money including, without limiting the generality of the foregoing provisions of this paragraph, rules—

(i) providing for the establishment and management of Common Funds; and

(ii) regulating the practice and procedure of the Senior Master in relation to the investment of money; and

(iii) generally prescribing anything necessary to be prescribed for the proper management and operation of Common Funds;

S. 25(1)(da)
inserted by
No. 78/2008
s. 6.

(da) the practice and procedure of the Costs Court, including, but not limited to generally providing for matters in respect of the assessment, settling, taxation and review of costs by the Costs Court.

S. 25(1)(db)
inserted by
No. 78/2008
s. 6.

(db) without limiting paragraph (da), the performance of assessing, settling, taxing and reviewing of costs by costs registrars, including, but not limited to, the exercise by costs registrars of the jurisdiction of the Costs Court;

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- (dc) the transfer or referral of matters between the Costs Court constituted by a Costs Judge and the Costs Court constituted by a costs registrar;
- (dd) reviews by and appeals from the Costs Court, whether constituted by a Costs Judge or by a costs registrar;
- (e) The reference of any question arising in a proceeding to a special referee or officer of the Court for decision or opinion;
- (ea) The reference of any proceeding or of any part of a proceeding to mediation or arbitration;
- (eab) judicial resolution conferences, including, but not limited to, the practice and procedure of the Court in relation to judicial resolution conferences;
- (eb) requirements for the purposes of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958** for or with respect to¹³—
- (i) the form of audio visual or audio link;
 - (ii) the equipment, or class of equipment, used to establish the link;
 - (iii) the layout of cameras;
 - (iv) the standard, or speed, of transmission;
 - (v) the quality of communication;
 - (vi) any other matter relating to the link;
- (ec) applications to the Court under Division 2 or 3 of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**¹⁴;
- S. 25(1)(dc) inserted by No. 78/2008 s. 6.
- S. 25(1)(dd) inserted by No. 78/2008 s. 6.
- S. 25(1)(ea) inserted by No. 64/1990 s. 7(1).
- S. 25(1)(eab) inserted by No. 50/2009 s. 6(a).
- S. 25(1)(eb) inserted by No. 4/1997 s. 5, amended by No. 69/2009 s. 54(Sch. Pt 2 item 48).
- S. 25(1)(ec) inserted by No. 4/1997 s. 5, amended by No. 69/2009 s. 54(Sch. Pt 2 item 48).

Supreme Court Act 1986
No. 110 of 1986
Part 2—Sittings, Powers and Procedures

s. 25

S 25(1)(ed)
inserted by
No. 8/2008
s. 9.

- (ed) any matter relating to sentence indications in criminal proceedings;
- (f) Any matter relating to—
 - (i) the practice and procedure of the Court; or
 - (ii) the powers, authorities, duties and functions of the officers of the Court;
- (g) Any matter relating to the enforcement of judgments of the Court, whether arising under the common law or under any jurisdiction conferred by or under any Act or enactment.

S. 25(1A)
inserted by
No. 24/2008
s. 22(2).

(1A) The Rules may—

S. 25(1A)(a)
amended by
No. 50/2009
s. 6(b).

- (a) confer a discretionary authority or impose a duty on the Chief Justice, a Judge of the Court, an Associate Judge or a specified court official or a specified class of judge or court official; and
 - (b) provide in a specified case or class of case for the exemption of proceedings or a class of proceeding from any of the provisions of the Rules, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (2) The power to make Rules of Court extends to the repeal and amendment of Rules even if they have been ratified, validated and approved by the Parliament.

26 Manner of making Rules

If by this or any other Act it is provided, expressly or by implication, that the Court or the Judges of the Court may make Rules, the power may be exercised by a majority of the Judges (not including any Judge who has made an election under section 80A(1) or has been appointed under section 80A(3A) of the **Constitution Act 1975** or any Associate Judge) present at a meeting held for that purpose.

No. 6387 s. 26.
S. 26
amended by
Nos 9/1995
s. 7(5),
24/2008 s. 23.

27 Disallowance of Rules

The Rules are subject to disallowance by the Parliament.

No. 6387 s. 27.

27A Protection of special referees, mediators and arbitrators

- (1) A special referee, mediator or arbitrator to whom a proceeding, part of a proceeding or question arising in a proceeding is referred under the Rules has, in the performance of his or her duties in connection with the reference, the same protection and immunity as a Judge of the Court has in the performance of his or her duties as a Judge.
- (2) Subsection (1) applies despite anything to the contrary in the **Commercial Arbitration Act 1984**.

S. 27A
inserted by
No. 64/1990
s. 8.

Division 5—Council of Judges

Pt 2 Div. 5
(Heading)
inserted by
No. 57/1989
s. 3(Sch.
item 192.1).

28 Council of Judges

- (1) A Council of the Judges of the Court must meet once at least in each year on a day or days fixed by the Chief Justice to—

No. 6387 s. 28.

s. 28A

- (a) consider the operation of this Act and the Rules; and
 - (b) consider the working of the offices of the Court and the arrangements relating to the duties of the officers of the Court; and
 - (c) inquire into and examine any defects which appear to exist in the system of procedure or the administration of the law in the Court and in any other court from which an appeal lies to the Court.
- (2) The Chief Justice must cause adequate notice of a meeting to be given to all the Judges.
 - (3) The Judges must report annually to the Governor on the operation of the Court.
 - (4) In this section *Judges* does not include any Judge who has made a election under section 80A(1) or has been appointed under section 80A(3A) of the **Constitution Act 1975** or any Associate Judge.

S. 28(4)
amended by
Nos 9/1995
s. 7(5),
24/2008 s. 24.

Pt 2 Div. 6
(Heading and
s. 28A)
inserted by
No. 24/2007
s. 3.

Division 6—Professional development and training

S. 28A
inserted by
No. 24/2007
s. 3.

28A Professional development and training

- (1) In this section—

judicial officer means—

- (a) a Judge or acting Judge of the Court; or
 - (b) an Associate Judge.
- (2) The Chief Justice is responsible for directing the professional development and continuing education and training of judicial officers.

S. 28A(1)
def. of
judicial officer
amended by
No. 24/2008
s. 25.

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- (3) In discharging his or her responsibility under subsection (2) the Chief Justice may direct—
- (a) all judicial officers; or
 - (b) a specified class of judicial officer; or
 - (c) a specified judicial officer—
- to participate in a specified professional development or continuing education and training activity.
- (4) A direction under subsection (3) may be given orally or in writing.
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PART 3—CONCURRENT ADMINISTRATION OF LAW AND EQUITY

No. 6387
s. 62(5).

29 Law and equity to be concurrently administered

(1) Subject to the provisions of this or any other Act, every court exercising jurisdiction in Victoria in any civil proceeding must continue to administer law and equity on the basis that, if there is a conflict or variance between the rules of equity and the rules of the common law concerning the same matter, the rules of equity prevail.

No. 6387
s. 61(5).

(2) Every court referred to in subsection (1) must give the same effect as before the commencement of this Act—

(a) to all equitable estates, titles, rights, reliefs, defences and counter-claims, and to all equitable duties and liabilities; and

(b) subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or created by any Act—

and, subject to the provisions of this or any other Act, must so exercise its jurisdiction in every proceeding before it as to secure that, as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of proceedings concerning any of those matters is avoided.

No. 6387
s. 61(5).

30 Power to stay proceedings

Nothing in this Act affects the power of the Court to stay a proceeding in the Court, either of its own motion or on the application of any person, whether or not a party.

PART 4—INFERIOR COURTS

31 Power of inferior courts with equity jurisdiction

No. 6387 s. 58.

Every inferior court which has jurisdiction in equity or at law and in equity—

- (a) has as regards all causes of action within its jurisdiction, power to grant in any proceedings before that court such relief, redress or remedy or combination of remedies, either absolute or conditional, as the Court has power to grant in the like case; and
- (b) subject to section 32, in any proceedings before it may give effect to every ground of defence or counter-claim, equitable or legal, in as full and ample a manner as the Court might give in the like case.

32 Transfer of proceeding from inferior court

No. 6387 s. 59.

- (1) If as to any claim brought in an inferior court the defendant raises—

S. 32(1)
amended by
No. 43/1991
s. 36(a).

- (a) a defence; or
- (b) a counter-claim—

which involves a matter exceeding the jurisdiction of that court, then, unless an order is made under the **Courts (Case Transfer) Act 1991** transferring the proceeding to a court with jurisdiction, that court must determine all the issues raised in the proceeding that relate to the claim of the plaintiff and the defence to it and may grant relief on the counter-claim to the extent that it is within its jurisdiction to do so.

* * * * *

S. 32(2)–(5)
repealed by
No. 43/1991
s. 36(b).

No. 6387 s. 60.

33 Rules of law to apply to inferior courts

Unless otherwise expressly provided by this or any other Act, the rules of law enacted by Part 5 apply to all courts so far as the matters to which those rules relate are within the jurisdiction of those courts.

PART 4A—GROUP PROCEEDING

Division 1—Preliminary

33A Definitions

In this Part—

Chapter I of the Rules means the Supreme Court
(General Civil Procedure) Rules 2005;

defendant means a person against whom relief is
sought in a group proceeding;

group member means a member of a group of
persons on whose behalf a group proceeding
has been commenced;

group proceeding means a proceeding
commenced under this Part;

handicapped person means a person who is
incapable by reason of injury, disease,
senility, illness or physical or mental
infirmity of managing his or her affairs in
relation to the proceeding;

person under disability means a minor or
handicapped person;

plaintiff means a person who commences a group
proceeding as a representative party or a
person who is substituted under section
33T(1) or 33W(3);

sub-group member means a person included in a
sub-group established under section 33Q;

Pt 4A
(Heading and
ss 33A–33H,
33J–33ZH,
33ZJ, 33ZK)
inserted by
No. 78/2000
s. 13.

S. 33A
inserted by
No. 78/2000
s. 13.

S. 33A def. of
*Chapter I of
the Rules*
amended by
No. 24/2008
s. 89(a).

s. 33B

sub-group representative party means a person appointed to be a sub-group representative party under section 33Q.

S. 33B
inserted by
No. 78/2000
s. 13.

33B Application

- (1) This Part applies to a cause of action whether arising before or on or after 1 January 2000.
- (2) This Part does not apply to—
 - (a) a proceeding under sections 34 and 35 of the Act; or
 - (b) a proceeding concerning—
 - (i) the administration of the estate of a deceased person; or
 - (ii) property subject to a trust; or
 - (c) a proceeding commenced under Order 18 of Chapter I of the Rules.

Division 2—Commencement of group proceeding

S. 33C
inserted by
No. 78/2000
s. 13.

33C Commencement of proceeding

- (1) Subject to this Part, if—
 - (a) seven or more persons have claims against the same person; and
 - (b) the claims of all those persons are in respect of, or arise out of, the same, similar or related circumstances; and
 - (c) the claims of all those persons give rise to a substantial common question of law or fact—

a proceeding may be commenced by one or more of those persons as representing some or all of them.

-
- (2) A group proceeding may be commenced—
- (a) whether or not the relief sought—
 - (i) is, or includes, equitable relief; or
 - (ii) consists of, or includes, damages; or
 - (iii) includes claims for damages that would require individual assessment; or
 - (iv) is the same for each person represented; and
 - (b) whether or not the proceeding—
 - (i) is concerned with separate contracts or transactions between the defendant and individual group members; or
 - (ii) involves separate acts or omissions of the defendant done or omitted to be done in relation to individual group members.

33D Standing

- (1) A person referred to in paragraph (a) of section 33C(1) who has a sufficient interest to commence a proceeding on the person's own behalf against another person has a sufficient interest to commence a group proceeding against that other person on behalf of other persons referred to in that paragraph.
- (2) If a person has commenced a group proceeding, that person retains a sufficient interest—
 - (a) to continue the proceeding; and
 - (b) to bring an appeal from a judgment in the proceeding—even though the person ceases to have a claim against the defendant.

S. 33D
inserted by
No. 78/2000
s. 13.

s. 33E

S. 33E
inserted by
No. 78/2000
s. 13.

33E Consent of group member

- (1) Subject to subsection (2), the consent of a person to be a group member is not required.
- (2) None of the following persons is a group member unless the person gives consent in writing to being so—
 - (a) the Commonwealth, a State or a Territory; or
 - (b) a Minister of the Commonwealth, a State or a Territory; or
 - (c) a body corporate established for a public purpose by a law of the Commonwealth, a State or a Territory, other than an incorporated company or association; or
 - (d) any judge, magistrate or other judicial officer of the Commonwealth, a State or a Territory; or
 - (e) any other officer of the Commonwealth, a State or a Territory, in his or her capacity as an officer.

S. 33F
inserted by
No. 78/2000
s. 13.

33F Persons under disability

- (1) It is not necessary for a person under disability to have a litigation guardian merely in order to be a group member.
- (2) A group member who is a person under disability may only take a step in the group proceeding, or conduct part of the proceeding, by the group member's litigation guardian.

S. 33G
inserted by
No. 78/2000
s. 13,
amended by
No. 12/2001
s. 6.

33G Group proceeding not to be commenced in certain circumstances

A group proceeding may not be commenced if the proceeding would be concerned only with claims in respect of which the Court has jurisdiction solely by virtue of the **Jurisdiction of Courts (Cross-vesting) Act 1987** or a corresponding law

of the Commonwealth or another State or a Territory.

33H Originating process

S. 33H
inserted by
No. 78/2000
s. 13.

- (1) A group proceeding must be commenced by writ.
- (2) The indorsement on the writ must, in addition to any other matters required by the Rules to be included—
 - (a) describe or otherwise identify the group members to whom the proceeding relates; and
 - (b) specify the nature of the claims made on behalf of the group members and the relief claimed; and
 - (c) specify the questions of law or fact common to the claims of the group members.
- (3) In describing or otherwise identifying group members for the purposes of subsection (2), it is not necessary to name, or specify the number of, the group members.

33J Right of group member to opt out

S. 33J
inserted by
No. 78/2000
s. 13.

- (1) The Court must fix a date before which a group member may opt out of a group proceeding.
- (2) A group member may opt out of the group proceeding by notice in writing before the date so fixed.
- (3) The Court, on the application of a group member, the plaintiff or the defendant, may extend the period within which a group member may opt out of the group proceeding.
- (4) Except with the leave of the Court, the trial of a group proceeding must not commence earlier than the date before which a group member may opt out of the proceeding.

- (5) Unless the Court otherwise orders, a person who has opted out of a group proceeding must be taken never to have been a group member.
- (6) The Court, on the application of a person who has opted out of a group proceeding, may reinstate that person as a group member on such terms as the Court thinks fit.

S. 33K
inserted by
No. 78/2000
s. 13.

33K Causes of action accruing after commencement

- (1) The Court may, at any stage of a group proceeding on application made by the plaintiff, give leave to amend the writ commencing the group proceeding so as to alter the description of the group.
- (2) The description of the group may be altered so as to include a person—
 - (a) whose cause of action accrued after the commencement of the group proceeding but before such date as the Court fixes when giving leave; and
 - (b) who would have been included in the group or, with the consent of the person would have been included in the group, if the cause of action had accrued before the commencement of the proceeding.
- (3) The date mentioned in subsection (2)(a) may be the date on which leave is given or another date before or after that date.
- (4) If the Court gives leave under subsection (1), it may also make any other orders it thinks just, including an order relating to the giving of notice to persons who, as a result of the amendment, will be included in the group and the date before which such persons may opt out of the proceeding.

33KA Court powers concerning group membership

S. 33KA
inserted by
No. 78/2000
s. 13.

- (1) On the application of a party to a group proceeding or of its own motion, the Court may at any time, whether before or after judgment, order—
 - (a) that a person cease to be a group member;
 - (b) that a person not become a group member.
- (2) The Court may make an order under subsection (1) if of the opinion that—
 - (a) the person does not have sufficient connection with Australia to justify inclusion as a group member; or
 - (b) for any other reason it is just or expedient that the person should not be or should not become a group member.
- (3) If the Court orders that a person cease to be a group member, then, if the Court so orders, the person must be taken never to have been a group member.

33L Fewer than seven group members

S. 33L
inserted by
No. 78/2000
s. 13.

If, at any stage of a group proceeding, it appears likely to the Court that there are fewer than 7 group members, the Court may order, on such conditions (if any) as it thinks fit—

- (a) that the proceeding continue under this Part;
or
- (b) that the proceeding no longer continue under this Part.

s. 33M

S. 33M
inserted by
No. 78/2000
s. 13.

33M Distribution costs excessive

If—

- (a) the relief claimed in a group proceeding is or includes payment of money to group members (otherwise than in respect of costs); and
- (b) on application by the defendant, the Court concludes that it is likely that, if judgment were to be given in favour of the plaintiff, the cost to the defendant of identifying the group members and distributing to them the amounts ordered to be paid to them would be excessive having regard to the likely total of those amounts—

the Court may, by order—

- (c) direct that the proceeding no longer continue under this Part; or
- (d) stay the proceeding so far as it relates to relief of the kind mentioned in paragraph (a).

S. 33N
inserted by
No. 78/2000
s. 13.

33N Proceeding not to continue under this Part

- (1) The Court may, on application by the defendant, order that a proceeding no longer continue under this Part if it is satisfied that it is in the interests of justice to do so because—
 - (a) the costs that would be incurred if the proceeding were to continue as a group proceeding are likely to exceed the costs that would be incurred if each group member conducted a separate proceeding; or
 - (b) all the relief sought can be obtained by means of a proceeding other than a group proceeding; or

- (c) the group proceeding will not provide an efficient and effective means of dealing with the claims of group members; or
 - (d) it is otherwise inappropriate that the claims be pursued by means of a group proceeding.
- (2) If the Court dismisses an application under this section, the Court may order that no further application under this section be made by the defendant except with the leave of the Court.
- (3) Leave for the purposes of subsection (2) may be granted subject to such conditions as to costs as the Court thinks fit.

33P Consequences of proceeding not continuing under this Part

S. 33P
inserted by
No. 78/2000
s. 13.

If the Court makes an order under section 33L, 33M or 33N that a proceeding no longer continue under this Part—

- (a) the proceeding may be continued as a proceeding by the plaintiff on the plaintiff's own behalf against the defendant; and
- (b) on the application of a person who was a group member, the Court may order that the person be joined as a plaintiff in the proceeding.

33Q Where not all questions common

S. 33Q
inserted by
No. 78/2000
s. 13.

- (1) If it appears to the Court that determination of the question or questions common to all group members will not finally determine the claims of all group members, the Court may give directions in relation to the determination of the remaining questions.
- (2) In the case of questions common to the claims of some only of the group members, the directions given by the Court may include directions establishing a sub-group consisting of those group

s. 33R

members and appointing a person who consents to the appointment to be the sub-group representative party on behalf of the sub-group members.

- (3) If the Court appoints a person other than the plaintiff to be a sub-group representative party, that person, and not the plaintiff, is liable for costs associated with the determination of the question or questions common to the sub-group members.

S. 33R
inserted by
No. 78/2000
s. 13.

33R Individual questions

- (1) In giving directions under section 33Q, the Court may permit an individual group member to take part in the proceeding for the purpose of determining a question that relates only to the claim of that member.
- (2) In such a case, the individual group member, and not the plaintiff, is liable for costs associated with the determination of the question.

S. 33S
inserted by
No. 78/2000
s. 13.

33S Directions for further proceedings

If a question cannot properly or conveniently be dealt with under section 33Q or 33R, the Court may give directions for the commencement and conduct of another proceeding, whether or not a group proceeding.

S. 33T
inserted by
No. 78/2000
s. 13.

33T Adequacy of representation

- (1) If, on an application by a group member, it appears to the Court that the plaintiff is not able adequately to represent the interests of the group members, the Court may substitute another group member as plaintiff and may make such other orders as it thinks fit.
- (2) If, on an application by a sub-group member, it appears to the Court that the sub-group representative party is not able adequately to represent the interests of the sub-group members,

the Court may substitute another person as sub-group representative party and may make such other orders as it thinks fit.

33U Stay of execution

S. 33U
inserted by
No. 78/2000
s. 13.

If a defendant commences a proceeding in the Court against a group member, the Court may order a stay of execution in respect of any relief awarded to the group member in the group proceeding until the other proceeding is determined.

33V Settlement and discontinuance

S. 33V
inserted by
No. 78/2000
s. 13.

- (1) A group proceeding may not be settled or discontinued without the approval of the Court.
- (2) If the Court gives such approval, it may make such orders as it thinks fit with respect to the distribution of any money, including interest, paid under a settlement or paid into court.

33W Settlement of individual claim

S. 33W
inserted by
No. 78/2000
s. 13.

- (1) The plaintiff may, with the leave of the Court, settle the plaintiff's individual claim in whole or in part at any stage of the group proceeding.
- (2) The Court may order that a person who has settled the person's individual claim in whole or in part cease to be plaintiff.
- (3) If an order is sought under subsection (2), the Court may, on the application of a group member, make an order substituting as plaintiff a group member who consents to that substitution.
- (4) An order must not be made under subsection (2) unless the Court is satisfied that—
 - (a) notice of application for the order has been given to group members in accordance with section 33X(1); and

- (b) such notice was given in sufficient time for an application to be made for an order under subsection (3); and
 - (c) an order under subsection (3) has been or will be made.
- (5) The Court may make an order under subsection (2) or (3) on such terms and conditions, as to costs or otherwise, as the Court thinks fit.

Division 3—Notices

S. 33X
inserted by
No. 78/2000
s. 13.

33X When notice to be given

- (1) Notice must be given to group members of the following matters in relation to a group proceeding—
 - (a) the commencement of the proceeding and the right of the group members to opt out of the proceeding before a specified date, being the date fixed under section 33J(1);
 - (b) an application by the defendant for the dismissal of the proceeding on the ground of want of prosecution;
 - (c) an application by the plaintiff seeking leave under section 33W.
- (2) The Court may dispense with compliance with any or all of the requirements of subsection (1) if the relief sought in a proceeding does not include any claim for damages.
- (3) If the Court so orders, notice must be given to group members of any offer to compromise the proceeding.
- (4) Unless the Court is satisfied that it is just to do so, an application for approval under section 33V must not be determined unless notice has been given to group members.

-
- (5) The Court may, at any stage, order that notice of any matter be given to a group member or group members.
 - (6) Notice under this section must be given as soon as practicable after the happening of the event to which the notice relates.

33Y Notices under section 33X

S. 33Y
inserted by
No. 78/2000
s. 13.

- (1) The form and content of a notice under section 33X must be approved by the Court.
 - (2) The Court must, by order, specify—
 - (a) who is to give the notice; and
 - (b) the manner in which the notice is to be given—and the order may include provision—
 - (c) directing a party to provide information relevant to the giving of the notice; and
 - (d) relating to the costs of notice.
 - (3) An order under subsection (2) may require that notice be given by means of press advertisement, radio or television broadcast, or by any other means.
 - (4) The Court must not order that notice be given personally to each group member unless it is satisfied that it is reasonably practicable, and not unduly expensive, to do so.
 - (5) A notice that concerns a matter for which the Court's leave is required must specify the period within which a group member or other person may apply to the Court, or take some other step, in relation to the matter.
 - (6) A notice that includes or concerns conditions must specify the conditions and the period, if any, for compliance.
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- (7) The failure of a group member to receive or respond to a notice does not affect a step taken, an order made, or a judgment given, in a proceeding.

Division 4—Judgment, etc.

S. 33Z
inserted by
No. 78/2000
s. 13.

33Z Judgment of the Court

- (1) The Court may, in determining a matter in a group proceeding—
- (a) determine a question of law;
 - (b) determine a question of fact;
 - (c) make a declaration of liability;
 - (d) grant any equitable relief;
 - (e) make an award of damages for group members, sub-group members or individual group members, being damages consisting of specified amounts or amounts worked out in such manner as the Court specifies;
 - (f) award damages in an aggregate amount without specifying amounts awarded in respect of individual group members;
 - (g) make such other order as is just, including, but not restricted to, an order for monetary relief other than for damages and an order for non-pecuniary damages.
- (2) In making an order for an award of damages, or monetary relief the Court must make provision for the payment or distribution of the money to the group members entitled.
- (3) Subject to section 33V, the Court must not make an award of damages under subsection (1)(f) or monetary relief under subsection (1)(g) unless a reasonably accurate assessment can be made of the total amount to which group members will be entitled under the judgment.

-
- (4) If the Court has made an award of damages, the Court may give directions in relation to—
- (a) the manner in which a group member or sub-group member is to establish the member's entitlement to share in the damages; and
 - (b) the manner in which any dispute regarding the entitlement of a group member or sub-group member to share in the damages is to be determined.

33ZA Constitution etc. of fund

S. 33ZA
inserted by
No. 78/2000
s. 13.

- (1) Without limiting the operation of section 33Z(2), in making provision for the distribution of money to group members, the Court may provide for—
 - (a) the constitution and administration of a fund consisting of the money to be distributed; and
 - (b) either—
 - (i) the payment by the defendant of a fixed sum of money into the fund; or
 - (ii) the payment by the defendant into the fund of such instalments, on such terms, as the Court directs to meet the claims of group members; and
 - (c) entitlements to interest earned on the money in the fund.
- (2) The costs of administering a fund are to be borne by the fund or the defendant, or by both, as the Court directs.
- (3) If the Court orders the constitution of a fund mentioned in subsection (1), the order must—
 - (a) require notice to be given to group members in such manner as is specified in the order; and

s. 33ZB

- (b) specify the manner in which a group member is to make a claim for payment out of the fund and establish the group member's entitlement to the payment; and
 - (c) specify a day (which is 6 months or more after the day on which the order is made) on or before which the group members are to make a claim for payment out of the fund; and
 - (d) make provision in relation to the day before which the fund is to be distributed to group members who have established an entitlement to be paid out of the fund.
- (4) The Court may, if it is just, allow a group member to make a claim after the day fixed under subsection (3)(c) if the fund has not already been fully distributed.
- (5) On application by the defendant after the day fixed under subsection (3)(d), the Court may make such orders as it thinks fit for the payment from the fund to the defendant of the money remaining in the fund.

S. 33ZB
inserted by
No. 78/2000
s. 13.

33ZB Effect of judgment

A judgment given in a group proceeding—

- (a) must describe or otherwise identify the group members who will be affected by it; and
- (b) subject to section 33KA, binds all persons who are such group members at the time the judgment is given.

Division 5—Appeals

33ZC Appeals

S. 33ZC
inserted by
No. 78/2000
s. 13.

- (1) On an appeal by the plaintiff on behalf of group members and in respect of the judgment to the extent that it relates to questions common to the claims of group members, the parties to the appeal are the plaintiff, as the representative of the group members, and the defendant.
- (2) On an appeal by a sub-group representative party on behalf of sub-group members in respect of the judgment to the extent that it relates to questions common to the claims of sub-group members, the parties to the appeal are the sub-group representative party, as the representative of the sub-group members, and the defendant.
- (3) On an appeal by the defendant in a group proceeding, other than an appeal referred to in subsection (4), the parties to the appeal are—
 - (a) in the case of an appeal in respect of the judgment generally—the defendant and the plaintiff as the representative of the group members; and
 - (b) in the case of an appeal in respect of the judgment to the extent that it relates to questions common to the claims of sub-group members—the defendant and the sub-group representative party as the representative of the sub-group members.
- (4) The parties to an appeal in respect of the determination of a question that relates only to a claim of an individual group member are that group member and the defendant.

- (5) If the plaintiff or the sub-group representative party does not commence an appeal within the time provided, another member of the group or sub-group may, within a further 21 days, commence an appeal as representing the group members or sub-group members, as the case may be.
- (6) If an appeal is brought from a judgment of the Trial Division in a group proceeding, the Court of Appeal may direct that notice of the appeal be given to such person or persons, and in such manner, as that court thinks fit.
- (7) Section 33J does not apply to an appeal.
- (8) The notice of appeal must describe or otherwise identify the group members or sub-group members, as the case may be, but need not specify the names or number of those members.

Division 6—Miscellaneous

S. 33ZD
inserted by
No. 78/2000
s. 13.

33ZD Costs

In a group proceeding, the Court—

- (a) may order the plaintiff or the defendant to pay costs;
- (b) except as authorised by section 33Q or 33R, may not order a group member or a sub-group member to pay costs.

S. 33ZE
inserted by
No. 78/2000
s. 13.

33ZE Suspension of limitation periods

- (1) Upon the commencement of a group proceeding, the running of any limitation period that applies to the claim of a group member to which the proceeding relates is suspended.

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- (2) The limitation period does not begin to run again unless either the member opts out of the proceeding under section 33J or the proceeding, and any appeals arising from the proceeding, are determined without finally disposing of the group member's claim.

33ZF General power of court to make orders

In any proceeding (including an appeal) conducted under this Part the Court may, of its own motion or on application by a party, make any order the Court thinks appropriate or necessary to ensure that justice is done in the proceeding.

S. 33ZF
inserted by
No. 78/2000
s. 13.

33ZG Order may specify a date by which group members must take a step

Without limiting the operation of section 33ZF, an order made under that section may—

- (a) set out a step that group members or a specified class of group members must take to be entitled to—
- (i) any relief under section 33Z; or
 - (ii) any payment out of a fund constituted under section 33ZA; or
 - (iii) obtain any other benefit arising out of the proceeding—

irrespective of whether the Court has made a decision on liability or there has been an admission by the defendant on liability;

- (b) specify a date after which, if the step referred to in paragraph (a) has not been taken by a group member to whom the order applies, the group member is not entitled to any relief or payment or to obtain any other benefit referred to in that paragraph.

S. 33ZG
inserted by
No. 78/2000
s. 13.

s. 33ZH

S. 33ZH
inserted by
No. 78/2000
s. 13.

33ZH Order in event of decision or admission on liability

- (1) Without limiting the operation of sections 33ZF and 33ZG, if the Court has made a decision on liability or there has been an admission by the defendant on liability, an order made under section 33ZF may require notice of that decision or admission to be given to group members or a specified class of group members.
- (2) Subject to subsection (3), the form and content of the notice must be approved by the Court.
- (3) If the Court has made an order of a kind referred to in section 33ZG, the notice must set out the effect of the order.
- (4) An order under section 33ZF may require that a notice referred to in this section be given by means of press advertisement, radio or television broadcast, or by any other means.

S. 33ZJ
inserted by
No. 78/2000
s. 13.

33ZJ Reimbursement of plaintiff's costs

- (1) If the Court has made an award of damages in a group proceeding, the plaintiff or a sub-group representative party, or a person who has been a plaintiff or such a party, may apply to the Court for an order under this section.
- (2) If, on an application under this section, the Court is satisfied that the costs reasonably incurred in relation to the group proceeding by the person making the application are likely to exceed the costs recoverable by the person from the defendant, the Court may order that an amount equal to the whole or a part of the excess be paid to that person out of the damages awarded.

33ZK Transitional provisions

A proceeding commenced under Rule 18A.03 of the Supreme Court (General Civil Procedure) Rules 1996 on or after 1 January 2000 and before the passing of the **Courts and Tribunals Legislation (Miscellaneous Amendments) Act 2000** must be taken for all purposes to have been commenced under this Part on the day on which it was commenced under that Rule.

S. 33ZK
inserted by
No. 78/2000
s. 13,
amended by
No. 24/2008
s. 89(b).

PART 5—MISCELLANEOUS RULES OF LAW

Division 1—General

Ss 34, 35
repealed by
No. 78/2000
s. 14.

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No. 6387
s. 62(1).

36 Declaratory judgments

A proceeding is not open to objection on the ground that a merely declaratory judgment is sought, and the Court may make binding declarations of right without granting consequential relief.

No. 6387
s. 62(2).

37 Injunctions and receivers

- (1) The Court may by order, whether interlocutory or final, grant an injunction or appoint a receiver if it is just and convenient to do so.
- (2) An order made under subsection (1) may be made either unconditionally or on such terms and conditions as the Court thinks just.
- (3) The Court may grant an interlocutory injunction under subsection (1) restraining a party to a proceeding from removing from Victoria or otherwise dealing with assets located within Victoria, whether or not that party is domiciled, resident or present within Victoria.

No. 6387
s. 62(3).

38 Damages in addition to or in place of other remedies

If the Court has jurisdiction to entertain an application for an injunction or specific performance, it may award damages in addition to, or in substitution for, an injunction or specific performance.

39 Foreign law

No. 6387
s. 62(1A).

If on a trial with a jury it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law must, instead of being submitted to the jury, be decided by the judge alone.

40 Crown payments to be subject to attachment

No. 6387
s. 63A.

Despite any Act or rule of law to the contrary, a court may make an attachment order in respect of earnings due to be paid by the Crown or a statutory authority representing the Crown.

41 Failure to prosecute not a bar to civil remedy

No. 6387
s. 63B.

Without limiting the generality of section 322B of the **Crimes Act 1958**, a civil remedy for an act or omission is not suspended because the act or omission amounts to an offence for which the offender has not been prosecuted.

42 Property available to satisfy judgment debt

No. 6387
s. 63C.

- (1) Despite any Act, subordinate instrument or rule of law to the contrary, any property of a judgment debtor which if the judgment debtor were a bankrupt under the Commonwealth Bankruptcy Act 1966 would not under section 116(2)(b), (c) and (ca) of that Act be property divisible amongst the creditors of the judgment debtor must not be seized or taken under any process issued for the enforcement or execution of a judgment for the recovery or payment of money.

S. 42(1)
amended by
No. 84/1997
s. 53.

(2) For the purposes of subsection (1)—

- (a) *the Commonwealth Bankruptcy Act 1966* means the Commonwealth Act known as the Bankruptcy Act 1966 as amended and in force for the time being and, if the provisions of that Act are re-enacted, means those provisions as re-enacted and as subsequently amended and in force for the time being; and
- (b) section 116(2)(b), (c) and (ca) of that Act or any corresponding later provision is to be construed as if it did not contain any reference to a determination by the creditors by resolution or by the Court in relation to other property of the bankrupt.

S. 42(2)(b)
amended by
No. 84/1997
s. 53.

No. 6387 s. 80.
S. 43
(Heading)
inserted by
No. 17/2005
s. 7(1).

43 Standard time in Victoria

- (1) Standard time throughout Victoria is the time that is 10 hours in advance of Co-ordinated Universal Time.

Note

Under section 8AA of the National Measurement Act 1960 of the Commonwealth the Chief Metrologist is required to maintain Co-ordinated Universal Time (UTC) as determined by the International Bureau of Weights and Measures.

- (2) If—
- (a) an expression of time occurs in an instrument; or
- (b) the doing or not doing of anything at a certain time has an effect in law—
- the time is standard time as provided in subsection (1) unless it is otherwise specifically stated.

S. 43(1)
substituted by
No. 17/2005
s. 7(2).

44 Meaning of *month* in documents

No. 6387 s. 63.

In any document, unless the contrary intention appears, a reference to a month is to be construed as a reference to a calendar month.

Division 2—Vessels

45 Rule as to division of liability for damage or loss

No. 6387 s. 64.

(1) If, owing to the fault of two or more vessels, damage or loss is caused to—

- (a) one or more vessels; or
- (b) their cargoes or freight; or
- (c) any property on board them—

the liability to make good the damage or loss is, subject to subsection (2), in proportion to the degree to which each vessel was at fault.

(2) The liability must be apportioned equally if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault.

(3) Nothing in this section—

- (a) makes a vessel liable for any loss or damage not contributed to by the fault of the vessel; or
 - (b) affects the liability of any person under a contract of carriage or any other contract; or
 - (c) imposes any liability on a person from which that person is exempted by any contract or law; or
 - (d) affects the right of any person to limit that person's liability in any lawful manner.
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- (4) For the purposes of this section—
- (a) *freight* includes passage money and hire; and
 - (b) references to damage or loss caused by the fault of a vessel are to be construed as including reference to any salvage or other expenses that are consequent on that fault and recoverable at law by way of damages.

No. 6387 s. 65.

46 Liability for loss of life or personal injuries

- (1) If, owing to the fault of two or more vessels, a person on board one of those vessels suffers loss of life or personal injuries, the owners of the vessels are jointly and individually liable.
- (2) Nothing in this section—
 - (a) deprives any person of a right of defence on which, apart from this section, that person might have relied; or
 - (b) affects the right of any person to limit that person's liability in any lawful manner.

No. 6387 s. 66.

47 Right of contribution

- (1) If—
 - (a) owing to the fault of two or more vessels, a person on board one of those vessels suffers loss of life or personal injuries; and
 - (b) a proportion of the damages is recovered from the owner of one of those vessels which exceeds the proportion in which that vessel was at fault—

that owner may, subject to subsection (2), recover by way of contribution the amount of the excess from the owners of the other vessels in proportion to the degree to which each vessel was at fault.

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- (2) An amount cannot be recovered by way of contribution if it could not have been recovered in the first instance as damages by the person entitled to sue for them because of—
 - (a) any limitation of liability, whether statutory or contractual; or
 - (b) any exemption from liability; or
 - (c) any other reason.
 - (3) Subject to this Act, for the purpose of recovering any amount by way of contribution under subsection (1) the person entitled to make that recovery has the same rights and powers as the person entitled to sue for damages in the first instance.

Division 3—Fires

48 Proceeding does not lie against person on whose land fire accidentally begins

No. 6387 s. 68.

- (1) Despite anything to the contrary, a proceeding cannot be brought or maintained against any person in whose building or on whose land a fire accidentally begins and that person is not liable to make any recompense for any damage caused by that fire.
- (2) Nothing in this section defeats or makes void a contract or agreement between a landlord and a tenant.

Division 4—Contracts of minors

No. 6387 s. 69.

49 Certain contracts by minors to be void

The following contracts entered into by a minor are void—

- (a) contracts for the repayment of money lent or to be lent;
- (b) contracts for payment for goods supplied or to be supplied, other than necessities;
- (c) accounts stated.

No. 6387 s. 70.

50 No proceeding to be brought on ratification of minor's contract

- (1) No proceeding can be brought to charge a person—
 - (a) on a promise made after full age to pay a debt contracted during minority; or
 - (b) on a ratification made after full age of a promise or contract made during minority.
- (2) This section applies whether or not there was any new consideration for the promise or ratification.

No. 6387 s. 71.

51 Avoiding contract for payment of loan advanced during minority

- (1) If a minor who has contracted a loan (a contract for the repayment of which is void under this Division) agrees after full age to repay all or part of that loan, that agreement and any instrument relating to it is, subject to subsections (2) and (3), void against everyone.

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- (2) A person who—
- (a) in good faith; and
 - (b) for value; and
 - (c) without notice—
- is the holder or assignee of an instrument referred to in subsection (1) may recover from the minor the amount secured by the instrument.
- (3) If a person referred to in subsection (2) recovers from the minor the amount secured by the instrument, the minor may recover that amount from the person to whom the minor gave the instrument.
- (4) For the purposes of this section any interest, commission or other payment in respect of a loan is to be taken to be a part of the loan.

Division 4A—Administration of children's funds

Pt 5 Div. 4A
(Heading and
s. 51A)
inserted by
No. 15/1998
s. 11.

51A Court orders relating to administration of children's funds

S. 51A
inserted by
No. 15/1998
s. 11.

- (1) If in any civil proceedings before the Court it is adjudged or ordered that money be paid to a child (whether or not that child is a party to a cause or matter) the money—
- (a) is to be paid into court; and
 - (b) unless the Court otherwise orders, is to be paid out to an administrator specified by the Court.

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- (2) If any money, not being money to which subsection (3) applies—
- (a) is paid into court—
 - (i) before the commencement of this section; or
 - (ii) after the commencement of this section in accordance with a judgment or order entered or made before the commencement of this section; and
 - (b) the money is being held in court on behalf of a child—
- the Court may by order direct that the money be paid out to an administrator specified in the order.
- (3) If the Court adjudges or orders that property (whether real or personal) be delivered up or transferred to a child (whether or not that child is a party to a cause or matter), the Court—
- (a) may order that the property be delivered up or transferred to an administrator specified in the order; and
 - (b) may give any directions for the service of the order on the administrator as it thinks fit.
- (4) If an order under subsection (3) is served on State Trustees within the meaning of the **State Trustees (State Owned Company) Act 1994**, State Trustees must accept delivery or transfer of the property to which the order relates and the acceptance of the property is a sufficient discharge to the person delivering or transferring the property.
- (5) A copy of any order made under this section must be given by the administrator to the Tribunal within the meaning of the **Guardianship and Administration Act 1986** and the Public Advocate appointed under that Act.

- (6) An order of the Court under this section that money be paid out to an administrator has effect as if it were an administration order under the **Guardianship and Administration Act 1986** and, subject to the order of the Court, the administrator has all the powers and duties of an administrator referred to in Divisions 3 and 3A of Part 5 of that Act.

S. 51A(6)
amended by
No. 30/2004
s. 12(1).

Division 5—Sureties, co-contractors and co-debtors

52 Surety discharging liability to be entitled to securities

No. 6387 s. 72.

- (1) A person who is—
- (a) surety for the debt or duty of another; or
 - (b) liable with another for a debt or duty—
- and who pays that debt or performs that duty, is entitled to have assigned to that person or to a trustee for that person every judgment specialty or other security held by the creditor in respect of that debt or duty.
- (2) Subsection (1) applies whether or not the judgment specialty or other security is taken at law to have been satisfied by the payment of the debt or the performance of the duty.
- (3) A person who pays a debt or performs a duty as referred to in subsection (1) is entitled—
- (a) to stand in the place of the creditor; and
 - (b) to use all the remedies of the creditor; and
 - (c) if necessary and on a proper indemnity, to use the name of the creditor—

in any proceeding to obtain from the principal debtor or any co-surety, co-contractor or co-debtor (as the case requires) indemnity for the advances

made and loss sustained by the person who paid the debt or performed the duty.

- (4) The payment of the debt or the performance of the duty by a surety is not a defence to any proceeding referred to in subsection (3).
- (5) A co-surety, co-contractor or co-debtor is not entitled to recover from another co-surety, co-contractor or co-debtor more than the proportion to which, as between those parties themselves, that person is justly liable.

Division 6—Apportionment

No. 6387 s. 76.

53 Definitions

- (1) In this Division—
 - annuities* includes salaries and pensions;
 - dividends* includes all payments that are made by the name of dividend bonus or otherwise out of the revenue of trading or other public companies and are divisible between all or any of the members of those companies, whether the payments are usually made or declared at a fixed time or otherwise but does not include payments in the nature of a return or reimbursement of capital;
 - rents* includes rent service, rent charge and rent seck and all periodical payments or renderings in place of or in the nature of rent.
- (2) For the purposes of this Division the divisible revenue referred to in the definition of *dividends* is to be taken to have accrued by equal daily increment during and within the period for or in respect of which the payment of the revenue is declared or expressed to be made.

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- (3) Nothing in this Division renders apportionable any annual sums made payable in any policies of assurance.
 - (4) This Division does not extend to any case in which it is expressly stipulated that no apportionment is to take place.

54 Rents etc. to accrue from day to day and be apportionable

No. 6387 s. 73.

All rents, annuities, dividends and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) are to be considered as accruing from day to day and are apportionable in respect of time accordingly.

55 Time when apportioned part is to be payable

No. 6387 s. 74.

The apportioned part of any payment referred to in section 54 is payable or recoverable—

- (a) in the case of a continuing payment, when the entire portion of which the apportioned part forms part becomes due and payable; and
- (b) in the case of a payment determined by re-entry, death or otherwise, when the next entire portion of the payment would have been payable if it had not been so determined.

56 Recovery of apportioned parts

No. 6387 s. 75.

- (1) In this section—

person includes the executor, administrator or assignee of a person and the executor, administrator or assignee of a person whose interest determines with that person's death;

landlord means the person who, if the rent for any land had not been apportionable, would have been entitled to the entire or continuing rent for that land.

- (2) Subject to subsection (3), the person entitled to the apportioned part of a payment referred to in section 54 may recover that part, when payable, in the same way as that person could recover the entire payment if entitled to it.
- (3) The apportioned part of a payment of rent for any land is not by itself recoverable from the person liable to pay the rent but may be recovered from that person by the landlord together with the remaining part of the payment and, if the landlord does so, the person entitled to that apportioned part may then recover it from the landlord.

Division 7—Interest

No. 6387 s. 77.

57 Any interest may be contracted to be paid

S. 57(1)
amended by
No. 41/1995
s. 62(Sch. 1
item 8).

- (1) Subject to the **Consumer Credit (Victoria) Code**, there is no limit to the interest which a person may lawfully contract to pay.
- (2) If interest for the loan of money or on any other contract may be lawfully recovered or allowed in any proceeding in any court but the rate of interest has not been previously agreed between the parties, the party entitled to interest may not recover or be allowed in the proceeding interest above the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**.

58 Interest to be allowed when debts or sums certain recovered

No. 6387 s. 78.

- (1) If in a proceeding a debt or sum certain is recovered, the Court must on application, unless good cause is shown to the contrary, allow interest to the creditor on the debt or sum at a rate not exceeding the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983** or, in respect of any bill of exchange or promissory note, at 2% per annum more than that rate from the time when the debt or sum was payable (if payable by virtue of some written instrument and at a date or time certain) or, if payable otherwise, then from the time when demand of payment was made.
- (2) Subsection (1) does not authorise the computation of interest on any bill of exchange or promissory note at a higher rate than the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983** if there has been no defence pleaded.
- (3) A debt or sum payable or a date or time is to be taken to be certain if it has become certain.

59 Damages in nature of interest

No. 6387 s. 79.

- (1) The Court, on application in all proceedings for trover or trespass concerning goods, must, unless good cause is shown to the contrary, give damages in the nature of interest over and above the value of the goods at the time of the conversion.
- (2) The Court, on application in all proceedings on any policies of insurance, must, unless good cause is shown to the contrary, give damages in the nature of interest over and above the money receivable.

60 Interest in proceedings for debt or damages

- (1) The Court, on application in any proceeding for the recovery of debt or damages, must, unless good cause is shown to the contrary, give damages in the nature of interest at such rate not exceeding the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983** as it thinks fit from the commencement of the proceeding to the date of the judgment over and above the debt or damages awarded.
- (2) Nothing in this section—
 - (a) authorises the granting of interest on interest;
 - (b) applies in relation to any sum on which interest is recoverable as of right by virtue of any agreement or otherwise;
 - (c) affects the damages recoverable for the dishonour of a negotiable instrument;
 - (d) authorises the allowance of any interest otherwise than by consent on any sum for which judgment is entered or given by consent;
 - (e) applies in relation to any sum on which interest might be awarded by virtue of section 58 or 59; or
 - (f) limits the operation of any enactment or rule of law which, apart from this section, provides for the award of interest.
- (3) If the damages awarded by the Court or jury include or if the Court in its absolute discretion determines that the damages awarded include any amount for—
 - (a) compensation in respect of liabilities incurred which do not carry interest as against the person claiming interest;

- (b) compensation for loss or damage to be incurred or suffered after the date of the award; or
- (c) exemplary or punitive damages—
the Court must not allow interest in respect of any amount so included or in respect of so much of the award as in its opinion represents any such damages.
- (4) The Court may request a jury to specify in its verdict any amount included in the verdict in respect of the matters referred to in subsection (3).

Division 8—Contempt of Court

Pt 5 Div. 8
(Heading and
ss 61–66)
amended by
No. 35/1989
s. 23(1),
repealed by
No. 35/1996
s. 453(Sch. 1
item 80.3),
new Pt 5
Div. 8
(Heading and
s. 61)
inserted by
No. 62/1999
s. 12.

61 Restoration of common law relating to contempt of court

S. 61
inserted by
No. 62/1999
s. 12.

- (1) The law relating to the right of any person to apply to a court for punishment of a person for a contempt of court is as if section 46 of the **Public Prosecutions Act 1994** had not been enacted and the common law has effect accordingly.

Supreme Court Act 1986
No. 110 of 1986
Part 5—Miscellaneous Rules of Law

s. 61

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- (2) This section has effect—
- (a) subject to section 52(2) of the **Public Prosecutions Act 1994**, whether the alleged contempt occurred before or after the commencement of section 12 of the **Public Prosecutions (Amendment) Act 1999**; and
 - (b) despite anything to the contrary in the **Interpretation of Legislation Act 1984**.

Pt 5 Div. 9
(Heading and
s. 67)
repealed by
No. 35/1996
s. 453(Sch. 1
item 80.3).

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PART 6—MISCELLANEOUS POWERS

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Pt 6 Div. 1
(Heading and
ss 68, 69)
repealed by
No. 35/1996
s. 453(Sch. 1
item 80.4).

Division 2—Delivery of documents

Pt 6 Div. 2
(Heading)
amended by
No. 35/1996
s. 453(Sch. 1
item 80.5)

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Ss 70–75
repealed by
No. 35/1996
s. 453(Sch. 1
item 80.6).¹⁵

**76 Power of Court to order legal practitioner or law
practice to deliver bill of costs etc.**

No. 6387 s. 95.
S. 76
amended by
Nos 35/1996
s. 453(Sch. 1
item 80.7),
18/2005
s. 18(Sch. 1
item 103.3).

The jurisdiction of the Court to make orders for the delivery by a legal practitioner or law practice of a bill of costs or for the delivery up of any documents in the possession, custody or power of a legal practitioner or law practice or to make any other order in relation to any such documents extends to cases in which the business or part of the business has not been transacted in the Court.

s. 77

Pt 6 Div. 3
(Heading)
amended by
No. 35/1996
s. 453(Sch. 1
item 80.8).

Division 3—Assistance of assessors and legal practitioners

No. 6387
s. 110.

77 Assessors

- (1) The Court may in any proceeding call in the assistance of one or more specially qualified assessors and hear the proceeding wholly or partially with their assistance but shall not be bound by their opinion or findings.
- (2) The Court may determine the remuneration of the assessors.

No. 6387
ss 111, 113.

78 Opinion of a legal practitioner

S. 78(1)
amended by
No. 35/1996
s. 453(Sch. 1
item 80.9(a)).

- (1) The Court may require or receive the opinion of a legal practitioner for its assistance—
 - (a) in the investigation of the title to any land with a view to an investment of money in the purchase or on mortgage of that land or with a view to a sale of that land; or
 - (b) in settling the draft of a instrument; or
 - (c) in such other cases as are directed by the Rules—

but any party may object to the opinion and, if so, the question in dispute must be disposed of by the Court.

S. 78(2)
amended by
No. 35/1996
s. 453(Sch. 1
item 80.9(b)).

- (2) The Court may determine the fee of the legal practitioner and how it shall be borne and paid.

Division 4—Proceeding for recovery of land

79 Proceeding by landlord if rent is in arrears

No. 6387
ss 114, 116.

(1) If—

(a) 6 months' rent is in arrears; and

S. 79(1)(a)
amended by
No. 11/2002
s. 3(Sch. 1
item 59.1).

(b) the landlord has the right by law to re-enter
for its non-payment—

the landlord may, without any formal demand for
the rent in arrears and without re-entry, commence
a proceeding for the recovery of the land.

(2) The commencement of a proceeding referred to in
subsection (1) takes the place of a demand and re-
entry.

(3) If the Court is satisfied—

(a) that 6 months' rent was in arrears before the
proceeding was commenced; and

S. 79(3)(a)
amended by
No. 11/2002
s. 3(Sch. 1
item 59.1).

(b) that the landlord had power to re-enter—
it may give judgment for the landlord.

(4) Unless the tenant within 6 months after the
enforcement of the judgment pays the rent and
arrears together with full costs and proceeds for
relief on equitable grounds, then—

(a) the tenant loses all rights to obtain relief or
remedy other than by appeal; and

(b) the landlord holds the land freed from the
lease.

S. 79(5)(a)
amended by
No. 35/1996
s. 453(Sch. 1
item 80.10).

- (5) If the tenant at any time before the hearing—
- (a) pays or tenders to the landlord or to the executor, administrator or legal practitioner of the landlord; or

- (b) pays into court—

the rent and arrears together with full costs, the proceeding under this section ceases.

- (6) Nothing in this section bars the right of a mortgagee of the lease or a part of the lease who is not in possession to pay, within 6 months after the enforcement of the judgment, all rent in arrears and all costs and damages sustained by the landlord and perform all the covenants and agreements which are to be performed by the tenant.

No. 6387
ss 115, 116.

80 Lessee not to have relief without payment of rent and costs

- (1) A tenant may proceed for relief in the Court within the time specified in section 79(4).
- (2) The Court may grant the tenant relief under this section if, within the time fixed by the Court, the tenant brings into the Court—
 - (a) the rent and arrears and other sums payable under the judgment; and
 - (b) the taxed costs of the proceeding under section 79.
- (3) The Court may—
 - (a) determine the amount referred to in subsection (2)(a) if the parties cannot agree on its amount;

-
- (b) order that any money brought into the Court under subsection (2)—
- (i) remain in the Court until the hearing of the proceeding; or
 - (ii) be paid to the landlord on good security.
- (4) If a proceeding for relief is brought after the enforcement of the judgment, the landlord is accountable only for so much as the landlord really and in good faith (without fraud, deceit or wilful neglect) received in respect of the land from the time of entering into actual possession of it.
- (5) If the amount received by the landlord is less than the rent reserved on the lease, the tenant must, before being restored to possession, pay to the landlord the amount of the shortfall for the period the landlord was in possession.
- (6) A tenant who is granted relief under this section holds the land under the terms of the lease without the need for a new lease.
- (7) In subsection (6) *tenant* includes the executor, administrator or assignee of a tenant.

81 Proceeding by landlord against tenant holding over after end of tenancy

No. 6387
s. 117.

- (1) If—
- (a) the term or interest of a tenant holding land under a lease or written agreement for a term or number of years certain or from year to year has ended or been determined by a notice to quit; and
 - (b) a lawful demand in writing for possession of the land has been made and signed by the landlord or the landlord's agent and served

personally on the tenant or left at the tenant's usual place of residence; and

- (c) the tenant refuses to deliver up possession of the land; and
- (d) the landlord commences a proceeding for the recovery of the land—

the landlord must, if the landlord intends to apply for security under subsection (2), serve notice of that intention on the tenant.

(2) If—

- (a) an appearance is filed for the tenant; and
- (b) an affidavit of service of the writ and notice referred to in subsection (1) is filed; and
- (c) the landlord produces the lease or agreement or a counterpart or duplicate of it; and
- (d) it is proved on affidavit that—
 - (i) the lease or agreement was executed; and
 - (ii) the tenant has been in possession of the land under the lease or agreement; and
 - (iii) the interest of the tenant has ended or been determined by a notice to quit; and
 - (iv) possession has been lawfully demanded in the manner described in subsection (1)(b)—

the landlord may apply to the Court for an order that the tenant show cause, within a time fixed by the Court, why the tenant should not enter into a bond with two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which are recovered by the landlord.

-
- (3) The Court may make the order applied for either wholly or partly.
- (4) If—
- (a) an order is made under subsection (3) and the tenant does not comply with it and does not raise any ground to induce the Court to enlarge the time for compliance with it; and
 - (b) the landlord proves on affidavit that the order was made and served and not complied with—

the landlord is entitled to judgment for the recovery of the land and costs.

82 Provisions concerning securities

No. 6387
s. 118.

- (1) A security under section 81 must be taken in the manner and before the officer that the Court directs.
- (2) A proceeding must not be commenced on a security if more than 6 months has passed since possession of the whole or part of the land was delivered to the landlord.

83 Saving of former remedies

No. 6387
s. 120.

This Division does not affect the right of a landlord to bring any other proceeding or seek any other remedy.

84 Proceeding for recovery of land by mortgagee

No. 6387
ss 121, 122.

- (1) If—
 - (a) a proceeding is brought by a mortgagee or the heir, executor, administrator or assignee of a mortgagee for the recovery of any mortgaged land; and

(b) a proceeding is not then depending for or touching the foreclosing or redeeming of that land—

then if the person who has the right to redeem that mortgaged land and who appears and becomes defendant in the proceeding at any time pending the proceeding pays to the mortgagee or, if the mortgagee refuses, brings into the Court, all the principal money and interest due on the mortgage and all costs expended in the proceeding on the mortgage, the amount so paid to the mortgagee or brought into the Court is to be taken to be in full satisfaction and discharge of the mortgage.

- (2) The amount to be paid to the mortgagee or brought into the Court is to be determined by the Court.
- (3) On the amount being paid to the mortgagee or brought into the Court, the Court must—
 - (a) discharge the mortgagor of and from the mortgage; and
 - (b) by order compel the mortgagee, at the expense of the mortgagor, to assign or reconvey the mortgaged land or the mortgagee's estate and interest in it and deliver up all documents in the mortgagee's custody relating to the title to it to the mortgagor who paid the amount or brought it into the Court or to the heir, executor, administrator or assignee of that mortgagor or to another person nominated by that mortgagor or the heir, executor, administrator or assignee of that mortgagor.

S. 84(3)(b)
amended by
No. 51/2000
s. 11(b)(i)(ii).

(4) Nothing in this section—

- (a) applies if the person against whom the redemption is sought insists, by writing signed by that person or by that person's legal practitioner or agent and delivered to the legal practitioner or agent for the other side before the amount is brought into the Court—
- (i) that the party seeking the redemption does not have the right to redeem; or
 - (ii) that the land is chargeable with other or different principal sums than what appear on the face of the mortgage or are admitted by the other side; or
- (b) applies if the right of redemption is controverted or questioned by or between different defendants in the same proceeding; or
- (c) prejudices any subsequent mortgage or encumbrance.

S. 84(4)(a)
amended by
No. 35/1996
s. 453(Sch. 1
item 80.10).

Division 5—Relief from forfeiture

85 Relief against forfeiture for non-payment of rent

No. 6387
s. 123.

- (1) In any proceeding for forfeiture for non-payment of rent, the Court may grant relief against forfeiture in a summary manner and may do so subject to such terms and conditions as it considers just.
- (2) If a lessee is granted relief under this section, the lessee holds the land in accordance with the terms of the lease without the need for a new lease.
- (3) In subsection (2) *lessee* includes the executor, administrator or assignee of a lessee.

Division 6—Arrest in pending proceedings

No. 6387
s. 127.

86 Arrest on mesne process abolished

Subject to this Division, a person must not be arrested on mesne process in any proceeding.

No. 6387
s. 128.

87 Court may order arrest

If a plaintiff in a proceeding in which a defendant would (prior to 3 October 1839) have been liable to arrest, shows to the satisfaction of the Court by affidavit (whether of the plaintiff or of some other person)—

- (a) that the plaintiff has a cause of action against the defendant to the amount of \$50 000 or more or has sustained damage to that amount; and
- (b) that there is probable cause for believing that the defendant is about to remove out of Victoria or is making preparations to remove out of Victoria; and
- (c) that the proceeding will be defeated unless the defendant is forthwith apprehended—

the Court may order that the defendant be arrested and imprisoned until further order of the Court or until security is given by the defendant.

No. 6387
s. 136.

88 Security to be given by defendant

- (1) The security to be given by a defendant may be—
 - (a) a deposit in court of the amount mentioned in the order (not exceeding the amount claimed in the proceeding); or
 - (b) a bond to the plaintiff by the defendant and two sufficient sureties (or, with the leave of the Court, either one surety or more than two) that if judgment is entered for the plaintiff for the sum named in the bond or

any lesser sum the sum for which judgment is so entered shall forthwith be paid to the plaintiff; or

- (c) with the plaintiff's consent, any other form of security.
- (2) The plaintiff may, within four days after receiving particulars of the names and addresses of the proposed sureties, apply to the Court to have the sufficiency of the security determined.
- (3) Unless the plaintiff applies under subsection (2) within the time stated in that subsection, the security is to be taken to be sufficient.

89 Control of the Court

No. 6387
s. 137.

The money deposited, the security and all proceedings concerning the security are subject to the order and control of the Court.

90 Making of order to arrest

No. 6387
ss 129, 130.

- (1) An order to arrest may be made, and the defendant arrested under it, at any time after the commencement of the proceeding and before final judgment has been obtained.
- (2) An order to arrest is to be made on affidavit and without notice to any person.
- (3) A defendant who, having been arrested under the order, is in custody and has not previously been served with a copy of the originating process, may be lawfully served with it.

91 Defendant may apply for relief

No. 6387
s. 130.

The defendant may apply to the Court at any time—

- (a) to rescind the order to arrest; or
- (b) to vary the order to arrest; or

- (c) to be discharged from custody; or
- (d) for such other relief as is just.

No. 6387
s. 131.

92 Endorsement on order

S. 92
amended by
No. 35/1996
s. 453(Sch. 1
item 80.10).

An order to arrest must before delivery to the sheriff be endorsed with the address for service of the plaintiff and of the plaintiff's legal practitioner (if any) as required by the Rules in relation to originating process.

No. 6387
s. 132.

93 Restrictions on execution of order

The sheriff, a deputy sheriff or any other officer having the execution of an order to arrest must not arrest a defendant on an order taken out by a plaintiff in person unless at or before the time of making the arrest—

S. 93(a)
amended by
No. 35/1996
s. 453(Sch. 1
item 80.10).

- (a) the order is delivered to the sheriff, deputy sheriff or other officer by a legal practitioner or the clerk of a legal practitioner or an agent authorised in writing by a legal practitioner; and

S. 93(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 80.10).

- (b) the order is endorsed, in the presence of the sheriff, deputy sheriff or other officer, with the name and place of residence of the legal practitioner by the legal practitioner, clerk or agent delivering it.

No. 6387
s. 133.

94 Execution on a Sunday

An order to arrest may be made or executed on a Sunday.

No. 6387
s. 134.

95 Privilege from arrest

A person is not subject to arrest under an order to arrest if that person is, by reason of any privilege, usage or otherwise, by law exempt from arrest.

96 Misdescription of defendant

No. 6387
s. 135.

If the defendant is described in the originating process or an order to arrest by—

- (a) initials; or
- (b) a wrong name; or
- (c) a name other than the defendant's full name—

the defendant must not, for that reason, be discharged out of custody if it appears to the Court that due diligence has been used to obtain knowledge of the defendant's proper name.

97 Costs

No. 6387
s. 138.

- (1) Unless otherwise ordered, the costs of and incidental to an order to arrest are costs in the proceeding.
- (2) In all proceedings under this Division the Court may make such order as to costs as it thinks fit.

98 Discharge of defendant

No. 6387
s. 139.

- (1) A receipt must be given by the Senior Master on the payment into court of the amount mentioned in the order to arrest.
- (2) On receipt of the bond or other security a certificate to that effect must be given, signed or attested by the plaintiff's legal practitioner or, if the plaintiff is suing in person, by the plaintiff.
- (3) The defendant is entitled to be discharged out of custody if—
 - (a) the receipt or certificate referred to in this section is delivered to the sheriff, deputy sheriff or other officer having the execution of the order; and
 - (b) the sheriff's fees and allowances are paid.

S. 98(2)
amended by
No. 18/2005
s. 18(Sch. 1
item 103.4).

No. 6387
s. 140.

99 Date of arrest

The sheriff, deputy sheriff or other officer having the execution of an order to arrest must, within 2 days after the arrest, endorse on the order the true date of the arrest.

No. 6387
s. 141.

100 Fees

- (1) The sheriff, deputy sheriff, or other officer having the execution of an order to arrest is entitled to the prescribed fees and allowances.
- (2) The Governor in Council may make regulations for or with respect to the fees and allowances payable to the persons referred to in subsection (1).

Division 7—Interest on judgment

No. 6387
s. 161.

101 Interest on judgment

S. 101(1)
amended by
Nos 74/2000
s. 3(Sch. 1
item 122),
78/2008
s. 7(1).

- (1) Every judgment debt carries interest at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983** from the time the judgment was given or, in the case of costs which are assessable by the Costs Court, from the date of the order of the Costs Court stating the result of the assessment or such other date as the Court orders.
- (2) The amount of the interest must be stated in the body of, and may be levied under, a warrant of execution on the judgment.

Division 8—Wards of Court

102 Minors to become wards only by order

No. 6387
s. 177.

- (1) Subject to subsection (2), a minor must not be made a ward of Court except by order of the Court constituted by a Judge of the Court.
- (2) If application is made for an order under subsection (1), the minor becomes a ward of Court on the making of the application but ceases to be a ward at the end of the period prescribed by the Rules unless within that period an order has been made in accordance with the application.
- (3) The Court may, either on an application or of its own motion, order that a minor who is a ward of Court shall cease to be a ward.

S. 102(1)
amended by
No. 24/2008
s. 26(1).

Division 9—Quashing by-laws

103 Proceeding to test legality of by-laws

No. 6387
s. 178.

- (1) A person who pays into court the sum of \$500 as security for costs may apply to the Court constituted by a Judge of the Court for an order calling on the corporation by which or on whose behalf a by-law has been made to show cause why the by-law should not be quashed, either wholly or in part, for illegality.
- (2) The Court may make the order absolute or discharge it with or without costs.
- (3) In this section—
by-law includes regulations, rules and articles of association;

S. 103(1)
amended by
No. 24/2008
s. 26(2).

corporation means every corporation, no matter how created, and whether it exists for municipal, trading, mining, charitable or other purposes.

PART 7—ASSOCIATE JUDGES AND OFFICERS OF THE COURT

Pt 7 (Heading) substituted by No. 24/2008 s. 27.

Division 1—Appointments

104 Appointment of Associate Judges

No. 6387 s. 180.

- (1) Subject to subsection (5), one or more Associate Judges are to be appointed by the Governor in Council.
- (2) The Associate Judges appointed under subsection (1)—
- (a) must include an Associate Judge who is the Senior Master; and
 - (b) may include—
 - (i) an Associate Judge who is the Registrar of the Court of Appeal;
 - (ii) an Associate Judge who is the Registrar of the Criminal Appeals;

S. 104 amended by Nos 64/1990 s. 3(a)(b), 109/1994 s. 22(1)(c)–(e)(2), 22/1995 s. 20(1), 46/1998 s. 7(Sch. 1), 31/2004 s. 12, 108/2004 s. 117(1) (Sch. 3 item 194), 16/2005 s. 6, substituted by No. 24/2008 s. 28.

* * * * *

S. 104(2)(b)(iii) repealed by No. 78/2008 s. 7(2).

- (3) An Associate Judge may be appointed as both Registrar of the Court of Appeal and the Registrar of Criminal Appeals and may hold both those offices concurrently.
- (4) If the offices of Registrar of the Court of Appeal and Registrar of Criminal Appeals are held by the same person—
- (a) the offices are deemed to be a single office under the title of Registrar of the Court of Appeal; and

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- (b) a reference in this or any other Act or in the Rules or any other instrument or document to the Registrar of Criminal Appeals is deemed to be a reference to the Registrar of the Court of Appeal.
- (5) No new office is to be created in the Court unless the Chief Justice certifies that a majority of the Judges of the Court are of the opinion that it should be created.
- (6) A person must not be appointed as an Associate Judge unless that person—
- (a) is or has been a judge, an associate judge or a magistrate of—
 - (i) the High Court of Australia or of a court created by the Parliament of the Commonwealth; or
 - (ii) a court of Victoria or of another State or of the Northern Territory or the Australian Capital Territory; or
 - (b) has been admitted to legal practice in Victoria, another State, the Northern Territory or the Australian Capital Territory, or has been enrolled as a legal practitioner of the High Court of Australia, for not less than 5 years.
- (7) An Associate Judge ceases to hold office only—
- (a) if he or she resigns by delivering to the Governor a signed letter of resignation; or
 - (b) if he or she is removed from office by the Governor in Council in accordance with Part IIIAA of the **Constitution Act 1975**; or
 - (c) if his or her office is abolished by or under an Act; or
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- (d) if he or she is not capable of continuing in office because of subsection (9) or (10).
- (8) An Associate Judge who is the Senior Master or the Registrar of the Court of Appeal and any other Associate Judge is—
- (a) entitled to such applicable salary and allowances as are payable under section 83A of the **Constitution Act 1975**; and
- (b) not subject to the **Public Administration Act 2004**.
- (9) Subject to subsection (10), a person who has attained the age of 70 years is not capable of being appointed to or continuing in an office referred to in this section.
- (10) A person appointed to the office of Master before 1 July 1986 and holding that office before the commencement of section 28 of the **Courts Legislation Amendment (Associate Judges) Act 2008** continues in office without interruption as an Associate Judge until attaining the age of 72 years.

104A Pension entitlements of Associate Judges, their partners and children

S. 104A
(Heading)
inserted by
No. 23/2008
s. 16(1),
amended by
No. 24/2008
s. 29(1).

S. 104A
inserted by
No. 64/1990
s. 4.

(1) An Associate Judge who—

S. 104A(1)
amended by
No. 24/2008
s. 29(2)(a)(i).

(a) has attained—

S. 104(1)(a)
substituted by
No. 22/1995
s. 20(2).

(i) the age of 65 years; or

Supreme Court Act 1986
No. 110 of 1986

Part 7—Associate Judges and Officers of the Court

s. 104A

S. 104A
(1)(a)(ii)
amended by
No. 24/2008
s. 29(2)(a)(ii).

(ii) in the case of an Associate Judge who was appointed as a Master before the commencement of section 20 of the **Judicial Remuneration Tribunal Act 1995**, the age of 60 years—

and has held office for at least 10 years; or

S. 104A(1)(aa)
inserted by
No. 22/1995
s. 20(2).

(aa) has held office for at least 20 years; or

(b) was appointed while under the age of 60 and has become afflicted with a permanent incapacity that disables him or her from the due execution of the office—

is, on resignation or retirement, entitled to a pension payable fortnightly at the annual rate of 60% of the annual salary for the time being applicable to his or her former office.

S. 104A(1A)
inserted by
No. 22/1995
s. 20(3),
amended by
No. 24/2008
s. 29(2)(b).

(1A) An Associate Judge who—

S. 104A(1A)(a)
amended by
No. 24/2008
s. 29(2)(b)(ii).

(a) had attained the age of 60 years when appointed as an Associate Judge; and

(b) has attained the age of 70 years—

is, on resignation or retirement, entitled to a pension payable fortnightly at the proportion of the rate of the pension that would have been payable if he or she had held office for 10 years that is equal to the proportion of 10 years during which he or she held office as an Associate Judge.

(1B) An Associate Judge who—

S. 104A(1B)
inserted by
No. 22/1995
s. 20(3),
amended by
No. 24/2008
s. 29(2)(c)(i).

(a) had attained the age of 60 years when appointed as an Associate Judge; and

S. 104A(1B)(a)
amended by
No. 24/2008
s. 29(2)(c)(ii).

(b) has become afflicted with a permanent incapacity that disables him or her from the due execution of the office—

is, on resignation or retirement, entitled to a pension payable fortnightly at the rate of the pension that would have been payable under subsection (1A) if he or she had held office until attaining the age of 70 years.

(2) On the death of an Associate Judge, a former Associate Judge or a former Master his or her partner is, until death or marriage or until the partner becomes the domestic partner of another person, entitled to a pension payable fortnightly at the annual rate of 3/8ths of the annual salary for the time being applicable to the former office of the Associate Judge or former Associate Judge or the office of Associate Judge that is equivalent to the former office of the former Master, as the case requires.

S. 104A(2)
amended by
Nos 23/2008
s. 16(2)(a)(b),
24/2008
s. 29(2)(d).

(3) A pension is not payable under subsection (2) to the partner of an Associate Judge, a former Associate Judge or former Master where the marriage took place or the domestic partnership was entered into after the Associate Judge's or former Master's resignation or retirement.

S. 104A(3)
amended by
Nos 23/2008
s. 16(2)(a)(c),
24/2008
s. 29(2)(e).

(4) On the death of an Associate Judge, a former Associate Judge or a former Master in respect of whom no pension is payable under subsection (2)

S. 104A(4)
amended by
No. 24/2008
s. 29(2)(f).

s. 104A

any eligible child of the Associate Judge, former Associate Judge or former Master is entitled to a pension payable fortnightly at the annual rate set out in subsection (2) divided by 4 or the number of eligible children, whichever is the greater.

S. 104A(5)
amended by
Nos 23/2008
s. 17, 24/2008
s. 29(2)(g).

- (5) An eligible child of an Associate Judge, a former Associate Judge or former Master or his or her partner is a child, adopted child or stepchild of the Associate Judge, former Associate Judge or former Master—
- (a) who is under the age of 16; or
 - (b) who is over the age of 16 but under the age of 25 and receiving full-time education at a school, college or university.

- (6) A pension payable under subsection (4) shall be paid to such person or persons as the Attorney-General directs.

S. 104A(7)
amended by
No. 24/2008
s. 29(2)(h).

- (7) The right of a former Master or former Associate Judge to a pension under this section—

(a) ceases if he or she accepts appointment to a judicial office in or outside Victoria;

(b) is suspended while—

(i) he or she holds an office or place of profit under the Crown in right of the Commonwealth or of a State; or

(ii) he or she is engaged in legal practice in any State or Territory or is employed by a law practice in connection with the practice's legal practice in any State or Territory.

S. 104A(7)
(b)(ii)
substituted by
No. 18/2005
s. 18(Sch. 1
item 103.5).

- (8) Subsection (7) applies unless the Governor in Council by Order otherwise determines in any particular case.

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- (9) An Associate Judge retires for the purposes of this section only if he or she ceases to hold office in the circumstances described in section 104(7)(d). **S. 104A(9) amended by No. 24/2008 s. 29(2)(i).**
- (10) This section does not apply to or in relation to a Master who resigned or retired before the commencement of section 4 of the **Courts (Amendment) Act 1990**.
- (10A) Subsections (8) to (22) of section 83 of the **Constitution Act 1975** apply with such modifications as are necessary to and in respect of a pension under this section in the same circumstances and to the same extent as those subsections apply to and in respect of a pension under section 83 of the **Constitution Act 1975**. **S. 104A(10A) inserted by No. 23/2008 s. 18.**
- (11) Pensions under this section and any payments of lump sums provided by the commutation of those pensions are payable out of the Consolidated Fund which is appropriated to the necessary extent. **S. 104A(11) amended by No. 19/2001 s. 20.**
- (12) For the purposes of this section, service as a Master before the commencement of section 28 of the **Courts Legislation Amendment (Associate Judges) Act 2008** shall count as service as an Associate Judge. **S. 104A(12) inserted by No. 24/2008 s. 29(3).**
- (13) In this section, *former Master* means a Master who resigned, retired or died before the commencement of section 29 of the **Courts Legislation Amendment (Associate Judges) Act 2008**. **S. 104A(13) inserted by No. 24/2008 s. 29(3).**

s. 104B

S. 104B
inserted by
No. 19/2001
s. 21.

S. 104B
(Heading)
amended by
No. 24/2008
s. 30(1).

S. 104B(1)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 30(2)(a).

S. 104B(2)
amended by
No. 24/2008
s. 30(2)(b).

S. 104C
inserted by
No. 19/2001
s. 21.

S. 104C
(Heading)
amended by
No. 24/2008
s. 31(1).

S. 104C(1)
amended by
No. 24/2008
s. 31(2)(a)(i).

S. 104C(1)(a)
amended by
Nos 11/2002
s. 3(Sch. 1
item 59.2),
23/2008
s. 16(3),
24/2008
s. 31(2)(a)(ii)
(b).

104B Election of Associate Judges to commute future pensions for payment of superannuation contributions surcharge

- (1) An Associate Judge may elect in writing to the Minister to have part of his or her future pension entitlement and that of his or her partner or eligible child, if any, under this Act commuted to provide a lump sum for the purposes of payment of the whole of the liability for the superannuation contributions surcharge arising because of the entitlement of the Associate Judge or his or her partner or eligible child to receive a pension under this Act.
- (2) An Associate Judge may by notice in writing to the Minister revoke his or her election under subsection (1).

104C Actuary's first calculation after election of Associate Judges to commute pensions

- (1) If an election under section 104B is in operation, within 10 days after the day on which an Associate Judge resigns, retires or dies while in office, the Minister must—
 - (a) cause an actuary to determine the extent to which the former Associate Judge's pension and any future entitlement of the Associate Judge's partner or eligible child to a pension upon the Associate Judge's death otherwise payable under this Act will be reduced

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- subject to subsection (4) and taking into account the lump sum to be provided by the commutation of part of the Associate Judge's total pension entitlement and that of his or her partner or eligible child at the time at which the former Associate Judge became entitled to his or her pension for the purposes of payment of the whole of the liability for the superannuation contributions surcharge; and
- (b) notify the former Associate Judge or, if he or she has died, the former Associate Judge's partner or eligible child of the actuary's determination under subsection (1)(a). **S. 104C(1)(b) amended by Nos 23/2008 s. 16(3), 24/2008 s. 31(2)(a)(ii) (b).**
- (2) A former Associate Judge or, if he or she has died, the former Associate Judge's partner or eligible child may revoke the election under section 104B within 10 days after the Minister's notification under subsection (1)(b). **S. 104C(2) amended by Nos 23/2008 s. 16(3), 24/2008 s. 31(2)(b)(c).**
- (3) If an election under section 104B is in operation, the former Associate Judge's pension and any future entitlement of the former Associate Judge's partner or eligible child to a pension upon the Associate Judge's death otherwise payable from time to time under this Act must be reduced to the extent determined under subsection (1). **S. 104C(3) amended by Nos 23/2008 s. 16(3), 24/2008 s. 31(2)(b).**
- (4) For the purposes of subsection (1)—
- (a) the reduction of the former Associate Judge's pension must not exceed 15% of his or her total pension entitlement under the Act on the day on which the Associate Judge resigned or retired; and **S. 104C(4)(a) amended by No. 24/2008 s. 31(2)(b)(c).**
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s. 104D

S. 104C(4)(b)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 31(2)(b)(c).

- (b) the reduction of any future entitlement of the Associate Judge's partner or eligible child to a pension must not exceed 15% of an amount equal to the total pension entitlement of the Associate Judge's partner and eligible children on the day on which the Associate Judge resigned, retired or died while in office; and
- (c) each reduction referred to in paragraph (a) and (b) must be a fixed percentage to be applied to the pension entitlement under the Act and, if paragraphs (a) and (b) both apply, the percentage must be the same; and
- (d) each reduction must be applied from the entitlement day according to paragraph (a) or (b).

S. 104D
inserted by
No. 19/2001
s. 21.

104D Actuary's second calculation after election of Associate Judges to commute pensions and payment of lump sums

S. 104D
(Heading)
amended by
No. 24/2008
s. 31(3).

S. 104D(1)
amended by
Nos 23/2008
s. 16(3)(4),
24/2008
s. 31(4).

- (1) If an election under section 104B is in operation, a former Associate Judge or, if he or she has died, the Associate Judge's partner or eligible child must, within 60 days after the day on which a superannuation contributions surcharge notice was issued in respect of the Associate Judge's pension or his or her partner's or eligible child's pension, lodge with the Minister—

S. 104D(1)(a)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 31(4)(b).

- (a) a notice that authorises the Minister to pay the lump sum that is equal to the superannuation contributions surcharge on behalf of the former Associate Judge or his or her partner or eligible child to the Commissioner of Taxation to be applied

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- wholly towards payment of the superannuation contributions surcharge; and
- (b) a copy of the superannuation contributions surcharge notice.
- (2) Within 10 days after the day on which the Minister received the authorisation and a copy of the superannuation contributions surcharge notice under subsection (1), the Minister must cause an actuary—
- (a) to review the determination made under section 104C(1); and
- (b) subject to section 104C(4), make any necessary adjustments to the determination and to the pension payable to the former Associate Judge and to any future entitlement of the former Associate Judge's partner or eligible child to a pension upon the Associate Judge's death.
- (3) If an election under section 104B is in operation and the Minister has received an authorisation under subsection (1), the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied towards payment of the superannuation contributions surcharge.

S. 104D(2)(b)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 31(4).

s. 104E

104E Election of former Associate Judges to commute pensions for payment of superannuation contributions surcharge

S. 104E
inserted by
No. 19/2001
s. 21.

S. 104E
(Heading)
amended by
No. 24/2008
s. 32(1).

S. 104E(1)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 32(2)(a).

(1) If no election under section 104B is in operation, a former Associate Judge who is entitled to receive a pension under this Act may elect to have part of his or her pension and that of his or her partner or eligible child, if any, commuted to provide a lump sum for the purposes of payment of the whole or part of the liability for the superannuation contributions surcharge arising because of the entitlement of the former Associate Judge or his or her partner or eligible child to receive a pension under this Act.

(2) An election under subsection (1) must—

S. 104E(2)(a)
amended by
Nos 23/2008
s. 16(4),
24/2008
s. 32(2)(b).

- (a) be made in writing to the Minister within 60 days after the day on which a superannuation contributions surcharge notice is issued in respect of a former Associate Judge's pension or his or her partner's or eligible child's pension; and
- (b) specify the amount of the lump sum (not exceeding the superannuation contributions surcharge) to be provided by the commutation of the pension; and

S. 104E(2)(c)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 32(2)(a).

- (c) authorise the Minister to pay the lump sum on behalf of the former Associate Judge or his or her partner or eligible child to the Commissioner of Taxation to be applied wholly towards payment of the superannuation contributions surcharge; and

- (d) be accompanied by a copy of the superannuation contributions surcharge notice.

104F Actuary's calculation after former Associate Judges' election to commute pensions

S. 104F inserted by No. 19/2001 s. 21.

S. 104F (Heading) amended by No. 24/2008 s. 32(3).

- (1) If an election under section 104E is in operation, the Minister must within 10 days after the day on which the Minister received the election—

- (a) cause an actuary to determine the extent to which a former Associate Judge's pension and any future entitlement of the partner or eligible child of the former Associate Judge to a pension upon the Associate Judge's death otherwise payable under this Act will be reduced subject to section 104G(3) and taking into account the specified amount of the lump sum to be provided by the commutation of the pensions; and

S. 104F(1)(a) amended by Nos 23/2008 s. 16(3), 24/2008 s. 32(4).

- (b) notify the former Associate Judge or, if he or she has died, the former Associate Judge's partner or eligible child of the actuary's determination under subsection (1)(a).

S. 104F(1)(b) amended by Nos 23/2008 s. 16(3), 24/2008 s. 32(4).

- (2) A former Associate Judge or, if he or she has died, the former Associate Judge's partner or eligible child may revoke the election under section 104E within 10 days after the Minister's notification under subsection (1)(b).

S. 104F(2) amended by Nos 23/2008 s. 16(3), 24/2008 s. 32(4).

104G Payment and commutation of pensions of former Associate Judges

S. 104G inserted by No. 19/2001 s. 21.

S. 104G (Heading) amended by No. 24/2008 s. 33(1).

- (1) If an election under section 104E is in operation, the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied

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No. 110 of 1986

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s. 104G

towards payment of the superannuation contributions surcharge.

S. 104G(2)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 33(2)(a).

(2) The former Associate Judge's pension and any future entitlement of the Associate Judge's partner or eligible child to a pension upon the Associate Judge's death otherwise payable from time to time under this Act must be reduced to the extent determined under section 104F in consequence of the payment of the lump sum.

S. 104G(3)(a)
amended by
No. 24/2008
s. 33(2).

(3) For the purposes of section 104F—

(a) the reduction of the former Associate Judge's pension must not exceed 15% of his or her total pension entitlement under the Act on the day on which the Associate Judge resigned or retired; and

S. 104G(3)(b)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 33(2).

(b) the reduction of any future entitlement of the Associate Judge's partner or eligible child to a pension must not exceed 15% of an amount equal to the total pension entitlement of the Associate Judge's partner and eligible children on the day on which the Associate Judge resigned or retired; or

(c) each reduction referred to in paragraph (a) and (b) must be a fixed percentage to be applied to the pension entitlement under the Act and, if paragraphs (a) and (b) both apply, the percentage must be the same; and

(d) the reduction must be applied from the day of payment of the lump sum under subsection (1).

104H Election of Associate Judges' partners and eligible children to commute pensions for payment of superannuation contributions surcharge

S. 104H
(Heading)
amended by
Nos 23/2008
s. 16(5),
24/2008
s. 34(1).
S. 104H
inserted by
No. 19/2001
s. 21.

(1) If no election made under section 104B or 104E is in operation, a person who is entitled to receive a pension under this Act as the partner or eligible child of a deceased former Associate Judge may elect to have part of his or her pension commuted to provide a lump sum for the purposes of payment of the whole or part of the liability for the superannuation contributions surcharge arising because of the entitlement of the former Associate Judge to receive a pension under this Act or the entitlement of the deceased former Associate Judge's partner or eligible child to receive a pension under this Act.

S. 104H(1)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 34(2).

(2) An election under subsection (1) must—

- (a) be made in writing to the Minister within 60 days after the day on which a superannuation contributions surcharge notice was issued in respect of the deceased former Associate Judge's pension or his or her partner's or eligible child's pension; and
- (b) specify the amount of the lump sum (not exceeding the superannuation contributions surcharge) to be provided by the commutation of the pension; and

S. 104H(2)(a)
amended by
Nos 23/2008
s. 16(4),
24/2008
s. 34(2)(b).

s. 104I

S. 104H(2)(c)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 34(2)(a).

- (c) authorise the Minister to pay the lump sum on behalf of the person who is entitled to receive a pension under this Act as the partner or eligible child of a deceased former Associate Judge to the Commissioner of Taxation to be applied wholly towards payment of the superannuation contributions surcharge; and
- (d) be accompanied by a copy of the superannuation contributions surcharge notice.

S. 104I
(Heading)
amended by
Nos 23/2008
s. 16(5),
24/2008
s. 34(3).

104I Actuary's calculation of reduction of pensions of Associate Judges' partners and eligible children

- (1) If an election is made under section 104H, the Minister must within 10 days after the day on which the Minister received the election—

S. 104I
inserted by
No. 19/2001
s. 21.

S. 104I(1)(a)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 34(4).

- (a) cause an actuary to determine the extent to which the pension of a person who is entitled to receive a pension under this Act as the partner or eligible child of a deceased former Associate Judge otherwise payable under this Act will be reduced subject to section 104J(3) and taking into account the specified amount of the lump sum to be provided by the commutation of the pension; and
- (b) notify the person of the actuary's determination under subsection (1)(a).

S. 104I(2)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 34(4).

- (2) A person who is entitled to receive a pension under this Act as the partner or eligible child of a deceased former Associate Judge may revoke his or her election under section 104H within 10 days after the Minister's notification under subsection (1)(b).

104J Payment and commutation of pensions of former Associate Judges' partners and eligible children

- (1) If an election under section 104H is in operation, the Minister must cause the amount of the lump sum to be paid to the Commissioner of Taxation within the period stated in the superannuation contributions surcharge notice to be applied towards payment of the superannuation contributions surcharge.
- (2) On payment of the lump sum, the pension of a person entitled to receive a pension as the partner or eligible child of the deceased former Associate Judge otherwise payable from time to time under this Act must be reduced to the extent determined under section 104I.
- (3) For the purposes of section 104I—
- (a) the reduction of any future entitlement of the Associate Judge's partner or eligible child to a pension must not exceed 15% of—
- (i) an amount equal to the total pension entitlement of the Associate Judge and his or her partner and eligible children on the day on which the Associate Judge resigned or retired; or
- (ii) in the case of the Associate Judge's death while in office, an amount equal to his or her partner's and eligible children's total pension entitlement on the day on which the Associate Judge died; and
- (b) the reduction must be a fixed percentage to be applied to the pension entitlement under the Act; and

S. 104J
(Heading)
amended by
Nos 23/2008
s. 16(5),
24/2008
s. 35(1).

S. 104J
inserted by
No. 19/2001
s. 21.

S. 104J(2)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 35(2)(a).

S. 104J(3)(a)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 35(2)(b).

S. 104J(3)(a)(i)
amended by
Nos 23/2008
s. 16(3),
24/2008
s. 35(2)(a).

S. 104J
(3)(a)(ii)
amended by
Nos 23/2008
s. 16(4),
24/2008
s. 35(2).

- (c) the reduction must be applied from the day of payment of the lump sum under subsection (1).

No. 6387
s. 181.

S. 105
amended by
No. 109/1994
s. 22(3),
substituted by
No. 24/2008
s. 36 (as
amended by
No. 78/2008
s. 21).

105 Acting Associate Judges

- (1) If an Associate Judge other than the Associate Judge who is the Senior Master is absent or temporarily unable to perform the duties of office, the Governor in Council may appoint another Associate Judge to act in the place of that Associate Judge.
- (2) If an Associate Judge other than the Associate Judge who is the Senior Master is absent for a period not exceeding 6 months, the Chief Justice may nominate another Associate Judge to act in the place of that Associate Judge.
- (3) A person appointed under subsection (1) or nominated under subsection (2) has and may exercise the duties and powers of the Associate Judge in whose place the appointee or nominee is acting.
- (4) If an office of Associate Judge becomes vacant, the Governor in Council may appoint another Associate Judge to act in that office.
- (5) An appointment under subsection (4) is for the term (not exceeding 6 months) specified in the instrument of appointment.
- (6) A person appointed under subsection (4) has, during the term of the appointment, all the powers, and may during that term perform all the duties, of the office to which that person is appointed.

105A Acting Senior Master

- (1) If the Associate Judge who is the Senior Master is absent or temporarily unable to perform the duties of office, the Governor in Council may appoint another Associate Judge to act in the place of the Senior Master.
- (2) If the Associate Judge who is the Senior Master is absent, another Associate Judge nominated by the Senior Master has and may exercise the duties and powers of the Senior Master in relation to the receipt, investment and payment out of funds in court.

S. 105A
inserted by
No. 24/2008
s. 36.

**106 Power to employ chief executive officer,
prothonotary etc.**

For the purposes of this Act and to assist in the administration of justice in Victoria there are to be employed under Part 3 of the **Public Administration Act 2004**—

No. 6387
s. 182.
S. 106
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 194).

- (a) a chief executive officer, a prothonotary and a registrar of probates and such other employees as are necessary; and
- (ab) registrars, deputy registrars and any other employees that are necessary for the effective operation of the Court generally; and
- (ac) such costs registrars, deputy costs registrars and other officers as are necessary for the effective operation of the Costs Court; and
- (b) as many deputy prothonotaries and assistant registrars of probates as are required to assist in the administration of justice.

S. 106(a)
amended by
Nos 46/1998
s. 7(Sch. 1),
9/2009
s. 58(1).

S. 106(ab)
inserted by
No. 24/2008
s. 37.

S. 106(ac)
inserted by
No. 78/2008
s. 8.

S. 106(b)
amended by
No. 9/2009
s. 58(2).

No. 6387
s. 183.

107 Certain office holders to be deputies

S. 107(1)
amended by
No. 9/2009
s. 59(1).

(1) The Governor in Council may by Order published in the Government Gazette declare the person for the time being carrying out the duties of any office in the public service to be a deputy prothonotary.

(2) A person who is the subject of an Order under subsection (1)—

(a) has the duties and powers specified in the Order; and

S. 107(2)(b)
amended by
No. 9/2009
s. 59(2).

(b) for the purposes of this Act is to be taken to be appointed as deputy prothonotary.

No. 6387
s. 184.

108 Powers of deputies

S. 108(1)
amended by
No. 9/2009
s. 60(1).

(1) A person appointed as deputy prothonotary has the duties and powers specified in the terms of that person's appointment.

S. 108(2)
amended by
No. 9/2009
s. 60(2).

(2) Anything done by a deputy prothonotary is as valid and effective as if it had been done by the prothonotary and no person need be concerned to inquire whether any action is within the terms of the deputy's authority.

No. 6387
s. 185.

109 Appointment of bailiffs and assistant bailiffs

S. 109(1)
substituted by
No. 9/2009
s. 61(1).

(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.

S. 109(1A)
inserted by
No. 9/2009
s. 61(1).

(2) Without affecting the operation of subsection (1), the member of the police force who is for the time being in charge of any police station specified for the purposes of this section by Order of the Governor in Council published in the Government Gazette is a bailiff for the purposes of this Act.

(3) A bailiff referred to in subsection (2) may from time to time in writing appoint any member of the police force to assist him or her.

(4) In this section—

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

S. 109(4)
inserted by
No. 9/2009
s. 61(2).

Division 2—Functions of Associate Judges

Pt 7 Div. 2
(Heading)
substituted by
No. 24/2008
s. 38.

109A Chief Justice responsible for business of Associate Judges

S. 109A
inserted by
No. 24/2008
s. 39.

The Chief Justice has responsibility for the administration of the business of the Associate Judges, including the Associate Judge who is the Senior Master, and the orderly and expeditious exercise of their functions and powers.

110 Functions of the Senior Master

No. 6387
s. 186.

The Senior Master has the duties, powers and authorities imposed or conferred on him or her by or under this Act or any other Act or the Rules.

S. 110
substituted by
No. 24/2008
s. 40.

No. 6387
s. 187.
S. 111
substituted by
No. 24/2008
s. 41.

111 Functions of Associate Judges

The Associate Judges—

- (a) must assist in the general business of the Court; and
- (b) must perform the duties and exercise the powers and authorities imposed or conferred on them by or under this Act or any other Act or the Rules.

S. 111A
inserted by
No. 109/1994
s. 23,
substituted by
No. 24/2008
s. 41.

111A Functions of Registrar of the Court of Appeal

The Registrar of the Court of Appeal is, subject to the general direction and control of the President, responsible for—

S. 111A(a)
amended by
No. 68/2009
s. 97(Sch.
item 116.7).

- (a) the preliminary examination of all applications and appeals made to the Court of Appeal, including all applications made to the Court of Appeal under Part 6.3 of Chapter 6 of the **Criminal Procedure Act 2009** and the Rules made under that Part;
- (b) taking such action as he or she is authorised or required by the President or the Rules to take to ensure the efficient and expeditious despatch of those applications and appeals to the Court of Appeal;
- (c) performing such other duties and exercising such other powers and authorities as are imposed or conferred on him or her by the President, this Act or any other Act or the Rules.

112 Functions of the Registrar of Criminal Appeals

(1) The Registrar of Criminal Appeals is, subject to the general direction and control of the Registrar of the Court of Appeal, responsible for—

No. 6387
s. 188.
S. 112
(Heading)
amended by
No. 78/2008
s. 7(3).
S. 112
amended by
Nos 109/1994
s. 24, 52/1998
s. 311(Sch. 1
item 88.1) (as
amended by
No. 101/1998
s. 22(1)(m)),
18/2005
s. 18(Sch. 1
item 103.6),
substituted by
No. 24/2008
s. 42.

- (a) the preliminary examination of all applications made to the Court of Appeal under Part 6.3 of Chapter 6 of the **Criminal Procedure Act 2009** and the Rules made under that Part;
- (b) taking such action as he or she is authorised or required by the Registrar of the Court of Appeal or the Rules to take to ensure the efficient and expeditious despatch of those applications to the Court of Appeal;
- (c) performing such other duties as are imposed or conferred on him or her by the Registrar of the Court of Appeal or any Act or the Rules.

S. 112(1)(a)
amended by
No. 68/2009
s. 97(Sch.
item 116.8).

* * * * *

S. 112(2)
repealed by
No. 78/2008
s. 7(4).

s. 113

113 Common Funds

No. 6387
s. 189.

S. 113(1)
amended by
Nos 52/1998
s. 311(Sch. 1
item 88.2),
30/2004
s. 3(1).

(1) Subject to section 66 of the **Guardianship and Administration Act 1986** and section 51A of this Act, all money paid into court under an order of the Court or under any Act or the Rules is to be held by the Senior Master.

S. 113(2)
amended by
No. 30/2004
s. 3(2).

(2) In addition to Common Fund No. 1 and the other Common Funds established before the commencement of this Act by or under the **Supreme Court Act 1958** and Common Fund No. 3 established by section 113A of this Act, there may be established, by and in accordance with the Rules or under subsection (26), more Common Funds, each to be identified by an appropriate distinguishing number.

(3) Unless the Senior Master otherwise determines, no money is to be invested in Common Fund No. 1 after the commencement of this Act.

S. 113(4)
amended by
No. 30/2004
s. 3(3).

(4) Money held by the Senior Master, including money forming part of a Common Fund (except Common Fund No. 3), may be invested—

S. 113(4)(a)
repealed by
No. 11/2001
s. 3(Sch.
item 71.1(a)).

* * * * *

S. 113(4)(b)
substituted by
No. 55/1987
s. 57(3)(Sch. 5
item 54),
amended by
No. 45/1994
s. 42(Sch.
item 9).

(b) on deposit with the State Trust for investment in such common fund as the Court specifies; or

S. 113(4)(c)
repealed by
No. 18/1994
s. 66(Sch. 2
item 24.1).

* * * * *

- (d) in any manner in which trust money may be invested by a trustee under the **Trustee Act 1958** or any other Act.
- (5) Money forming part of a Common Fund (except Common Fund No. 3) may be invested in any class of investment authorised under the Rules.
- (6) Subject to the Rules and to any order of the Court, the Senior Master must transfer any money received by the Senior Master on behalf of any person, estate or trust to a Common Fund, unless the Senior Master considers it desirable for any special reason to invest it on separate account.
- (7) Investments made from money forming part of a Common Fund are not made on account of, and do not belong to, any particular person, estate or trust.
- (8) Subject to subsection (26), the Senior Master must cause to be kept in the books of the Senior Master an account showing at all times the current amount held by the Senior Master or at credit in a Common Fund on behalf or account of each person, estate or trust and of any investments made of the money of a Common Fund or on behalf of a person, estate or trust.
- (9) The Senior Master may sell or call in investments belonging to a Common Fund and may withdraw any of the money forming part of a Common Fund if necessary in the performance of his or her duties or the exercise of his or her powers and authorities.
- (10) The Senior Master may at any time withdraw from a Common Fund any amount at credit in the Common Fund on the account of any person, estate or trust and may invest that amount on separate account or transfer it to another Common Fund.

S. 113(5)
amended by
No. 30/2004
s. 3(4).

Supreme Court Act 1986
No. 110 of 1986

Part 7—Associate Judges and Officers of the Court

s. 113

S. 113(12)
amended by
No. 30/2004
s. 3(5).

- (11) Amounts withdrawn from a Common Fund cease, from the date of withdrawal, to have any claim for interest or otherwise from the Common Fund.
- (12) Subject to section 113A and unless otherwise expressly provided by the rules under which a Common Fund is constituted—
 - (a) no capital appreciation or depreciation in the value of any investments made or taken to have been made from a Common Fund are to be taken to increase or diminish the amount at credit in the Common Fund on the account of any person, estate or trust; and
 - (b) on the withdrawal from the Common Fund of any amount transferred to it, the person, estate or trust in question is entitled to be credited with the actual amount so transferred without regard to any capital appreciation or depreciation.

S. 113(13)
amended by
No. 30/2004
s. 3(6).

- (13) Interest received from the investment of money forming part of a Common Fund (except Common Fund No. 3) is to be paid into an account to be called the "Interest Suspense Account" of that Common Fund and to be allocated as provided in subsection (14).

S. 113(14)
amended by
No. 30/2004
s. 3(7).

- (14) On each amount at credit in a Common Fund (except Common Fund No. 3) interest at the appropriate rate fixed from time to time by the Senior Master, with the approval of the Chief Justice, must at such times and intervals as are prescribed by the Rules be allocated and paid out of the Interest Suspense Account of that Common Fund to the credit of the person, estate or trust entitled for the time being to the interest.
- (15) The Senior Master, with the approval of the Chief Justice, may fix different rates of interest according to—

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- (a) the source and nature of the different amounts transferred to a Common Fund (except Common Fund No. 3);
- (b) the periods for which those amounts will probably remain in the Fund;
- (c) such other factors as they consider relevant.
- (16) At such time or times in each year as the Senior Master determines, such amount of the money at credit in each Interest Suspense Account as the Senior Master considers necessary must, after providing for all interest payable to the credit of persons, estates and trusts, be carried to the credit of an account to be called the "Common Funds Guarantee and Reserve Account".
- (17) All capital profit made on the realization of investments from a Common Fund (except Common Fund No. 3) must also be carried to the credit of the Common Funds Guarantee and Reserve Account.
- (18) Money standing to the credit of the Common Funds Guarantee and Reserve Account may be applied for all or any of the following purposes:
- (a) Payment to a Common Fund of an amount equivalent to any capital loss incurred on realization of any investment made from the Common Fund;
- (b) Payments of any costs and expenses incurred in protecting investments made from a Common Fund;
- (ba) Payments of any costs, expenses and charges incurred in respect of staff employed in connection with the administration of a Common Fund as in the opinion of the Senior Master are properly chargeable against the Common Funds Guarantee and Reserve Account;
- S. 113(15)(a) amended by No. 30/2004 s. 3(8).**
- S. 113(17) amended by No. 30/2004 s. 3(9).**
- S. 113(18)(ba) inserted by No. 30/2004 s. 3(10).**
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Supreme Court Act 1986
No. 110 of 1986

Part 7—Associate Judges and Officers of the Court

s. 113

S. 113(18)(bb)
inserted by
No. 30/2004
s. 3(10).

(bb) Payments of any costs, expenses and charges incurred in respect of—

(i) legal advice obtained in relation to a person, estate or trust; or

(ii) legal proceedings to which a person, estate or trust is a party—

as in the opinion of the Senior Master are properly chargeable against the Common Funds Guarantee and Reserve Account and not against a particular person, estate or trust because of the general interest and importance of the subject matter of the advice or proceedings;

(c) Payments of such other costs, expenses and charges incurred in respect of a Common Fund or investments made from a Common Fund as in the opinion of the Senior Master are properly chargeable against the Common Funds Guarantee and Reserve Account.

(19) Any money standing to the credit of the Common Funds Guarantee and Reserve Account which is not for the time being required for any of the purposes referred to in subsection (18) may be invested—

S. 113(19)(a)
amended by
No. 11/2001
s. 3(Sch.
item 71.1
(b)(i)).

(a) in any manner in which trust money may be invested by a trustee under the **Trustee Act 1958** or any other Act—

S. 113(19)(b)
repealed by
No. 11/2001
s. 3(Sch.
item 71.1(b)
(ii)).

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and all interest received from that investment must be paid into the Common Funds Guarantee and Reserve Account.

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- (20) If it appears to the Senior Master that the amount standing to the credit of the Common Funds Guarantee and Reserve Account on 1 June last past (after allowing for all ascertained and known contingent liabilities of that Account) is in excess of 1% of the amount to the credit of the Common Funds on that day, the Senior Master may pay out of that Account into the Interest Suspense Accounts of the Common Funds such amount as is in excess of that 1% as the Senior Master thinks fit and in such proportions as he or she thinks fit.
- (21) If it appears to the Senior Master that the amount of capital gains transferred to the Common Funds Guarantee and Reserve Account for the period of 12 months ending on 31 May in each year (after allowing for all ascertained and known contingent liabilities of that Account) is in excess of 0·10% of the amount to the credit of the Common Funds on that day, the Senior Master may, until the amount standing to the credit of that Account on 1 June next reaches 1% of the amount to the credit of the Common Funds on that day, pay out of that Account into the Interest Suspense Accounts of the Common Funds such amounts as is in excess of that 0·10% as the Senior Master thinks fit and in such proportions as he or she thinks fit.
- (22) Any amount paid into an Interest Suspense Account under subsection (20) or (21) is to be allocated from that Account in the same manner as interest received from the investment of the money forming part of the Common Fund.
- (23) If at any time a Common Fund (except Common Fund No. 3) is insufficient to meet a proper claim on it, the amount of that claim, so far as it cannot be met from the Common Fund, must be paid out of the Consolidated Fund, which is hereby to the necessary extent appropriated accordingly.

S. 113(23)
amended by
No. 30/2004
s. 3(11).

s. 113A

S. 113(24)
amended by
No. 11/2001
s. 3(Sch.
item 71.1(c)).

(24) In order to admit of the money in a Common Fund being kept closely invested, the Senior Master may obtain advances to the Common Fund from any authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth by the deposit by way of equitable mortgage of any securities held by the Senior Master in respect of investments from the Common Fund.

S. 113(25)
amended by
No. 11/2001
s. 3(Sch.
item 71.1(d)).

(25) The aggregate amount of advances made to the Common Funds by any authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth and outstanding at any one time must not exceed \$1 000 000.

S. 113(26)
amended by
Nos 55/1987
s. 57(3)(Sch. 5
item 55),
11/2001
s. 3(Sch.
item 71.1(e)).

(26) Subject to the Rules, the Senior Master may, with the consent of the Treasurer and the Chief Justice, enter into arrangements with the State Trust for or with respect to all or any of the following matters—

- (a) to undertake the management and investment of money held by the Senior Master;
- (b) to maintain the accounts required to be kept by subsection (8);
- (c) the establishment and management of one or more Common Funds in which money held by the Senior Master may be invested.

S. 113A
inserted by
No. 30/2004
s. 4.

113A Common Fund No. 3

- (1) In this section, *prescribed financial market* has the same meaning as in section 9 of the Corporations Act.
- (2) There is established a Common Fund to be known as Common Fund No. 3.
- (3) On the commencement of section 4 of the **Courts Legislation (Funds in Court) Act 2004**—

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- (a) the interest of any person, estate or trust in a security listed on a prescribed financial market and held by the Senior Master on separate account under section 113(6) immediately before that commencement is cancelled;
 - (b) all securities of a kind referred to in paragraph (a) are transferred to Common Fund No. 3;
 - (c) in consideration of, and as compensation for, the cancellation of any interest of a person, estate or trust in a security by force of paragraph (a), that person, estate or trust is given all the rights of a person, estate or trust with money invested in Common Fund No. 3 as set out in section 113.
- (4) No duty or other tax is chargeable under any Act in respect of anything effected by or done under this section or in respect of any act or transaction connected with or necessary to be done by reason of this section, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of securities made by this section.
- (5) Money held in Common Fund No. 3 may only be invested in securities listed on a prescribed financial market or in cash securities, deposits or discount bills-of-exchange or in another type of security determined by the Senior Master.
- (6) The monetary value at any time of a security listed on a prescribed financial market and held by the Senior Master in Common Fund No. 3 is the value last published by that market with respect to that security.
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- (7) Any capital profit or loss incurred on the realisation of an asset in Common Fund No. 3 must be credited or debited (as the case requires) to that Fund and apportioned between the accounts of each person, estate or trust with money invested in the Fund at that time proportionately to the extent of that investment.
 - (8) Income arising from Common Fund No. 3 must be apportioned between the accounts of each person, estate or trust with money invested in the Fund at that time proportionately to the extent of that investment.

S. 113B
inserted by
No. 30/2004
s. 4.

113B Senior Master to have certain powers of administrator

- (1) If—
 - (a) an administrator has not been appointed under the **Guardianship and Administration Act 1986** in respect of the estate of a person under disability; and
 - (b) the Senior Master holds money on behalf of that person—

the Senior Master has, in respect of that money, the powers referred to in section 58B(2) of that Act that he or she would have if he or she had been named as administrator in an administration order made under that Act that specified the administrator as having those powers.

- (2) The Senior Master ceases to have the powers conferred by subsection (1) if another person is appointed under the **Guardianship and Administration Act 1986** as an administrator of the estate of the person under disability.
 - (3) The Senior Master may, by instrument, delegate to any person employed in connection with the administration of a Common Fund any power of the Senior Master conferred by subsection (1).
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Division 3—The sheriff

114 Definition

In this Division *sheriff* includes a deputy sheriff.

115 Functions of sheriff

No. 6387
s. 190.

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S. 115(1)
repealed by
No. 9/2009
s. 62.

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S. 115(2)
repealed by
No. 9/2009
s. 62.

(3) Unless consent to the sheriff acting is given by or on behalf of the opposite party, if the sheriff is a party to or interested in or affected by any proceeding, any warrant or writ which would otherwise have been directed to the sheriff must be directed to a person or persons to be appointed by the Court in that behalf and any duty which would otherwise have been performed by the sheriff must be performed by the appointed person or persons.

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S. 116
repealed by
No. 9/2009
s. 63.

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S. 117
repealed by
No. 9/2009
s. 64.

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S. 118
repealed by
No. 9/2009
s. 65.

119 Duties on arrest of civil debtors

- (1) If an officer arrests or has in custody any person under the provisions of section 7 of the **Crown Proceedings Act 1958** or Division 6 of Part 6, that person must be lodged in the prison nearest to the place of arrest or, with that person's consent, in any other prison and, subject to subsection (2), that person must be detained in that prison until the Court orders his or her discharge or until he or she is otherwise discharged by due course of law.
- (2) During the first 24 hours after a person's arrest—
 - (a) the arresting officer may, subject to such safeguards as the officer determines and at the expense of the arrested person, permit him or her to be under arrest in such premises approved by the arresting officer and located within 40 kilometres of the place of arrest as the person arrested nominates; and
 - (b) the arrested person must be permitted to have at his or her own expense such food and drink as he or she desires and to communicate with such legal advisers, financial institutions and the like as he or she desires.
- (3) On the arrest of a person under the provisions referred to in subsection (1), the arresting officer must give a copy of this section to the arrested person and, if that person is unable to read, the arresting officer must also read this section to him or her.
- (4) In this section—

officer includes sheriff and bailiff;

prison means a prison for the purposes of the
Corrections Act 1986.

S. 119(4)
def. of
prison
amended by
Nos 16/1987
ss 4(3)(Sch. 1
item 21),
12(Sch. 2
item 11),
48/2006
s. 42(Sch.
item 34).

120 Liability for wrongful imprisonment

No. 6387
s. 195.

- (1) A person unlawfully imprisoned by the sheriff or any of the sheriff's officers has an action against the sheriff in like manner as against any other person who should imprison him or her without warrant.
- (2) If a person in the custody of the sheriff or of any other person either in execution or for non-performance of a judgment or order of the Court or for contempt of the Court or otherwise in the course of a proceeding escapes out of legal custody, the sheriff or other person is liable to pay the damages sustained by the person at whose suit the prisoner was taken into custody and all costs of recovering those damages but not any further sum.
- (3) There is no liability under this section for the escape of a prisoner when confined in a prison.

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S. 121
amended by
No. 57/1989
s. 3(Sch.
item 192.2),
repealed by
No. 9/2009
s. 66.

s. 123

S. 121A
inserted by
No. 9/2008
s. 44,
repealed by
No. 9/2009
s. 67.

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S. 122
repealed by
No. 9/2009
s. 68.

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No. 6387
s. 198.

123 Punishment for misconduct

(1) If the sheriff or any person employed in levying or collecting debts due to the Crown by process of any court or any officer to whom the return or execution of warrants or other process belongs does any of the following things—

- (a) unlawfully lets go at large a prisoner or unlawfully withholds a prisoner entitled to be released;
- (b) grants a warrant for the execution of any process before actually receiving that process;
- (c) is guilty of an offence against or breach of the provisions of this Division or of any wrongful act or default in the execution of his or her office or of any contempt of the Court—

he or she, and any person procuring the commission of the offence, is, without prejudice to any other punishment under this Division, liable—

- (d) to be punished by the Court under subsection (2); and

- (e) to forfeit \$400 to any aggrieved person and to pay all damages suffered by that person—
and the forfeiture and damages may be recovered by the aggrieved person as a debt by a proceeding in the Court.
- (2) The Court may, on being satisfied that an offence referred to in subsection (1) has been committed, punish the offender or cause proceedings to be taken for the offender's punishment in like manner as a person guilty of contempt of the Court may be punished.
- (3) The Court may order the costs of, or occasioned by, a complaint to be paid by either party to the other.

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S. 124
amended by
No. 57/1989
s. 3(Sch.
item 192.3)
repealed by
No. 9/2009
s. 69.

Division 4—General

125 Extortion by and impersonation of court officials

No. 6387
s. 201.

The following persons are guilty of contempt of court and liable to be punished by the Court accordingly—

- (a) a court official who extorts, demands, takes or accepts from any person any unauthorised fee, gratuity or reward;
- (b) a court official who assumes or pretends to act as the holder of an office or position in or in relation to the Court which he or she does not hold;

s. 127

(c) any person who is not a court official and who assumes or pretends to act as a court official.

S. 126 amended by No. 57/1989 s. 3(Sch. item 192.4), repealed by No. 9/2009 s. 70.

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No. 6387 s. 203. S. 127 substituted by No. 18/1994 s. 66(Sch. 2 item 24.2).

127 Senior Master and court officials subject to audit for receipt of public money

The accounts of the Senior Master, the Sheriff, the Prothonotary and the Registrar of Probates relating to the collection of public money must be audited by the Auditor-General or a person authorised by the Auditor-General.

No. 6387 s. 203A

128 Money held under Act may be invested

- (1) Except as otherwise expressly provided, if any money is held by the Court—
 - (a) as security for costs; or
 - (b) as security for the release on bail of any person; or
 - (c) under the Sheriff's Suitors and Revenue Account—

the whole or any part of the money, whether already in a state of investment or not, may be invested in one or more of the following ways—

S. 128(1)(d) repealed by No. 11/2001 s. 3(Sch. item 71.2).

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S. 128(1)(e) repealed by No. 18/1994 s. 66(Sch. 2 item 24.3).

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- (f) in any manner in which trust money may be invested by a trustee under the **Trustee Act 1958**;
 - (g) on deposit in a fund prescribed by regulations made under this Act.
- (2) Notwithstanding anything to the contrary in any other Act or any rule of law, all income derived from the investment of money under subsection (1) must be paid into the Consolidated Fund.

128A Supreme Court—limitation of jurisdiction

It is the intention of section 33ZD(b) of this Act and section 14 of the **Courts and Tribunals Legislation (Miscellaneous Amendments) Act 2000** to alter or vary section 85 of the **Constitution Act 1975**.

S. 128A
inserted by
No. 78/2000
s. 15.

129 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) the fees payable in respect of any matter in the Court;
 - (b) the fees payable in respect of anything done by a bailiff in or in relation to the execution of any warrant or other process;
 - (c) prescribing a fund for the purposes of section 128(1)(g);
 - (d) generally prescribing any other matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.

No. 6387
s. 205.

S. 129(1)(a)
substituted by
No. 64/1990
s. 14(a).

S. 129(1)(b)
amended by
No. 9/2009
s. 71.

s. 129

- (2) A power conferred by subsection (1) to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum fees;
 - (c) minimum fees;
 - (d) fees that vary according to value or time or class of matter;
 - (e) the manner of payment of fees;
 - (f) the time or times at which fees are to be paid—

and it is not necessary for the amount of any fee to be related to the cost of providing the service.

- (3) The prothonotary or a deputy prothonotary at or for the place where a proceeding is to be heard may, having regard to the income, day to day living expenses, liabilities and assets of the person liable to pay a fee prescribed under subsection (1)(a), waive payment of that fee if, in his or her opinion, the payment of that fee by that person would cause him or her financial hardship and, in that case, that prescribed fee is not payable.

S. 129(2)(d)
amended by
No. 64/1990
s. 14(b).

S. 129(3)
inserted by
No. 9/1995
s. 11(1).

PART 8—TRANSITIONALS AND SAVINGS

Pt 8 (Heading)
substituted by
No. 51/2000
s. 11(c).

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Ss 130–137
repealed by
No. 51/2000
s. 11(d).

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S. 138
repealed by
No. 52/1998
s. 311(Sch. 1
item 88.3).

139 Transitional and savings

- (1) A person who was appointed to the office of Master before the commencement of this Act continues in that office without interruption until attaining the age of 70 years or, if appointed before the commencement of section 6(3) of the **Courts Amendment Act 1986**, 72 years.
- (2) Without limiting the generality of section 16(b) of the **Interpretation of Legislation Act 1984**, all rules of court made before the commencement of this Act under any Act or provision of an Act repealed by this Act, or having effect as if so made, continue (until amended or revoked under a power contained in this or any other Act or in any other enactment) to have the same operation and effect as they would have had if this Act had not been passed.

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- (3) All Common Funds established before the commencement of this Act by or under the **Supreme Court Act 1958** and the Common Funds Guarantee and Reserve Account established under section 189 of that Act continue in existence despite the repeal of that Act.
- (4) Nothing in Division 3 of Part 7 affects—
- (a) any power, right, privilege, obligation, liability or duty of the sheriff or any of the sheriff's officers as existing by common law at the commencement of this Act; or
 - (b) any investigation, legal proceeding or remedy in respect of any such power, right, privilege, obligation, liability or duty as is mentioned in paragraph (a)—
- and any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if this Act had not been passed.
- (5) Unless the contrary intention appears, a reference in any Act, subordinate instrument or other document—
- (a) to the Master in Equity or the Chief Clerk of the Court is to be construed as a reference to the Senior Master;
 - (b) to the Master is to be construed as a reference to a Master.

S. 139A
inserted by
No. 10/1999
s. 26.

139A Transitional provision

The amendment of section 19 of this Act made by section 25 of the **Magistrates' Court (Amendment) 1999** applies to proceedings, whether commenced before or after the commencement of that section of that Act.

**140 Transitional provision—Courts and Tribunals
Legislation (Miscellaneous Amendments) Act 2000**

Without limiting section 14 of the **Interpretation of Legislation Act 1984**, the repeal of sections 34 and 35 of this Act by section 14 of the **Courts and Tribunals Legislation (Miscellaneous Amendments) Act 2000** has no effect on a proceeding under those sections commenced before that repeal and not yet finally determined immediately before that repeal and any such proceeding may be continued in all respects as if those sections had not been repealed.

S. 140
repealed by
No. 51/2000
s. 11(d),
new s. 140
inserted by
No. 78/2000
s. 16.

**141 Transitional provision—Justice Legislation
(Amendment) Act 2005**

The amendment of section 43 of this Act made by section 7(2) of the **Justice Legislation (Amendment) Act 2005** applies to an instrument or anything done or not done, irrespective of when the instrument was made or the thing was done or not done.

S. 141
inserted by
No. 17/2005
s. 8.

142 References

Unless the contrary intention appears, on and from the commencement of section 28 of the **Courts Legislation Amendment (Associate Judges) Act 2008**, a reference in any Act (other than that Act), subordinate instrument or other document—

- (a) to a Master of the Supreme Court is to be construed as a reference to an Associate Judge of the Supreme Court; and
- (b) to the Senior Master is to be construed as a reference to the Associate Judge who is the Senior Master; and
- (c) to the Taxing Master is to be construed as a reference to the Associate Judge who is the Taxing Master.

S. 142
inserted by
No. 24/2008
s. 73.

S. 142A
inserted by
No. 24/2008
s. 73 (as
amended by
No. 78/2008
s. 22).

**142A Regulations dealing with transitional matters—
Courts Legislation Amendment (Associate Judges)
Act 2008**

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the **Courts Legislation Amendment (Associate Judges) Act 2008** (including the repeals and amendments made by that Act).
- (2) Regulations made under this section may—
 - (a) have a retrospective effect to a day on or from the date that the **Courts Legislation Amendment (Associate Judges) Act 2008** received the Royal Assent; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of person; and
 - (d) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations made under this section.
- (3) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act, the **Charter of Human Rights and Responsibilities Act 2006** or the **Courts Legislation Amendment (Associate Judges) Act 2008**) or in any subordinate instrument.

S. 143
inserted by
No. 24/2008
s. 73 (as
amended by
No. 78/2008
s. 23(1)).

143 Masters to become Associate Judges

- (1) On and from the commencement of section 28 of the **Courts Legislation Amendment (Associate Judges) Act 2008**—
 - (a) a person appointed to the office of Senior Master before that commencement and holding that office immediately before that

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- commencement continues to hold office as an Associate Judge who is the Senior Master appointed under section 104(2)(a) as substituted by section 28 of that Act without further appointment;
- (b) a person appointed to the office of Registrar of the Court of Appeal before that commencement and holding that office immediately before that commencement continues to hold office as an Associate Judge who is the Registrar of the Court of Appeal appointed under section 104(2)(b) as substituted by section 28 of that Act without further appointment;
- (c) a person appointed to the office of Registrar of Criminal Appeals before that commencement and holding that office immediately before that commencement continues to hold office as an Associate Judge who is the Registrar of Criminal Appeals appointed under section 104(2)(b) as substituted by section 28 of that Act without further appointment;
- (d) a person appointed to the office of Taxing Master before that commencement and holding that office immediately before that commencement continues to hold office as an Associate Judge who is the Taxing Master appointed under section 104(2)(b) as substituted by section 28 of that Act without further appointment;
- (e) a person appointed to the office of Master before that commencement and holding that office immediately before that commencement continues to hold office as an Associate Judge appointed under
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section 104 as substituted by section 28 of that Act without further appointment.

- (2) Subsection (1) does not affect any salary, other remuneration, allowances or pension entitlements of any person referred to in that subsection.
- (3) Despite subsection (1), if the holder of an office referred to in subsection (1)(a) to (d) is, on the commencement of section 28 of the **Courts Legislation Amendment (Associate Judges) Act 2008**, acting in an office referred to in any of those paragraphs, the person continues, on and from that commencement, to hold that office on an acting basis until the expiry of the acting appointment.

S. 144
inserted by
No. 24/2008
s. 73 (as
amended by
No. 78/2008
s. 23(2)).

144 Pension entitlements

Nothing in the **Courts Legislation Amendment (Associate Judges) Act 2008** affects the pension entitlements of a Master who resigned, retired or died before the commencement of section 29 of that Act or the spouse or partner or eligible child of such a Master and—

- (a) subject to paragraph (b), those entitlements continue in existence as if the amendments made by that Act had not been made;
- (b) a reference in section 104A to the annual salary for the time being applicable or payable in respect of an office held immediately before retirement or at the date of death, resignation or retirement is, in relation to a Master who resigned, retired or died before the commencement of section 29 of the **Courts Legislation Amendment (Associate Judges) Act 2008** or the spouse or partner or eligible child of such a Master, a reference to the annual salary for the time being payable under section 83A(1) of the

Constitution Act 1975 in respect of the office of Associate Judge equivalent to the office of that Master or, in the case of a former Master who held office as a Specialist Supreme Court Master referred to in the **Judicial Salaries Act 2004**, the annual salary for the time being applicable to the office of Specialist Supreme Court Master under that Act, as the case requires.

145 Pending matters—Taxing Master

S. 145
inserted by
No. 78/2008
s. 9.

- (1) If, immediately before the commencement of section 5 of the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**, any matter in relation to the assessment, settling, taxing or reviewing of costs was pending before the Taxing Master and the Taxing Master had not begun to hear that matter, on and from that commencement, the matter is to be heard and determined by the Costs Court in accordance with this Act as amended by the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**.
- (2) If, immediately before the commencement of section 5 of the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**, any matter in relation to the assessment, settling, taxing or review of costs was pending before the Taxing Master and the Taxing Master had begun to hear that matter, on and from that commencement, the matter is to be heard and determined by the Costs Court in accordance with this Act and for that purpose—
 - (a) the matter is to be taken to have commenced in the Costs Court;

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- (b) anything done in relation to the matter by the Taxing Master before the commencement of section 5 of the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**, is taken to have been done by the Costs Court;
- (c) the Costs Court may have regard to any record of the matter before the Taxing Master, including any record of any evidence taken in the matter;
- (d) the procedure applying in the Costs Court applies to the matter on and after the commencement of section 5 of the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**;
- (e) anything done or omitted to be done in relation to the matter by a party or any other person before the commencement of section 5 of the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**, under or in accordance with the procedure that applied before that commencement is to be taken, so far as is possible, to have been done or omitted to be done under or in accordance with the procedure applying on and after that commencement;
- (f) any order made by the Costs Court may only be reviewed or appealed against in accordance with this Act as amended by the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**.
- (3) This section applies irrespective of when the order for costs was made or the entitlement to costs arose in the proceeding to which the assessment, settling, taxing or reviewing of costs relates.
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146 Pending matters—other courts and VCAT

S. 146
inserted by
No. 78/2008
s. 9.

- (1) If, immediately before the commencement of section 5 of the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**, any matter in relation to the assessment, settling, taxing or reviewing of costs was pending before the County Court, the Magistrates' Court or VCAT and the court or VCAT (as the case requires) had not begun to hear that matter, on and from that commencement, the matter is to be heard and determined by the Costs Court in accordance with this Act as amended by the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**.
- (2) Subsection (1) applies irrespective of when the order for costs was made or the entitlement to costs arose in the proceeding in the County Court, the Magistrates' Court or VCAT, as the case requires, to which the assessment, settling, taxing or reviewing of costs relates.
- (3) If, immediately before the commencement of section 5 of the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**, any matter in relation to the assessment, settling, taxing or review of costs in the County Court, the Magistrates' Court or VCAT (as the case requires) was in existence and the court or VCAT had begun to hear that matter, on and from that commencement, the matter is to be heard and determined by the County Court, the Magistrates' Court or VCAT (as the case requires) as if the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008** had not been enacted.

S. 147
inserted by
No. 78/2008
s. 9.

147 Power to resolve transitional difficulties in proceedings

- (1) If any difficulty arises because of the operation of section 145 or 146(1) and (2) in relation to a matter to which either of those sections apply, the Costs Court constituted by a Costs Judge may make an order it considers appropriate to resolve the difficulty.
- (2) An order made under subsection (1)—
 - (a) may be made on application of a party to the proceeding or on the motion of the Costs Court, as the case requires; and
 - (b) has effect despite any provision to the contrary made by or under any Act.

S. 148
inserted by
No. 78/2008
s. 9.

**148 Regulations dealing with transitional matters—
Courts Legislation Amendment (Costs Court and
Other Matters) Act 2008**

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008** (including the repeals and amendments made by that Act).
- (2) Regulations made under this section may—
 - (a) have a retrospective effect to a day on or from the date that the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008** receives the Royal Assent; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of person; and

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- (d) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations made under this section.
- (3) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act, the **Charter of Human Rights and Responsibilities Act 2006** or the **Courts Legislation Amendment (Costs Court and Other Matters) Act 2008**) or in any subordinate instrument.
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No. 110 of 1986

Sch.

Sch.
amended by
Nos 55/1987
s. 57(1),
53/1988
s. 45(Sch. 3
item 75) (as
amended by
No. 47/1989
s. 23(2)),
124/1993
s. 4(4),
52/1994
s. 97(Sch. 3
items 31.1,
31.2),
repealed by
No. 51/2000
s. 11(d).

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 23 October 1986

Legislative Council: 5 December 1986

The long title for the Bill for this Act was "A Bill to amend and consolidate the law relating to the Supreme Court, to repeal the **Supreme Court Act 1958**, to amend the **Constitution Act 1975**, to amend various Acts in relation to procedure in the Supreme Court, to vary the law applicable to civil litigation in Victoria and for other purposes."

The **Supreme Court Act 1986** was assented to on 16 December 1986 and came into operation on 1 January 1987: section 2.

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2. Table of Amendments

This Version incorporates amendments made to the **Supreme Court Act 1986** by Acts and subordinate instruments.

Community Services Act 1987, No. 16/1987

Assent Date: 12.5.87
Commencement Date: Ss 4(3)(Sch. 1 item 21), 12 on 22.2.89: Government Gazette 22.2.89 p. 386; Sch. 2 item 11 on 15.3.89: Government Gazette 15.3.89 p. 587
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

State Trust Corporation of Victoria Act 1987, No. 55/1987

Assent Date: 27.10.87
Commencement Date: 2.11.87: Government Gazette 28.10.87 p. 2925
Current State: All of Act in operation

Subdivision Act 1988, No. 53/1988 (as amended by No. 47/1989)

Assent Date: 31.5.88
Commencement Date: 30.10.89: Government Gazette 4.10.89 p. 2532
Current State: All of Act in operation

Legal Profession Practice (Amendment) Act 1989, No. 35/1989

Assent Date: 6.6.89
Commencement Date: S. 23 on 20.9.89: Government Gazette 20.9.89 p. 2404
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Courts (Amendment) Act 1990, No. 64/1990

Assent Date: 20.11.90
Commencement Date: Ss 3, 4, 7, 8 on 1.1.91: Government Gazette 19.12.90 p. 3750; s. 14 on 18.11.91: Government Gazette 13.11.91 p. 3083
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Crimes (Sexual Offences) Act 1991, No. 8/1991

Assent Date: 16.4.91
Commencement Date: S. 19(1) on 5.8.91: Government Gazette 24.7.91 p. 2026
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

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Courts (Case Transfer) Act 1991, No. 43/1991

Assent Date: 18.6.96
Commencement Date: S. 2, Pt 9 (ss 39–41) on 1.8.91; rest of Act on 1.10.91:
Government Gazette 17.7.91 p. 1930
Current State: All of Act in operation

Health and Community Services (Further Amendment) Act 1993, No. 124/1993

Assent Date: 7.12.93
Commencement Date: S. 4(4) on 18.12.94: Government Gazette 15.12.94
p. 3308
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Financial Management Act 1994, No. 18/1994

Assent Date: 10.5.94
Commencement Date: Pt 1 (ss 1–8), ss 60, 61 on 10.5.94: s. 2(1); rest of Act
on 1.7.94: s. 2(2)
Current State: All of Act in operation

State Trustees (State Owned Company) Act 1994, No. 45/1994

Assent Date: 7.6.94
Commencement Date: Pt 1 (ss 1–3), s. 27 on 7.6.94: s. 2(1); rest of Act on
1.7.94: Special Gazette (No. 36) 23.6.94 p. 1
Current State: All of Act in operation

Catchment and Land Protection Act 1994, No. 52/1994

Assent Date: 15.6.94
Commencement Date: S. 97(Sch. 3 items 31.1, 31.2) on 15.12.94: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Constitution (Court of Appeal) Act 1994, No. 109/1994

Assent Date: 20.12.94
Commencement Date: Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on 7.6.95:
Special Gazette (No. 41) 23.5.95 p. 1
Current State: All of Act in operation

Courts (General Amendment) Act 1995, No. 9/1995

Assent Date: 26.4.95
Commencement Date: Ss 7(5), 11(1) on 27.4.95: Government Gazette
27.4.95 p. 973
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Judicial Remuneration Tribunal Act 1995, No. 22/1995

Assent Date: 16.5.95
Commencement Date: S. 20 on 28.9.95: Government Gazette 28.9.95 p. 2731
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

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Consumer Credit (Victoria) Act 1995, No. 41/1995

Assent Date: 14.6.95
Commencement Date: S. 62(Sch. 1 item 8) on 1.11.96: Government Gazette
29.8.96 p. 2274
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 80.1–80.10) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Courts and Tribunals (General Amendment) Act 1996, No. 64/1996

Assent Date: 17.12.96
Commencement Date: Pt 10 (ss 41–43), s. 48 on 17.12.96: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Evidence (Audio Visual and Audio Linking) Act 1997, No. 4/1997

Assent Date: 22.4.97
Commencement Date: S. 5 on 22.12.97: Government Gazette 18.12.97
p. 3612
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Law and Justice Legislation (Further Amendment) Act 1997, No. 84/1997

Assent Date: 2.12.97
Commencement Date: S. 53 on 1.8.98: s. 2(8)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Legal Practice (Amendment) Act 1997, No. 102/1997

Assent Date: 16.12.97
Commencement Date: S. 49(Sch item 5) on 16.12.97: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

State Trustees (Amendment) Act 1998, No. 15/1998

Assent Date: 28.4.98
Commencement Date: S. 11 on 1.8.98: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

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**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,
No. 52/1998** (as amended by No. 101/1998)

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 88) on 1.7.98: Government Gazette
18.6.98 p. 1512
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Magistrates' Court (Amendment) Act 1999, No. 10/1999

Assent Date: 11.5.99
Commencement Date: Ss 25, 26 on 11.5.99: s.2(1)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Public Prosecutions (Amendment) Act 1999, No. 62/1999

Assent Date: 21.12.99
Commencement Date: 22.12.99: s. 2
Current State: All of Act in operation

Courts and Tribunals Legislation (Further Amendment) Act 2000, No. 51/2000

Assent Date: 5.9.00
Commencement Date: Ss 10, 11 on 6.9.00: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 122) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

**Courts and Tribunals Legislation (Miscellaneous Amendment) Act 2000,
No. 78/2000**

Assent Date: 28.11.00
Commencement Date: S. 13 on 1.1.00: s. 2(2); ss 14–16 on 28.11.00: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

**Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001,
No. 11/2001**

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 71) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Gaming and Betting Act 1994**

Constitution (Supreme Court) Act 2001, No. 12/2001

Assent Date: 22.5.01
Commencement Date: S. 6 on 1.1.00: s. 2(2); s. 5 on 23.5.01: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Supreme Court Act 1986**

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Judicial and Other Pensions Legislation (Amendment) Act 2001, No. 19/2001

Assent Date: 29.5.01
Commencement Date: Ss 19–21 on 30.5.01: s. 2
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 107) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 59) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Supreme Court (Vexatious Litigants) Act 2003, No. 71/2003

Assent Date: 14.10.03
Commencement Date: 15.10.03: s. 2
Current State: All of Act in operation

Courts Legislation (Funds in Court) Act 2004, No. 30/2004

Assent Date: 1.6.04
Commencement Date: Ss 3, 4, 12 on 1.7.04: s. 2
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Courts Legislation (Judicial Appointments) Act 2004, No. 31/2004

Assent Date: 1.6.04
Commencement Date: S. 12 on 2.6.04: s. 2
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 194) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Courts Legislation (Judicial Conduct) Act 2005, No. 16/2005

Assent Date: 24.5.05
Commencement Date: S. 6 on 28.4.06: Special Gazette (No. 119) 28.4.06 p. 1
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Justice Legislation (Amendment) Act 2005, No. 17/2005

Assent Date: 24.5.05
Commencement Date: Ss 7, 8 on 1.9.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

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Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 103) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 34) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Courts Legislation Amendment (Judicial Education and Other Matters) Act 2007, No. 24/2007

Assent Date: 26.6.07
Commencement Date: Ss 3, 10(2)–(4) on 27.6.07: s. 2
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Criminal Procedure Legislation Amendment Act 2008, No. 8/2008

Assent Date: 18.3.08
Commencement Date: S. 9 on 1.7.08: s. 2(5)
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Infringements and Other Acts Amendment Act 2008, No. 9/2008

Assent Date: 18.3.08
Commencement Date: S. 44 on 1.7.08: Special Gazette (No. 172) 27.6.08 p. 1
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Constitution Amendment (Judicial Pensions) Act 2008, No. 23/2008

Assent Date: 3.6.08
Commencement Date: Ss 16–18 on 4.6.08: s. 2(1)
Current State: This information relates only to the provisions amending the **Supreme Court Act 1986**

Courts Legislation Amendment (Associate Judges) Act 2008, No. 24/2008
(as amended by No. 78/2008)

Assent Date: 3.6.08
Commencement Date: Ss 13–42, 73, 89 on 17.12.08: Special Gazette (No. 377) 16.12.08 p. 1
Current State: This information relates only to the provisions amending the **Supreme Court Act 1986**

Courts Legislation Amendment (Costs Court and Other Matters) Act 2008, No. 78/2008

Assent Date: 11.12.08
Commencement Date: Ss 3–9 on 31.12.09: s. 2(3)
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

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Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date: 10.2.09
Commencement Date: S. 37(Sch. 1 item 25) on 1.12.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Sheriff Act 2009, No. 9/2009

Assent Date: 24.3.09
Commencement Date: Ss 57–71 on 1.10.09: Government Gazette 1.10.09 p. 2539
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Courts Legislation Amendment (Judicial Resolution Conference) Act 2009, No. 50/2009

Assent Date: 8.9.09
Commencement Date: Ss 3–6 on 16.9.09: Special Gazette (No. 319) 16.9.09 p. 1—see **Interpretation of Legislation Act 1984**
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 116) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 48) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

Courts Legislation Miscellaneous Amendments Act 2010, No. 34/2010

Assent Date: 15.6.10
Commencement Date: S. 51 on 16.6.10: s. 2(3)
Current State: This information relates only to the provision/s amending the **Supreme Court Act 1986**

3. Explanatory Details

¹ S. 3(1) def. of *Chief Justice*: Sections 29, 30 of the **Constitution (Court of Appeal) Act 1994**, No. 109/1994 read as follows:

29 Proceedings before Full Court

- (1) The **Constitution Act 1975**, the **Supreme Court Act 1986** and the **Crimes Act 1958** and any other Act amended by this Act as respectively in force immediately before the commencement of this section continue to apply, despite the enactment of this Act, to a proceeding the hearing of which by the Full Court of the Supreme Court commenced before the commencement of this section.
- (2) If the Court of Appeal so orders, anything required to be done by the Supreme Court in relation to or as a consequence of a proceeding after the Full Court has delivered judgment in that proceeding, may be done by the Court of Appeal.

30 References to Full Court

A reference in an Act or an instrument made under an Act or in any other document to the Full Court of the Supreme Court or to the Supreme Court sitting as the Full Court is to be taken to include a reference to the Court of Appeal.

² S. 3(1) def. of *Court of Appeal*: See note 1.

³ S. 3(1) def. of *Full Court* (repealed): See note 1.

⁴ S. 3(1) def. of *Judge of Appeal*: See note 1.

⁵ S. 3(1) def. of *President*: See note 1.

⁶ S. 3(1) def. of *Trial Division*: See note 1.

⁷ Ss 8, 9 (*repealed*): See note 1.

⁸ Pt 2 Div. 2: See note 1.

⁹ Pt 2 Div. 2A: See note 1.

¹⁰ S. 20A: See note 1.

¹¹ S. 24A: Section 48 of the **Courts and Tribunals (General Amendment) Act 1996**, No. 64/1996 reads as follows:

48 Supreme Court Act 1986—transitional provision

- (1) The amendment made by section 43 to the **Supreme Court Act 1986** applies only to proceedings commenced after the commencement of that section.

¹² S. 25: See note 1.

¹³ S. 25(1)(eb): Section 12 of the **Evidence (Audio Visual and Audio Linking) Act 1997**, No. 4/1997 reads as follows:

12 Transitional provisions

- (1) An amendment made by a provision of this Act to the **Evidence Act 1958**, the **Supreme Court Act 1986**, the **County Court Act 1958**, the **Magistrates' Court Act 1989** or the **Children and Young Persons Act 1989** applies to a proceeding that is commenced to be heard on or after the twenty-first day after the commencement of that amendment, irrespective of when the proceeding was commenced or when any offence to which the proceeding relates is alleged to have been committed.
- (2) For the purposes of subsection (1) in its application to criminal proceedings—
- (a) a trial is commenced to be heard on arraignment of the accused person; and
 - (b) a hearing of a charge for an offence is commenced to be heard on the taking of a formal plea from the accused person.

¹⁴ S. 25(1)(ec): See note 15.

¹⁵ S. 75 (*repealed*): The following provision of the **Legal Practice Act 1996**, No. 35/1996 re-enacts section 75:

120 Review of assessment

A person may apply to the Supreme Court for an order for the review of the assessment of a bill of costs.